

# Notes on Spirituality, Halakha, and The Guide of the Perplexed

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*I*

Neither of the Torahs, Written or Oral, seems to have anything to say about “spirituality” as such. The concept, like the Hebrew word for it, *ruhaniut*, is evidently much later, perhaps medieval. Yet anyone who has even a passing familiarity with Tanakh, Talmud, Midrash, and the later rabbis, knows that many of these texts and sages (among whom we may wish to count the masters of the Kabbalah) embrace the *substance* of what we now often call spirituality:

that is, a personal, meditative encounter with the Transcendent or Holy, which is essentially individual and autonomous. They also include moral, ethical, and metaphysical *perceptions* (as distinct from halakhic mandates) that may seem to come to our mind directly from a transcendent Source, or (in the wonderful expression of the Quakers) as from an “inner voice.” We may think also of the self-generated *kavanah* of passionate prayer, and the spiritually elevating joy of song and dance, much beloved among Hassidic and “Carlebachian” devotees. Maimonides believed the essential part of our human, and thus of our Jewish, vocation to be something profoundly personal—our “knowledge” and “intellectual apprehension” of a Primary Reality, *Matsui Rishon*.

Alongside this personal *experience* that many of us think of as spirituality, there is the elaborate fabric of halakhically prescribed *behavior*, which is regarded as being divinely mandated. Something like a universal consensus of Torah sages holds, I think, that the two—the experience and the behavior—are inseparably linked, mutually animating, equally necessary, equally obligatory. Though we may distinguish them analytically, we may not dispense with either.

Though late in coming—to speculate why would be an intriguing temptation—awareness of “spirituality” has, thus, long since arrived in Jewish life, and indeed (as the subject of this issue of *Conversations* amply testifies) in *Orthodox* Jewish life (even though in Orthodoxy the halakhot of prescribed Jewish *behavior* are given particular emphasis, and “observant” is the most usual epithet of approval). But as with the other touchstones of Torah and Jewish culture, including halakhic observance itself, the actuality of Orthodox spirituality never quite catches up with the ideal, and for us to contemplate our tradition’s *ruhaniut* may be to deplore what can often seem its elusiveness, to bridle at the challenges it encounters from time to time in our individual and communal lives. The problem is substantial and (pending messianic fulfillment) ongoing, and defies easy solution, or even easy description. What I hope to do here is to consider several aspects of the matter from contemporary perspectives, and then to invoke a few potent rabbinical ideas that, I believe, may help us address the specific “perplexities” at issue.

### *Halakha and Moral/Ethical Sensitivity*

Let us proceed, in the conversational spirit of *Conversations*, by recalling two articles that appeared in the Spring 2010/5770 issue.

In “Sounds of Silence,” Pinchas Landau deplored that (as he sees it) American Orthodox Jews, and most egregiously their rabbinical leaders, generally failed to express moral indignation at the ongoing financial corruptions and distortions of principle that harmed so many people during the recent, and continuing, economic crisis. In what he perceives as this dereliction, Landau finds evidence of a larger, more sinister problem: “Many people, including—or perhaps especially—rabbis and educators actually have no clear idea what ethical and moral issues are. More precisely, they have great difficulty distinguishing between legal/halakhic and moral/ethical treatments of issues, preferring to subsume the latter in theological, or even mystical, conceptual frameworks.” His conclusion is a severe indictment: “Orthodox Judaism, as currently conceived and practiced, is morally challenged.” Rabbi Eliezer Berkovits had put the matter even more provocatively: “Orthodoxy is, in a sense, halakha in a straitjacket” (*Essential Essays on Judaism*, p. 101).

### *Halakha and Autonomous Spiritual Experience*

In the same issue of *Conversations*, a daring and original article by Rabbi Nathan Lopes Cardozo addressed other dimensions of the problem (“On the Nature and

Future of Halakha in Relation to Autonomous Religiosity”). From his perspective as a

teacher of Jewish philosophy, R. Cardozo has encountered a frustrated craving for “spiritual satisfaction” among “countless young Jews who search for an authentic Jewish religious way of life, but are unable to find spiritual satisfaction in the prevalent halakhic system as practiced today in most Ultra- or Modern Orthodox communities.” These students seek “to experience the presence of God on a day-to-day basis. Beyond ‘observance,’ they look for holiness and meaning.”

