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## Law, Halacha, and Education: New Directions in the Philosophy of Halacha



*Abstract: The philosophy of halacha (Jewish law) has until now most commonly been engaged in and studied as a branch of legal philosophy and has used its tools. And yet halacha has been recognized to have a different character from political law, with a unique contribution to make to the understanding of different legal systems. Rather than asking the usual questions asked in philosophy of halacha, which are derived from political and legal theory, this essay considers halacha as law whose goal is primarily educational, and approaches philosophy of halacha with questions derived from philosophy of education. As Plato's philosophy exemplifies, philosophy of education was once an integral part of political theory. Here I suggest that the separation of educational philosophy from legal and political philosophy has had an adverse effect on our understanding of Jewish political and, particularly, legal thought.*

As a religious legal system, *halacha* (Jewish law) differs, certainly at face value, from the law of the state. The distinction between the two, however, was not at all clear to prominent thinkers writing about halacha through the ages. Baruch Spinoza—to cite an extreme example—who left his mark on Jewish thought, saw halacha as the law of the Jewish state (and therefore regarded it as superfluous in the political context in which the Jews of his day found themselves);<sup>1</sup> and though Moses Mendelssohn pointed to the separation between religion and state, he considered this as an actual rather than an ideal situation.<sup>2</sup> We can likewise cite the Maimonidean

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<sup>1</sup> Baruch Spinoza, *Tractatus Theologico-Politicus* (1670), ch. 3.

<sup>2</sup> The distinction drawn by Mendelssohn is between the law of the state, which commands or forbids actions solely in an external manner, and religious law, which is

sources of the idea that halacha is meant to form the basis for the law of the state;<sup>3</sup> and many modern Jewish thinkers have also considered the issue.<sup>4</sup> The possibility that halacha may be a model for political law intensifies the need for a comparison between halacha and state law with regard to the respective systems' standing and authority. The comparison can be based on such questions as: "Can a legal system be established for a state or a community without activating the sorts of sanctions known to us from the political arena?" "Are there alternatives to the methods used today for instilling loyalty to the law of the state?" "How can halacha contribute to answering these questions?"

Questions in this vein were raised, as is well known, by Robert Cover in his classic article "Nomos and Narrative,"<sup>5</sup> and later by Suzanne Stone in her article "In Pursuit of Counter-Text,"<sup>6</sup> and these questions pervade the entire literature dealing with the distinction between "natural morality" and "positivistic morality."<sup>7</sup> Cover cites the halachic system as

directed as well toward the inner world of a person's intentions. Morality and religion, in his opinion, are intended to assist the state in attaining its goals, but we must not as a practical matter intermingle the (external) laws of the state and (internal) morality. Christianity attempted this sort of combination, striving to transform the legal into the moral; the result was sociopolitical compulsion and meddling in people's inner worlds (their beliefs, feelings, and opinions). Accordingly, Mendelssohn believed, it was proper to distinguish between actual Jewish religious law (which concerns itself solely with external actions) and utopian law (which can apply to the world of intentions as well).

<sup>3</sup> See Aviezer Ravitzky, "Religion and State: Competing Models in Jewish Thought," in Ravitzky, *Freedom Inscribed: Diverse Voices of Jewish Religious Thought* (Tel Aviv: Am Oved, 1999), pp. 49–89 [Hebrew]; Zev Harvey, "Between Political Philosophy and Halacha in Maimonides' Teachings," *Iyyun* 29:3 (1980), pp. 198–212. [Hebrew]

<sup>4</sup> See Pinhas Rosenblit, "State and Government in Jewish Thought," *Molad* 35/36 (1975), pp. 114–126 [Hebrew]; Yitzhak Englard, "The Relationship Between Halacha and State," *Molad* 22 (1962), pp. 702–714 [Hebrew]; Aviezer Ravitzky, "Outline of a Position Paper: Is a Halachic State Possible? The Paradox of Jewish Theocracy," *Parliament* 47:26 (2005) [Hebrew]; Naftali Rotenberg, "Is a Halachic State Possible?" *Ravgvani*, Tammuz 5758 (1998), pp. 32–35. [Hebrew]

<sup>5</sup> Robert M. Cover, "Nomos and Narrative," *Harvard Law Review* 97:1 (1983), pp. 4–68.

<sup>6</sup> Suzanne Stone, "In Pursuit of Counter-Text: The Turn to the Jewish Legal Model in Contemporary American Legal Theory," *Harvard Law Review* 106:4 (November 1993), pp. 813–894.

<sup>7</sup> See Avi Sagi, *Judaism: Between Religion and Morality* (Tel Aviv: Hakibbutz Hameuhad, 1998) [Hebrew]; Zvi Zohar, "On the Relation Between the Language of Halacha and Natural Language," in S. Yisraeli, N. Lamm, and Y. Refael, eds., *Rabbi J.B. Soloveitchik Jubilee Volume* (Jerusalem: Rubin Mass, 1984), pp. 59–71; Bernard S. Jackson, "The Jewish View of Natural Law," *Journal of Jewish Studies* 52:1 (2001), pp. 136–145; David J. Bleich, "Judaism and Natural Law," *Proceedings of the Eighth World Congress of Jewish Studies* 3 (1982), pp. 7–11; Julius Stone, "Leeways of Choice, Natural Law and Justice in Jewish Legal Ordering," *Jewish Law Annual* 7 (1988), pp. 210–251.

an example of a legal system that does not depend on political power or sanctions; it is, rather, a normative framework that depends on the free acceptance of the legal framework's values by the members of the community of the faithful.<sup>8</sup> Stone, following Cover, seeks to amplify the halachic system's distinctiveness, citing its interpretive freedom and flexibility. She also refers to Cover's distinction between the *normative end* of the (ideal) law and the actual political and moral situation,<sup>9</sup> stressing the link between midrash and halacha and the importance of understanding how halacha in particular and law in general take shape with reference to the history, community, environment, and cultural forces within which they are created.<sup>10</sup> Stone accordingly notes the anomaly of attempting to illuminate the American Constitution through insights coming from other cultural domains, such as Aristotle, Cicero, Locke, or Hume.<sup>11</sup> In her view, an understanding of any constitution requires an awareness and understanding of the foundational tradition, myths, and narratives of the community that produced that constitution.<sup>12</sup>

The claims put forth by Cover and Stone provide foundations for the approach developed in this article. Here I attempt to explore a possible extension of Cover's argument that it is possible for a legal system to be grounded in something other than the authority and sanctions of the state. To that end, I will broaden the inquiry with regard to halacha, pointing to the educational objectives implicit in, and even essential to, this particular system of law. Having done this, I will reexamine the

<sup>8</sup> See n. 2 above.

<sup>9</sup> Stone maintains there is a link between Cover's distinction and the halachic and kabbalistic writing of R. Joseph Karo; and Cover is aware of Jacob Katz's argument that halacha and Kabbala were blended. Cf. Jacob Katz, "Post-Zoharic Relations Between Halacha and Kabbala," in Bernard D. Cooperman, ed., *Jewish Thought in the Sixteenth Century* (Cambridge, Mass.: Harvard University Press, 1983), pp. 283–286. Of the contrary argument that Karo's writings should be understood without any such blending, see Robert Bonfil, "Halacha, Kabbala, and Society: Some Insights into Rabbi Menachem Azariah da Fano's Inner World," in Isadore Twersky and Bernard Septimus, eds., *Jewish Thought in the Seventeenth Century* (Cambridge, Mass.: Harvard University Press, 1987), pp. 43–44. Cf. Katz, "Post-Zoharic Relations," pp. 287–304; Cover, *Nomos*, p. 12.

<sup>10</sup> See Richard Hyland, "Babel: A *She'ur*," *Cardozo Law Review* 11:5 (1990), pp. 1589–1597, 1603, which notes, in the context of the Tower of Babel episode, the connection between language and education regarding the legal system.

<sup>11</sup> See Bruce Ackerman, "Constitutional Politics/Constitutional Law," *Yale Law Journal* 99:3 (December 1989), pp. 453–547.

<sup>12</sup> In this context, see Robert M. Cover, *Justice Accused: Antislavery and the Judicial Process* (New Haven: Yale University Press, 1975), pp. 154–158; Michael S. Paulsen, "Accusing Justice: Some Variations on the Themes of Robert M. Cover's *Justice Accused*," *Journal of Law and Religion* 33 (1989), pp. 35–38.

arsenal of analytical tools available to the philosophy of halacha, and also hopefully shed new light on the nature of political law.

## 1. FUNDAMENTAL ISSUES IN THE PHILOSOPHY OF HALACHA

Before reexamining the philosophy of halacha, we must familiarize ourselves with some of the existing discourse in the field. Various analytic approaches have been brought to bear within the rubric of philosophy of halacha.

A systematic mapping out of the basic questions in this area can be found in Yohanan Silman's book *The Voice Heard at Sinai*.<sup>13</sup> Silman sets forth his views—which need not be considered in detail here—regarding the epistemological status of halacha: Does halacha represent an established, given truth, or does it express a developing truth at one stage or another? In other words, does “divine guidance” lead one to the truth, or do decrees and commands imposed on the believer?<sup>14</sup> Questions of an entirely different type grow out of the writings of Jacob Katz and Haim Soloveitchik, who examine medieval halachic literature using the tools of history and sociology.<sup>15</sup> Yet another approach can be found in the writings of Moshe Halbertal and Avi Sagi (despite the differences between them), who apply the tools of hermeneutics enriched by an awareness of the tools of general and legal philosophy.<sup>16</sup>

The issues raised by these various studies can be identified as the authority of the halachic system in general and the decisor in particular;

<sup>13</sup> Yohanan Silman, *The Voice Heard at Sinai: Once or Ongoing?* (Jerusalem: Magnes Press, 1999). [Hebrew] As seen in his book, the fundamental issues are: the standing and force of the Sinaitic legislation, the significance of innovation and human legislative activity, the master-disciple relationship and the tension it implies between tradition and innovation, the hierarchy and authority of the Sages, and the standing of prophecy vis-à-vis tradition and the Sinaitic revelation. See pp. 101, 127.

