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Halakha and Agada
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A B S T R A C T

The traditional hermeneutic ruling not to use reports and legends for questioning edicts and rules signifies the tacit recognition, contrary to explicit statement, of the part of the Rabbinical leadership, of the inevitability of change in diverse aspects of Jewish life. This may invite criticism of the conduct of the ancient leadership, which, as always, is questionable and useless. Rather, an open discussion should be instituted on the proposal to make future changes openly, not surreptitiously; particularly the change from surreptitious changes to open changes is better done openly.

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1. Jewish Studies and Rabbinic Studies

The modern field of Jewish Studies was inaugurated by Leopold Zunz early in the nineteenth century, as a historical survey of

Jewish literature in the broadest sense, including Jewish Law, commentaries, liturgy, philosophy, etc. He left his stamp on the field to date, both in the breadth and scope of the subject and in its character. As to the breadth and scope, even his own work, relatively slender and sketchy as it was, is simply unbelievably huge. These days the requirements from a scholar in this field are staggering; to be taken seriously in it one needs a few qualifications, each of which requires a lifetime of devotion to scholarship. First, the major required competence is in Jewish Law-to the degree attainable only by constant exposure to it from early childhood (see Lieberman, 1974, p. 92; Lieberman takes relish, it seems, in showing that even the leading Jewish historian Fritz Baer was not up to this). Second, one must be a philologist at home in the classics, able to compare Hebrew, Greek and Latin texts, translations, common expressions, legal terminologies, inscriptions, amulets, and more. Third, one must be proficient in a few ancient Semitic languages and dialects. Fourth, one must be familiar with the swelling secondary literatures in diverse modern languages from the writings of Zunz onward. Fifth, one has to be familiar with Church history, the works of the Church Fathers, Canon Law and Church rites. Sixth and finally, one has to exhibit sufficient command of world history, political, social and cultural, as well as of snippets of archeology, art history and

whatever else may turn up as relevant to one or another item under scrutiny. It is clear that only few individuals qualify, and they form an elite club like the world's greatest artistic virtuosi.

The disadvantage of such elitism is that the elite can play with ideas beyond the comprehension, let alone the critical appraisal, of ignorant outsider like the writer of these lines. Yet as their labors signify for us ignoramuses, we must do our miserable best to comprehend the methods, general criteria and underlying principles involved in their awesome researches, as well as their major conclusions.

Remarkably, Zunz has laid the ground rules in this respect without ever specifying them and that with some minor corrections and extensions his rulings still stand, no matter how much the image of the different historical items that he had studied was altered as the field has progressed. (See * Encyclopedia Judaica*, Art. Zunz; see preface to Hebrew translation of his work for a more detailed, accurate and sympathetic presentation.)

As noted, the field of Jewish Studies embraces Rabbinical Studies with the exception that, as such, its practitioners do not qualify as rabbinical authorities, and it is not clear what impact

they do have on Jewish public life. However much admiration was accorded Zunz and his followers (he had no disciples), the impact they had on Jewish tradition, on Jewish practices, etc. are probably minor. (Even the Jewish communities of the conservative and reform persuasions evolved more under the pressure of circumstances than following Jewish Studies, simply because

systematically ignored as much as possible.) Zunz himself was active in Jewish affairs, and his activities were readily colored by his views of Jewish history. Yet they were vague: he wrote on the Jews in a mixed mode—partly as a modern (sub)culture, partly as a nation in the ancient sense of the word and even in the modern sense. Yet he found unproblematic and fully justified his demand for full emancipation for the Jews of Prussia. This, however, was outside the domain of Rabbinic Studies, especially since the really orthodox rabbis did not welcome emancipation (See Graetz ***) and others took for granted the separation of national and communal affairs in the spirit of the modern world. (This hardly needs mention, but for the disastrous identification in contemporary Israel of the nation with the orthodox community—in the face of the facts that of the nation one fifth are non-Jews and only a minority are religiously observant.)

Apart from Rabbinical Studies proper, there is little in Jewish Studies of interest to the genuinely orthodox-except for some chronology, some philology and occasional restorations of some corrupt texts; since these studies are readily in the critical scientific spirit and thus free of religious postulates, orthodox Rabbinical scholars tend to ignore them.

This is not to say that the tradition of Jewish Studies is hostile to religion or to orthodoxy in the wake of Spinoza. He was an apostate; he flatly rejected Jewish ritual as magical and superstitious and so he was anathema. No doubt, there were two important precedents to Spinoza's conduct that met with some measure of tolerance. First, the great Maimonides (ca. 13th c. AD), it is well-known, rejected animal sacrifices as superstitious. But then this ritual was already cancelled anyway. Moreover, he was not utterly exempt from severe censure-on account of that and on account of his readiness to reinterpret Scriptures in line with his philosophy. But it is generally agreed that it is the rejection of rituals that matters much more than reinterpretation, and that even though Maimonides is possibly forgiven, this is no license for lesser mortals. Second was the Old Testament criticism of Ebenezer (ca 12th c). Yet he, like most critics in late Antiquity and the Middle Ages, did not take his criticism as

conclusive in any way, but, on the contrary, he considered it a challenge to improve his own understanding of the holy texts. This is the major difference between the traditionalist and the critical, scientific attitude to criticism, as stressed by a number of leading scholars, Harry A. Wolfson and Shlomo Pines being the most prominent among them; whereas the traditionalist finds in criticism a defect in the critic's understanding which requires a return to the pure sources, the critical finds it devastating and requiring corrections, new readings and new ideas. Thus, says Wolfson (1929, p.), the criticisms which Al-Ghazali (ca 11th c.) launched against Aristotle were taken from Averroes (ca * c.), but the earlier writer did not take it as finding faults in Aristotle's texts, only the later did. The conservative attitude is the prevalent one, and it persevered for a long time. Thus, not only did St. Thomas find it necessary to compromise the physics of Aristotle and Archimedes, thus making a mess of things, but also, when in Galileo's famous dialogue of the early seventeenth century about astronomy the Aristotelian interlocutor in it is made to admit a criticism of Aristotle's physics, he does not conclude that Aristotle's physics is to be overthrown, and a long methodological debate about intellectual autonomy is offered as means to make such a drastic change. (See the famous study of Dijksterhuis, 1965, where both Thomas' compromise and the later contrast between

Aristotle and Archimedes are praised. So much for the alleged prevalence of the scientific critical attitude among historians of science.)