Concluding that “we need to find new paths to Jewish spirituality,” R. Cardozo

affirms provocatively a principle that, by logical necessity, one should expect to be axiomatic in Orthodoxy, but that appears to be often ignored: that “Judaism is an autonomous way of life” that expects us “to respond *as an individual* to the Torah’s demands.”

### *Defectors from Judaism in Search of Spirituality*

Contemplating Rabbi Cardozo’s Orthodox Israeli students and their failure to find “spiritual satisfaction” in the Judaism of their experience calls to mind the quite different, yet in a sense parallel, constituency of spiritually dissatisfied young *American* Jews of whom Professor Rodger Kamenetz had written over 15 years earlier in his notable and well-remembered *The Jew in the Lotus* (1994). Though few of them seem to have had an Orthodox background comparable to that which had probably nourished (but nevertheless dissatisfied) R. Cardozo’s students, they too—most significantly—used the word “spiritual” to denote what they missed in the Judaism *they* knew. Less committed to their formal Jewish identities by family and social bonds, they eventually sought “spiritual” satisfaction in the Asian religions of Hinduism and (especially) Buddhism.

A few Jews are known to have embraced Buddhism more than a century ago, but it was in the 1950s and later—the period of the “beat generation” and its aftermath—that the Asian religions came to exert a strong attractive power on significant numbers of young Americans inclined to religious or cultural experiment, who happened to be, for a variety of reasons, disenchanted with their family’s Christianity or Judaism. In the latter half of the twentieth century, this became one of the conspicuous features of “hippie culture”; and the greatly disproportionate number of young Jews who adopted Buddhism (either in place of, or in addition to, their religion of birth) was widely noted.

It was also, of course, profoundly deplored in traditional Jewish circles, and the “cults,” as Buddhism and Hinduism were often derogatorily called, have been perceived by some as a major menace to the stability and continuity of Jewish life in America. The matter is complex, and has been much studied and discussed.

Writing in 1994, Kamenetz reveals (pp. 7–9) how important had been (and we may presume still is) the Jewish presence among recently fledged American Buddhists:

In the past twenty years, [Jewish Buddhists] have played a significant and disproportionate role in the development of this second form of American Buddhism. Various surveys show Jewish participation in such groups ranging from 6 percent to 30 percent. This is up to twelve times the Jewish proportion of the American population, which is 2 ½ percent. In these same twenty years, American Jews have founded Buddhist meditation centers and acted as administrators, publishers, translators, and interpreters. They have been particularly prominent teachers and publicizers. . . . Today in American universities there is an impressive roster of Buddhist scholars with Jewish backgrounds, perhaps up to 30 percent of the total faculty in Buddhist Studies.

Kamenetz’s book provides copious examples of the Jewish experiences and perceptions that underlie these figures. He tells, for instance, of a friend of his, Marc, who described his religious position with metaphors Kamenetz found both eloquent and depressing: “I have Jewish roots and Buddhist wings.”

He comments: "I knew what Marc meant by wings. Buddhism had gotten him somewhere spiritually in a way Judaism never had" (pp. 12–13). For some of the Buddhist-oriented Jews he met and talked with, their Buddhism complemented but did not wholly replace their Judaism. Others, like the poet Allen Ginsberg, seemed to have discovered, or retained, nothing of spiritual substance in their Jewish experience, which they rejected with scorn.

As a sophisticated, synagogue-bred Jew who, despite his spiritual dissatisfaction, always rejected categorically the notion of tampering with his Jewish identity and commitment, Kamenetz himself seems to embody in an accessible and understandable form the syndrome he discusses in others. Though writing from a quite different perspective with respect to education and commitment, his critical survey of Orthodoxy can be regarded as complementing those of Pinchas Landau (Orthodoxy is "morally challenged") and Rabbi Cardozo (Orthodox students are "unable to find spiritual satisfaction in the prevalent halakhic system"):

I recall an evening in Jerusalem with a group of *baalei teshuvah*, Jews who had converted to Orthodoxy. To them it all boiled down to one proposition: either God had given Jews the Torah on Mt. Sinai or had not. And they asked me to choose. I felt like I was being grilled. The emotional undertone of today's Orthodoxy, at least as I'd encountered it, seemed excessively self-righteous and self-isolating. It came down to little things, customs, such as the refusal of Orthodox men to shake a woman's hand. I knew there were reasons for it: if she were menstruating they could not touch her, nor could they ask her point blank. But it seemed to symbolize a self-enclosure, another barrier or boundary between men and women, and also between Jews and contemporary life. I had imagined that someone obeying God's law would feel more joy. I didn't always feel that joy. There often seemed a neurotic quality to the obedience, a Judaism by the numbers that I couldn't relate to. (p. 22)

