

Does Jewish Tradition Recognize
An Ethic Independent of Halakha?

"DOES THE TRADITION RECOGNIZE AN ETHIC independent of Halakha?" My subject is a simple factual question presumably calling for a yes-or-no answer. But what kind of Jew responds to salient questions with unequivocal monosyllables? Certainly not the traditional kind. Moreover, as formulated, this particular query is a studded minefield, every key term an ill-defined boobytrap. Who or what represents the tradition? Is the recognition *de facto* or *de jure*? How radical is the independence? Above all, what are the referents of ethic and Halakha? A qualified reply is obviously required.

Before presenting it in detail, however, I must confess that, at one level, an unequivocal response could be easily mounted. If the issue be reduced to natural morality in general, it need hardly be in doubt. "Rabbi Yohanan stated," says the Gemara in *Erubin*, "'If the Torah had not been given, we would have learnt modesty from the cat, [aversion to] robbery from the ant, chastity from the dove, and [conjugal] manners from the cock.'" The passage implies, first, that a cluster of logically ante-halakhic virtues exists; second, that these can be inferred from natural phenomena; and, probably, third—with Plato and against the Sophists—that these relate to *physis* rather than *nomos*, being not only observable through nature but inherent within it. Nor does the passage stand alone. The wide-ranging concept of *derekh eretz*²—roughly the equivalent of what

Coventry Patmore called "the traditions of civility"—points in the same direction. Its importance—again, not as descriptively synonymous with conventional conduct but as prescriptive *lex naturalis*—should not be underestimated. The Mishna cites Rabbi Eliezer b. Azaria's view that "without Torah, there is no *derekh eretz*, and without *derekh eretz*, there is no Torah";³ and the Midrash goes beyond this dialectical reciprocity, stating that "*derekh eretz* preceded Torah."⁴ In context, the primary reference is to chronological priority. Nevertheless, one senses that the common tendency—especially prevalent among the *mussar* masters—to include logical if not axiological precedence as well is a response to clearly present undertones; and, in this sense, the two texts are of course closely related. As the Maharal put it, "From this [i.e., the Mishna], we learn that *derekh eretz* is the basis of Torah which is," as explained by the Midrash, "'the way of the tree of life.'"⁵ Their link reinforces our awareness of the Rabbis' recognition of natural morality.

There is, however, little need to adduce proof texts. Even if one assumes that the Rabbis' awareness of natural law as an explicit philosophic and historical doctrine was limited—a point that Baer and Lieberman⁶ have debated—this would be, for our purposes, quite irrelevant. Indeed, even if one accepts the thesis, recently advanced by Marvin Fox,⁷ that the concept of natural law, in its classical and Thomistic sense, is actually inconsistent with rabbinic and *rishonim*'s thought, our problem is very little affected. The fact remains that the existence of natural morality is clearly assumed in much that is quite central to our tradition. Discussion of theodicy is predicated upon it. As Benjamin Whichcote,⁸ the seventeenth-century Cambridge Platonist pointed out, one cannot ask, "Shall, then, the judge of the whole earth not do justice?"⁹ unless one assumes the existence of an unlegislated justice to which, as it were, God Himself is bound; and which, one might add, man can at least apprehend sufficiently to ask the question. Or again, any attempt at rationalizing Halakha—an endeavor already found in *Hazal*, although much more fully elaborated by *rishonim*—presupposes

an axiological frame of reference, independent of Halakha, in the light of which it can be interpreted. It makes no sense to say, with Abaye, that "the whole of the Torah . . . is for the purpose of promoting peace,"¹⁰ unless the ethical value of peace can be taken for granted. The same holds true with respect to suggesting reasons for specific *mitzvot*. The intensity of Maimonides' efforts on this front is consistent with the position—advanced by Rav Saadia Gaon¹¹ and, in broad outline, adopted by Rabbenu Bahya¹² and probably by Maimonides¹³—that, given sufficient time, ability, and interest, the bulk of revealed Torah could have been naturally and logically discovered.

Any supposed traditional rejection of *lex naturalis* cannot mean, therefore, that apart from Halakha—or, to put it in broader perspective, that in the absence of divine commandment—man and the world are amoral. Nor does it entail a total relativism or the view (evidently ascribed to Maimonides by Professor Fox¹⁴) that social convention and/or utility are the sole criteria for action. At most, the Rabbis rejected natural law, not natural morality. They may conceivably have felt one could not ground specific binding and universal rules in nature but they hardly regarded uncommanded man as ethically neutral. They could have accepted, at the natural plane, the position summarized by Whitehead: "There is no one behaviour-system belonging to the essential character of the universe, as the universal moral ideal. What is universal is the spirit which should permeate any behaviour-system in the circumstances of its adoption. . . . Whether we destroy, or whether we preserve, our action is moral if we have thereby safeguarded the importance of experience so far as it depends on that concrete instance in the world's history."¹⁵ But they would surely have gone no further. One might contend, maximally, that natural morality is contextual rather than formal. It does, however, exist.

Inasmuch as the traditional acceptance of some form of natural morality seems to me beyond doubt, I could, were I

literally minded, simply answer our original question in the affirmative and close up shop. I presume, however, that its framers had something more in mind. If I read their concern rightly, the issue is not whether the tradition accords a non-halakhic ethic some theoretical standing by acknowledging its universal validity and provenance. Rather, it is whether now that, in *Hazal's* phrase, "Torah has been given and Halakha innovated,"¹⁶ that standing is of any practical significance to us; whether, for the contemporary Jew, an ethic independent of Halakha can be at all legitimate and relevant at an operative level.

At this plane, the issue resolves itself, in turn, into the problem both historical and analytic, of the relation of the pre- and post-Sinai orders, something akin to the question of the relation of nature and grace that has exercised so much Christian theology. On this score, traditional thought has focused upon two complementary points. The first is that natural morality establishes a standard below which the demands of revelation could not possibly fall. Thus, in proving that the killing of a gentile constitutes proscribed murder (although the Torah at one point speaks of a man killing "his fellow" [Exod. 21:14], i.e., a Jew), the *Mekhilta* explains: "Issi b. Akiba states: Prior to the giving of the Torah, we were enjoined with respect to bloodshed. After the giving of the Torah, instead of [our obligation's] becoming more rigorous [is it conceivable] that it became less so?"¹⁷ Moreover, this limit does not just reflect a general attitude but constitutes a definitive legal principle to be applied to specific situations. "Is there, then, anything," the Gemara asks, "which is permitted to the Jew but prohibited to the Gentile?"¹⁸ And it uses the implicit rhetorical denial to clinch a fine point in the course of intricate discussion.