<sup>14</sup> Yohanan Silman, “The Authoritativeness of Halakhic Directives: A Meta-Halachic Inquiry,” in Aviezer Ravitzky and Avinoam Rosenak, eds., *New Studies in the Philosophy of Halacha* (forthcoming). [Hebrew]

<sup>15</sup> Jacob Katz, *Halacha and Kabbala* (Jerusalem: Magnes Press, 1986) [Hebrew]; Katz, *Halacha Under Stress—Impediments to the Emergence of Orthodoxy* (Jerusalem: Magnes Press, 1992) [Hebrew]; Katz, *Tradition and Crisis* (Jerusalem: Magnes Press, 1992) [Hebrew]; Haim Soloveitchik, *Responsa as an Historical Source* (Jerusalem: Zalman Shazar, 1990).

<sup>16</sup> Moshe Halbertal, *Interpretive Revolutions in the Making: Values as Interpretive Considerations in Halakhic Midrash* (Jerusalem: Magnes Press, 1997) [Hebrew]; Halbertal, *People of the Book: Canon, Meaning, and Authority* (Cambridge, Mass.: Harvard University Press, 1997); Avi Sagi, *Both Are the Word of the Living God: The Significance of Halakhic Conversation* (Tel Aviv: Hillel Ben Haim Press, 1996) [Hebrew]; Sagi, *Judaism: Religion and Morality* (Tel Aviv: Hakibbutz Hameuhad and Hartman Institute, 1998). [Hebrew]

the role and force of textual interpretation; the sources that establish the norms and possess the capacity to change them; the standing of “tradition,” “revelation,” and “reason” and their force in shaping halacha; the concept of “truth” within the halachic system; what constitutes “error” and how to treat disagreement; whether halacha is a canonization or a codification and the implications of that distinction; and, finally, the relationship between halacha and *agada* (non-legal rabbinic writings and thought).

To sum it up even more sharply, the investigator attempts, in his heart of hearts, to answer a single question: *As a practical matter, what underlies the halachic dispute that is confronting me?* Or, to state the question differently: What can be learned from the halachic text itself about the authority of the decisor, the sources of the halacha’s authority, its mechanisms for change, its standing as a canon, and the extrahalachic forces that affect halachic decision making?

Given that these are the central issues of the philosophy of halacha, one can find more profound connections between that field’s development and the main pending inquiries in legal philosophy.<sup>17</sup> Indeed, legal philosophy exercised an especially profound effect on the intellectual tools used in studying philosophy of halacha, and that effect warrants comprehensive treatment elsewhere.

At first glance, this hardly seems surprising. Would it be possible to think about and analyze the halachic system—namely, the Jewish legal system—without using jurisprudential tools? It is almost inconceivable that philosophy of law would not have a part in the analysis of halacha; and yet the question remains: Is halacha merely a legal system, or does it operate in somewhat more diverse ways?

## 2. HALACHA AND HALACHIC RULINGS AS EDUCATIONAL TOOLS

I would like to propose a new approach, one that draws on a variety of intellectual sources and is anchored in a series of little-discussed questions at the margins of meta-halachic analysis: What does a halachic text mean to do? Does it shape a culture? Does it create a system of forbidden

<sup>17</sup> Important literature on the subject includes Lon L. Fuller, *The Morality of Law* (New Haven: Yale University Press, 1965); Fuller, *The Principles of Social Order: Selected Essays of Lon L. Fuller* (North Carolina: Duke University Press, 1981); H.L.A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1961); Ronald Dworkin, *A Matter of Principle* (Cambridge, Mass.: Harvard University Press, 1986); Dworkin, *Taking Rights Seriously* (Cambridge, Mass.: Harvard University Press, 1977); Dworkin, *Law’s Empire* (Cambridge, Mass.: Harvard University Press, 1986).

and obligatory acts that keep people from transgression? Does it control human nature or shape people's characters? These questions offer the potential for a new examination of the subject, and they can cast additional light on the nature of juridical action in general and halachic action in particular.

In deciding a case, a judge applies the law to a given state of affairs, resolving the legal problems arising in that context. He also shapes a culture, controls the system of social norms, and so forth. For the most part, however, the judge's frame of reference differs from that of the halachic decisor in at least one important respect: when the rabbi issues a halachic ruling he is not simply a judge deciding a case; he is an educator serving in an ongoing educational capacity vis-à-vis his community, a community that depends on him, among other things, to answer its questions regarding halacha. The rabbi or decisor has an educational responsibility to his community, and he relates to it as a teacher to his disciples, his students, or his public. He differs from those whose job it is to adjudicate, but who, once the case is decided, are able to go home to their private lives (respectable lives, to be sure, but nonetheless private). The community rabbi—at every level—is regarded as a constant halachic authority, with whom his community has a multifaceted and multilayered relationship. Issuing halachic rulings is but one part of that relationship, and it is integrated with all its other aspects as part of a constant process of guidance and education—two concepts that do not appear, at least not at first glance, in the job description of a judge. In other words, while Stone points to the need to uncover a community's cultural building blocks in order to understand the nature of legislation as an embodiment of those building blocks, the concept of halacha as an educational system, as I present it here, points to the legislator as an active formulator of diverse cultural and educational connections that are embodied, as a practical matter, within his halachic decisions. It follows that the question "what does the halachic ruling mean to do?" lends itself to a simple answer: to educate! The community rabbi who leads his flock to proper normative action is clearly educating it.

It may be argued, of course—and with some justification—that the secular judicial legal system is also an educational system. The work that goes on within the courthouse seems intended to shape an orderly society and produce educated citizens through the application of a legal system involving reward and punishment, establishment of values, and similar measures. That claim is certainly correct, and the observation opens new analytic perspectives on the nature of the legal and adjudicatory processes, but I would claim that the observation pertains far more to the halachic system. While the general legal system and the halachic system

both lend themselves to the application of educational analysis, that sort of analysis is emphasized far more in the halachic context: while the judge can fulfill his job description without playing a pedagogical role, the halachic decisor cannot—he is clearly an educator, and this is true especially in modern times.

The recognition that we are dealing with an educational situation opens up a whole new range of issues that are grounded in the field of philosophy of education. Philosophy of education, as we will see in the next section, is a discipline that touches on sociology, anthropology, psychology, and philosophy but that has its own distinctive basis: the educational process.<sup>18</sup>

### 3. WHAT IS ‘PHILOSOPHY OF EDUCATION’?

It is necessary to clarify, at the outset, what I mean by “philosophy of education.” Clearly, the entire subject cannot—and need not—be treated in this context. In what follows I will provide an overview of the relevant aspects of the field.

Philosophy of education does not deal forthrightly with pedagogical strategies, though its implications can enhance a teacher’s performance in the classroom.

Rather, philosophy of education reflects on the entire educational process as a cultural phenomenon and strives thereby to attain philosophical insights into the culture as a whole. This philosophical process begins and ends with the effort to understand the meaning of “instruction” and “thought,” of “learning” and “knowledge.” Along the way it examines the other cultural and intellectual interactions that occur in the educational enterprise, attempting to cast new light on the entire structure of a culture. Hence, philosophy of education creates a reflective process that strives to reach philosophical insights about the culture as a whole by posing the question: “what is culture and how is it ordered?” Because the reflective process begins and ends with an educational moment, it unfolds in the context of its tie to an educational situation, and it therefore deflects the philosophical analysis to areas that general philosophy usually considers only in passing.

<sup>18</sup> Regarding this point, one might ask exactly what I mean when I speak of “education.” What is the distinction between a text that educates and one that does not? Can everything educate? And what is the difference between education and indoctrination or between education and training or conditioning? These are vital questions that cannot be addressed in the present context; I hope to treat them in a broader study.

Within this framework of philosophy of education, one may identify four distinct philosophical paths. Below is a description of each, along with allusions to its parallels in the field of Jewish thought:

### 3.1 *Philosophy in the Service of Education*

This perspective, exemplified by John Peter Wynne<sup>19</sup> and Hanan Alexander,<sup>20</sup> takes all available tools from the history of philosophy, from Plato to contemporary philosophers, and uses them to analyze and clarify the educational enterprise. It poses such questions as “how do the dualism of Plato, the structuralism of Levi-Strauss, or the language games of Wittgenstein illuminate the processes of learning, teaching, or understanding, or the concept of knowledge?” In this philosophical approach, education can be explicated only through the use of general philosophical tools, and the educational process cannot be safeguarded without them.

The parallel stance in the field of Jewish thought maintains that “Judaism,” or religion in general, can be discussed only if it can be explained, translated in full,<sup>21</sup> or justified using the philosophical tools taken as authority, or to represent the truth. For example, the Platonic notion of the Ideal can be the path to understanding the religious concept of the Godhead; or Kant’s ethical philosophy can lead us to a way of clarifying the status of the commandments.

### 3.2 *Normative Philosophy*<sup>22</sup>

Here, the investigator or philosopher has an agenda—a *normative end* or educational goal in which he believes, which is in his view the proper one for the educator to pursue. These investigators do not simply analyze the educational situation they confront; they also provide guidance on how to overcome challenges so as to instill proper educational principles and

<sup>19</sup> John Peter Wynne, *Theories of Education: An Introduction to the Foundations of Education* (New York: Harper & Row, 1963).