This two-level manifestation of spiritual dissatisfaction with their Jewish experience—with Orthodox experience, in the case of R. Cardozo's students, with an experience more diverse (rarely Orthodox, often synagogue-based, sometimes secular), in the case of Professor Kamenetz and the Jewish Buddhists—strongly suggests that the problem is not exclusive to one level or another of Jewish religious life, but may be endemic. Those of us who are most particularly concerned with the challenge to Orthodoxy may be disposed to find R. Cardozo's dissatisfied students more disturbing than Professor Kamenetz's Jewish Buddhists. But we would be unwise to dismiss with a cynical shrug the religious frustrations of those other young Jews who, having found their own Jewish experience spiritually impoverished, have turned to Asian religion to try to acquire "wings."

I think of a line of Chaucer's that expresses what I should consider an enlightened Orthodox perspective on the matter: "If gold can rust, then what should iron do?" What seems evident is that both the "gold" and the "iron" are suffering today from the same "rust." But it is precisely because of the unique role that Orthodoxy inevitably plays in the whole of Jewish religious life that the Orthodox problem that R. Cardozo has identified is by no means an exclusively Orthodox problem.

## II

We like to hope that problems of this importance have solutions. I pray that this one does, and that such solutions can be speedily discovered and effected. However, I have no intention (nor authority or

knowledge) to propose them. What I want to do in the remainder of this article is to touch upon a few of the relevant insights in rabbinic thought, as I understand them—chiefly those of Maimonides—which may help us toward understanding and solution.

### *Maimonides and Halakha*

We have noted the broad rabbinical consensus that the Torah is as concerned with our religious *experience* (our understanding, feelings, perceptions, intentions) as with our *behavior* (our fulfillment of the mitzvot and halakhot). The discussions and citations above with respect to the perception of frustrated spirituality in contemporary Orthodoxy and in Judaism more generally have all implied that in contemporary Orthodoxy, there has come to be an imbalance (if indeed there was ever an authentic as distinct from a theoretical *balance*) between these two essential elements of our *avodah*—that the dominating focus upon behavior or halakha has tended to diminish the role of experience or spirituality (to oversimplify a complex subject).

By virtue of his range and penetration, Maimonides (better known in the Orthodox world as the Rambam) has long enjoyed a unique eminence as both rabbi and philosopher. This notwithstanding, he remains controversial as he was in his own day and after. I would like to recall some of his ideas here not to suggest that they should be regarded as sacrosanct, but rather to propose that they offer valuable points of departure for anyone who wishes to address the issue of spirituality vis-à-vis the contemporary halakhic dominance in Orthodoxy.

Maimonides, as befits an intellect of his stature, seems to embrace both “sides” of the issue—or, better, to acknowledge the danger of a simplistic commitment to either. His *Mishneh Torah* is, of course, our premier codification of biblical mitzvot and rabbinical halakhot—and yet, as we shall point out presently, he has harsh words in his other masterpiece, the *Guide of the Perplexed* (*Moreh Nevukhim*), for halakhic devotion that is unleavened by spiritual (his term is “intellectual”) “apprehension.”

### *Sacrifice, Prayer, and Meditation*

A substantial portion of the Written Torah addresses the system of *korbanot*, or sacrifices, which is the Torah’s most conspicuous prescription of service (*avodah*) to God. In the *Mishneh Torah*, Maimonides organizes and elaborates the sacrificial laws in several extensive sections. In Jerusalem today, some rabbis and other devotees are even now preparing to resume the sacrifices when the Temple will be restored.

