

A JEWISH PERSPECTIVE ON HUMAN RIGHTS

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Community boundaries and group identity are often maintained by defining the community against an “other” who embodies traits or pursues practices opposed to that of the core values of the group. For example, the Talmud states that compassion is an essential characteristic of the nation of Israel. Significantly, this midrashic statement is made in the context of explaining why the Gibeonites, who sought to hang the sons of Saul to avenge Saul’s earlier acts of violence against them, were unfit to join the assembly of Israel (Talmud Bavli, Yevamot 79a). Cruelty is imputed to the other, while mercy is exalted as a distinctive ideal around which Israel’s self-identity as a people is forged. For Judaism, the archetypal others are the idolatrous nations of the world. Paganism not only stands in opposition to the monotheistic mission of Judaism, it is also associated with moral corruption and barbarous practices. There is also the archetypal “other” who comes from within the community—the heretic or apostate, epitomized in the rabbinic imagination by the figure of Elisha ben Avuya, known in the Talmud as Aher, the Other.

The Jewish tradition, however, recognizes a spectrum of others. There is not only the pagan other, but also the pagan neighbor with whom one must pursue paths of peace. There is the resident other, the biblical stranger within one’s gates, to whom political and social solidarity is owed. And there is the righteous other, who shares with Jews the task of creating a just social order. Others co-exist within the boundaries of the Jewish community as well. In talmudic culture, the schools of Hillel and Shammai could disagree about fundamental legal principles affecting eligibility to marry, yet still intermarry. But other normative disagreements result in sectarianism and eventually rejection from membership in the group, as with the case of the early Jewish-Christians and later the Karaites. Identifying who is clearly within the community and who is without, and thus marking the boundaries of community, is a shifting process. The tradition sometimes reincorporates its heretics, either re-categorizing them as insiders, as in the case of

the Hasidim, or as involuntary sinners who may be forgiven, or as ongoing members of an expanded definition of the community—the national community—whose boundaries overlap with but are larger than that of the religious community of the faithful. The boundary between the group and others is constantly reconfigured in light of new perceptions of group values and goals, and new historical circumstances.

Indeed, historical experience has played a crucial role in shaping Judaism’s political and social practices of inclusion and exclusion. In pre-modern exile, Jews lacked a state of their own; lived in compact, internally autonomous and religiously more homogenous communities; and were segregated from general society legally, politically, and socially. The boundaries of the community were imposed from without as much as created from within and the aspiration to establish bonds of social solidarity extending beyond the community was muted. The Jewish historical experience also provided few incentives for developing a Jewish political practice of inclusiveness of non-Jews within Jewish society from a position of power. The changes wrought by the “Jewish emancipation and self emancipation,”—the break-up of homogenous religious communities, the rise of secularism, and the consequent fragmentation of Jewish society—raise new questions for the rabbinic tradition about the proper boundaries of the Jewish community. With the establishment of the State of Israel, the rabbinic tradition faces two critical challenges: first, defining who is a member of the Jewish community; and, second, constructing a “Jewish” vision of a civil society, one capable of including the diverse groups, both Jewish and non-Jewish, that constitute Israeli society. In America, as well, a fundamental shift in perception has taken place among religious Jews about the nature of their relationship to other groups in society. In the past four decades, Jews, including the most religious segments, have come to view themselves as full members—even leaders—of a mixed society to which

they now perceive themselves as truly belonging. Their new role in society has led them to focus attention on potentialities within the tradition for the creation of genuine bonds of social solidarity with fellow members of the nation.

In this essay, I review some classical rabbinic sources and traditions that exhibit a more inclusive attitude toward non-Jews and nonconforming Jews and thus create opportunities for blurring and extending the boundaries of the Jewish community.