The second point is most familiarly associated with a statement—frequently quoted and never, to the best of my knowledge, seriously challenged—made by Maimonides in his *Commentary on the Mishna*. Taking his cue from a Mishna in *Hullin* concerning the prohibition against eating the sciatic

nerve (*gid hanashe*), he goes on to postulate a general principle: "And pay attention to this great principle conveyed by this *mishna* as it states that it [i.e., the sciatic nerve] was 'proscribed from Sinai.' What you must know is that [as regards] anything from which we abstain or which we do today, we do this solely because of God's commandment, conveyed through Moses, not because God had commanded thus to prophets who had preceded him. For instance . . . we do not circumcise because Abraham circumcised himself and the members of his household but because God commanded us, through Moses, to become circumcised as had Abraham. . . . Take note of their [i.e., the Rabbis'] remark, '613 *mitzvot* were stated to Moses at Sinai'—and all of these are among those *mitzvot*.'"¹⁹ On this view, although the substance of natural morality may have been incorporated as a floor for a halakhic ethic, it has nevertheless, as a sanction, been effectively superseded.

At another level, however, we are confronted by an issue of far wider scope. The question is not what vestiges of natural morality continue to bind the Jew or to what extent receiving the Torah abrogated any antecedent ethic. It is rather whether, quite apart from ground common to natural and halakhic morality, the demands or guidelines of Halakha are both so definitive and so comprehensive as to preclude the necessity for—and therefore, in a sense, the legitimacy of—any other ethic. In translating my assigned topic into these terms (so strikingly familiar to readers of Hooker's *Ecclesiastical Polity*²⁰), I am of course taking two things for granted. I assume, first, that Halakha constitutes—or at least contains—an ethical system. This point has sometimes been challenged—most notably, in our day, by Professor Yeshayahu Leibowitz; but I do not think the challenge, albeit grounded in healthy radical monotheism, can be regarded seriously. The extent to which Halakha as a whole is pervaded by an ethical moment or the degree to which a specific *mitzva* is rooted, if at all, in moral considerations are no doubt debatable. If evidence were

necessary, we need only remember conflicting interpretations of the Mishna concerning "he who says, may your mercies encompass the bird's nest"²¹ and the attendant controversy²² over the rationalization of *mitzvot* en bloc. As for the outright rejection of the ethical moment, however, I cannot find such quasi-fideistic voluntarism consonant with the main thrust of the tradition. One might cite numerous primary texts by way of rebuttal but a single verse in Jeremiah should suffice: "But let him that glorieth glory in this, that he understandeth and knoweth Me, for I am the Lord who exercise mercy, justice, and righteousness, in the earth; for these I desire, saith the Lord."²³ The ethical element is presented as the reason for seeking knowledge of God, or, at the very least—if we translate *ki ani* as "that I am" rather than "for I am"²⁴—as its content. In either case, the religious and the ethical are here inextricably interwoven: and what holds true of religious knowledge holds equally true of religious, that is, halakhic, action. This fusion is central to the whole rabbinic tradition. From its perspective, the divorce of Halakha from morality not only eviscerates but falsifies it.

Second, I assume that, at most, we can only speak of a complement to Halakha, not of an alternative. Any ethic so independent of Halakha as to obviate or override it, clearly lies beyond our pale. There are of course situations in which ethical factors—the preservation of life, the enhancement of human dignity, the quest for communal or domestic peace, or the mitigation of either anxiety or pain—sanction the breach, by preemptive priority or outright violation, of specific norms. However, these factors are themselves halakhic considerations, in the most technical sense of the term, and their deployment entails no rejection of the system whatsoever. Admittedly, advocates of such rejection are no strangers to Jewish history; but they are hardly our present concern. However elastic the term *tradition* to some, it does have its limits, and antinomianism, which for our purposes includes the rejection of Torah law, lies

beyond them. As a prescriptive category, the currently popular notion of *averah lishmah* (idealistic transgression) has no halakhic standing whatsoever.²⁵

Essentially, then, the question is whether Halakha is self-sufficient. Its comprehensiveness and self-sufficiency are notions many of us cherish in our more pietistic or publicistic moments. For certain purposes, it would be comfortable if we could accept Professor Kahana's statement "that in Jewish civil law there is no separation of law and morals and that there is no distinction between what the law *is* and what the law *ought* to be."²⁶ If, however, we equate Halakha with the *din*; if we mean that everything can be looked up, every moral dilemma resolved by reference to code or canon, the notion is both palpably naive and patently false. The *Hazon Ish*, for one—and both his saintliness and his rigorous halakhic commitment are legend—had no such illusions. "Moral duties," he once wrote, "sometimes constitute one corpus with Halakhic rulings, and it is Halakha which defines the proscribed and permitted of ethical thought."²⁷ Sometimes—but not, evidently, always. There are moments when one must seek independent counsels. Recognition of this element rests upon both textual and practical evidence. In this setting, I presume little need be said with reference to the latter. Which of us has not, at times, been made painfully aware of the ethical paucity of his legal resources? Who has not found that the fulfillment of explicit halakhic duty could fall well short of exhausting clearly felt moral responsibility? The point to be emphasized, however—although this too, may be obvious—is that the deficiency is not merely the result of silence or ambiguity on the part of the sources. That may of course be a factor, requiring, as it does, recourse to inference and analogy to deal with the multitude of situations that, almost a priori, have not been covered by basic texts. The critical point, however, is that even the full discharge of one's whole formal duty as defined by the *din* often appears palpably insufficient.²⁸

Lest this judgment appear excessively severe, let me hasten to

add that it is precisely this point that is stressed by the second source of evidence: the textual. "Rav Yohanan said," the Gemara in *Baba Mezia* cites, "'Jerusalem was but destroyed because they [i.e., its inhabitants] judged [in accordance with] Torah law within it.' Well, should they rather have followed the law of the Magians?! Say, rather, because they based their judgments solely upon Torah law and did not act *lifnim mishurat hadin* [i.e., beyond the line of the law]."²⁹ Nahmanides was even more outspoken. In a celebrated passage, he explains that the general command, "Ye shall be holy" was issued because, the scope of the Torah's injunctions regarding personal conduct notwithstanding, a lustful sybarite could observe them to the letter and yet remain "a scoundrel with Torah license." The same holds true, he continues, with respect to social ethics. Hence, there, too, the Torah has formulated a broad injunction: "And this is the Torah's mode: to detail and [then] to generalize in a similar vein. For after the admonition about the details of civil law and all interpersonal dealings . . . it says generally, 'And thou shalt do the right and the good,' as it includes under this positive command justice and accommodation and all *lifnim mishurat hadin* in order to oblige one's fellow."³⁰ This position is further elaborated in Nahmanides' explication of the phrase, "the right and the good." He suggests, initially, that it may refer to the collective body of specific *mitzvot*, but then presents an alternative:

And our Rabbis³¹ have a fine interpretation of this. They said: "This refers to compromise and *lifnim mishurat hadin*."³² The intent of this is that, initially,³³ He had said that you should observe the laws and statutes which He had commanded you. Now He says that, with respect to what He has not commanded, you should likewise take heed to do the good and the right in His eyes, for He loves the good and the right. And this is a great matter. For it is impossible to mention in the Torah all of a person's actions toward his neighbors and acquaintances, all of his commercial activity, and all social and political institutions. So after He had mentioned many of them such as, "Thou shalt

not go about as a tale-bearer," "Thou shalt not take vengeance nor bear any grudge," "Thou shalt not stand idly by the blood of thy fellow," "Thou shalt not curse the deaf," "Thou shalt rise up before age,"³⁴ and the like, He resumes to say generally that one should do the good and the right in all matters, to the point that there are included in this compromise, *lifnim mishurat hadin*, and [matters] similar to that which they [i.e., the Rabbis] mentioned concerning the law of the abutter³⁵—even that which they said, "whose youth had been unblemished,"³⁶ or, "He converses with people gently,"³⁷ so that he is regarded as perfect and right in all matters.³⁸

These passages contain strong and explicit language and they answer our question plainly enough. Or do they? Just how independent of Halakha is the ethic that ennobles us above the "scoundrel with Torah license?" If we regard *din* and Halakha as coextensive, very independent. If, however, we recognize that Halakha is multiplanar and many dimensional; that, properly conceived, it includes much more than is explicitly required or permitted by specific rules, we shall realize that the ethical moment we are seeking is itself an aspect of Halakha. The demand or, if you will, the impetus for transcending the *din* is itself part of the halakhic corpus. This point emerges quite clearly from the primary rabbinic source for the concept of *lifnim mishurat hadin*:

"'And thou shalt show them the way'—this is the study of Torah; 'and the action they should take'—good conduct"—these are the words of Rabbi Yehoshua. Rabbi Eleazar of Modi'im says: "'And thou shalt show them'—teach them their life's course; 'the way'—this alludes to visiting the sick; 'they shall walk'—to burying the dead; 'therein'—to exercising kindness; 'and the action'—to *din* proper; 'which they shall do'—to *lifnim mishurat hadin*."³⁹

Regardless of whether we accept Rabbi Yehoshua's generalization or Rabbi Eleazar's more specific catalogue, the conjunction of either "good conduct" or *lifnim mishurat hadin* with

thoroughly mandatory elements clearly indicates it is no mere option.

The obligatory character of *lifnim mishurat hadin* stands revealed in the verses Nahmanides saw as related to it—"And thou shalt do the right and the good" and "Ye shall be holy." Neither was expressed in the indicative or the optative. With respect to the degree of obligation, however, *rishonim* admittedly held different views. Perhaps the most rigorous was held by one of the Tosafists, Rabbi Isaac of Corbeille. In his *Sefer Mitzvot Katan*, one of the many medieval compendia summarizing and enumerating *mitzvot*, he lists "to act *lifnim mishurat hadin*, as it is written, 'which they shall do' "⁴⁰ as one of the 613 commandments; and he goes on to cite the Gemara in *Baba Mezia* 30b as a proof text. Nahmanides did not go quite this far, as he does not classify *lifnim mishurat hadin* as an independent *mitzva*, as binding as *shofar* or *tefillin*. However, he does clearly posit it as a normative duty, incumbent upon—and expected of—every Jew as part of his basic obligation. Failure to implement "the right and the good" would obviously not be regarded as mere insensitivity to music of spiritual spheres. It is villainy—with the Torah's license—but villainy nonetheless.

Maimonides, however, does apparently treat *lifnim mishurat hadin* within a more rarefied context. After presenting his account of the golden mean in the opening chapter of *Hilkhot De'ot*, he concludes: "And the early pietists would incline their traits from the median path toward either extreme. One trait they would incline toward the farther extreme, another toward the nearer; and this is *lifnim mishurat hadin*."⁴¹ On this view, supralegal conduct appears as the hallmark of a small coterie of *hasidim*. Postulated as an aristocratic rather than as a popular ideal, *lifnim mishurat hadin* thus represents a lofty plane whose attainment is a mark of eminence but whose neglect cannot be faulted as reprehensible.

This is, of course, drastically different from Nahmanides and may be construed as indicating—contrary to my earlier statement—that, according to Maimonides, *lifnim mishurat hadin* is

purely optional; that it constitutes a kind of supererogatory extra-credit morality rather than an obligation, strictly speaking. Even if the argument is accepted, it would not render *lifnim mishurat hadin* wholly voluntary. It would merely shift it, to use Lon Fuller's⁴² distinction, from the "morality of duty" to the "morality of aspiration." But a Jew is also commanded to aspire. More important, however, this point has little impact upon our present broader purposes. The semantics and substance of the term *lifnim mishurat hadin* aside, Maimonides most certainly does not regard character development, ethical sensitivity, or suprallegal behavior as non-halakhic, much less as optional, elements. He simply subsumes them under a different halakhic rubric, the demand for *imitatio dei*. "And we are commanded," he writes, "to walk in these median paths, and they are the right and the good paths, as it is written, 'And ye shall walk in His ways.'"⁴³ The command refers, of course, to the golden mean rather than to *lifnim mishurat hadin*,⁴⁴ but we are confronted by the same normative demand for "the right and the good." The difference in terminology and source is significant, and were my present subject *lifnim mishurat hadin* per se I would discuss it in detail. For our purposes, however, Maimonides' and Nahmanides' views point in the same general direction: Halakha itself mandates that we go beyond its legal corpus. Were I to follow Fuller's⁴⁵ example and chart a spectrum running from duty to aspiration, I think that, on Maimonides' view, so-called non-halakhic ethics would be a couple of notches higher than for Nahmanides. Even after we have taken due account of the imperative of pursuing "His ways," we are still imbued with a sense of striving for an ideal rather than of satisfying basic demands. Nevertheless, the fundamental similarity remains. The ethic of *imitatio* is not just a lofty ideal but a pressing obligation. The passage previously cited from Maimonides explicitly speaks of our being "commanded" (*u'mezuvim anu*) to pursue the golden mean; and subsequent statements are in a similar vein. Thus, he asserts that Scripture ascribes certain attributes to God "in order to inform