<sup>20</sup> Hanan Alexander, *Reclaiming Goodness: Education and the Spiritual Quest* (Notre Dame, Ind.: University of Notre Dame Press, 2001); see also Robert Maynard Hutchins and Seymore Fox, eds., *Philosophy for Education* (Jerusalem: The Van Leer Jerusalem Foundation, 1983).

<sup>21</sup> On the concept of translation and translation in full, see Michael Rosenak, *Roads to the Palace: Jewish Texts and Teaching* (Providence: Berghahn Books, 1995), pp. 140–144; Jonathan Cohen, “Can Jewish Thought Be Translated?” in Zvi Lamm, ed., *Molding and Rehabilitation* (Jerusalem: Magnes Press, 1996), pp. 164–182. [Hebrew]

<sup>22</sup> See Robert M. Hutchins, *The Conflict of Education in a Democratic Society* (New York: Harper & Row, 1953); Allan Bloom, *The Closing of the American Mind* (New York:

clarify what it is they regard as “proper.” This sort of philosophy creates an end, impelling the community toward a clear ethos that is admittedly subject to periodic change by way of reinterpretation.<sup>23</sup>

Paralleling this philosophical approach in Jewish thought is the approach of thinkers with a firmly set worldview, who attempt to extend the appeal of their teachings through a systematic reading of Jewish texts that, at face value, appear consistent with their views. Within this rubric we find comprehensive interpretations of Maimonides, R. Yehuda Halevi, Maharal, and many others through the centuries.

It is fair to say that these thinkers generate a culture more than they engage in research; in their writings, one senses the interpreter more than the text being interpreted. Nevertheless, their works are the subjects of research, and their texts are studied by communities of students.

### 3.3 *Analytic Philosophy*

This approach to the philosophy of education, exemplified by the work of Israel Scheffler,<sup>24</sup> has first and foremost an analytic dimension, as its name suggests; it approaches various educational and cultural frameworks with a fixed array of analytic questions aimed at clarifying the concepts with which education deals. These questions include, for example: “What, exactly, does one mean when one speaks of ‘learning,’ ‘instruction,’ ‘human potential,’ or ‘understanding’?” “How are these concepts used in the given cultural framework?”

This philosophical approach does not deal with normative instruction (that is, it provides no guidance on what is “good”), nor does it raise educational discourse above the viewpoint of philosophical insights. Instead, it introduces the importance of conceptual consistency into educational discourse and illuminates the various ways in which different educational systems, with their different fundamental premises, define the basic concepts of the educational event and the language of education, and forge distinctive educational processes. Despite the fact that this approach is not normative, one can find, between the lines, the advancement of some

Simon & Schuster, 1987). Less prominent examples of this position can be found in the writings of Alastair McIntyre and John Dewey; see Alastair McIntyre, *After Virtue: A Study in Moral Theory* (Notre Dame, Ind.: University of Notre Dame Press, 1981); John Dewey, *Democracy and Education: An Introduction to the Philosophy of Education* (New York: Macmillan, 1929).

<sup>23</sup> See Hutchins, *Conflict of Education*; Bloom, *Closing of the American Mind*.

<sup>24</sup> Cf. Israel Scheffler, “Philosophical Models of Teaching,” in Scheffler, *Reason and Teaching* (Indianapolis: Hackett, 1988); Scheffler, *Conditions of Knowledge: An Introduction to Epistemology and Education* (Chicago: University of Chicago Press, 1983).

positions and the rejection of others. This dynamic does not take place—and, according to this view, need not take place—openly. Clarifying the concepts is enough to signal to a reader with one orientation or another what constitutes a reasonable educational position and what constitutes a position worthy of rejection. But in principle, even if not always in practice, this approach does not expressly adopt a positive or negative judgment on any stance.

Expressions of this position can be found within Jewish philosophy among thinkers who come from the realm of analytic philosophy. Some of the writings of Avishai Margalit and Moshe Halbertal,<sup>25</sup> and Daniel Statman and Avi Sagi,<sup>26</sup> are consistent with this approach and illuminated by its premises.

### 3.4 *Critical Philosophy*

This approach is exemplified by some of the works of Zvi Lamm,<sup>27</sup> Michael Rosenak,<sup>28</sup> and Jonathan Cohen.<sup>29</sup> This philosophy encompasses various disciplinary strategies, and its practitioner is interested in understanding the processes of an existing culture. Like analytic philosophy, it formally deals not with normative education but with explaining and parsing the underlying premises of other normative systems and pursuing the outlooks that shape the educational process. The educational philosopher assumes the existence of a normative end or educational and moral vision underlying every educational system he analyzes, and he attempts to uncover that vision and its connection to the educational act. Within that framework, the link between the educational act and the educator's open and hidden goals will be exposed,<sup>30</sup> as will the connection between the underlying premises and the shaping of a specific

<sup>25</sup> Moshe Halbertal and Avishai Margalit, *Idolatry*, trans. Naomi Goldblum (Cambridge, Mass.: Harvard University Press, 1992).

<sup>26</sup> Daniel Statman and Avi Sagi, *Religion and Morality* (Jerusalem: Mosad Bialik, 1993). [Hebrew]

<sup>27</sup> Zvi Lamm, "Ideology and Educational Thought," in *Psychology and Educational Counseling Annual* (Jerusalem: Otsar Hamoreh, 1986), pp. 5–30. [Hebrew]

<sup>28</sup> Michael Rosenak, *Commandments and Concerns: Jewish Religious Education in Secular Society* (Philadelphia: Jewish Publication Society, 1987); Rosenak, *Roads to the Palace*.

<sup>29</sup> Jonathan Cohen, *Selected Trends in Contemporary Scholarship in Jewish Philosophy: Implications for Curriculum* (PhD dissertation, Hebrew University of Jerusalem, 1990).

<sup>30</sup> Philosophy serves as a tool for unmasking halachic thinkers. Hermeneutics can unmask the philosopher, who is likewise engaged in advancing his ideas through scholarly writing. The scholar will be revealed, at the end of the day, as one with a hidden

curriculum and the image of the ideal student expected to be produced by it. Questions that lie at the heart of this approach include: “What does the educator actually do and how does he do it?” and “How do the things he does advance his goals?”

As noted above, this approach, like the analytic one, does not attempt in the first instance to convey any educational doctrine or worldview. It stands on the sidelines—or at least purports to—and strives to assist in and illuminate the particular educational framework for anyone involved in the educational process, within a given ideological context. But here, too, as in the case of the analytic approach, the investigator, along with his objective analysis, will embrace a particular normative end, which he will attempt to conceal and whose effects will be hidden from the eye. This is not a built-in esoteric process in a Straussian vein, and it is not necessarily known to the normative educational process in which it is situated, but beyond the level of analysis often there are hints directed at the philosopher’s audience that take it toward one stance rather than another.

The parallel to this position within Jewish thought is the same effort to uncover and map the different schools within Jewish philosophy. The works of Aviezer Ravitzky,<sup>31</sup> Eliezer Schweid,<sup>32</sup> and Yair Lorberbaum,<sup>33</sup> as well as my own,<sup>34</sup> offer a few examples of these sorts of studies. The premise in studies such as these is that every position and every thinker has a philosophic core that must be uncovered and in light of which the writings being studied can be better understood. Here, too, we can say that every scholar has some veiled (if not esoteric) philosophical claim threading its way through his scholarly writings.

agenda, striving to advance one system and reject another by arguing to the community of students that the system represents impossible positions. Cf. Cover, “*Nomos and Narrative*,” pp. 11–14; see also Sara Mills, *Michel Foucault* (London: Routledge, 2003).

<sup>31</sup> Aviezer Ravitzky, “The Foreseen and the Free Will That Is Given: Messianism, Zionism, and the Future of the State of Israel in Israel’s Divided Religious Viewpoints,” in Aluf Har-Even, ed., *Toward the Twenty-First Century* (Jerusalem: Van Leer, 1984), pp. 135–198 [Hebrew]; Ravitzky, *Messianism, Zionism, and Jewish Religious Radicalism* (Tel Aviv: Am Oved, 1993). [Hebrew]

<sup>32</sup> Eliezer Schweid, *Democracy and Halacha: Studies in the Thought of Rav Hayim Hershenson* (Jerusalem: Magnes Press, 1978) [Hebrew]; Schweid, *Wrestling until Daybreak* (Tel Aviv: Hakibbutz Hameuhad, 1991) [Hebrew]; Schweid, *From Ruin to Salvation* (Tel Aviv: Hakibbutz Hameuhad, 1994) [Hebrew]; and many others.

<sup>33</sup> Yair Lorberbaum, *Image of God: Halacha and Agada* (Tel Aviv: Schocken, 2004). [Hebrew]

<sup>34</sup> Avinoam Rosenak, *The Prophetic Halacha: The Philosophy of [the] Halacha of Rabbi A.I.H. Kook* (Jerusalem: Magnes Press, forthcoming); Rosenak, “The Influence of Neo-Kantian Models on R. Soloveitchik’s Talmudic Thought,” in Avi Sagi, ed., *Faith in Changing Times* (Jerusalem: Sifriyat Eliner, 1996), pp. 275–306. [Hebrew]

Research into philosophy of halacha can benefit from all four of the foregoing investigative paths. And there can be no doubt that from the moment we apply the basic premise of any of these options to the halachic system, we will find that various responsa and aspects of the system will be illuminated in a manner determined by the questions that are asked and the philosophical models that are employed. In this article, I conduct an inquiry while primarily adopting the analytic and critical models, and I hope to illustrate the utility of these approaches to philosophy of education for examining the halachic system, as well as their capacity to illuminate political legal systems.

#### 4. INVESTIGATIVE QUESTIONS AND SUBJECTS OF INQUIRY

When we confront a halachic text with a question as to what the text means to achieve, and we receive the reply “education,” we will understand what the halacha is attempting to do and how well it is succeeding only if we have understood what “education” means, how it is created, and how a halachic text educates. We are then led to ask: If halacha intends to educate, does that itself not affect the definition of halacha? To state it differently: Does every educational activity related to norms constitute part of halacha? If not, how do we identify a halachic activity per se?