Judaism and the Others Without

The biblical story of the creation of humans in God's image embodies an ethical ideal of social harmony between humankind, one that the prophets envision as the goal of the end of days. Humanity is not intended to be a universal human order, however, nor "one fellowship and societie," as John Locke wrote. Instead, humanity is divided into unique collectivities, each with its own language and laws. The biblical election of Israel at Sinai creates an immediate division within humanity between Israel and the other nations of the world. The community, or nation, of Israel comes into being through the covenant, a historical contract between God and Israel at Sinai, which establishes the Torah as the law of the Israelites. The fundamental axiom of Judaism is that the Torah is the particular inheritance of Israel and only Jews are bound by its commandments.

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The particularism of Judaism inevitably raises the question of the role of other collectivities in the divine plan and the relationship of Judaism to these other collectivities. Additional models of social solidarity overlapping the covenantal is already provided by the biblical portrayal of the associational life that Israelites share with non-Israelites residing in the polity. The biblical concept of social solidarity among diverse ethnic members of the polity bears a resemblance to the fellowship of citizens in the modern nation. The Bible speaks of three types potentially within the polity: the heathen, the stranger, and the resident stranger. The heathen is an idolater who is not permitted to associate with Israelites. Idolatry is not only absolute falsehood, it is associated with moral corruption. The Bible repeatedly commands the community to purge the territory of idolatry and idolaters—pagan and Israelite alike. Thus,

idolatry marks the outer and inviolate boundaries of the Jewish polity as well as the community.

In contrast to the heathen, Israelites are enjoined in the Bible to love the stranger as one self, to provide one law for the stranger and the Israelite alike, and to provide the stranger with food, clothing, and agricultural charity. In several biblical passages, the social solidarity that Israelites owe to the stranger is ascribed to the stranger's political and material dependency on Israelites. The stranger is not only subject to Jewish authority, he does not have an allotted portion of the land and therefore is like the Levite, the widow, and the orphan, to whom special consideration must be shown. In others, the duty to love the stranger is elevated to an absolute ethical plane. The stranger is no different from the Israelite in two essential respects: Israelites, too, were once strangers in Egypt; moreover, everyone is a stranger in the world in relation to God.

In its original biblical setting, the stranger is an individual of non-Jewish birth living in the land who accepts Jewish political authority and obeys some, though not all, of the covenantal law. Indeed, by the Second Temple period, the distinctiveness of Jewish identity was blurred not only by the proliferation of Jewish sects but also by the existence of a variety of non-Jewish groups that adopted some though not all Jewish practices. One of the early rabbinic projects was to delineate more sharply between Jew and non-Jew, given the increased presence of groups with hyphenated identities, such as Jewish-Christians, and groups practicing some but not all of Jewish law. Strangers were gradually assimilated into the covenantal community and reconceived as converts, who became full members of the covenant once they assumed all the obligations of the law. This reconception of the "stranger" as a convert served to create a clear boundary between the Jewish community and all others.

At the same time, however, the rabbis recognized intermediate categories between idolatrous paganism and Judaism. The rabbis equated the category of the biblical stranger with that of the resident stranger, and defined the latter as a non-Jew who formally accepts the Noahide laws. According to the rabbinic tradition, God stipulated a moral and legal order to Adam and the children of Noah prior to the election of Israel at Sinai. This order, which is binding on all humanity, consists of six prohibitions—idolatry, bloodshed, robbery, incest, blasphemy, and eating a limb torn from a live animal—and a seventh positive command to establish systems of justice. In talmudic sources, non-Jews must accept these minimal universalist principles in order to live in the Jewish polity. Thus, the alien need not assimilate; he may retain his ancestral identity so long as

he abides by a minimal set of obligations that are the marks of a civilized person. In return, Maimonides holds, the resident stranger is owed full ethical and charitable reciprocity. He portrays the duty to love the stranger as a pure moral law, one that is counter-instinctual, because the stranger shares no thick primordial tie, no common ethnic bond, nor religious tradition, with the Israelite. The obligation of Israelites to engage in concrete acts of solidarity with the stranger is based, instead, on allegiance to universal criteria of morality.