[us] that they are good and right ways and [that] a person is obligated [*hayav*] to guide himself by them and to resemble Him to the best of his ability." Or again, he speaks of the attributes as constituting collectively "the median path which we are obligated [*hayavim*] to pursue."⁴⁶ Furthermore, it is noteworthy that in describing this ethic, Maimonides uses the very adjectives fastened upon by Nahmanides: "right and good." It can be safely assumed that, in principle, both recognize the imperative character of suprallegal conduct.⁴⁷

This exposition is admittedly partial. It rests upon two assumptions: first, that Maimonides recognizes an elitist ethic of the *hasid*, which though grounded in *din* nevertheless transcends it; second, that even the universal median ethic demands much that has not been specifically legislated and that according to Nahmanides' definition would be subsumed under *lifnim mishurat hadin*. I think both points emerge unequivocally from the account in *Mishneh Torah*; but in the earlier *Shemonah Perakim*⁴⁸ we do get a distinctly different impression. There, action *lifnim mishurat hadin* is not described as inherently superior to the golden mean but as a propaedeutic technique for attaining it. As in Aristotle's familiar example of straightening the bent stick,⁴⁹ one excess is simply used to correct another, this corresponding to standard medical practice. Second, Maimonides suggests that adherence to *din* proper produces the ideal balance so that deviation in any direction—except when dictated by the need to "cure" the opposite deficiency—becomes not only superfluous but undesirable. The brunt of this argument is directed against asceticism, and the excesses decried by Maimonides all concern material self-denial.⁵⁰ However, the list of examples adduced to prove the sufficiency of Torah law includes *mitzvot*, which relate to a whole range of virtues and vices: munificence, anger, arrogance, timidity. The net impact of the passage is therefore clearly to diminish somewhat the role of an independent ethic. Nevertheless, I am inclined to regard the later and fuller exposition in *Hilkhot De'ot* as the more definitive. The difference between

Maimonides and Nahmanides, though significant, does not therefore strike me as radical.

The variety of *rishonim*'s conceptions of a supralegal ethic may be judged from another perspective—in light of a very practical question: Is *lifnim mishurat hadin* actionable?⁵¹ The Gemara records at least one instance in which it was enforced. It tells a story of some porters who had been working for Rabba the son of Rav Huna and who had broken a barrel of wine while handling it. Inasmuch as they had evidently been somewhat negligent, the strict letter of the law would have held them liable for the damage; and since they had been remiss in performing their assigned task, it would have allowed them no pay. By way of guaranteeing restitution, Rabba held onto their clothes—which had apparently been left in his possession—as surety; whereupon

they came and told Rav [who in turn], told him, "Return their clothes to them." "Is this the *din*?" he asked. "Yes," he answered, "That thou mayest walk in the way of good men." He then returned their clothes, whereupon they said to him, "We are poor, we have labored all day, and [now] we are hungry and left with nothing!" [So] he said to him, "Go and pay their wages!" "Is this the *din*?" he asked. "Yes," he answered, "And keep the path of the righteous."⁵²

Moreover, in a similar passage in the Palestinian Talmud,⁵³ the story is not told with reference to an *amora*—from whom a higher ethical standard could presumably be exacted—but of an ordinary potter. However, the pathetic circumstances as well as the omission of the term *lifnim mishurat hadin*⁵⁴ suggest this may have been an isolated instance. In any event, *rishonim* divided on the issue. The Rosh held that "we do not compel to act *lifnim mishurat hadin*";⁵⁵ and inferring *de silentio*, I think it is safe to assume this was the prevalent view of the Spanish school. However, a number of Tosafists—notably, Ravya and Ravan⁵⁶—held such action could indeed be compelled. Of

course, such a position could not conceivably be held with reference to all supralegal behavior. *Din* has many ethical levels; and so, of necessity, must *lifnim mishurat hadin*. Surpassing laws grounded in, say, the concept that "the Torah has but spoken vis-a-vis the evil inclination"⁵⁷ is hardly comparable to transcending those with a powerful moral thrust. Nevertheless, the fact that some *rishonim* held *lifnim mishurat hadin* to be, in principle, actionable, indicates the extent to which it is part of the fabric of Halakha.

The possibility of such compulsion arises in yet another—and possibly surprising—context. *Hazal* states that *kofin al midat Sodom*, "we coerce over a trait of Sodom."⁵⁸ As defined by most *rishonim*, the term refers to an inordinate privatism that leaves one preoccupied with personal concerns to the neglect of the concerns of others; a degree of selfishness so intense that it denies the others at no gain to oneself. There need be no actual spite. Simple indifference may suffice. Nor is *midat Sodom*—despite the severity of the term—confined to what popular morality might regard as nastiness or mindless apathy. One view in the Mishna—the definitive view according to most *rishonim*—subsumed under it the attitude that "mine is mine and yours is yours."⁵⁹ It thus broadly denotes obsession with one's private preserve and the consequent erection of excessive legal and psychological barriers between person and person.

This posture the Rabbis both condemned and rendered actionable. To the best of my knowledge, however, *Hazal* nowhere explicitly formulated the basis of this *halakha*. I would therefore conjecture that it is most likely subsumed under *lifnim mishurat hadin*; and if this be so, we have here a striking instance of its scope and force. Admittedly, most of us do not instinctively associate the two concepts. However, this is simply another manifestation of our failure to grasp the full range of supralegal obligation. So long as *lifnim mishurat hadin* is regarded as the sphere of supererogatory extracredit morality, it can hardly include rejection of actions so reprehensible as to earn the opprobrium of *midat Sodom*. However, once we ap-

precipitate its true scope—from rigorous obligation to supreme idealism—we should have little difficulty with the association.

The Maharal, at any rate, had none—precisely because he emphasized the centrality and force of *lifnim mishurat hadin*. This emphasis was clearly expressed in the course of his discussion of *gemilut hasadim* (loosely translatable as “benevolent action”). “The antithesis of this trait,” he writes, “is [a person] who does not want to do any good toward another, standing upon the *din* and refusing to act *lifnim mishurat hadin*.” This virtual equation of *hesed* and *lifnim mishurat hadin* then becomes the basis for an explanation of the Gemara’s comment regarding the destruction of Jerusalem. This was not, the Maharal explains, retributive punishment. It was a natural consequence, as a wholly legalistic community simply cannot exist. Supralegal conduct is the cement of human society. Its absence thus results in disintegration: “Standing upon *din* entails ruin.” Likewise, excessive commitment to law invites disaster on a broader scale, for, by correspondence, it both recognizes and enthrones natural law as cosmic sovereign, thus rejecting the providential grace of miracles that deviates from it. Finally, rejection of *lifnim mishurat hadin* is defined as the hallmark of Sodom whose evil, although it issued in corruption, nevertheless was grounded in total fealty to legal nicety: “For this was their nature, to concede nothing, as the Rabbis o.b.m. said, ‘Mine is mine and yours is yours—this is the trait of Sodom.’ And they have everywhere said, *kofin al midat Sodom*.”⁶⁰ Identification of *lifnim mishurat hadin* as the source of such coercion is here fairly explicit; and the conjunction of its denial with the biblical apotheosis of malice reflects the importance that the Maharal attached to supralegal conduct.