The philosophy of education presents a wide array of issues that flow from systematic reflection on the educational enterprise. Here I wish to concentrate on one of these issues that, in my judgment, has an immediate impact on philosophy of halacha: I will be assessing the halachic text through a recognition that the educational process obliges us to see the subject matter through a psychological prism so that we understand the state of the learner, and his or her worldview. This knowledge is a necessary condition for the teacher to foster continuing growth and development in his pupils.<sup>35</sup>

How can the subject of this study cast new light on halachic thought? I present below an outline of possible developments in the field, but I do not undertake—in this context—a detailed explication of the host of questions I am posing here as prods to future research. In my judgment, those questions will require further inquiry and investigation that will expand the scope of this field and of others that can only be noted here.

<sup>35</sup> John Dewey, *The Child and the Curriculum* (Chicago: University of Chicago Press, 1966). But before John Dewey can be drafted into a halachic context, it is necessary to draw a clear distinction between his non-normative educational approach and the normative framework of halachic consideration. That analytical assessment is beyond the scope of this article.

In the present context, I attempt primarily to raise the types of questions that can be asked in the future, once the textual implications of the phenomenon identified here have been better defined.

5. HALACHA AND THE PHILOSOPHY OF EDUCATION:  
MAIMONIDEAN MODELS

“How does one teach a Jew Torah or halacha?” The question is not merely a technical-pedagogic one; it is essential and fundamental to Jewish thought and has been throughout its history. It requires the philosopher to approach issues such as the nature of man, the nature of knowledge, the definition of the subject matter, the educational goal of the learning process, and—in the context of studying halacha and the culture of halacha—how these other issues bear on the concept of halacha itself.

Let me begin with an interpretive dispute over a passage in Maimonides’ writings. The implications of this particular passage for the educational-philosophical notion that education requires sensitivity to the student’s state of mind can clarify Maimonides’ teachings in general and shed new light on the place and role of halacha in his thought.<sup>36</sup>

In his introduction to “Perek Helek” (chapter 10 of the mishnaic tractate Sanhedrin), Maimonides sets forth his well-known account of the child being led by the teacher to the knowledge of truth:

Consider a small lad brought to a teacher to be taught Torah, which is the greatest good for him with regard to his attaining perfection. But because of his tender years and still-feeble intellect, he does not understand the value of that good or how it can bring him to perfection. Accordingly, the educator, who is closer to perfection, will be required to prod the lad to learn with things he likes at his tender age... and say to him, “Read, and I will give you nuts and figs”... and when he gets older and such things become unimportant to him... [the educator] will prod him... with things he craves and say to him, “Read, and I will get you nice shoes or desirable clothes”... and when... those things become inconsequential to him as well... he will say to him, “Learn, so you can become a rabbi and a judge”... and all this is unbecoming, yet it is necessary, in view of man’s limited intellect... and the Sages

<sup>36</sup> My analysis below is predicated on Aviezer Ravitzky’s argument on behalf of the feasibility of a philosophic-educational process, in contradistinction to the position that views the human philosophic state as static. See Aviezer Ravitzky, “Maimonides—Esotericism and Philosophic Education,” *Da’at* 43 (2003), pp. 52–55. [Hebrew]

referred to such learning as “not for the [Torah’s] own sake [i.e., for some ulterior motive].”<sup>37</sup>

This passage grapples with the question of how to teach a person perfections or imbue him with a culture that does not appeal to him. The solution Maimonides proposes here consists of a series of enticements, yet he does not address the issue of what material such a child should be taught and how.<sup>38</sup>

Michael Rosenak has argued that Maimonides is treating the child as an adult who does not yet understand either the need to learn the truth or the pleasure in doing so and who therefore must be bribed by various means.<sup>39</sup> Teaching methods vary. In the “parable of the child,” the entry into culture is by way of candy, clothes, wealth, and honor. The parable suggests several crucial premises that Maimonides appears to postulate (in contradistinction to other passages in his writings noted below): The child can learn everything, as long as he is motivated for one reason or another. The concept of “Torah”—which must be learned—is equally accessible to adults and children, and education consists in successfully impelling the child to truly proper activity (being intellectual activity consistent with reason),<sup>40</sup> even for the “wrong” reasons, so he may be brought to understand not only what is written in the Torah but also why it is to be studied for the sake of truth alone.

But that impression is not uniformly conveyed by all of Maimonides’ writings. Elsewhere, we find that he understands the child’s varied needs and employs different means of instruction consistent with them. Dov Rapel has identified coercion, diligence, explanation, and cajoling as methods found in Maimonides’ teachings on education.<sup>41</sup> For instance, in the Laws of Penitence (chapter 10, law 1), Maimonides gives a description of ways of introducing the uneducated to the study of Truth that is more complex than that contained in his *Commentary on the Mishna* above:

When teaching children and women and the ignorant, they are instructed to serve [the Almighty] exclusively out of fear and for the

<sup>37</sup> Maimonides, Introduction to his *Commentary on the Mishna*, s.v. “Perek Helek” (Jerusalem: Mosad Harav Kook, 1960). [Hebrew]

<sup>38</sup> See Rosenak, *Roads*, pp. 45–49, 79–85.

<sup>39</sup> *Ibid.*

<sup>40</sup> That is the purpose of man insofar as he possesses intellect. See Maimonides, *The Guide of the Perplexed*, trans. Shlomo Pines (Chicago: University of Chicago Press, 1963).

<sup>41</sup> Dov Rapel, *Maimonides as Educator* (Givatayim: Yediat Aharonot Press, 1998), pp. 57–60. [Hebrew]

sake of reward, until their intellect develops and they become exceedingly wise. Then we *gradually reveal the secret to them, and we gently accustom them to it* until they apprehend it and know it and serve him out of love. (Italics mine)

Maimonides refers here not only to bribery but to the necessity of gradually translating the material into a language the pupil can understand, while clarifying the character of the material that needs to be studied at every stage.

This interpretive strain is reinforced by Maimonides' comparisons between different types of leaders, as he presents them in his *Mishneh Torah* (chapter 1 of book 3: *Hilchot Avodat Kochavim*—Laws of Idolatry), and by a reading of Maimonides' political and halachic philosophy that is sensitive to educational questions. David Hartman<sup>42</sup> and Jonathan Cohen<sup>43</sup> have both noted the conflict between the patriarch Abraham's flawed image as a leader and the more perfected image of Moses our teacher. Abraham knows Truth but lacks the ability to translate it for the masses. He teaches, writes books, and creates "a nation that knows God," yet this "nation" does not include the masses but only those thousands who are drawn to knowledge of God. This is a community of intellectuals brought together by love of wisdom and revelation of the Truth.<sup>44</sup> Such a nation cannot maintain itself in the face of Egyptian slavery; it lacks arrangements for translating the intellectual dimension into something that can be "acquired" even without intellectual speculation. According to Maimonides, that deficiency brought the Israelites in Egypt to a very lowly state:

And the principle Abraham had planted would quickly have been uprooted and Jacob's children would have returned to the errors and straying of the world; but God, in his love for us and in observance of his oath to Abraham our father, made Moses our teacher the

<sup>42</sup> David Hartman, *Maimonides: Law and Philosophy* (Tel Aviv: Am Oved, 1979), pp. 58–64. [Hebrew]

<sup>43</sup> Jonathan Cohen, "Thoughts on Understanding and Habit: Maimonides' Laws of Idolatry as an Educational Paradigm," *Hagut Bahinuch Hayehudi* 1 (1999), pp. 35–36. [Hebrew]

<sup>44</sup> Hartman, *Maimonides*, pp. 60–61. My interpretation differs from that of Aviezer Ravitzky (n. 36 above), pp. 54–55. Ravitzky views this passage as proof of the ability of education to elevate the public at large to knowledge of God. "Abraham addressed each individual 'according to his understanding,' namely, according to his intellectual level." It seems to me, however, that the passage can be understood otherwise: Abraham addressed individuals rather than the multitudes, identifying those who had philosophic potential and elevating them to the knowledge of God. If Abraham had indeed had the gift of reaching the masses, he would in any case have had to develop a structure of Torah and commandments like Moses—but that is not what happened.

master of all the prophets and his messenger. When Moses prophesied and God chose Israel as his possession, he crowned them with commandments and told them how to serve him and what the rule was regarding idolatry and all those who err and pursue it.<sup>45</sup>

It was Moses, then, who made the social arrangements necessary for religion possible, through the social and political legislation that was lacking in Abraham's efforts. Inculcating those commandments is not to be seen simply as a technical matter; it is, rather, connected to a new understanding of the figure of the prophet: the prophet is one in whom the divine excess reaches both the rational and the imaginative faculties<sup>46</sup> (in contrast to the "man of science" [*hacham*], in whom the excess reaches only the rational faculty,<sup>47</sup> and the "governors" and "soothsayers," who receive the overflow only in the imaginative faculty).<sup>48</sup> The scientists know science and the leaders know how to legislate for the city and lead the masses, but only the prophet knows how to meld the two—a combination that requires, on the one hand, the ability to lead the masses, and, on the other, an orientation toward the truth that accompanies that leadership.<sup>49</sup>

<sup>45</sup> Maimonides, *Mishneh Torah*, Book 3: *Hilchot Avodat Kochavim*, Eliyahu Touger, ed. (Jerusalem: Moznaim, 1990), 1:3.

<sup>46</sup> Maimonides, *Guide of the Perplexed*, II:37, pp. 373–375; in particular: "If... this overflow reaches both faculties—I mean both the rational and the imaginative—as we and others among the philosophers have explained, and if the imaginative faculty is in a state of ultimate perfection owing to its natural disposition, this is characteristic of the class of prophets" (p. 374).