We face a problem here: do Jewish Studies allow some ritually forbidden criticism, namely, public criticism of rituals, and if so is this conducive to ritual reform? On this, too, Zunz had an opinion: his criticism was as inoffensive as he could make it and scarcely ever of rituals, and though he did favor reforms, he considered only marginal ones, and on the strict condition that they do not threaten Jewish unity. Otherwise he preferred compromise or even submissiveness. Later writers simply refused to comment on the matter of ritual and stuck to discussion of matters of doctrine and of history. Yet here is a question concerning doctrine which is of great ritual significance: how much dissent from established doctrine is it permitted to express—in private and/or in public?

This is an open question, on which there is an extensive view that dissent may be tolerated in private but not in public. Nor is it peculiar to Judaism: in a few modern societies in which magic rituals are alive, such as in the less developed parts of Southern Europe, faith in magic is not required but the public

expression of its rejection is not tolerated. Much of the Mediaeval literature is read this way. Much of today's literature on the ideas and opinions of Maimonides, the greatest Rabbinic legislator and Jewish philosopher of all commentators since Rabbi Juda the President (ca. 2nd c AD) rests on the supposition that he intentionally confused his untutored reader as he intended to hint at heresies in a language comprehensible only to the adept. This is not the place to express my reservations on this reading of Maimonides, (see my 1983); the fact that this is a view with some currency suffices to explain the situation in the field. The general attitude is scientific, and so not tolerant of superstition in any way other than the one exhibited by most anthropologists and historians of culture. (See Lieberman, 1974, p. 135:

Nonsense is nonsense, but the history of nonsense is a very important science. In certain respects it is more revealing than the history of science based on reason.

This quote is revealing about Lieberman's views, say, about magic in the Old Testament.) As much as possible, the literature on Jewish Studies ignores the critique of religion *a la* Spinoza; few recognized contributors to the field are even half as defiant as he was. (As to contributors to Jewish

Studies who are of Conservative communities, they either keep their dissent from orthodoxy separate from their scholarship or risk their membership in the scholarly elite club.) Now submissiveness is not quite possible, as textual analysis of the Old Testament is based on the heretic assumptions that some of its texts are corrupted, and that they were all authored, compiled and edited, so that even if each of them is the output of one author, its extant version is not. Moreover, in the effort at the reconstruction of an * urtext*, conjectures may be surmised about the diverse (possibly conflicting) problem-situations of its author(s), compilers and editors. But this cannot be helped, except by separating Jewish Studies from Old Testament scholarship. The separation is generally endorsed. Old Testament Studies still abide by the understanding that heresies do not impinge on ritual practices one way or another, but otherwise they are governed by different, slightly more critical rules: they permit the statement of heresy, though as inoffensively as possible, and while mitigated by minimizing it and by stressing acceptable orthodox views, especially overall orthodox readings of the ancient texts and their overall gists, so that what is lost by tempering with the sacred texts is partly recovered by expressed reverence.

What is shared by Jewish Studies and Old Testament Studies are

not only the conciliatory attitude and deference to orthodoxy and the to taboo on criticism of all rituals; also, rituals are made by all critically-minded scholars of both fields to appear as meaningless as possible, so as to denude them of all possible magical contents-even when their original sense looks suspiciously magical.

It is not clear how much this is possible. Both Emile Durkheim and Sir James Frazer distinguished clearly between magic and religion, and even though their views are (dissimilar and) questionable, they somehow bear the stamp of scientific authority or at least of scientific respectability, and this may suffice for those active in Jewish and Old Testament Studies as an excuse for the intent not to join Spinoza, especially in Jewish Studies which are kept clear of Old Testament studies. Indeed, the maxim proposed by Harry A. Wolfson is the full justification of the abstention from criticism of the Old Testament while engaging in Jewish Studies: Wolfson takes the Renaissance metaphor of the Two Books to its extreme: there are two ways of schooling in the ways of the Lord, the reading of the Two Books, and both readings are done hypothetico-deductively: hypotheses are generated and tested against texts from this Book or that. (Wolfson's opinion of religious studies as hypothetico-deductive, is apologetic: science

is not only hypothetico-deductive, it is also ready to undergo revolutions, if need be, that religious studies forbid, as he himself has noted when recognizing the great shift that Al-Ghazali effected when he shifted the studies of Aristotle's texts away from the sacrosanct religious sphere.) The discussion may be mere niceties, what is a fixture is simple: the tacit presupposition of Jewish Studies with almost no exception is that this field sustains the exclusion of both the Old Testament texts and the Law or the Ritual as unconditionally as possible off limits, namely beyond criticism-perhaps not in principle, but allegedly and tacitly as irrelevant to the field. Let us look at this second exclusion first, as it largely rests on the first exclusion as well as on Jewish tradition that says, ****one does not query an edict on the basis of a report****.