The category of resident stranger had no application in exile because there was no Jewish authority to impose formal acceptance of Noahide law. The early talmudic discussion of the obligations owed by Jews to non-Jews with whom they lived assumes that non-Jews are pagan idolaters and erects encumbrances against free intercourse with them. The Talmud also permits blatantly discriminatory treatment of pagans. Even in the talmudic period, however, these discriminatory rules were subject to suspension. Various aspirational principles, such as avoiding desecration of the divine name and pursuing paths of social peace, were invoked to enhance obligations toward pagans (Talmud Bavli, Gittin 61a). The former was invoked as the basis for forbidding robbery of a Gentile and the latter for extending acts of benevolence and social solidarity toward pagan neighbors, such as visiting the pagan sick and burying their dead.

Both the principle of pursuing paths of peace and the recognition of an intermediate category between Judaism and paganism, consisting of non-Jews who obey Noahide law, are critical to the project of constructing overlapping bonds of social solidarity between Judaism and other groups. Genuine acceptance of other religions and forms of life requires more than toleration of their presence within Jewish society or even social solidarity and legal reciprocity, however. The critical question is whether Judaism is willing to ascribe independent, intrinsic value to other collectivities. Does rabbinic Judaism recognize that other groups share certain religious truths or moral criteria with Judaism, which are then properly instantiated in different religious, political, or legal settings?

A significant step in this direction is the rabbinic association of observance of the Noahide laws with the condition for religious perfection or salvation. According to Maimonides, one who obeys these laws is righteous and all the righteous of the nations have a share in the world to come. It may be argued that inclusion of the righteous of the nations in the world to come is in spite of the fact that they belong to other collectivities, not because of it. Their inclusion rests on the fact that these individuals obey the Jewish law for non-Jews. Yet, the Talmud itself seems to view the Noahide laws

as the product of a historic divine revelation to humanity, implying that redemption follows from adherence to the obligations addressed by God directly to other nations. Thus, the rabbinic tradition can be understood as embracing a concept of divine religious pluralism. Each person or nation attains independent moral significance through adherence to the different obligations addressed to them by God.

In the medieval period, the idea of intermediate categories between Judaism and paganism was applied to legitimate not only individuals but also whole political and religious entities. The rabbinic legitimation of other collectivities laid the basis for legal and social interaction between Judaism and other political orders or social groups. Two examples of this process are particularly noteworthy. The Talmud rules that Jews must formally recognize certain laws of foreign rulers as legitimate. As the Talmud puts it, “the law of the kingdom is the law (*dina de-malkhuta dina*) (Talmud Bavli, Bava Kamma 113a-b).” The eleventh-century exegete Rashi offers a particularly suggestive rationale for this principle. Rashi links the principle to the Noahide obligation to establish just systems of law. Because the creation of non-Jewish systems of law fulfill a divine command, Rashi comments, these systems are vested with divine legitimacy and their civil laws may serve as a residual source of law even for Jews (Rashi, Gittin 9b). Thus, non-Jewish collectivities share with Judaism the divine goal of establishing a just social order. In the modern period, especially among halakhic decisors living under Western democratic rule, there has been increased recognition that non-Jewish civil law often provides equitable rules missing from the corpus of Jewish law and an increased tendency to incorporate such laws into the Jewish legal system.

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A second example of the positing of a common inter-religious project shared by Jews and non-Jews is offered by Menahem Ha-Me’iri, a thirteenth-century French decisor. Me’iri ruled that all nations who are disciplined by enlightened religion are entitled to juridical equality and ethical reciprocity under Jewish law. Me’iri presented an original synthesis of the entire talmudic system of discriminatory rules and exceptions, essentially rendering them obsolete. He held that ju-

ridical discrimination against non-Jews in the Talmud refers to non-Jewish idolaters who lived in the culture of the ancient world, who “were not bound by proper customs” and not to the people of the medieval era, who are “constrained by the ways of religion.” (Beit Ha-Behirah, Avodah Zarah 22a). Me’iri’s formulation ascribes positive value to Christianity and Islam, not just as private religions that uphold basic tenets of belief, but as practical systems of governance, whose adherents are impelled by their faith to maintain legal institutions and establish moral standards in society.