<sup>47</sup> *Ibid.*: "Know that the case in which the... overflow overflows only toward the rational faculty and does not overflow at all toward the imaginative faculty—either because of the scantiness of what overflows or because of some deficiency existing in the imaginative faculty in its natural disposition, a deficiency that makes it impossible for it to receive the overflow of the intellect—is characteristic of the class of men of science engaged in speculation."

<sup>48</sup> *Ibid.*: "If the overflow only reaches the imaginative faculty, the defect of the rational faculty deriving either from its original natural disposition or from insufficiency of training, this is characteristic of the class of those who govern cities, while being the legislators, the soothsayers, the augurs, and the dreamers of veridical dreams. All those who do extraordinary things by means of strange devices and secret arts, and withal are not men of science, belong likewise to this third class."

<sup>49</sup> See Harvey, "Political Philosophy and Halacha in Maimonides' Teachings," pp. 198–212; Shlomo Pines, *Studies in the History of Jewish Philosophy: The Transmission of Texts and Ideas* (Jerusalem: Bialik Institute, 1977), p. 161 [Hebrew]; Moshe Halbertal, *Concealment and Revelation: The Secret and Its Boundaries in Medieval Jewish Tradition* (Jerusalem: Makor, 2001), p. 53 [Hebrew]; Avinoam Rosenak, "Teaching, Prophecy, and the Student Caught Between Them—On the Philosophy of Education of Rav Kook," Joel Linsider, trans., *Edah* 5:1 (2005), pp. 12–13. This portrayal of Abraham as lacking the perfection of the imaginative faculty resembles the description in the Laws of Idolatry,

We thus find in Maimonides two different educational approaches. On the one hand, we see an effort to impart unmediated, untranslated truth to the child, enticing him with rewards he finds appealing. On the other hand, we find a recognition of the child's intellectual inadequacy (or that of the adult who for one reason or another has not attained a high level of intellection) and the crafting of an arrangement that makes it possible to perpetuate the culture under these less-than-ideal circumstances.

If we consider these readings of Maimonides in light of the premise that education should also be sensitive to the worldview of the student, we can gain a new perspective on the disputes among commentators interpreting Maimonides, and also on Maimonides' own educational and philosophical approach. The philosophical-educational model below, which is sensitive to the need to interpret the subject matter both psychologically and culturally, provides a context within which we might understand not only what Maimonides did in his educational and philosophical writings, but also what he did not do. It also helps us to view alternatives that developed throughout the Talmud and halacha. I will attempt to note the philosophical, halachic, and educational potential of the approach.

In his book *Individual Development and the Curriculum*,<sup>50</sup> Kieran Egan describes four stages or dimensions of human thought and cultural development, drawn from the educational process: the mythic, the romantic, the philosophical, and the ironic. He notes that this taxonomy differs from that of Piaget (being not only a psychological theory), and rather parallels the stages identified by Plato<sup>51</sup> and is part of philosophical discourse.<sup>52</sup>

where Abraham is presented as a philosopher par excellence. I am aware of the problematic nature of this interpretation, in view of contradictory statements appearing elsewhere in Maimonides' work. See, for example, the article by Yeshayahu Leibowitz, who argued that Abraham alone reached the level of "Abraham, he who loves me," meaning he achieved the level of performing divine service out of love of Torah for its own sake. Moses himself failed to attain this level. In addition, Harvey has directed my attention to the contradiction in book II of the *Guide*, where Maimonides describes the various levels of prophecy and depicts Abraham as prophesying by means of the imaginative faculty. This may be an instance of one of the deliberate contradictions in the *Guide*.

<sup>50</sup> Kieran Egan, *Individual Development and the Curriculum* (London: Hutchinson Educational, 1986).

<sup>51</sup> Plato distinguishes the stages of *eikasia*, *pistis*, *dianoia*, and *noesis*. See Egan, *Individual Development*, p. 76 n. 11; Plato, *The Sophist and the Statesman*, in Raymond Klibansky and Elizabeth Anscombe, eds., *Plato: The Sophist and the Statesman*, trans. and introduction by A.E. Taylor (London: Thomas Nelson and Sons, 1961).

<sup>52</sup> See Kieran Egan, *Education and Psychology: Plato, Piaget, and Scientific Psychology* (New York: Teachers College Press, 1983).

The mythic dimension<sup>53</sup> represents the initial stage that imparts to the child cognitive defenses he needs in order to confront the world. The young child is unable to differentiate himself from the world, he has no concept of causality, and his thought is binary and simple. At these stages, Egan argues, a mythic translation of the culture is needed, and that need gave rise to mythic legends that personify the cosmos, blur the line between “ego” and nature, and elucidate the world through a “closed story” constructed in a binary manner. It would be wrong to disparage this stage and press the child to “understand what is really going on here.” Any premature effort to impel him to a later stage before he has completed an earlier one entails a risk of disastrously compromising his future ability to function at higher levels.

Next comes the romantic stage.<sup>54</sup> Here, the person becomes aware both of the distinction between himself and the world and of the concept of causation, but he continues to understand the world according to a binary model. He craves heroism and suffers from narcissistic impulses. The romantic stage is characterized by a drive to conquer the world in all its detailed aspects.

A teacher working with students at the romantic stage must formulate a translation and a didactic technique suited to each student’s needs and mode of thought. The teacher must present the world of information to the student in a manner that recognizes that it is the student who is to absorb the information and that he cannot be enticed to sit and study it in a manner ill-suited to him.

The philosophical level<sup>55</sup> of thought fractures the romantic view. At this point, a person comes to understand that the world operates according to rules and norms and that all the varied details that romantic man diligently studied are simply manifestations of overall abstract principles. The faith in the world’s orderliness that began to develop at the previous stage attains further development; now, it lends itself to understanding through science, norm, and rule.

There can be no doubt that teaching at the philosophic level will differ profoundly from teaching at the earlier levels. At this stage, the student will be drawn to the great ideologues (such as Marx or Hegel), who strive to impart a view that the world can be represented through a single, clear, and precise model.

<sup>53</sup> Egan, *Individual Development*, pp. 9–27.

<sup>54</sup> *Ibid.*, pp. 28–49.

<sup>55</sup> *Ibid.*, pp. 50–81.

Finally, the ironic stage<sup>56</sup> is one of cultural crisis, as the person discovers that the world does not, in fact, function in accordance with the philosophical paradigm. He finds that law does not inhere in nature but is imposed by human culture, as it strives to organize the world. Ironic man is equipped to use once again, along with his philosophic tools, the mythic and romantic components that were scorned by philosophy at the third stage.

The connection between Maimonides and Egan has been drawn in Michael Rosenak's *Roads to the Palace*,<sup>57</sup> but we can now appreciate the model's power to elucidate the raging dispute between Maimonides' interpreters. From the standpoint of Egan's analysis, Maimonides, in his "parable of the child," would seem to commit every imaginable educational error. The idea that a child can be taught Torah per se—without specifying the character and level of the subject matter—so long as the child is properly motivated, represents an educational doctrine absolutely at odds with the schema above. Maimonides is portrayed as "fixated" on the philosophical level, lacking any understanding of the perspective from which the child views the world. The philosophical interpretation embraces all this, and even squares with Maimonides' account of the three different ways in which people study the Sages' midrashim<sup>58</sup> (and everything he says about the proper way to read the Sages applies as well to the proper way to read the Torah). He rejects the first group of readers, who take the midrashim literally and believe in their content, as well as the second group, who take the midrashim literally and disparage them; he regards the second group as even worse than the first. For him, the only acceptable option is that of the third group, "and they, I aver, are too few to be properly called a group... and they are those people for whom the greatness of the Sages has been clarified, and their intellect is sound... and they have attained the Truth."<sup>59</sup> Maimonides requires a completely philosophical reading of Jewish literature, regarding any other reading as erroneous and failing to serve the Truth. Mythic or romantic readings are of no value to him—and, as noted, Maimonides is thereby exposed to sharp criticism from anyone who adopts Egan's ironic insights.

Things appear very different, however, if we consider the interpretation that follows from the analysis of Maimonides' halachic approach

<sup>56</sup> Ibid., pp. 82–90.

<sup>57</sup> Rosenak, *Roads*, pp. 79–84.

<sup>58</sup> Maimonides, "Perek Helek," pp. 117–121.

<sup>59</sup> Ibid., p. 121.

as described above by Hartman and Cohen. It becomes clear that Maimonides indeed believes in philosophical interpretation as a representation of the objective world, but he appreciates the limitations of philosophical speculation in the face of history's twists and turns (such as the bondage in Egypt) and as a mechanism to be used by the broader society, most of whose members fail to attain intellectual perfection. He recognizes the importance of translating philosophical truth for those at lower levels of cognition, who require rule, habit, and myth, as expressed in the Torah of Moses. In this view, Maimonides emerges as a figure who may not be ironic—for he would deny that the philosophical picture is the product of human cognition, believing instead, as a man of the Middle Ages, that the world is rational—but who nevertheless acknowledges the contribution of the romantic narrative (if not the mythic) to the formation of the broader society within the real world.