However, when Maimonides turns to this matter in the *Guide* (III.32), he implies unmistakably that the sacrificial system was not in fact God’s first “wish” for Israelite *avodah*, but rather a concession to human weakness, specifically the human reluctance to give up familiar ways. (Maimonides’ translator, Professor Shlomo Pines, renders the author’s Arabic for this divine accommodation with the arresting expression “wily graciousness.”) After citing examples of God’s accommodating the limitations of the human body, he addresses the subject of sacrifices:

Many things in our Law are due to something similar to this very governance. . . For a sudden transition from one opposite to another is impossible. And therefore man, according to his nature, is not capable of abandoning suddenly all to which he was accustomed. . . . and as at that time the way of life generally accepted and customary in the whole world and the universal service to which we were brought up consisted in offering various species of living beings in the temples in which images were set up. . . His wisdom did not require that he give us a Law prescribing the rejection, abandonment, and abolition of all these kinds of worship. For one could not then conceive the acceptance of [such a Law], considering the nature of man, which always likes that to which it is accustomed.

If this were not sufficiently jarring to conventional assumptions, Maimonides immediately follows it with an observation perhaps more startling:

At that time this would have been similar to the appearance of a prophet in these times [*i.e.*, *Maimonides' own times*] who, calling upon the people to worship God, would say, "God has given you a law forbidding you to pray to Him, to fast, to call upon Him for help in misfortune. Your worship should consist solely in meditation. . . ." Therefore He . . . suffered the abovementioned kinds of worship to remain.

Professor Pines cites the eleventh-century Arab philosopher Avicenna as Maimonides' probable source or influence with respect to meditation, and believes that Maimonides not only regarded prayer as superior to animal sacrifice, which seems likely enough, but that he indeed agreed with Avicenna that meditation was a superior form of worship to verbal prayer (p. cii). (Cf. *Guide*, III.51: "the worship peculiar to those who have apprehended the true realities" is "to set their thought to work on God alone, after they have achieved knowledge of Him.") Maimonides' text is subtle and is no doubt susceptible to multiple interpretations. What I suggest may be most relevant to us, if we address the matter cautiously, is this: in comparing kinds of *avodah*, of divine service or worship, Maimonides seems unmistakably to find *least* attractive—thus least "pleasing" to God—the kind of sacrifice that employs mainly human *behavior*, by contrast with those that invoke human understanding, intellect, mind, speech, and spirit, "that intellectual worship consisting in nearness to God and being in His presence."

### *Halakhic Observance and "Apprehending" God*

We find the same principle, expanded to the scale of a human typology, at the beginning of that quartet of magisterial chapters which form the climax of the *Guide*. Maimonides calls this now-famous text a parable. It is a parable of man in search of God. In order to understand its relevance to our subject, we must recall all of it.

The ruler is in his palace, and all his subjects are partly within the city and partly outside the city. Of those who are within the city, some have turned their backs upon the ruler's habitation, their faces being turned another way. Others seek to reach the ruler's habitation, turn toward it, and desire to enter it and to stand before him, but up to now they have not yet seen the wall of the habitation. Some of

those who seek to reach it have come up to the habitation and walk around it searching for its gate. Some of them have entered the gate and walk about in the antechambers. Some of them have entered the inner court of the habitation and have come to be with the king, in one and the same place with him, namely, in the ruler's habitation. But their having come into the inner part of the habitation does not mean that they see the ruler or speak to him. For after their having come into the inner part of the habitation, it is indispensable that they should make another effort; then, they will be in the presence of the ruler, and see him from afar or nearby, or hear the ruler's speech or speak to him. (III.51)

Part of this unforgettable parable is quite transparent. Those outside the city are barbarians "without the law," who neither adhere to a religious tradition nor speculate for themselves. The city of God is not even a rumor to them. Lacking even a suspicion of the transcendent order, they lack authentic human identity—they are "lower than the rank of man but higher than the rank of the apes." They are, we may suppose, akin in a way to the *apikorsim* of rabbinic typology. By contrast, all those within the city walls acknowledge and seek God, in one way or another, though some of these are fatally corrupted with error, and cannot even approach, let alone see, his habitation.

The final three classes of seekers are the ones who embody definitively Maimonides' conceptions of *avodah*. First are those who are eager to encounter God but can't even see the walls of his habitation. These are "the multitude of the adherents of the Law, I refer to the ignoramuses who observe the commandments."

Next are those seekers who can indeed perceive the habitation but cannot find its gate, and so are condemned to walk around it. These are the masters of tradition who know what is considered to be correct but do not think for themselves. As Maimonides puts it: They "believe true opinions on the basis of traditional authority and study the law concerning the practices of divine service, but do not engage in speculation concerning the fundamental principles of religion and make no inquiry whatever regarding the rectification of belief."