Me’iri’s formulation is noteworthy for two reasons. Although other jurists often reached similar legal conclusions, they did so through the traditional talmudic, casuistic method and confined their rulings to the practical needs of the community. Me’iri, as the historian Jacob Katz points out, formulated his distinction between the idolaters of old and contemporary nations as a “principle,” and thus “transcended the conventional methods of halakhic thinking.” Moreover, although Me’iri compares religiously enlightened non-Jews to resident strangers who observe Noahide law, he does not equate them. Rather, Me’iri creates a new intermediate category between paganism and Judaism consisting of the “nations restricted by the ways of religion.”

Me’iri’s functional understanding of religion raises the question whether all civilized societies that maintain legal institutions and thus enforce moral standards in society are owed full legal and ethical reciprocity. Me’iri’s work was lost to the tradition until the last century but there are intimations that his view is slowly re-entering the tradition, stimulating debate as to whether the talmudic patterns of juridical discrimination are inapplicable in empirically observed social and legal systems that view themselves as constrained by the rule of law.

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The positive valuation of other societies paves the way, in the halakha, for legal, social, and cultural interchange between Judaism and other societies. Indeed, Maimonides’s view that Jews are obligated to enforce Noahide law—to aid all social and political collectivities in establishing a just social order—is often cited to

ground a Jewish religio-legal obligation to engage the other in collaborative projects designed to improve the ethical, moral, spiritual, and material condition of general society. The intuition that such an obligation exists sustains those who interpret Judaism nontraditionally in terms of a Jewish mission to pursue justice in the social sphere. It is true that the more traditional segments of religious Judaism have not yet turned their energies in this direction in a significant way, favoring projects that advance the interests of Jews to the exclusion of those involving humanity. This tendency is in large part due to the historical experience of Judaism. As a result of persecution and exile, Judaism did not enter the marketplace of world religions until its emancipation on the heels of the Enlightenment. The potential for engagement with the world introduced by the Enlightenment was punctuated by the Holocaust, inaugurating a sense of despair about the possibility of cultural and social collaboration as well as an outpouring of energy into the reconstruction of Jewry. Given time and stable political conditions, this potential in the tradition may emerge.

Although the Jewish tradition does conceive of itself as part of other, overlapping communities, the boundary of the Jewish community still remains distinct and the claims of its members take priority over others. Thus, Judaism’s intricate system of associational duties presents, as Gordon Lafer points out, a “hierarchy of obligations,” privileging community members over resident strangers, resident strangers over members of “civilized” societies, and “civilized” societies over those who disregard the moral law. Communal bonds, dependence, and moral character determine the level of obligation owed rather than an abstract commitment to universal criteria, which assumes that “the proper subject of politics must be the human species.” This worldview does present a serious obstacle, however, to the extension of full citizenship rights to non-Jews, a pressing issue in Israel. According to Maimonides, for example, non-Jews (and Jewish women) are forbidden to hold positions of political authority in the Jewish polity (Mishneh Torah, Law of Kings 1:4-5). The traditional rabbinic models of toleration and inclusion outlined above, and developed in exile, do not resolve this issue because they address only the sharing of acts of social solidarity and not political equality.

The admission of non-Jews (and Jewish women) as equal partners in the polity would seem to require a bolder theory, one that affirms the equality of all persons under the law. The Jewish philosopher Hermann Cohen claimed that the biblical injunction to provide one law for the citizen and the stranger (who obeys

Noahide law) was, in fact, the precursor of this emancipation ideal. “The Noahide,” he writes, “is a citizen,” a person whose equal moral worth is recognized, triggering full equality under the law. Cohen seems to have no followers within the rabbinic community, however.