It is possible, however, to go one step further in light of a more radical trend in Maimonidean scholarship, which holds his approach to be distinctly ironic. This trend first emerged in the debate between the later Pines and Leo Strauss on Maimonides. Zev Harvey<sup>60</sup> has clearly demonstrated how, in contrast to the (early) Strauss, who highlighted the tension between esoteric “Athens” (whose content is philosophy) and exoteric “Jerusalem” (whose content is religion), both the mature Strauss and primarily Pines, in his later writings,<sup>61</sup> have a more complex view of Maimonides. In light of this novel interpretation, Pines abandons Strauss' dichotomy in favor of a system composed of four evolving steps: (a) traditional or popular theology, (b) Aristotelian philosophy, (c) critical epistemology, and (d) intellectual mysticism. *The Guide of the Perplexed* (and even the *Mishneh Torah* that preceded it) are revealed to adopt an esoteric approach specifically with regard to Judaism (“Jerusalem”), while philosophy assumes the role of the exoteric aspect.<sup>62</sup> According to Pines, the shift in Maimonides' position stemmed from his recognition that the realm of cognition of the Knowing and Known Intellect is unattainable.

<sup>60</sup> Zev Harvey, “How Leo Strauss Paralyzed the Study of the *Guide of the Perplexed* in the Twentieth Century,” *Iyyun* 50 (2001), pp. 387–396. [Hebrew]

<sup>61</sup> See Shlomo Pines, “The Limitations of Human Knowledge according to Al-Farabi, ibn Bajja, and Maimonides,” in Isadore Twersky, ed., *Studies in Medieval Jewish History and Literature* (Cambridge, Mass.: Harvard University Press, 1979), pp. 82–109; Shlomo Pines, “The Philosophic Purport of Maimonides' Halakic Works,” in Yirmiyahu Yovel and Shlomo Pines, eds., *Maimonides and Philosophy: Papers Presented at the Sixth Jerusalem Philosophical Encounter, May 1985* (Boston: Martinus Nijhoff, 1986), pp. 1–14.

<sup>62</sup> See also Harvey, “How Leo Strauss Paralyzed the Study of the *Guide*,” pp. 387, 390–393.

Thenceforth, the theory of negative attributes served to reflect the depth of the mystical teachings, while positive reason reverted to the mandate to perform “mercy, charity, and justice.”<sup>63</sup>

If we combine Pines’ remarks with those of Egan above, we may infer that the Maimonides of the introduction to the *Commentary on the Mishna* is a young philosophic thinker (who wavers between “Athens” and “Jerusalem,” but whose heart is in “Athens”), while the Maimonides of the *Mishneh Torah* and the *Guide* is a mature, almost ironic, philosophic thinker, whose approach to the commandments and to imagination is more complex.<sup>64</sup> This understanding takes issue with Strauss’ classic interpretation, which categorizes Maimonides as being on the *philosophic* level throughout the entire corpus of his work.

The portrayal of Maimonides as an ironic figure is further buttressed by new interpretations advanced by Kenneth Seeskin and Yair Lorberbaum.<sup>65</sup> To their way of thinking, Maimonides is a skeptical philosopher. Metaphysical knowledge, in his view, is inaccessible to humans; all we can hope to attain are various items of probable knowledge. Human knowledge is forever doomed to be incomplete. Maimonides compares it to the appearance of lightning, incapable as we are of attaining a clear and stable understanding of it. For this reason he has no compunctions about employing imagery and intuitive insights (which belong to the mythic and romantic levels), in contradistinction to abstract and discursive thought (which is the philosophic level, according to Egan).<sup>66</sup>

<sup>63</sup> Maimonides, *Guide of the Perplexed*, III:54, pp. 632–638.

<sup>64</sup> In this context it is worth noting that Maimonides’ later works were of a distinctly didactic character, particularly the *Mishneh Torah*. Zev Harvey relates on this subject that Maimonides was called “the Teacher,” not merely because he wrote the *Guide [Teacher] of the Perplexed*, but because he was felt to be first and foremost a teacher.

<sup>65</sup> See Kenneth Seeskin, “Maimonides’ Conception of Philosophy,” in David Novak, ed., *Leo Strauss and Judaism* (Lanham, Md.: Rowman & Littlefield, 1996), pp. 87–110; Seeskin, *Searching for a Distant God: The Legacy of Maimonides* (Oxford: Oxford University Press, 2000), pp. 11–19, 177–188; Yair Lorberbaum, “As if the Sages Are Drawn to It by the Divine Will: Regarding the Concept of Parable in *Guide of the Perplexed*,” *Tarbitz* 71 (2002), pp. 87–132 [Hebrew]; Lorberbaum, “The Seventh Reason: On the Contradictions in *Guide of the Perplexed*—a Reappraisal,” *Tarbitz* 69 (2000), pp. 211–237 [Hebrew]; Lorberbaum, “On Contradictions, Rationality, Dialectics, and Esotericism in Maimonides’ *Guide of the Perplexed*,” *The Review of Metaphysics* 55 (2002), pp. 711–750. Aviezer Ravitzky’s article summarizes Seeskin’s and Lorberbaum’s arguments, and my description below draws on his synopsis. See Ravitzky, “Maimonides—Esotericism and Philosophic Education,” pp. 60–61.

<sup>66</sup> My description above does not enter into the debate regarding the validity of the various interpretations. On this matter, see Ravitzky, “Maimonides—Esotericism,” pp. 60–62.

In addition to the insight it provides regarding Maimonides' teaching,<sup>67</sup> Egan's schema also raises several broad issues that may be of interest to us as we examine the world of halacha.

## 6. EGAN AND THE LINK BETWEEN KABBALA AND HALACHA

On the premise that every person needs a social structure that organizes his world and that without such organization—at one level or another—existence is totally chaotic, one may ask how Torah and halacha satisfy the multilayered cultural need sketched out by Egan. In other words, at what level of cognition does Torah and/or halacha function? Can one find mythic, romantic, or philosophic dimensions in halacha? Might it be ironic? On the premise that it is not mythic—indeed, that it provides a safety net and a sense of meaning that displaces mythic thought—what are its romantic and philosophic aspects? And if it in fact contains such varied components, can that explain why portions of it are taught at one stage of a person's education and others at a later stage? For example: How do we now assess a religious education program that begins by having the young child study the book of Leviticus<sup>68</sup> (comprising the priestly code and laws of animal sacrifice—not, at first blush, mythic or romantic), in comparison with a program that begins with the stories of Genesis, replete with narrative accounts?<sup>69</sup>

Applying Egan's analysis, we may now understand kabbalistic thinking as a stream of interpretation and thought that succeeded in translating certain halachic components from one stage (the philosophic?) into a world laden with romantic and mythic imagery. To state it differently:

<sup>67</sup> I do not intend to resolve this dispute, which I have not fully explicated. See Harvey, "Political Philosophy and Halacha in Maimonides' Teachings," pp. 198–212; Harvey, "Maimonides and Spinoza—on the Knowledge of Good and Evil," *Iyyun* 28 (1978), pp. 167–185. [Hebrew]

<sup>68</sup> "He [R. Akiva] and his son went and sat before a teacher of children. He said to him, 'Master, teach me Torah.' R. Akiva grasped the tablet and his son grasped the tablet. He wrote A–B, and he learned it; A–Z and he learned it; the priestly code (Leviticus) and he learned it. He continued learning until he had learned the entire Torah" (*Avot de-Rabbi Natan*, version 1, c. 6, s.v. *davar aher*); "R. Isi said: Why do we first introduce children to the priestly code [Leviticus]; should they not [instead] begin from Genesis? The Holy One Blessed Be He said: Because the sacrifices are pure and the children are pure, let the pure ones come and be engaged with the pure" (Leviticus Rabba, Margoliot ed., sec. 7, s.v. [3] *gufa*; see also *Pesikta de-Rav Kahana*, Mandelbaum ed., sec. 6, s.v. [3] *ata tzivita*).

<sup>69</sup> See Simchah Assaf, *Sources for the History of Jewish Education*, vol. 2, ed. Samuel Glick (Philadelphia: Jewish Theological Seminary of America, 2001), p. 23, n. 15. In contrast to the practice at various Talmud Torah schools, the Israeli public schools, religious and secular, do, in fact, begin with Genesis. See Rosenak, *Roads*, p. 80.

In this context, we are interested not only in the influence of Kabbala on halachic decision making (that is, in how mythic contemplation changed the halacha's structure and content)<sup>70</sup> but also in the simpler matter of how Kabbala reinterpreted the world of halacha. The Kabbala transformed a normative social structure, one that ordered the functioning of a religious society, into a structure reflecting the supernal worlds; in Recanati's words, the commandments "depend on the heavenly chariot, each with its assigned task, and each commandment depends on one part of the chariot."<sup>71</sup> The commandments thus become transformed into expressions of higher powers, of the limbs of the heavenly King:

All the Torah's commandments are united in the King's body...  
some in the King's head, some in his body, some in the King's