This exposition is open to two obvious objections. First, if *lifnim mishurat hadin* is indeed obligatory as an integral aspect of Halakha, in what sense is it supralegal? More specifically, on the Ravva’s view, what distinguishes its compulsory elements from *din* proper? Secondly, isn’t this exposition mere sham? Having conceded, in effect, the inadequacy of the halakhic ethic,

it implicitly recognizes the need for a complement, only to attempt to neutralize this admission by claiming the complement had actually been a part of Halakha all along, so that the fiction of halakhic comprehensiveness could be saved after all. Yet, the upshot of this legerdemain does not differ in substance from the view that the tradition does recognize an ethic independent of Halakha—so why not state this openly?

These are sound objections; but they do not undermine the position I have developed. They only stimulate its more precise definition. As regards the first question, a comment made, interestingly, by the Ravva, points toward the solution. In explaining why Rav Nahman had not compelled the finder of a lost object whose owner had despaired of its recovery to return it—legally, he is free to retain it but the Gemara⁶¹ notes that it is returnable, *lifnim mishurat hadin*—he suggests that, in this instance, “perhaps the finder was poor while the object’s owner was well-to-do.”⁶² Within the framework of *din*, this would of course be a startling distinction. Powerful as is the obligation of the affluent to help the relatively disadvantaged, it is a general responsibility to a group and enforceable only through a third party, the community and its *beth din*. Although many *poskim*⁶³ regard charity as a legal and collectible debt rather than a mere act of grace, an individual pauper certainly has no right—except with respect to one type of *ma’aser ani* (tithe for the poor)⁶⁴—to seize his more affluent neighbor’s property. That such a point could be made with reference to *lifnim mishurat hadin* suggests its crucial distinction from *din*. It is less rigorous not only in the sense of being less exacting with respect to the degree and force of obligation—and there are times, as has been noted, when it can be equally demanding—but in the sense of being more flexible, its duty more readily definable in light of the exigencies of particular circumstances. This has nothing to do with the force of obligation. Once it has been determined that, in a given case, realization of “the right and the good” mandates a particular course, its pursuit may conceivably be as imperative as the performance of a *din*. However,

the initial determination of what moral duty requires proceeds along different lines in the respective sphere. *Din* consists of a body of statutes, ultimately rooted in fundamental values but which at the moment of decision confront the individual as a set of rules. It is of course highly differentiated, numerous variables making the relevant rule very much a function of the situation. Yet the basic mode is that of formulating and defining directives to be followed in a class of cases—it is precisely the quality of generality that constitutes a rule—and applying them to situations marked by the proper cluster of features. Judgments are essentially grounded in deductive, primarily syllogistic reasoning. Metaphors that speak of laws as controlling or governing a case are therefore perfectly accurate.

Lifnim mishurat hadin by contrast, is the sphere of contextual morality. Its basis for decision is paradoxically both more general and more specific. The formalist is guided by a principle or a rule governing a category of cases defined by *n* number of characteristics. The more sensitive and sophisticated the system, the more individuated the categories. Whatever the degree of specificity, however, the modus operandi is the same: action grows out of the application of class rules to a particular case judged to be an instance of that class or of the interaction of several classes, there being, of course principles to govern seemingly hybrid cases as well. The contextualist, by contrast, will have nothing to do with middle-distance guidelines. He is directed, in theory, at least, only by the most universal and the most local of factors—by a minimal number, perhaps as few as one or two, of ultimate values, on the one hand, and by the unique contours of the situation at hand, on the other. Guided by his polestar(s), the contextualist employs his moral sense (to use an outdated but still useful eighteenth-century term) to evaluate and intuit the best way of eliciting maximal good from the existential predicament confronting him. A nominalist in ethics, he does not merely contend that every case is phenomenologically different. That would be a virtual truism. He argues that the differences are generally so crucial that no

meaningful directives can be formulated. Only direct ad hoc judgment, usually—although this is logically a wholly separate question—his own, can serve as an operative basis for decision. Between ultimate value and immediate issue, there can be no other midwife.

It goes without saying that Judaism has rejected contextualism as a self-sufficient ethic. Nevertheless, we should recognize equally that it has embraced it as the modus operandi of large tracts of human experience. These lie in the realm of *lifnim mishurat hadin*. In this area, the halakhic norm is itself situational. It speaks in broad terms: “And thou shalt do the right and the good”; “And thou shalt walk in His ways.” The metaphors employed to describe it—“the ways of the good” or “the paths of the righteous”—denote purpose and direction rather than definitively prescribed acts. And the distinction from *din* is, finally, subtly recognized in the third source we have noted: “‘And the action’—this is the line of *din*; ‘that they shall take’—this is *lifnim mishurat hadin*”—the reified static noun being used in relation to one and the open-ended verb in relation to the other. In observing *din*, the Jew rivets his immediate attention upon the specific command addressed to him. His primary response is to the source of his prescribed act. With respect to *lifnim mishurat hadin*, he is, “looking before and after,” concerned with results as much as with origins. His focus is axiological and teleological.

Quite apart from the severity of obligation, therefore, there is a fundamental difference between *din* and *lifnim mishurat hadin*. One, at a more minimal level, imposes fixed objective standards. The demands of the other evolve from a specific situation; and, depending upon the circumstances, may vary with the agent.