(* The terms used here systematically as translations of the ancient term "halakha" and "hagada" or "Agada" will be "edict" and "report" respectively*.)

2. Edicts and Reports

In his ** magnum opus**, on Jewish commentaries, Zunz declares all literature past the Old Testament (and even some of

the latest parts of the Old Testament) to be commentary or exegesis [medrash]. (This, incidentally, is true only in a very loose sense: what Jewish text is called a commentary proper [medrash] and what not is at least in part a matter of tradition rather than an inherent quality. One intriguing scholar, Jacob Neusner, came up with the radical thesis that the texts known as commentaries [medrashim] are in dissent from the main Talmudic text [mishna] that is presented defiantly not as commentaries on Scriptures. Needless to say, his opinion is taken as more of an oddity than a serious thesis, though it has a very interesting kernel that may indeed be true: the general assumption that each major trend in Judaism exhibits one essential, consistent attitude, is untenable, not only because different texts may exhibit different and even conflicting concerns, but also because attention must be given to the interesting and powerful theories of both Alexandre Kojève and Claude Lévi-Strauss about myths as basically inconsistent.)

After three introductory chapters of Zunz' text, the opening of his fourth chapter divides all commentaries to two: one part is on edicts-attempts to clarify obscure legal or ritual texts, translate legal terms, etc. He intended to present this part as uncritically as he could. The idea that whatever is not an edict is report is his hypothesis, tacitly endorsed in Jewish Studies in

general. Also, and much worse, it is insinuated there that the dichotomy of all texts to edicts and reports is traditional. (The (con)fusion here is of a traditional contrast with a recent dichotomy.) It stands to reason that this dichotomy is not strictly true, yet it is endorsed as a matter of course. The reason is simple: if in Jewish texts all non-edicts are reports, then the traditional Rabbinical protection of edicts from queries based on reports protects edicts from all queries based on Jewish texts, so that keeping edicts off limits makes Jewish Studies, however critical, scarcely capable of heresy. Is this ploy successful? I think not.

What do reports tell us about edicts? Zunz, it seems, was in two minds about this question. In the opening of his seventh chapter he goes so far as to declare that the separation of halakha and agada holds even for the Old Testament itself. Yet in the second paragraph of his fourth chapter he stresses that the two intertwine. What is the problem here is very clear: he wanted to take license regarding reports that he did not dare take regarding edicts. On this he was, of course, following the ancient ruling: ****one does not query an edict on the basis of a report****. He explains this ruling cogently when he introduces the very distinction (first paragraph of Chapter Four) between edicts and reports: edicts require

consensus, but reports merely inform that someone has said something or other. This will not do: the biblical reports have all the authority of the Word of God. Maccoby offers a somewhat different explanation (1988, p. 21): edicts do and reports do not undergo the decision process that is required to render an item authoritative. This, too, is not satisfactory, as some reports have the stamp of authority as even Maccoby reluctantly hints (* loc. cit*): "The authority of the * haggadah* is very different", yet he ascribes the authority of any report "simply to its poetic force". He "simply" should not have said this.

This information is broached not in order to contest Zunz' reading of all the Rabbinical literature in a sense commentaries, nor his dichotomy of all these commentaries to edicts and reports, but in order to highlight a problem that his followers met but not

A tense, dialectical relationship between religion in essence and religion in manifestation is at the core of the Jewish religious consciousness-its legal configuration and its historical experience. Halakhah is the indispensable manifestation prescribed concretization of an underlying and overriding spiritual essence, a volatile, magnetic and

incompressible religious force designated as Judaism. The tension flows from the painful awareness that manifestation and essence sometimes drift apart, from the sober recognition that the carefully constructed, finely chiseled normative system cannot regularly reflect, refract, or energize interior, fluid, spiritual forces and motives. Yet, if the system is to remain vibrant, it must. If Halakhah is the means for the actualization and celebration of ethical norms, historical experiences, and theological postulates, then external conformity must be nurtured by internal sensibility and spirituality.

I will not degrade the great scholar who wrote these words by careful analysis or by reporting in detail the elaboration of it in a detailed and scholarly paper whose apex (* ibid.*, p. 76) is the assertion that some very important ideas are better left in the dark. Rather let me say that through the excessively figurative language the author expresses a difficulty that he honestly feels as if it is inherent in Judaism-despite the obvious fact that for most Jews the quote, or the whole essay, is incomprehensible and insignificant, and despite the fact that many Jewish thinkers, such as Martin Buber and Gershom Scholem, deny that there is an essence of Judaism, not to mention the notable

fact that essentialism is nowadays in ill-repute.

The Talmud offers lists of traditional hermeneutic ways of reading a text, plain reading (the unsophisticated reading of a text) is one, and different methods of commentary [medrashim] on it, four, thirteen or thirty-two, depending on one's classification, of course. Commentary in this sense should not be confused with sense in which all literature past the Old Testament are (according to Zunz) commentaries one way or another. Attempts to comprehend difficult texts, attempts to remove some misunderstanding rooted in changes of situations, attempts to give variant meanings of a word, and so on, all of which are subsumed under the label of hermeneutics in the modern sense, they are all plain interpretations or plain commentaries. These, Zunz showed, are done by reviewing ancient customs, by comparing texts sharing obscure words, and by translations; from the viewpoint of Jewish Studies these differences do not matter half as much as the question, is the text under scrutiny an edict or a report? Nevertheless, from the scientific viewpoint there is a world of difference between the plain commentary, intended to be as much a straight interpretation as possible, what these days we usually call hermeneutics [pshat], and other commentaries on a text [medrashim], which offer less obvious readings, of a kind not

included in what these days we usually call hermeneutics; they are often bluntly anachronistic, and at times they scarcely relate to the texts to which they are appended (allegedly) as commentaries; they may easily be really fanciful, namely have no more than flimsy associations with the plain readings of the texts, and then, as often as not, they are hardly reinterpretations but merely discourses tagged onto texts according to given customary rules so familiar today from sermons which start with sacred quotes as mere takeoff points; the texts then may serve as mere pretexts for the commentaries [medrashim] allegedly on them. The most important novelty on this matter is Lieberman's evidence (1962, pp. 68-82) that however far-fetched they look to us today, they were current in antiquity not only among Jews. (Some of them, he shows, were deemed by non-scholars even in antiquity as too far-fetched.)