<sup>70</sup> This issue has been dealt with by Zvi Werblowsky, Moshe Halamish, Israel Ta-Shima, and Jacob Katz, among others. See Raphael Jehudah Zvi Werblowsky, *Joseph Karo: Lawyer and Mystic* (Philadelphia: Jewish Publication Society of America, 1980); Jacob Katz, *Halacha and Kabbala* (Jerusalem: Magnes Press, 1986) [Hebrew]; Moshe Halamish, *Kabbala in Prayer, Halacha, and Custom* (Ramat Gan: Bar-Ilan University Press, 2000) [Hebrew]; Halamish, "Kabbala in the Rulings of R. Joseph Karo," *Da'at* 21 (1988), pp. 85–102 [Hebrew]; *The Revealed Within the Hidden: On the Study of the Zohar's Latent Halacha* (Tel Aviv: Hakibbutz Hameuhad, 1995). [Hebrew] Halamish cites the following: "The responsum of R. Shne'ur Zalman, heard and transmitted by the renowned *hasid*, R. Hillel Paritscher, may his memory protect us: Once they asked the old *admor* [an acronym for "our lord, master, and teacher," used as an honorific, referring here to R. Shne'ur Zalman of Lyady] how it was proper to act in a case where the kabbalists differ with the halachic decisors, and the *admor* replied that one should act in accordance with the kabbalists. They asked him how that could be, since he himself, in his version of the *Shulhan Aruch*, wrote that it was proper to follow the decisors. He replied: That is what the decisors write, but the kabbalists wrote that one should follow the kabbalists rather than the decisors." R. Abraham David Levavot, *Sha'ar Hakolel* 1:1, quoted in Halamish, "The Halachic Authority of the *Zohar*," in Zeev Safrai and Avi Sagi, eds., *Between Authority and Autonomy* (Tel Aviv: Hakibbutz Hameuhad, 1997), p. 322. [Hebrew] Regarding the sense of equality between the authority of the halacha on the one hand and that of the Kabbala on the other, see R. Aviad Sar Shalom-Bazileh, *The Belief of the Sages* (Padua, 1888), ch. 29 [Hebrew]; Menachem Elon, *Jewish Law: History, Sources, Principles*, trans. Bernard Auerbach and Melvin J. Sykes (Philadelphia: Jewish Publication Society of America, 1994). Regarding the reciprocity between halacha and agada, see Elon, *Jewish Law*; Halamish, *Samchuto Hahilchatit*, pp. 322–340. See also Halamish, "Lowering the Face as an Example of Kabbalistic Influence on Prayer," *Mahanayim* 6 (1994), pp. 123–133. Opposition to the tendency to mythologize the halacha can be found in the writings of R. Solomon Luria, who argues that any clash between the *Zohar* and the halacha should be resolved in accordance with the halacha: "And if R. Shimon bar Yohai [the pseudepigraphic author of the *Zohar*] were to stand before us and order a change in the practice followed by earlier authorities, we would not heed him, for in most matters, the halacha is not in accord with his view, as [R. Joseph] Karo wrote." Resp. R. Solomon Luria, sec. 98. See also Jacob Elbaum, *Openness and Insularity: Late-Sixteenth-Century Jewish Literature in Poland and Ashkenaz* (Jerusalem: Magnes Press, 1990), pp. 357–359, 208–218, 361–370. [Hebrew]

<sup>71</sup> R. Menahem Recanati, *Rationales for the Commandments* 3a (Amberiswo Provinwo, 1581). [Hebrew]

hands, some in his legs, and nothing extends outward from the King's body.<sup>72</sup>

Given this view of the world, anyone who fails to understand the mythic dimension inherent in the kabbalistic alternative misses the main point, for "all the Torah's commandments are sections and limbs... and one who does not examine and contemplate the mysteries of the Torah's commandments does not know and does not contemplate how the portions are arranged in the heavenly mystery."<sup>73</sup> The mythic depiction also affords us an understanding of what actually goes on in the upper realms on account of the commandments being fulfilled in the lower world,<sup>74</sup> and each jot and tittle of the halacha gains a meaning much more profound than the sociological or philosophical-teleological meaning previously given it:

One who leaves out even a single one of the Torah's commandments is as if he leaves out the divine image, for all the commandments are parts and limbs of the [supernal] man, and everything therefore becomes incorporated in the mystery of unification.<sup>75</sup>

Actions in the lower reaches arouse the upper reaches, and a covenantal interdependence is forged.<sup>76</sup> The commandment brings about unification in the heavens;<sup>77</sup> and one who sins is considered to have "transgressed against the body of the King"<sup>78</sup> or to have "caused the

<sup>72</sup> *Zohar*, part 2, 85b. So, too: "All the Torah's commandments are sections and limbs of the heavenly mystery, and when they are all united as one, they all form a single mystery... for the Torah's commandments are all within the mystery of humanity, male and female, and when they are joined together, they are a single mystery of humanity" (*Zohar*, part 2, 162b).

<sup>73</sup> *Zohar*, part 2, 165b.

<sup>74</sup> "For performance of the commandment is the light of life [of the divine *sefira*], and one who does so below establishes and bolsters its power" (R. Ezra, commentary on Song of Songs, 11a).

<sup>75</sup> *Zohar*, part 2, 162b. So, too: "Come and see: Whenever people walk in the true path, he goes to the right and the holy *supernal* spirit is drawn to him... and when a person walks in deviant paths, he draws upon him the sinister spirit that defiles him" (*Zohar*, part 1, 53b-54a).

<sup>76</sup> "The action above is aroused by the action below. If a person properly performs an action below, the proper force is aroused above. If a person does an act of kindness in the world [below], kindness is aroused on high." (*Zohar*, part 3, 92a-b; see also *Zohar*, part 3, 38b).

<sup>77</sup> "One who fulfills the Torah's commandments and walks in its paths is as if he created the heavens. The Holy One Blessed Be He said, it is as if he created me, interpreting the scriptural statement [Numbers 15:39] 'you shall do them' (*va'asitem otam*) as if it read, 'you made them' (*va'asitam atem*)" (*Zohar*, part 3, 113a).

<sup>78</sup> *Zohar*, part 2, 85b.

*Shechina* to be bowed down into the dust,”<sup>79</sup> for sin delivers the heavens into the hands of the evil forces [*sitra ahra*, literally “the other side”].<sup>80</sup>

The foregoing explanation provides an understanding not only of the world of the commandments in general but of each individual commandment as well. For example, Kabbala can instill new meaning into the concept of memory incorporated into the commandment to place fringes on one’s garments;<sup>81</sup> the commandment of “charity” can now be understood as engendering arousal in the heavenly coupling;<sup>82</sup> and the scriptural passages included in the phylacteries, consistent with this genre of reading, gain a meaning that embraces all of the divine *sefirot*.<sup>83</sup> One who dons phylacteries gains protective powers,<sup>84</sup> and a connection is formed between donning phylacteries and being genuinely identified with the image of God.<sup>85</sup> These types of interpretation are offered with respect to prayer,<sup>86</sup> its

<sup>79</sup> *Zohar*, part 1, 191b.

<sup>80</sup> “For all the positive and negative commandments depend on the ten *sefirot*, so even a small transgression affects a great mountain, that is, the *sefirot*.” R. Joseph Karo, *Magid Meisharim* (Petah Tikva: Bar-Lev, 1990), p. 381. “And because the holy side was revealed, all our efforts should be directed to repel the impure side from the holy side, and that is the mystery of all the commandments.” Karo, *Magid*, p. 257.

<sup>81</sup> For the understanding of the commandment of fringes as corresponding to the *sefira* of kingship (*malchut*), while that of phylacteries corresponds to splendor (*tiferet*), see Ra’ayah Mehemna on Numbers, *Parashat Shelah Lecha*, 174b–175a.

<sup>82</sup> *Zohar*, part 1, 153b.

<sup>83</sup> “The [passages in each of the] four compartments of the [head] phylactery [can be explained] in this manner [the arm phylactery contains the same passages but they are together in a single compartment; see below]: “Sanctify each firstborn to me” [Ex. 13: 1–10] corresponds to the heavenly crown (*keter*). “When the Lord has brought you into the land” [Ex. 13:11–16] corresponds to wisdom (*hochma*). “Hear O Israel” [Deut. 6:4–9] corresponds to understanding (*bina*). “And it shall be...” [Deut. 11:13–21] corresponds to kindness (*hesed*). After that, they are all combined [in a single compartment] on the left arm, for it is called “strength” (*oz*), and it is written “the arm of his strength” [Isa. 62:8], and strength is nothing if not Torah, and strength is nothing if not phylacteries” (*Zohar*, part 3, 269a).

<sup>84</sup> “Place me as a seal upon your heart’ (Song of Songs 8:6), but who places a seal upon the heart? Rather, these are the phylacteries, whose straps hang down over the heart, in the case of the head phylactery, and the arm phylactery is on the left arm, opposite the heart, and that is ‘as a seal on your heart and as a seal on your arm.’ The arm phylactery is an impression of the holy name... and the nations of the world are agitated in fear of that name... A person who preserves that impression below, which is the sign of the covenant, the sign of the Sabbath, the sign of the phylacteries, the sign of the festivals [all these commandments are referred to in the Torah as “a sign”] is impressed and engraved on high and shines a light on high, and heavenly and earthly beings are agitated in fear of it.” *Tikkunei Zohar*, part 1, Tikkun 22, 65b. See also *Zohar*, part 3, 54b (s.v. *simani kehotam al libbecha*).

<sup>85</sup> *Zohar*, part 1, 13b, s.v. *pikuda teshi’ah*.

<sup>86</sup> For example: The Friday evening worship service includes the reading of *Mishna Shabbat*, chapter 2. Is the chapter read solely to extend the service so that latecomers

symbols,<sup>87</sup> and the study of Torah; as a practical matter, they cover the entire gamut of norms.<sup>88</sup> In light of Egan's analysis, we can reevaluate what it means to translate the legal system—comprising laws and rules of conduct along with norms—into a mythic structure having the ontological, cosmic, and metaphysical consequences that accompany myth and theology.

If it in fact is the case that the halacha in itself does not deal with the mythic layer, how do Jewish communities outside the kabbalistic stream relate to mythic thinkers, and how do they educate them? Do these educational needs shed light on the distinction drawn in some of the Sages' midrashim between agada (which is suited to the masses, that is, the mythic and romantic groups) and halacha, suited to the intellectual and aristocratic scholarly level?<sup>89</sup> And does all of this provide the basis for a new understanding of the tension between the philosophical and

can complete their worship and walk home together with the rest of the community for reasons of safety (a sociological reason)? Is it read for the sake of studying Torah (an educational reason)? Or is it read to expel the demons through the ritual of reading these mishnaic passages publicly (a kabbalistic reason)? See Naftali Wieder, ed., *The Crystallization of the Liturgy in East and West: Collected Articles*, vol. 2 (Jerusalem: Yad Ben Zvi, 1998), p. 323. [Hebrew] See also Alick Isaacs, *The Place of the Synagogue in Ashkenazi Society and the Attitude Toward It in the Middle Ages—an Anthropological and Historical Study* (PhD dissertation, Hebrew University of Jerusalem, 2002), p. 141 n. 38, and pp. 149–150. [Hebrew] Though unpublished, this dissertation is on file in the Hebrew University library.