Those who succeed in gaining access to the ruler's habitation, though they are lodged in rooms of varying nearness to the ruler himself, are Maimonides' ideal of the autonomous seekers, who alone can approach the ruler though with an intimacy commensurate with the acuteness of their "apprehension." Maimonides has encapsulated their search at the beginning of this chapter, where he promises that the chapter will explain

the worship as practiced by one who has apprehended the true realities peculiar only to Him after he has obtained an apprehension of what He is; and [this chapter] also guides him toward achieving this worship, which is the end of man, and makes known to him how providence watches over him in this habitation until he is brought over to the *bundle of life*.

If Maimonides had earlier been relatively circumspect in depreciating sacrifice by comparison with prayer and meditation as expressions of *avodah* (III.32), here he is startlingly forthright with respect to "observance" without intellectual-spiritual content, and declares categorically that these "ignoramuses who observe the commandments" but will never even glimpse God's "habitation" constitute the mass of those who adhere to the Law. And the conformists who are content to think the approved thoughts get off only little better.

That which both classes of earnest but defective worshippers lack—the robotic observers of the Law and the merely conforming traditionalists—is what Maimonides often, in many places in the *Guide*, speaks of as our necessary, unending attempt at “intellectual apprehension” of God. We must not, I think, mistake what he means by “intellectual.” Maimonides is often called a “rationalist,” at times somewhat dismissively. But there is certainly nothing *merely* ratiocinative about his use of this word and the concept behind it. They appear throughout the *Guide*, from beginning to end. Thus in the first chapter, we learn that the human capacity for “intellectual apprehension” is nothing less than that “divine image” in which man was created. It is not a faculty simply for reasoning, in a narrow sense, but for perceiving, grasping, or apprehending, in a comprehensive sense. Maimonides’ own intellectual or spiritual “apprehensions” throughout the *Guide*—certainly not least in these final chapters—are dense, subtle, often mystical (however one understands that term), and they unfold at a very high level of intellectual and spiritual sophistication.

His peerless final chapter (III.54), in which the idea receives its apotheosis, gives us what are perhaps his ripest reflections on “spirituality” as autonomous seeking for apprehension of the Transcendent. The chapter is a kind of peroration, and at its climax is a celebrated text from Jeremiah (9:22–23):

Thus saith the Lord: Let not the wise man glory in his wisdom, neither let the mighty man glory in his might, let not the rich man glory in his riches; but let him that glories glory in this, that he understands and knows Me.

As Maimonides paraphrases this verse, even the wisdom of the moral virtues in which the wise man glories—along, of course, with lesser goods—stands below the highest and only unqualified *hokhmah*, which is “apprehension of Him.” But the same is true, he contends, of the *mizvoth* and *halakhot* themselves—thus ringing a significant variation on what we have found him affirming in his parable of the seekers, regarding the “multitude of the adherents of the Law”:

[A]ll the actions prescribed by the Law—I refer to the various species of worship and also the moral habits that are useful to all people in their mutual dealings—. . . all this is not to be compared with this ultimate end and does not equal it, being but preparations made for sake of this end.

This Maimonidean bombshell is bound to dismay at least as many as it thrills. But coming from so authentic a “halakhic man” as Rambam, who was also Maimonides the philosopher, it may help to illuminate the link between spirituality and halakha. In the last sentence of his book, Maimonides (alluding to the text from Jeremiah that he has just quoted) points the direction:

It is clear that the perfection of man that may truly be gloried in is the one acquired by him who has achieved, in a measure corresponding to his capacity, apprehension of Him. . . . The way of life of such an individual, *after he has achieved this apprehension* [italics mine], will always have in view *loving-kindness, righteousness*, and judgment, through assimilation to His actions, may He be exalted. . . .



But according to Maimonides, I take it, we cannot “apprehend” that of whose existence we are not convinced. If the *avodah* of “apprehension” of God is the way to our own perfection, and in fact (as he implies elsewhere) to that intersection with the Eternal we call *olam haBa*, then a prior “knowledge” of the necessity of God’s existence or being is its cognitive *sine qua non*, the cornerstone of our understanding, the foundation of our *hokhmah*. (Maimonides, like Rav Abraham Isaac Kook centuries later, is reluctant even to ascribe so abstract but, in his view, mundane an attribute as *existence* to God.) In his articulation of the 613 mizvot, Maimonides starts by affirming: “The first of the positive commandments is to know that there is a God.” We must know that there is *a* God before we can apprehend *the* God.