The traditional hermeneutic contrast between edict and report is often read by the inexpert as the hermeneutic contrast between plain reading of a text and a (fanciful) commentary on it- for the reason that as often as not the (possibly fanciful) commentary include a (possibly fanciful) report. Often, however, the report is tagged to a commentary that discusses an edict proper, and then the report is intended to serve as a means of validation-of the sort prevalent in mythical discourse of all traditions-such as a

report of some conduct in accord with the edict or the commentary, allegedly exhibited by some individual who is evidently a role model. As the subject-matter of a commentary regards at times an edict and at times a report (the traditional distinction is between "medrash halakha" and "medrash agada"), the wrong identification is very convenient, as it may permit the critical assessment of a medrash halakha on the pretence that it is not an edict but a report. In addition to this, it is convenient to examine cases where clearly the critical comment on a report does not reflect any criticism of any edict. Even Lieberman is not free of this, as the following may illustrate. When he endorses the distinction between edict and report (1974, p. 273), he observes that the Sages were not averse to the use of pagan laws and of current events to illuminate ancient lore. Such discourses, he seems to insinuate, cannot possibly be relevant to questions of the validity of an edict or of a reading of an edict. This is true and very convincing as far as it goes, but it suggests an extrapolation that is palpably false, that is admitted without raising the reader's suspicion as long as the cautious scholar examines cases which are unproblematic and ignores the mine-field of problematic cases. Yet he gives no hint at the fact that the literature is problematic; a simple, unquestionable report may easily suggest that an edict is not valid, and yet such suggestions

are in principle invalid and void. Why?

One should not identify the traditional Jewish hermeneutic rule forbidding the questioning of an edict on the basis of a report with the critique which traditional classical western philosophy offers (and which is usually ascribed to David Hume) of any inference from facts to norms, from what is the case to what it should be, from reports to edicts. The traditional philosophical hermeneutic rule concerns the invalidity of some inferences, and the traditional Jewish hermeneutic rule blocks valid ones.

Generally speaking, all invalidity of inference can easily be rectified by some added premise which is very easy to discover.

The smoothest rectification of any invalid inference from premises to conclusion is the additional premise which is a conditional statement, asserting that if what the premises say hold so does what the conclusion says. [When the inference from p to q is (possibly) invalid, the inference can be (assuredly) rectified by adding the premise if-p-then-q; if the inference is invalid, then this addition renders it valid; if the inference is valid, then the addition makes no difference, as it is uninformative: it is a tautology.] Any sentence that includes this added premise will do too, of course. [If q does not follow from p, while if-p-then-q follows from r, then q does follow from the two premises, p and r.]

In the case at hand, the premise which will render valid a conclusion from a report to an edict may be (the edict) that the report presents a role model. [The following inference is valid: the conduct of Moses the law-giver is a model of propriety; he performed a magical act; therefore, performing magical acts may be proper.] The philosophical rule tell us nothing about the propriety or otherwise of learning about edicts from reports on role models; yet classical philosophy regularly recommended natural conduct, common to all humans, and then deduced rules of conduct from claims about the naturalness of some mode of conduct or another. For example, David Hume deemed greed common to all humans, and hence natural, and he concluded that greed is commendable. Similarly, given that some conduct or the conduct of some person is a model, some inferences from reports about conduct to norms are rendered quite valid. It is this kind of valid inference that is precluded by the traditional hermeneutic rule that blocks the questioning of an edict from reports; indeed, were the inference invalid, there would be no need to block it.

3. The Place of Magic in Jewish Law

Let us dwell a bit on the example from Moses. There is an edict against magic and there is the report that Moses has

performed magic acts in the court of the Pharaoh, during his negotiations with the Pharaoh-not to confuse with the miracles he performed later on. Clearly, there is a logical contradiction here, rooted in the view of Moses as a role model: were it permissible to view his magic acts as wrong, there would be no problem here, whether or not we accept his other conduct as becoming a role model. The claim that Moses was a perfect role model is report, not an edict, of course. There are, of course, reports to the contrary: some cases of misconduct performed by some role models, such as the idolatry of King Solomon and the grumble of Miriam, sister of Moses, are expressly reported as not to be emulated, of course. In the context of the present discussion they are unproblematic as long as they are singled out as faulty. Nor is it problematic to observe that a role model has exhibited some faulty conduct not to be emulated, of course. It is because Moses is reported to constitute the most perfect role model that Moses did perform a magic act, together yield a contradiction. The same problem is posed by any action of any role model not singled out as faulty. Hence, in the cases singled out here a query on an edict from a report may be resolved by declaring the case an exception; the problem persists because some role models will not allow such exceptions. Not only Moses, but also the Patriarches are perfect role models, and the Patriarch Jacob is

reported to have performed magic acts proper (in determining the color of the offspring of the sheep he was herding). The Talmud even declared King David a perfect role model, the story of Bath Sheba notwithstanding. This may suggest that the whole matter is not serious, since David's conduct in this case is clearly declared in Scripture to have been faulty. This matter should be discussed at a later stage; first, serious attention should be given to the contradiction inherent in the case of Moses as a perfect role model who has performed magic despite the prohibition on such acts. What is the resolution of this contradiction?