<sup>87</sup> See Isaacs, *Place of the Synagogue*, pp. 150–152. See also R. Isaac of Vienna, *Light Is Sown*, sec. 42 [Hebrew]; S.Z. Altmann, "Sacred Songs in the Early *Heichalot* Literature," *Melila* 2 (1946), pp. 1–24 [Hebrew]; A. Greenwald, "The Songs of the Angels, the *Kedusha*, and the Problem of the Composition of *Sefer Haheichalot*," in A. Oppenheimer et al, eds., *Studies in the History of Jerusalem During the Second-Temple Period: A. Shalit Memorial Volume* (Jerusalem: Yad Ben Zvi, 1981), pp. 459–481. [Hebrew] This mythologizing of liturgical literature generated a countermovement; see E. Fleischer, "The *Kedusha* in the *Amida*," *Tarbitz* 3 (1998), p. 67. [Hebrew]

<sup>88</sup> Jonah Ben-Sasson in his book *The Philosophical System of R. Moses Isserles* (Jerusalem: The Israel Academy of Sciences and Humanities, 1984), p. 270 n. 109 [Hebrew], notes the kabbalistic interpretation of the full range of the commandments included in the writings of R. Isserles (Rema).

<sup>89</sup> The sources that see agada as able to charm a person's heart—in the manner of wine—are well-known. See R. Isaac Abohab's introduction to his work *The Lamp of Illumination* (Jerusalem: Mosad Harav Kook, 1961). [Hebrew] R. Nahman Krochmal takes the view that agada is intended only for the masses, in contrast to halacha, which provides the context for the learned; see Krochmal's *Perplexities of the Time* (Berlin: Einot Press, 1924), pp. 242–247 [Hebrew], and Rawidowitz's introduction, p. 143. The superiority of the halacha is expressed in the following midrashim: "Just as the ill person does not eat... nor healthy bread... so this generation seeks not tractates [of halachic literature] but explanations of agadot" (Shir Hashirim Zuta [Buber], sec. 2, s.v. *hevi'ani el*, p. 26); "R. Isaac said: In the past, the Torah was generally [known], and they would want to hear words of Mishna and Talmud [that is, halacha]; but now that the Torah is not generally [known], they want to hear words of Scripture and of agada." Shir Hashirim Rabba (Vilna), sec. 2, (s.v. 1 [5] *sammechuni*). See also Elbaum, *Openness*, p. 74.

kabbalistic streams?<sup>90</sup> In the political context, this educational sensitivity appears as early as in the writings of Plato—who may be the first political and educational philosopher—and Egan in fact describes the four stages of development in light of, and on the basis of, Plato's insights.<sup>91</sup>

## 7. EGAN: LIBIDO AND HALACHIC CREATIVITY

Once education is understood as involving sensitivity to the student's psychology and cultural state of mind, several questions naturally follow: What are we to study and teach, and when, why, and how are we to study and teach it? These questions are fundamental to the overarching question of "What is the culture that we want to study?" and to its corollary questions of "How do we transmit that culture to society?" and "When should I withhold certain information from an individual with whom I am speaking?" With all those questions in mind, we can examine whether Egan's analysis can bring us to a new understanding of halachic literature and of the world of halacha in general and its rabbinic practitioners in particular.

We begin with the last of these questions. Egan claims that a child should not be pressed to leave the mythic or romantic stage prematurely, since curtailment of the time needed for development at any stage impedes a full transition to the ensuing one.<sup>92</sup> It follows that a person who has moved completely to the philosophic stage will be one in whom the mythic and romantic stages have been totally exhausted. In other words, the mythic and romantic worlds are not foreign to one whose consciousness has come to be dominated by philosophy; rather, they are the basis on which his thought is constructed. That model provides us with a new reading of the following midrash (and many others)<sup>93</sup> that deals with the psychology of halachic Sages:

<sup>90</sup> On the dispute between philosophy and Kabbala, see Isaiah Tishby, *The Wisdom of the Zohar*, vol. 1 (Jerusalem: Mosad Bialik, 1957), pp. 95–98 [Hebrew]; and with regard to the superiority of one or the other, see "And This Is Judah to Me," in Avraham Abulafia, *Hayei Ha'olam Haba* 19 (Jerusalem: Makor, 1969). [Hebrew] See also Moshe Idel, *Kabbalah: New Perspectives* (New Haven: Yale University Press, 1990), pp. 12–13; and Aviezer Ravitzky's discussion in "Kabbalists Standing on the Heads of Philosophers—on the Fifteenth-Century Candia Disputation," in *Al Da'at Hamakom* (Jerusalem: Keter, 1991), pp. 182, 195–211, esp. pp. 198–199 and nn. 90, 92. [Hebrew]

<sup>91</sup> See n. 52 above.

<sup>92</sup> Egan, *Development*, pp. 95–96.

<sup>93</sup> See also the encounter between R. Yohanan and Reish Lakish, and see Ruth Calderon, *The Market, the Home, the Heart* (Jerusalem: Keter, 2002), pp. 27–40. [Hebrew]

The evil impulse concealed within a person's heart, which leads him astray into an uninhabited wilderness, performs mighty acts; and Abaye said that is particularly so with respect to scholars. For Abaye once heard a certain man saying to a certain woman, "Let's set out early and travel together." [Abaye] thought, "I will follow them and deter them from any transgression." He followed them [a distance of] three *parsot* [about 14 kilometers, or 8.7 miles] into the field, and when they left each other, he heard them say, "Our journey is long and our companionship pleasant." Abaye said, "Had my enemy been in that position, he would not have been able to restrain himself" [a euphemistic way of saying, "Had I been in that position, I would not have been able to resist the temptation"], and he leaned against his door and was troubled [over his perceived weakness]. A certain elder came and taught him: "Anyone who is greater than his fellow has a [correspondingly] greater impulse."<sup>94</sup>

What does it mean to say, "Anyone who is greater than his fellow has a [correspondingly] greater impulse"? In his book *The Yetzer: A Kabbalistic Psychology of Eroticism and Human Sexuality*,<sup>95</sup> Mordecai Rotenberg has noted the vital nature of the libido and its restraint, so it may be channeled and sublimated in the process of creativity, and he cites numerous examples of this interweaving of libido and creativity.<sup>96</sup> But if we apply Egan's schema, we can add the developmental dimension of human personality and the process of human education. It follows that the greater a person is in the world of halacha (the highest level of rational analysis), the greater his store of repressed drives that reflect the mythic and romantic aspects of his personality. The power to create at the higher levels of development depends on the vitality and strength of the forces below. The midrash thus depicts the potential that these repressed layers might burst forth, particularly in the case of persons practiced in channeling these drives into the context of the study hall (that is, the philosophic realm). Abaye acknowledged that he could not have withstood the temptation to which the couple traveling together had exposed themselves. Abaye's desire to follow the couple to protect them from sinning (the normative layer) was motivated, in effect, by his own powerful libidinous impulse. The various layers of development are thus here intertwined.

<sup>94</sup> Yalkut Shimoni, Joel, sec. 535.

<sup>95</sup> Mordecai Rotenberg, *The Yetzer: A Kabbalistic Psychology of Eroticism and Human Sexuality* (Northvale, N.J.: Jason Aronson, 1997).

<sup>96</sup> *Ibid.*, ch. 2.

## 8. CONCLUSION

This article touched on only one aspect of educational philosophy—and it really only skimmed the surface—in an effort to bring to light some initial questions it presents with respect to the study of philosophy of halacha. The subject is but one of many that could be raised in the same manner. For example, one might apply in the study of halacha the well-known distinction in educational philosophy between theory and praxis. That subject could become another central axis for an examination of the halachic narrative and its connection to the literature on the reasons for the commandments. Beyond that, consideration of research findings in educational philosophy may provide us with a model for studying a halachic text and deriving its underlying theory without recourse to the reflective literature on Jewish thought. And if that is in fact so, this intellectual channel will provide us with a powerful tool for inquiring into the philosophy of halacha. But that inquiry—with its wealth of philosophical consequences and textual examination—is too broad to be undertaken here.

In light, however, of this direction in research in particular and my foregoing discussion overall, we can see a pronounced strengthening of the link between halachic literature and the general legal system and its political and educational contexts. Cover and Stone have pointed out, as noted earlier, the distinctiveness of halacha as a legal system that does not depend on an array of sanctions of the sort common in the general legal system, and they have emphasized the cultural-communal dimension that establishes and clarifies the nature of the halachic and legal systems. In the present context, I have sought to broaden that claim and to argue that the role of culture in our understanding of halacha and law becomes even more profound if we assume that the halachic system is not only legal but also (if not primarily) educational. In other words, not only does halacha embody the culture that produced it (as Cover and Stone maintain), beyond that, the halachic system continues to shape that culture by activating educational concerns and sensitivities. Thus, halacha is not only the finished product of the culture, it is also a part of the ongoing educational process by which the community is shaped. It follows that understanding the legal and halachic system from an educational perspective does more than provide tools for studying how halacha and law take shape; it also illuminates the ways in which these systems continually act on the community, society, and state. I should emphasize here that when I say halacha is not only a legal system but also (perhaps primarily) an educational one, my purpose is not to narrow the discussion but to broaden it. I do not mean to deny the power of legal tools to analyze

halacha; I mean to supplement that power by noting the capabilities and productivity of the tools of educational analysis when they are brought to bear on the legal and halachic systems. Recognizing that education is the constant companion of these normative systems can shed new light on how the legal system functions within the framework of society and state and on the cultural consequences of that functioning.

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