This point was clearly recognized by a late *rishon*, author of a fourteenth-century commentary on the *Mishneh Torah*. In explaining why Maimonides both expanded and differentiated the concept of *dina debar mezra*, making it legally enforceable in some cases but only obligatory *ante facto* in others,⁶⁵ the Mag-

gid Mishneh both echoes Nahmanides and goes beyond him. "The point of *dina debar mezra*," he comments,

is that our perfect Torah has laid down [general] principles concerning the development of man's character and his conduct in the world; as, in stating, "Ye shall be holy,"⁶⁶ meaning, as they [i.e., the Rabbis] said, "Sanctify yourself with respect to that which is permitted you"⁶⁷—that one should not be swept away by the pursuit of lusts. Likewise, it said "And thou shalt do the right and the good," meaning that one's interpersonal conduct should be good and just. With regard to all this, it would not have been proper to command [about] details. For the Torah's commands apply at all times, in every period, and under all circumstances, whereas man's characteristics and his behavior vary, depending upon the time and the individual. The Rabbis [therefore] set down some relevant details subsumed under these principles, some of which they made [the equivalent of] absolute *din* and others [only] *ante facto* and by way of *hasidut*⁶⁸—all [however] ordained by them. And it is with reference to this that they said, "The words of consorts [i.e., the Rabbis] are more beloved than the wine of Torah, as stated, 'For thy love is better than wine.'"⁶⁹

The *Maggid Mishneh* is certainly not espousing an exclusively relativistic or situational ethic. No conscientious halakhist could even countenance the possibility. He is, rather, defining the character of *dina debar mezra*, specifically, and of "the right and the good," generally; and, beyond this, noting that, from a certain perspective, the greater flexibility and latitude that characterize this class of rabbinic legislation gives it an edge, as it were, over the Torah's absolutely rigorous law. The concluding remark is of considerable interest in its own right. Comparisons aside, however, the passage clearly reveals the respective characters of *din* and *lifnim mishurat hadin*.

The second objection—that I am either playing games or stalking a Trojan horse, and possibly both—can likewise be parried. Whether supralegal behavior is regarded as an aspect of—

and in relation to—Halakha does matter considerably. The difference, moreover, concerns not so much the prestige of Halakha as the substance of that behavior. And this in three respects. First, integration within Halakha helps define the specifics of supralegal conduct. One of its principal modes entails the extension of individual *dinim* by (1) refusal to avail oneself of personal exemptions; (2) disregard of technicalities when they exclude from a law situations that morally and substantively are clearly governed by it; and (3) enlarging the scope of a law by applying it to circumstances beyond its legal pale but nevertheless sufficiently similar to share a specific *telos*. All three, however, constitute, in effect, the penumbra of *mitzvot*. To this end, relation to a fundamental law, which posits frontiers and points a direction, is obviously essential.

Not all supralegal conduct bears this character, however. It may, alternatively, either fill in a moral lacuna at a lower level—*kofin al midat Sodom* is an excellent example—or, at a higher plane, aspire to attainments discontinuous with any specific practical norm. Even within these nether and upper reaches, however, relation to the overall halakhic system is important both for the definition of general goals and by way of molding orientation, context, and motivation. Even while closing an interstice or reaching for the stars, one does not move in a vacuum. The legal corpus is here, to adapt Ben Jonson's remark about the ancients, more guide than commander; but it is vital nonetheless.

Finally, the halakhic connection is relevant at a third level, when we are concerned with an ethic neither as decisor of specific actions nor as determinant of a field of values but as the polestar of life in its totality. Halakhic commitment orients a Jew's whole being around his relation to God. It is not content with the realization of a number of specific goals but demands personal dedication—and not only dedication but consecration. To the achievement of this end, supralegal conduct is indispensable. Integration of the whole self within a halakhic framework becomes substantive rather than semantic insofar as it is

reflected within the full range of personal activity. Reciprocally, however, that conduct is itself stimulated by fundamental halakhic commitment.

Let me emphasize that in speaking of the investiture of an independent ethic with a halakhic mantle, I hold no brief for terminology per se. I would readily concede that we can, if we wish, confine the term *halakha* to *din* and find some other term to cover what lies beyond. Moreover, such limitation would probably be consonant with the use of the term *halakha* by *Hazal*. In classical usage, the term *halakha*—properly lower-case and commonly used without the definite article—generally denotes a specific rule (hence, the frequent appearance of the plural, *halakhot*) or, in broader terms, the body of knowledge comprising Torah law. It does not convey the common contemporary sense in which it is roughly the equivalent of halakhic Judaism—the *unum necessarium* of the Jew committed to tradition, in which, as a commanding presence, magisterial to the point of personification, it is regarded as prescribing a way of life; in which, as with the term *Torah* in *Hazal*, Halakha and its Giver frequently become interchangeable. Hence, we ought not be surprised if we find that *Hazal* did differentiate between *halakhot* and other normative elements. Thus, in commenting upon the verse, “If thou wilt diligently hearken to the voice of the Lord thy God, and wilt do that which is right in His eyes, and wilt give ear to His commandments, and keep all his statutes.”⁷⁰ the *Mekhilta* notes:

“‘And wilt do that which is right in His eyes’—these are wonderful *agadot* which hold every one’s ear; ‘and wilt give ear to His commandments’—these are orders; ‘and keep all His statutes’ these are *halakhot*.” . . . These are the words of Rabbi Yehoshua. Rabbi Eleazar of Modi’im says . . . “‘And wilt do that which is right in His eyes’—this is commercial dealing. [The verse thus] teaches [us] that whoever deals honestly and enjoys good relations with people is regarded as having realized the whole Torah. ‘And wilt give ear to His commandments’—these

are *halakhot* ‘and keep all His statutes’—these are [prohibitions concerning] forbidden sexual relations.”⁷¹

This exposition I understand readily and, semantics apart, find fully consistent with the view I have outlined above. At most, it requires that we adjust our customary terminology somewhat and then issue with the thesis that traditional halakhic Judaism demands of the Jew both adherence to Halakha and commitment to an ethical moment that though different from Halakha is nevertheless of a piece with it and in its own way fully imperative.⁷² What I reject emphatically is the position that, on the one hand, defines the function and scope of Halakha in terms of the latitude implicit in current usage and yet identifies its content with the more restricted sense of the term. The resulting equation of duty and *din* and the designation of suprallegal conduct as purely optional or pietistic is a disservice to Halakha and ethics alike.

In dealing with this subject, I have, in effect, addressed myself both to those who, misconstruing the breadth of its horizons, find the halakhic ethic inadequate, and to those who smugly regard even its narrower confines as sufficient. In doing so, I hope I have presented my thinking clearly. But for those who prefer definitive answers, let me conclude by saying: Does the tradition recognize an ethic independent of Halakha? You define your terms and take your choice.

1. *Erubin* 100b. Soncino translates “we could have learnt,” but I think “would” is more accurate. Rabbenu Hananel, it might be noted, has *lamadnu*.