There are different avenues to explore here. Any of the following suggestions resolves the contradiction.

- (1) Moses performed magic proper by a special dispensation,
- (2) Moses performed not magic proper but a miracle.
- (3) Moses performed not magic proper but a mere sleight of hand.

The first move is evidently one which the Sages were reluctant to employ-presumably because it is too arbitrary. To say this, however, is to admit that stories have moral to them, contrary to the hermeneutic rule here under examination, namely that there is no query from a report to an edict. If the second move is

permitted, it forces upon us the question, what demarcates magic from miracles? Indeed, magic is often called "miracle" in the West, e.g. in "miracle cures", and magicians, individuals who possess special powers, who can regularly perform miracles, are described not as magicians but as holy or inspired saintly and righteous people [tzadikim]- just because only magic is forbidden, not miracles; this misnomer is ancient, going back, say, to the miracles performed by the prophet Elisha, and common in both Jewish and Christian hagiography to date. When a court of law is supposed to impose the law against the performance of magic or to recognize a miracle, then the question at hand can scarcely be avoided. At times it is raised even in folk-tales. A conspicuous example is the story of the modern Jewish writer J.L. Peretz, "The Miracle Maker", where even an answer to it is provided, a criterion for demarcation between miracles and magic, no less: if the products of the act are real, it is miraculous, not magical. In other words, in the opinion of Peretz, Jewish Law does not recognize magic proper, i.e., effective magic. This amounts to the endorsement of the third and last option: the magic performed by Moses in the court of the Pharaoh was mere sleight of hand: declaring such a blatant magic act a sleight of hand amounts to declaring sleight of hand no magic. (Hypnosis, incidentally, if recognized at all, must be considered mere sleight of hand.)

Clearly, the discussion here must bifurcate, as it can be conducted while affirming or denying the postulate that magic is possible. On the denial, either there is no magic or else all magic is but sleight of hand. On its affirmation, however, clearly, both magic and miracles are supernatural (i.e., in violation of the laws of nature), the latter by blessed divine intervention, the other by "the other side" [sitra ahara, i.e. fiendish], and so is strictly forbidden by Jewish Law. The distinction between the divine and the fiendish supernatural is no small matter; the Royal Society of London, founded in 1660, was devoted to natural knowledge, in the intention to exclude any discussion of the supernatural. This was a great shame, as at the time witch-hunts were carried out full-blast in England and violated the slim rights of women, yet the Royal Society did not intervene. Clearly its members feared that denying the possible efficacy of magic they would expose themselves to charges of impiety, both because Scriptures clearly forbid magic and because denying magic is but a step to denying miracles.

To return to our problem, it matters little what option one chooses to solve the contradiction at hand: either way, the report about Moses' conduct does teach us something about magic, contrary

to the traditional Jewish hermeneutic rule forbidding queries from reports to edicts. And this is really inevitable, as the inference is valid from a role model to a rule of conduct. We now have to resolve the contradiction between the traditional hermeneutic rule that edicts are not to be contrasted with reports with the valid contrast between some reports concerning some role models and some edicts.

The simplest way of so doing is to read the rule this way: least) one of them has to be modified or qualified, it is always the report that should be qualified, never the edict. In other words, the rule is the claim that a report cannot invalidate an edict even though, as we have seen, it can help us comprehend it. This, however, is unsatisfactory, since the comprehension is often a limitation of the edict and thus a kind of invalidation. One should therefore go further and observe that under such conditions it is better to abstain: after all, not all contradictions that the Sages have discovered were resolved. Some are admitted to be unresolved and wait for further discussion [teiqu]. If so, then one can add, if there is a conflict between a ruling and a report, the conflict may remain unresolved, yet the edict should not be weakened. This, I suggest, is the real meaning of the ruling not to query an edict on the basis of a report.

This is not to say that edicts are not weakened or otherwise tempered with (all scholars in the field agree that this is a regular event in Jewish history though they are reluctant to say so). This is not to say that orthodoxy and criticism are always deemed incompatible (some of the more critical scholars in the field are known to be sincerely orthodox Jews). It is only an attempt to read a ruling in line with the intended meaning of it.

For an example of all this we may wish to return to witchcraft. The biblical edict is clear: thou shalt not suffer a witch to live. Yet, if one thing is clear from the writings of Lieberman (1950), it is that ancient Jewish society was as seeped in magic as the whole region, and the Sages preferred to confine it rather than to fight it. Reports to that extent certainly qualify the edicts against magic one way or another. Yet edicts are not always that clearly stated in the Old Testament, and so are in danger of being overruled on the ground of a report. The rule in question, then, may indeed save them from such a fate.

One might object that the example I have conjured is but a trick. If we view Moses' acts miraculous and we declare miracles no longer possible, then the problem disappears. If we assume

either that magic is but conjurers' tricks or that magic proper never existed, then the contradiction I have offered and resolved here may be declared no problem from the very start and thus a mere fake.