The more common rabbinic strategy is to retain the differential rules in theory but to make them inapplicable to the issue at hand. Thus, Chief Rabbi Isaac Herzog argued that the ban on non-Jews holding political authority refers to the exercise of non-elective, life-tenure powers because it had in mind the office of the Jewish king. Rabbi Shaul Yisraeli proposes to circumvent the ban by conceiving the state itself as no more than a partnership, modeled on the talmudic partnership of the “townspeople.” He analogizes the holding of office in the state to holding office in a business, which a non-Jew may head. The difficulty with these opinions is not their result but their rationales, which highlight the paucity of resources in the tradition for the development of a genuine theory of equal citizenship based on principle.

Resort to casuistic reasoning and other technical means of problem solving is, of course, the traditional rabbinic method. Such methods also often reflect a genuine shift in consciousness about the justness of an institution. The abolition of slavery, for example, was accomplished through a series of technical restrictions, clearly motivated by a deep abhorrence of the institution. There is an increased call, however, to attempt a new position based, as Gerald Blidstein writes, on the candid acknowledgment that Jews relate to non-Jews as “fully human possessors of the divine image.” Blidstein asks whether the “divine image of man” can “become a more powerful halakhic concept than it seems to be at present or than it has been historically.” To draw the question out: can the idea that man is created in the image of God provide a new universal category of membership in the Jewish polity and a new universal category for the creation of social bonds with all members of society by virtue of their humanity alone? This is no easy task in a tradition that has as its centerpiece the idea of the distinctiveness of human collectivities and that values the particular over the general. Judaism’s particularity, its limitation to one nation, is both the generating force for a vision of ethical and religious pluralism and a limitation.

Judaism and the Other Within

The intellectual pluralism of talmudic thought is well-known. Multiple, contradictory opinions about the law are all described as the “words of God.” All opinions proffered in legitimate pursuit of the divine law bear an aspect of truth.

Diverse opinions, in one view, illuminate the search for truth, sharpening debate, and clarifying the correct opinion. Talmudic intellectual pluralism is also rooted in a certain skepticism about certitude, stemming either from the nature of the revelation itself or from the limits of human reason. The Talmud, in one passage, describes the revelation as itself a series of decisional options—providing an equal basis for prohibiting or permitting conduct. Thus, multiplicity and contrast are features of the divine revelation itself. In this view, the essential characteristics of a legal matter are best grasped by simultaneously contemplating its negation.

The mystical view of revelation as a fragmented process, also emphasizes that each individual opinion reflects a partial understanding of the divine truth. The rationalist model is no less skeptical of human certitude, but it tends to ascribe controversy and pluralism, not to inherent features of revelation, but to the extremely limited scope of revealed law, breaks in the historic chain of transmission of revelation, and individual differences in intellectual prowess and temperament. Because human reasoning is fallible, error is inevitable. But error is accounted for by the halakhic system itself, which demands not fidelity to abstract truth, but fidelity to the process of halakhic reasoning and to the halakha’s own internal procedures for resolving disputes.

The intellectual tolerance that Judaism manifests is the exclusive province of the normative rabbinic class, however, and extends only to other recognized members of this class. Moreover, such intellectual tolerance is limited to the realm of ideas and opinions; it does not extend to action or legal practice. Behavioral pluralism, in theory, is either a sin, the disregard of a binding norm or, in the absence of a binding norm, the consequence of failure to reach a legal consensus. Given the potential for sectarian division, legal anarchy, and the loss of the unifying force of the law in the life of the community, behavioral pluralism is viewed as a problem. Thus, the Jewish tradition’s epistemological skepticism is accompanied by an equally deep appreciation for order and authority.