The first page of the *Mishneh Torah* addresses our relation to God with a philosophically austere expression of this same cognitive formula: “The foundation of all foundations and the pillar of wisdom is to know (*leida*) that there is a Primary Reality (*Matsui Rishon*) who brought into being all existence” (*Yesodei haTorah* I.1).

How to try to fulfill this primary Torah mitzvah to *know* of God’s being, and then the corollary obligation (in Maimonides’ terms) to *apprehend* God, is not self-evident. We look to the Torah as God’s revealed Truth; but like our ancestors of the twelfth century, when we do this we cannot be sure of either comprehension or agreement.

I suggest that Maimonides’ insights into these vitally important matters have not lost their usefulness.

### *Maimonides on Man, God, and Torah*

Three of these insights in particular seem to me immensely relevant to the challenges, both moral and spiritual, that we have seen imputed to contemporary Orthodoxy. First, there are the individual, autonomous “intellectual” ways we should, according to Maimonides, try to relate to God. The unquestioned importance of observing the formal halakhic requirements of the Law notwithstanding, fulfillment of our lives as humans and Jews requires that we personally *know the existence of* (not only believe in), and then *apprehend* (not only obey), God. Without this our devotion to halakha is fatally incomplete. No idea in the *Guide of the Perplexed* is more central or more pervasive. It is, I think, at the core of what we now mean by spirituality. In this context, Maimonides’ evident preference for prayer and meditation as expressions of *avodah* is altogether comprehensible.

Then, too, there is Maimonides’ very conception (or conceptions) of God. Some of his most provocative and demanding chapters are about the divine nature. For his own reasons, he himself almost invariably uses the Torah’s imagery and language of super-monarchical personification, although he explains at length that God’s nature and attributes are altogether beyond human comprehension. He reminds us many times that the Torah’s personifications of God are instances of its “speaking in the language of men,” for the benefit of those whose thinking cannot rise above this language. He himself quite decisively (and possibly a little ironically) puts aside the conventional imagery in that extraordinarily interesting opening of the *Mishneh Torah*, which we have already quoted, where he invokes the “Primary Reality (*Matsui Rishon*) that brought into being all existence.” He thus seems to distance himself at a critical moment from the familiar encrustation of personifications, images, and metaphors, numinous and venerated and usually conceived literally, which in his day, for at least a few, had evidently already become encumbrances (and have certainly, in our own day, become so for many more, as Rav Kook acknowledges in some of his most luminous

pages). Perhaps it is not too much to say that Maimonides thus assists—even authorizes—our individual cognitive capability, our “intellectual apprehension,” our meditative faculty, to lead our individual sensibilities toward those personal intimations of Transcendent Reality in which he believes our fullest humanity and our most authentic Torah devotion lies.

Finally, there is Torah itself, the ordained source—more precisely, the *register*—of God’s mizvoth and halakhot, and thus at the core of historic Judaism, most assuredly of Orthodox Judaism. Maimonides devotes over a third of the *Guide* to explaining that the Torah’s innumerable ascriptions to God of “corporeality,” of a formal constitution parallel to the human, are not to be understood literally, that they are concessions, in “the language of men,” to the needs of those who cannot otherwise conceive of “Primary Reality.” Although the traditional divine personification remains for many a stumbling block and a perplexity, Maimonides and like-minded thinkers did eventually win their battle against divine corporeality.

For contemporary seekers of spirituality, however, Torah perplexities are at least as likely to be related to crime and punishment—to the range of approved human behavior and prescribed penalties for infraction. What are we to do when the Written Torah authorizes or forbids behavior in ways that our moral apprehension—our “inner voice”—rejects? Especially when the Written Torah prescribes the punishment of death in contexts which may seem to us morally unacceptable—when, in short, halakha seems at odds with morality?