Unfortunately this will not do: the Talmudic edict on magic is indeed what is presented here. In the Talmud miracles are allowed, not only for the distant past: they are reported as parts of the lives of some Sages. Nevertheless, it seems clear that the Talmud allows or even encourages faith in miracles on the strict condition that they do not interfere with any edict. Likewise, in the Talmud sleights of hand are discussed [Sanhedrin] as possible acts of magic, and they are explicitly ruled out as mere deceptions for the gullible, and so no magic at all. More important, though it is never explicitly stated, it is understood that the same holds for futile magic, like worthless potions with alleged magic powers. This is so because the two edicts in question (first, that miracles do not impinge on conduct and second that sleights of hand and fake magic are insignificant) is not so superfluous as it seems. It is clear that at least as far as edicts are concerned, the Sages ruled the supernatural impossible, magic or no magic [simana lav milta havve]: indications are that they deemed sheer superstition all faith in the supernatural, be it miracles or magic, be the magic

witchcraft, sorcery, physiognomy, necromancy, charm, adjuration or divination. (Lieberman's great contribution here is his study of the prevalence of superstition in the ancient world; he even showed that "bat kol", a voice from heaven, is scarcely a miracle and more often a superstitious reading of signs allegedly hidden in ordinary events. See his 1962, pp. 194ff. The prevalence of superstition, he suggests, * passim*, made it incumbent on the Sages to try to contain it rather than fight it.) To bridge between the letter of the law and the disregard of the supernatural it is quite convenient to dismiss miracles and magic as marginal, as sheer fancy: the belief that someone has performed a miracle or a magic act proper is, of course, the superstitious faith in the efficacy of miracles or of magic in the face of the desire to deny it or even in the face of the desire merely to abolish it.

This is clearly not the attitude exhibited in Scriptures towards the supernatural, though a crucial passage in the * Book of Deuteronomy* is explicit on the matter of the ritual insignificance of the supernatural: in a discussion of the demarcation between true and false prophecies we are told in no true prophecy is admonition. Future miracles are possible, then, but they are of no import: true prophets are armed not with

controls over the forces of nature but with moral force of their own.

If the supernatural is to be inferior to morality, then, why miracles? This is a very difficult question. It receives two traditional answers which are very similar. First, miracles are the meant to persuade simple people to behave properly. Second, though reason suffices, revelation is the second chance that the Good Lord has kindly offered people who would foolishly relinquish reason. The difference between the two answers concerns respect for common people, and is thus scarcely relevant to the present discussion.

4. The Law and Magic Today

The world is divided today to the scientific and the magical. The scientific has rules of evidence, theories, and scientific technology. The magical has myth and rituals, these including magic proper, witchcraft, sorcery, physiognomy, chiromancy, necromancy, charm, abjuration, divination and much more: it encompasses myth and superstition and all sorts of rituals enacting them. In a pinch pseudo-science-astrology and alchemy and folk medicine etc.-are included in magic. This is a bit of cheating

designed to defend the false dichotomy. It is cheating, as pseudo-science disregards ritual proper and its connection with myth proper may be casual. Even superstition is not magic, though it shares with magic the vagueness of reference and thus untestability (whereas pseudo-science is often refuted theories or fragments of them). Thus, besides magic and science there are other sorts of beliefs, contrary to the dichotomy of all ideas to magic and science. The advocates of the dichotomy stick to it as it supports the foolish claim that "our" (admittedly scientific) society is purely scientific with no magic practices, no pseudo-science, no ideas but science. This foolish view is called positivism, or rather it is the view that the philosophy called positivism (i.e. stick to science and disown all else) is at all possible in a human society. Jarvie and I have argued (1987) that no society is utterly free of magic and superstition and pseudo-science and dogma. Even were the dichotomy true, the foolish idea that we are scientific would not hold: since no one denies that some knowledge possessed by even the most primitive societies can ascend to the status of scientific knowledge, and since there still is some magic in our midst, at best the dichotomy should be replaced with grading. But there is more to it than that. In the ancient Hebrew doctrine myth abounds but magic is forbidden, whereas its attitude to superstitions is mixed.

This is surprising, and it is hardly noticed in the literature, as it introduces a new distinction between magic and myth. That biblical and Talmudic lore are full of myth need scarcely be mentioned. That magic is forbidden by Hebrew Law is likewise well-known. This is most unusual yet hardly noted. There is no doubt that the literature does not permit myth with no magic. For example, when it is noted that Plato's writings exhibit myth with no magic, commentators dismiss this by the claim that Plato's alleged myths are not myths but parables. Even were this so, it is hardly reasonable to say of modern (say, Sorrel-style) irrationalist ideologies that they are not myth-ridden or that they advocate magic.

This is not to say that the Hebrew prohibition on magic was practiced; even to examine this one needs more specifications of what is magic, and we lack these specifications. Come to think of it, this is very unusual in Hebrew Law, and more so in Talmudic Law. The prohibitions in the Old Testament are usually well-specified, and the Talmud goes much further in the descriptions and specifications of the prohibited. Some specifications are mentioned in the Old Testament, to be sure, for example, necromancy and divination are explicitly forbidden in

addition to magic. But the whole matter is obviously shrouded in mystery, perhaps because of the magic stories that the Old Testament is full of, perhaps because certain biblical rituals are undeniably magical in character. Talmudic specification of forbidden magic such as they are come under the heading of forbidden idolatry, scarcely of forbidden magic. It should be noted that though sacrificing animals is obviously a magical act, and is so presented when sacrifices are first introduced in the Old Testament, in the story of Cain and Abel, it still is contestable-and contested-that the sacrificial rituals in the is undeniably magical, as the poor woman is made to drink accursed bitter water-water used to clean the piece of parchment on which some curses had been written by a priest with the ashes of a specific sacrifice-on the expectation of a summary verdict: the accursed bitter water causes the body of the guilty to swell up.

The question which a modern reader tends to ask in this context is, is the biblical viewpoint scientific? Or at least, can it be read in a more-or-less scientific mood? This question betrays the dogmatic adherence to the dichotomy between the scientific and the magical. It is better to ask, how critical was this or that product of this or that writer, compiler, or editor of a given biblical text, and what was the object of the criticism? In

particular, what abomination did they and what did they forbid?