2. In the passage cited from the *Gemara* in *Erubin*, the term has a rather narrow meaning, referring, in context, to proper conjugal gallantry. Elsewhere, however, it clearly denotes far more, sometimes civility or culture generally. The *Mahzor Vitry*, commenting on *Abot*, 3:17 (ed. Horowitz, p. 517), renders it as *nourriture*, and the Maharal of Prague spells out its latitude quite clearly: “The things that are *derekh erez* are all ethical matters included in *Abot*, those mentioned in the Talmud, and all other ethical matters. It is that conduct which is right and fitting toward (possibly, “in the eyes of”) people; and failure to pursue some of its elements is sinful and a great

transgression" (*Netivot Olam*, "Netiv Derekh Eretz," chap. 1). See also N. S. Greenspan, *Mishpat Am Haaretz* (Jerusalem, 1946), pp. 1-5; the references cited in Boaz Cohen, *Law and Tradition in Judaism* (New York, 1959), p. 183n.; and *Encyclopedia Talmudit*, Vol. 7, pp. 672-706. One might add that the flexible range of *derekh eretz* parallels those of curteisie and manners in their Middle English and Elizabethan senses.

3. *Abot*, 3:17. Cf. also *ibid.*, 2:2, and *Tosafot Yeshanim*, *Yoma* 85b, s.v. *teshuva*.

4. *Vayikra Rabba*, 9:3 (*Tzav*); cf. *Tanna Debei Eliyahu Rabba*, chap. 1.

5. *Netivot Olam*, "Netiv Derekh Eretz," chap. 1.

6. See Saul Lieberman, "How Much Greek in Jewish Palestine?," in *Biblical and Other Studies*, ed. A. Altmann (Cambridge, Mass., 1963), pp. 128-29.

7. M. Fox, "Maimonides and Aquinas on Natural Law," *Dine' Israel* 3 (1972): 5-27. Cf. also Ralph Lerner, "Natural Law in Albo's *Book of Roots*," in *Ancients and Moderns*, ed. Joseph Cropsey (New York, 1964), pp. 132-44.

8. The statement appears in one of his *Discourses* but the exact reference eludes me, at present.

9. *Gen.* 18:25.

10. *Gittin* 59b. This passage was cited by Maimonides in the concluding lines of *Sefer Zemanim*: "Great is peace as the whole Torah was given in order to promote peace in the world, as it was stated: 'Her ways are the ways of pleasantness and all her paths are peace'" (*MT, Hannuka*, 4:14). There may be a shift in focus, however, as Maimonides dwells upon the reason for giving the Torah while the Gemara may conceivably refer to its content and the telos to which its inner logic leads. In either case, Torah is regarded as serving the interests of peace and therefore, presumably, as axiologically ancillary to it. In the *Guide* (III: 27; and cf. III: 52), this nexus is reversed. Peace and social stability are subsumed under the welfare of the body that is merely a condition for attaining man's ultimate perfection via the soul's intellectual apprehension. There is no contradiction, however, as the passage in *Mishneh Torah* probably refers to the specific corpus of revealed Torah and the regimen prescribed by it rather than, as in other contexts, to the full range of spiritual perception.

11. See *Ha'emunot Vehadeot*, "Introduction," sec. vi; and cf. III: iii.

12. See *Hovot Halevavot*, III: i-iii.

13. This point is not explicitly developed in Maimonides' discussions of prophecy, which focus upon its nature rather than upon the need for it. However, it is implicit in the substance and tone of numerous passages concerning the Torah's revelation and dovetails with Maimonides' faith in the spiritual capacity of singular individuals, on the one hand, and his conviction about the average person's indolence, on the other.

14. See Fox, "Maimonides and Aquinas on Natural Law," pp. 15-17.

15. Alfred North Whitehead, *Modes of Thought* (New York, 1938), p. 20.

16. *Shabbat* 135b.

17. *Mishpatim*, *Massekhta Dinezikin*, iv (ed. Horowitz-Rabin), p. 263.

18. *Hullin* 33a; cf. *Sanhedrin* 59a.

19. *Perush Ha-Mishnayot*, *Hullin*, 7:6. The talmudic citation is from *Makot* 23b.

20. See, especially, Book 2.

21. *Berakhot* 5:3 and *Megilla* 4:9.

22. See Maimonides, *Guide*, III:26, III:31, and III:48; Nahmanides' comment on *Deut.* 22:7; and Maharal, *Tiferet Israel*, chaps. 5-7. See also Yitzhak Heinemann, *Taamei Ha-Mitzvot Besafrut Yisrael* (Jerusalem, 1954), Vol. 1, pp. 46-128.

23. *Jer.* 9:23.

24. The J.P.S. translation, following A.V., has "that I am," an interpretation implicitly supported by *Ikkarim*, 3:5. However, Radak is closer to "for I am," which I am more inclined to accept. The Septuagint's *hoti* is inconclusive but the Vulgate's *quia* parallels "for." For a discussion of the verse, see Maimonides, *Guide*, III: 54.

25. The term *avera lishma* does, of course, appear in the Gemara that cites a statement by Rabbi Nahman b. Yitzhak that "an *avera lishma* is greater than a *mitzva* performed with an ulterior motive" (*Nazir* 23b and *Horayot* 10b). However, this apparent priority of telos and motivation over formal law has no prescriptive or prospective implications. At most, it means that, after the fact, we can sometimes see that a nominal violation was superior to a licit or even required act; but it gives no license for making the jump. Moreover, in the case at hand—Yael's sexual relations with Sisera—most likely there was no formal violation. Most *rishonim* assume that a woman, inasmuch as she can be regarded as passive during coitus, is not obligated to undergo martyrdom rather than engage in incest or adultery (see *Sanhedrin* 74b). This is true even when she is threatened but not assaulted, as it is the element of willful involvement that defines her sexual participation as a human action. Hence, when motivated by the need to save her people, Yael's relations with Sisera, even though she may have initially seduced him, may very well be regarded as passive and therefore no formal violation whatsoever; see *Tosafot*, *Yebamot* 103a, s.v. *veha* and *Yoma* 82b, s.v. *ma*. The term *avera* refers, then, to an act which is proscribed under ordinary circumstances and yet, its usual sinful character notwithstanding, here becomes superior to a *mitzva*. Likewise, Raba's remark that the verse, "In all thy ways know Him and He will direct thy paths" (*Prov.* 3:6), is to be understood "even with regard to a matter of *avera*" (*Berakhot* 63a), may refer to acts that are ordinarily forbidden but in certain cases have formal dispensation. See, however, Maimonides, *Shemonah Perakim*, chap. 5.