We have already encountered Maimonides’ original, if somewhat equivocal, attitude toward animal sacrifice: that its authorization may have been from the start a divine concession to our human weakness for the familiar, and thus in itself “less pleasing” to God than prayer and meditation. But never, I believe, in either the *Guide* or the *Mishneh Torah*, does Maimonides hint that he deplores its original institution, whether for reasons of spiritual or aesthetic fitness, cruelty, or any other, nor that he would deplore its eventual restoration. Though the sacrifices may be a concession, they are also a mitzvah, a law. (Nevertheless, most contemporary Jews, including I suspect large numbers of Modern Orthodox, would be unenthusiastic for their return.) But still, Maimonides’ unmistakable preference for prayer and meditation—a preference that he in effect also ascribes to God—seems to me evidence of a critical attitude toward the Written Law, founded, one may surmise, upon his own moral and aesthetic perceptions, his personal “intellectual apprehension.”

If there is no unequivocally moral component in Maimonides’ apparent misgivings about *korbanot*, this may not be the case with respect to his rejection of the Torah’s unqualified command that when they are able, the Israelites must exterminate without exception, and irrespective of age, all the Canaanites (Deut. 7:1-2, 7:16, 20:15–18) and all the Amalekites (Deut. 25:19). Though hedged with a multitude of qualifications, his contrary conclusion is clear enough: if these arch-enemies should accept “a peaceful settlement” (however ungentle), even the Amalekites and Canaanites may live. (Cf. *Hilkhot Melakhim* 6:4–6.)

In thus nullifying the Written Torah’s demand for total proscription of these peoples, on account of their exceptionally destructive offenses and presumed mortal dangers, Maimonides is following in part a certain few midrashic and talmudic texts. “*Sifrei* and other halakhic sources reason that since the express purpose of the law is to prevent the Canaanites from influencing the Israelites. . . if they abandoned their paganism and accepted the moral standards of the Noahide laws they were to be spared” (Jeffrey Tigay, *JPS Torah Commentary: Deuteronomy*, 472). Like Maimonides’ apparent discomfort with animal sacrifice, the Oral Torah’s finding such a way to save Canaanite lives seems to suggest a critique (to which Maimonides adheres) of the Written text’s plain sense. “[I]t is clear. . . that Deuteronomy’s demand for proscription of the Canaanites is indeed unconditional.. The rabbis’ rejection of this view is a reflection of their own sensibilities” (*Ibid.*, 472).

Tigay's explanation appears to contradict the usual rabbinical principle that the Oral Torah's role vis-à-vis the Written is to amplify and clarify. What of the Amalekites? I know of no text in the Oral Torah which extends to *them* the option to save their lives by accepting a "peaceful settlement," with all that is thus entailed. Among the later rabbis, Maimonides seems unique in so extending it. I suggest that to have done so, to have once again revealed (and this time without a midrashic source) a critical attitude toward the Written Law, Maimonides has given us another reflection of his own moral sensibility.

### *Dynamic Halakha and Ethical Insights*

When, a number of years ago, I first encountered Rabbi Robert Gordis' well-known article "A Dynamic Halakhah: Principles and Procedures of Jewish Law" (*Judaism*, Summer 1979), I was excited by what it suggested about the complex relation between Written Torah and Oral Torah. ("Dynamic" seems to me an excellent epithet.) Some years later, I found Rabbi Eliezer Berkovits equally suggestive, and for the same reason. (In particular, see his article, "The Nature and Function of Jewish Law," reprinted in his *Essential Essays on Judaism*.) Other writers in these 30 years have developed the same theme, which is precisely relevant to the imputed confrontation of the Written Law with spirituality. The theme is this: Despite assertions that it is "unchanging," rabbinical interpretation of Torah Law has always been dynamic and responsive to rabbinical moral sensibilities.

[There is] clear evidence of growth and development in the Halakha because of *new ethical insights and attitudes that represent movement beyond earlier positions*. In these instances the Halakha did not hesitate to establish new legal norms, not local or temporary in character, but universally and permanently binding. (Gordis, 270; italics in the original)

Rabbi Gordis writes of "the dynamic character of the ethical consciousness of the Sages and . . . their unremitting effort to interpret the Torah in the light of their ethical insights" (*Idem.*). Rabbis Gordis and Berkovits, as well as others, have presented evidence that the sages of the Oral Torah regularly interpreted the Written Law so as to diminish judicial execution. Everyone knows about their institution of the requirement for witnesses and warnings. The reluctance of Rabbi Akiva to countenance any executions at all is well known. Equally familiar are the halakhic stratagems that in effect nullified the biblical mizvot to execute the "stubborn and rebellious son" and to exterminate the "city led astray to idol worship." There was, says Rabbi Berkovits, among the rabbis of the halakha a prevailing "tension between the written law and the living conscience" (73). "Obviously," notes Rabbi Gordis, "the Law of God could not be inferior to the conscience of men" (272).