Maimonides had a hint at a general answer when he discussed the laws of animal sacrifice: it was a concession to the ignorant multitude, only reluctantly made. Lieberman makes this a general rule, as we have seen.

How cogent is this reading? The biblical injunction against magic seems to reaffirm the faith in the possible efficacy of magic acts while proscribing or exorcising them, but, possibly it is meant, on the contrary, as the attempt to dissuade people from partaking in any superstitious conduct based on faith in the supernatural, an attempt based on the rejection of all faith in all supernatural events, sacred, abominable or profane. It is convenient, in this context, that a verse in the Scriptures says, "there is no divination in Jacob [lo nakhash beyaakov]"; the trouble is caused by the biblical stories of effective miracles and effective magic (by the righteous and by the wicked alike), as well as by the biblical edicts, such as the verse "thou shalt not let a witch live" (why witch rather than wizard and witch is not clear, since wizards are treated no better than witches) and by rituals like the testing of a wife's fidelity by serving her accursed bitter water. There are, of course, many instances of people who do not believe in the supernatural, who try to banish

it, yet who speak as if they endorse it: they know how ubiquitous faith in the supernatural is, and they find the outright denial of it a barrier to communication with those whom they wish to dissuade. The conduct of those who speak as if they do believe in the supernatural while fighting this very belief is thus quite comprehensible. The supposition that this holds for the Old Testament-which is far from being self-evident-renders much of it harmless, then, but it still does not make the acceptance of the text as it stands comfortable: even if the text thus read allows the denial of the supernatural, the question remains, what should one do with the miracles and the magic which permeate the ancient text, not to mention the iniquity of the intolerance expressed in the readiness to execute anyone imputed with magic (in truth or not)? It is possible to understand the injunction to execute a witch as applicable to anyone who claims to be a magician and/or who performs some allegedly magic acts, of course. Will that settle matters? The historian may condone the intolerant edict against them as a means of reform, and one may even suggest that the intolerant edict is a mere threat, not a real instruction to execute any witch (especially in view of the Talmudic surreptitious reform that practically abolished all capital punishment).

All this involves a relatively easy matter of historical study

and a very difficult matter of a moral decision. The historical question is this. Were people executed under biblical edicts for having claimed to have performed magic acts? Let me postpone the discussion of this, factual question, and center now on the hard, moral one: is it just to force people out of a superstition by the means of expressing the intolerant biblical edict (thou shalt not suffer a witch to live) without ever practicing it? It may be argued that the threat of a death penalty is justified by the fact that allowing a superstition to persevere is dangerous. But then there is a strong argument against an intolerant edict even if not practiced: it is easy for a rogue to abuse an intolerant edict even if the edict is not ever practiced, to use it to prove the merit of some intolerance. And this is harmful as well, of course. How can there be a rational decision between these two options?

The question should be generalized. The Old Testament expresses intolerance not only in matters regarding the supernatural. Moses is reported to have passed the death penalty on a man who broke the law of the Sabbath. Is this not too intolerant? Can we explain this intolerance as rooted not in religious fanaticism but in some reasonable, if false, idea about the need of civil society for civil order that justifies the like the taboo on labor on the Sabbath?

There is, here, an open secret, which is very hard to discuss, as its discussion is often rejected by the claim that the secret is very well-known indeed-even though the point of the discussion is not the secret itself but the taboo on it. Now clearly a taboo on any discussion is very difficult to discuss, as such discussion is a violation of the taboo. This is a serious matter: when we discuss a prohibition, the rule of fairness demands that we assume it is possibly valid possibly not. Any prohibition which does not yield to such a rule of fairness is simply not given to rational discourse. Suppose we meet an individual who denies the prohibition to kill a human being-to take real examples, because the human in question is a Jew, a black or a woman or a newly-born infant. Public debates about their opinions are just out of question, even though propaganda is permissible and perhaps even required. Private debates with such people are scarcely possible in the sense that one can scarcely abide by the rule of fairness. If one does carry out debates with such individuals, then they are not quite fair. This is hard to stomach, and many scholars will not agree, but I, for one, will not debate this matter with them.

Assuming the rule of fairness, debating the idea that debating some matter is forbidden has to be taken as possibly true, and so

the discussion is possibly harmful. How can this be mitigated? At times it can be mitigated by reading the prohibition to apply to public debates only and by holding secret debates. Or by assuming that the prohibition holds for debates with outsiders - non-Jews, non-blacks, males, enemies-and holding the debates in the community of the faithful. This is acceptable on the condition that if the debate leads to the criticism of the prohibition, some steps should be permitted for the efforts to lift it. Reading a prohibition to debate to hold under all circumstances makes it plainly objectionable on this very ground. This overcomes the taboo on discussions on the possible need to reform Jewish Law.

The most powerful argument against such a discussion is that Jewish Law is the Word of God. It is clear that assuming this to be the case still raises possibilities of reforms, and Jewish history has ample testimony to that effect. There remains one more strong argument against the debate on reform of Jewish Law, and it is that it threatens the unity of the Jewish People. This invites some discussion.