26. K. Kahana, *The Case for Jewish Civil Law in the Jewish State* (London, 1960), p. 28n (his italics).

27. *Hazon Ish: Emunah Uvitahon* (Jerusalem, 1954), p. 21. The point is

illustrated by a discussion of economic competition, aspects of which are very differently evaluated, depending upon their being regarded as aggressive or defensive; and this, in turn, is a function of legal right. Of course, in such a case, the moral duties include many outright *dinim*. However, the implication of the sentence stands and is clearly accepted in the following chapter, pp. 44–46. Cf., however, p. 49.

28. Many of the leaders of the *mussar* movement, who criticized what they regarded as the ethical shortcomings of their contemporary Torah community, often ascribed many of these failings to the fact that the relevant halakhot had been insufficiently developed. They therefore urged the fuller analysis and exposition of these categories as a remedy; see J. D. Epstein, *Mitzvot Ha-bayit* (New York, 1966), pp. 34–57. I am inclined to think that while such neglect could be a factor in causing the alleged failings, its importance—and the potential for resolution via fuller halakhic exposition—has been exaggerated by the *mussar* movement.

29. *Baba Mezia* 30b.

30. Lev. 19:2.

31. In his edition of Nahmanides' commentary, *Perush Ha-Ramban al Ha-Torah* (Jerusalem, 1960), II, 376n., C. B. Chavel notes that no extant source of this comment is known.

32. Rashi, Deut. 6:18, comments, "This is compromise *lifnim mishurat hadin*." This reading—he is presumably quoting the same source as Nahmanides—narrows the scope of the remark considerably.

33. In the preceding verse, 6:17.

34. The verses cited are from Lev. 19:16, 18, 16, 14, and 32, respectively.

35. A Rabbinic ordinance that requires a seller to give first option to any prospective customer who already owns property adjacent to that to be sold; see *Baba Mezia* 108.

36. *Ta'anit* 16a.

37. *Yoma* 86a.

38. Deut. 6:18.

39. *Mekhilta, Yithro, Massekhta D'Amalek*, ii (ed. Horowitz-Rabin), p. 198. The phrase I have rendered as "their life's course" is *bet hayehem*. Rashi interprets it variously as "the study of Torah" (*Baba Kama* 100a, s.v. *bet*) and as "a trade from which to derive a livelihood" (*Baba Mezia* 30b, s.v. *zeh*).

40. *Semak*, 49.

41. *MT, Hilkhot De'ot*, 1:5.

42. See his *The Morality of Law* (New Haven, 1964), pp. 5–9; cf. also A. D. Lindsay, *The Two Moralities* (London, 1940), passim.

43. *De'ot*, 1:5.

44. Maimonides thus distinguishes here between "the right and the good" and *lifnim mishurat hadin*. Elsewhere, however, he seems to identify them.

See Rabbi M. Krakowski's commentary, *Avodat Hamelekh* (Vilna, 1931), *ad loc.*, and S. Rawidowicz, *Iyyunim Bemahashevet Yisrael* (Jerusalem, 1969), I, 430–31.

45. See Fuller, *The Morality of Law*, pp. 9–13.

46. *De'ot*, 1:6 and 1:7, respectively.

47. See, however, *Avodat Hamelekh, De'ot* 1:5, who expresses some uncertainty on this point.

48. See chap. 4; cf. also *Perush Ha-Mishnayot Abot* 4:4.

49. See *Nic. Eth.*, 1109b.

50. Most involve actual physical deprivation so that the passage largely anticipates *MT, De'ot*, 3:1. However, it also criticizes excessive munificence; cf. *MT, Arakhin* 8:13.

51. There is of course no question about practices such as *dina debar mezia* (i.e., "the law of the abutter") that were instituted by Hazal on the basis of the principle of "the right and the good;" see *Baba Mezia* 108. The question concerns situations that have not been singled out for rabbinic prescription.

52. *Baba Mezia* 83a. The citations are from Prov. 2:20.

53. *P.T., Baba Mezia* 6:6.

54. However, Rashi, *ad loc.*, does use the term.

55. *Pesakim, Baba Mezia* 2:7.

56. This view was advanced by the author of the *Mordecai, Baba Mezra*, sec. 327, who cites his predecessors, the Ravan and the Ravva as support, but it is usually associated with the latter and cited in his name by *Hagahot Maimuniyot, Hilkhot Gezela*, 11:3. The Ravva's original text is no longer extant, however. The reference to the Ravan is presumably to *Sefer Ravan* (ed. Ehrenreich), II: 198, but that passage, while it unequivocally states that the finder, in the case in question, is fully obligated to return the lost object, says nothing of juridic coercion. Perhaps the *Mordecai* drew upon another, more explicit source. See also Z. Y. Meltzer, "Lifnim Mishurath Hadin," in *Mizkeret: In Memory of Rabbi I. H. Herzog* (Jerusalem, 1962), pp. 310–15.

57. *Kiddushin* 21b.

58. *Ketubot* 103a. For an analysis of this *halakha*, see my "Leverur kofin al midat Sodom," in *Hagut Ivrit Be'Amerika*, ed. M. Zohori et al. (Tel Aviv, 1972), Vol. 1, pp. 362–82.

59. *Abot* 5:10.

60. *Netivot Olam, "Netiv Gemilut Hasadim,"* chap. 5.

61. See *Baba Mezia* 24b.

62. Quoted in *Mordecai, Baba Mezia*, sec. 327.

63. See *Ketzot Ha-Hoshen*, 290:3.

64. See *Tosafot, Yebamot* 100a, s.v. *ma'aser* and Maimonides, *Matnot Aniyim*, 1:8.

65. The *halakha* in question concerns criteria for assignment of priorities

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among various prospective purchasers, none of whom is an abutter. In such cases, Maimonides states that while "this, too, is included within the good and the right," the priority is not enforceable, "for the Rabbis only commanded regarding this by way of *hasidut*, and it is a virtuous soul which acts thus" (*Shekhenim*, 14:5).

66. Lev. 19:2.

67. *Yebamot* 20a.

68. I know of no satisfactory English equivalent for this term. It suggests a blend of spiritual elevation and refinement with scrupulousness and pietism. Perhaps "saintliness" comes closest, though more in the Jamesian than in the popular sense, of total selflessness or other-worldiness; but that too, has too ethereal a ring.

69. *Shekhenim* 14:5. The concluding talmudic quotation is from *Avoda Zara* 34a, the verse from Cant. 1:3.

70. Exod. 15:26.

71. *Beshalah. Massekhta D'Vayissa*, i (ed. Horowitz-Rabin), pp. 157-58; see also the notes there.

72. This is pointed up by the fact that Nahmanides (Exod. 15:26) quotes Rabbi Eleazar's statement and yet, in the same passage, refers the reader to his subsequent discussions of "the right and the good."