If we accept this reasoning, it would seem to follow, then, that when the rabbis of the Mishna find ways to void (in effect) the unqualified Scriptural proscription of the Canaanites, and when Maimonides does the same with regard to the Amalekites, they are invoking their own consciences, and implying thereby that these "inner voices" too are in their own way *miSinai*.

### *The Semantic Model*

There may seem to be a contradiction between this concept of a progressively unfolding halakha and the axiomatic rabbinical principle, enshrined in the Torah itself, that the Torah is definitive and unchanging. We read in Maimonides' own *Principles of Faith*:

*The Ninth Fundamental Principle* is the authenticity of the Torah, i.e., that this Torah was precisely transcribed from God and no one else. To the Torah, Oral and Written, nothing must be added nor anything taken from it, as it is said, "You must neither add nor detract" (Deut. 13:1).

What role in such a Torah is there for personal sensibilities, consciences, and inner voices? Extrapolating a little, what place is there for "spirituality" in a religion founded upon Law? Fortunately, the rabbinical concept of the Oral Law is wondrously flexible and sensitive to disagreement among qualified disputants. (Cf. Isadore Twersky, *A Maimonides Reader*, 13–14.) The functions of rabbinical amplification and clarification embrace a wider range of possibilities than we might expect from Maimonides' categorical Ninth Principle—but for which his own practice, as we have seen, might well have prepared us. And we have observed that among Maimonides' dominating themes is his insistence that our individual understanding and apprehension of Transcendent Truth takes precedence for us over halakhic observance *per se*, and indeed over halakha itself, though these remain altogether essential. In this way he may have provided us with tools for helping resolve the conflicts in Modern Orthodox life between Law and spirituality.

And in the same spirit, I suggest a conceptual analogy for helping clarify how we can reconcile our "unchanging" Law with the autonomy and spontaneity of our experiences and apprehensions.

One of the basic principles of semantics is *semantic contamination*. According to this principle, a "message" sent by *A* to *B* is almost always vulnerable to errors of one kind or another between leaving *A* and arriving at *B*. There might, for instance, be static in a radio transmission; a paper message might be damaged by the elements; an email message might be distorted by a computer glitch; and so forth. More germane would be a situation in which the recipient failed to understand the message correctly because of intellectual or cultural limitations, and was obliged therefore to guess at some of its content. (We may also imagine a situation, less likely perhaps, where the recipient, for reasons of intellect, culture, or even perceived self-interest, willfully distorted the message.) And if the transmission of the message occurs not only in space but in time, we can easily imagine another range of potential dangers to accuracy of reception and comprehension. These matters are well-known to the historian, and especially to the philologist; such sciences as textual criticism are founded upon them.

Without being drawn too near the quicksand of divisive theological speculation, let us think of the truths of Torah as messages, in this semantic sense—in the language of Torah itself, messages from God, through Moses, to us. An essential corollary of any such conception is, of course, as Maimonides registers in his Ninth Principle, that "messages" coming from Transcendent Reality are true and definitive. Yet by the time, so to say, that they have reached *us* (for the reasons I've sketched out, and for others that will readily come to mind) many or most of them may have been "contaminated," or may have reached us incomplete. It may even be that *no one's* "hearing," even that of the most eminent prophets, is ever quite up to comprehending the Transcendent message. Thus the Written Torah required, and requires, to be supplemented by the Oral, and the Oral by the most eminent sages of the generations. Emphasizing one aspect of this requirement, Rabbi Eliezer Berkovits addresses the matter with exceptional eloquence:

Thus, the Oral Torah as halakha redeems the Written Torah from the prison of its generality and “humanizes” it. The written law longs for this, its redemption, by the Oral Torah. That is why God rejoices when he is defeated by his children. Such defeat is his victory. (p. 97)

May we imagine, extending Rabbi Berkovits’ celebrated talmudic allusion, that God also rejoices whenever his children use their unique faculties of spirit and perception, of instinct and conviction, to reach beyond halakha, beyond even our only partially understood Torah, to that direct and personal “intellectual apprehension” of *Matsui Rishon* in which Maimonides finds our human fulfillment?