5. The Civil View of Religion

There is ample evidence that many thinkers, religious and

irreligious alike, took preaching hell-fire and brimstone essential to the stability of civil society, and social stability as essential to all that we value. We still do not know if a society without a religion is possible, because all human societies, even those governed by the most secular regimes, are populated by mostly religious people. But we do now know that the view of stability is an error: today the idea of stability is increasingly replaced by the idea of social (democratic) control. (See Popper, 1945.) This idea can easily be read as, religion is but a means of control of the masses. This reading is traditional, and it is probably first expressed in Macchavelli's ** The Prince**, for which he was more censured than for his advice to rulers to be ruthless (see Agassi, 1986). The result was that sincerely religious individual could no freely discuss the political import of religion and all those who did discuss it were taken to be irreligious. This was not so bad, as the thrust of Macchavelli's discussion of religion was the attempt to separate state and church in an effort to institute religious toleration, and, indeed, the discussion of religious toleration took precedence over the question of the political import of religion in general. And when the matter of religious toleration was exhausted, the discussion of the political import of religion was conducted by social thinkers who were hostile to religion, who took it as a matter of course to be sheer

superstition.

The methodology these social thinkers was simple: ignore the myth and look at the ritual. (See Jarvie, 1964 and Agassi, 1977.) This methodology is dangerous, as it takes all beliefs except scientific ones to be worse than silly, namely, insincere. It amounts to a profound disrespect for the common people. Its best known advocate was Durkheim, who took magic to be nothing but a cement for tribal unity and religion for national unity. Of course, this contemptuous attitude has its impact even on those Jews who take rituals as inviolable but faith as insignificant, can accuse them of intentional contempt for the naive believer: they still exhibit such contempt, though it is merely unintended.

The obviously more commonsensical attitude to the matter of the political attitude to religion is to ignore the matters of the validity of any faith while discussing its political import. This has its drawbacks, to be sure, especially since political and religious thinking cannot be neatly separated. Yet as a first approximation the exercise may be enlightening.

The best example I know of this is a humble book, obviously by an amateur of a limited familiarity with primary sources, who

excels in common sense and in political concern. I have in mind
Berl Gross, * Before Democracy* of 1992, in which he
follows another amateur, the forgotten 19th century Fabius Mises.
Gross presents ancient religions as most religions, as containing
ideas not conducive to individual freedom. The novelty of
Abraham's religion he presents not as monotheism, and so he is not
in the least concerned with its origins. Rather, he sees in
Abraham a preacher of toleration. Moses, next, is presented as a
reformer of the politics of religion, with the ideal of a
decentralized tribal society with each tribe settled on its land
divided to family plots. This makes Moses the first utopian
experimenter. The idea of a decentralized tribal society raises
problems, and Gross sees in Moses' legislation attempts to overcome
them, such as the law that the land of a family with daughters only
passes to the daughters on the condition that they marry within the
tribe, and that land cannot be sold for more than fifty years and
that the priests [the tribe of Levi] were landless.

Gross' point is in the wake of the philosophy of Karl Popper of
trial and error. He declares that history was distorted because of
the failure to acknowledge the failure of Moses' program: it was
never executed due to the Philistine invasion, the Philistine use
of iron, and the appearance of military chariots. As to the

failure, he describes the dispersion of the army of Joshua with no heir as a tacit admission of failure of the Mosaic experiment, which led to the period of the Judges, when the Israeli tribal society dissipated due to the failure of the experiment, yet while blaming the common people, not while admitting error. The age of Samuel is then described as the rather successful revival of the Mosaic program by uniting the tribes to fight the Philistines which, however, could not be sustained and so it led to the demise of that program with the establishment of a monarchy, centralism and a cast of priests [Cohanim].

Gross presents a picture that is riddled with problems. But his program is clear, he shows more respect to Jewish religion than the leading scholars in the field-by ignoring the question of its validity altogether, and instead speaking of the politics of priesthoods. He suggests that Moses' ideas follow the failure of the Egyptian ruler to rid the country of the yoke of the priesthood. This explains much of the social and political aspects of the Mosaic Law, while insisting that the book of *Leviticus* is simply contrary to that spirit. This is not as heretic as it sounds, as the prophets stressed the same sentiment repeatedly, and the Talmudic edict goes with it too: sins against fellow humans, it says, are worse than sins against the Holy,

Blessed be He, as those of the one kind are also of the other.

This is not the end of the story, since the Israeli Rabbinat, for example, has totally disregarded this edict to the shame of all Israelis, all Jews and the whole of the Jewish tradition, prophecy and Talmud alike, orthodox and humanist alike.

It is clear that many issues of great concern for Jewish scholars are of no interest to Gross, especially problems of origins and of priority. He even does not mind much what solution one accepts to the Mosaic problem, namely, who exactly Moses was? His only concern is with the socio-political ideas that were expressed in the Books of Moses, describing a decentralized tribal society working on family plots and serving no central authority. He argues that it is a great innovation, a utopian experiment, and conjectures that it evolved in reaction to the centralized, clerical regime of Egypt. And so he argues that all the texts relating to the status of priests are late (post Davidic) interpolations, citing passages that indicate that in early periods the tribe of Levi played the role of priests and there was no specific recognition of the Cohen family of that ruled the Temple rituals and the rites they came to replace.

Thus Gross does not discuss the validity of Jewish Law, since

Talmud (to be partly revived in Israel as means of clericalist control). He rejects the traditional reading of much of the Old Testament, but this is a sin hardly any Old Testament scholar is free of, even if Gross' transgressions are quite unusual and large-scale. That in a clear sense his reading is imposing and more complimentary to Jewish tradition than is usual is also quite clear, so that from the orthodox viewpoint as well as from the scientific viewpoint one can hardly express an outright condemnation or commendation of his work.

This is very disquieting. As Gross' moral is socio-political and not religious, it is hard to ignore it: he says, not admitting failure openly prevents learning from it, particularly the institution of the lesson from it. This is how things stand today. Who will dare take them further from here, and will they do so as political thinkers, moralists, Bible scholars or religious thinkers?

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