This raises a profound question with respect to the Jewish community’s ability to bear heresy and sin. Public rejection of the authority of the law not only threatens order but also is viewed as a betrayal of the community because the community itself is constituted and defined by obedience to the law. Heretics, apostates, and rebellious sinners, in a sense, occupy another intermediate category between Jew and non-Jew. Traditionally, these Jews are no longer deemed “fellows” to whom mutual social obligations are owed, and they no longer enjoy rights of association with covenantal members. Social contact with them is forbidden, they are neither

mourned nor eulogized, and intermarriage with them is forbidden. Maimonides writes that they are “removed from the category of Israel” in that they are not entitled to any form of social solidarity. Yet, they remain Jews for purposes of incurring an obligation to God to observe the law. The status of covenantal fellow turns on conduct, and not ascription, a concept that plays a critical role in defining who is included in Jewish society, one that has assumed critical significance in modern conditions of Jewish social fragmentation.

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Given the traditional definition of Jewish society as excluding deviants, including public desecrators of the Sabbath, the question arises whether secular Jews are, from the rabbinic perspective, within Jewish society. This question arose immediately on the heels of the Jewish Enlightenment, when nontraditional denominations and secularist movements began to proliferate. As expulsion from the Jewish community was no longer an option, several traditional communities, instead, self-separated themselves from general Jewish society and formed segregated communities of the faithful.

The early settlement community in Israel raised this issue in its most acute form but also spurred efforts at accommodation because the very fact of the individual’s continued attachment to the idea of a Jewish nation softened the rabbinic category of rebellious sinners who reject the law. Although one still can find contemporary rabbinic opinions holding that those who deny the divinity of Jewish law or publicly desecrate the Sabbath are no longer a part of the covenantal community, most rabbinic authorities hold otherwise. These opinions reflect two different strategies of rapprochement.

The first strategy is to craft conditions precedent to the invocation of the categories of rebellious sinners and apostates, so as to narrow the instances when these categories have legal effect. Rabbi Abraham Yeshayahu Karelitz, the Hazon Ish, argues broadly, for example, that the times have so changed that the traditional categories no longer even apply. Modernity is different because it is “a time of God’s concealment.” These rulings are motivated by communitarian concerns, and not by respect for the value of diverse forms of Jewish life or of individual choice. As such, they create a virtual fellowship, in which the primordial obligation of so-

cial solidarity exists only on one side. Still, these rulings enable continued social interaction among all Jews.

A second strategy of inclusion of apostates in Jewish society becomes possible only if attention is shifted away from the intolerable act or idea, and directed, instead, toward the person. This perspectival switch is made possible by the perception that there is a good reason to excuse the person, although not the action or belief. Tolerance is advocated neither as an expression of legitimate pluralism nor out of respect for individual autonomy but, rather, on the ground that the deviant was not fully responsible for his or her actions or heretical beliefs. The individual can be tolerated because the fault for the sin lies in inferior education or upbringing, in intellectual seduction, or the like. The development of this attitude of tolerance toward persons, based on a notion of excuse, was extended beyond the covenantal community to justify tolerant behavior toward pagan idolaters as well.

This model of tolerance builds on a constellation of concepts intrinsic to the Jewish tradition. First, it recognizes that a multiplicity of forces and social frameworks shape the self. Tolerance of persons assumes a model of the socially-situated self, in contrast to the liberal freely-choosing self. Second, “bearing” the sinner comports with the Jewish tradition’s approach to repentance, mercy, and imitatio dei. As God bears sinners, restrains his anger, and is patient, in order to maintain his relationship with Israel, so humans must emulate the divine virtues, exercise restraint and patience, and preserve the sinner’s relationship with the community, in the hope of eventual return and reconciliation. Bearing the sinner is not a legal duty; it is, like forgiveness and divine mercy, an act of loving-kindness that exists outside the sphere of justice. Third, when extended toward deviant Jews, such toleration is not only motivated by an ethical concern for the tolerated person, or by an ideal picture of the ethical qualities of the one who tolerates. In the particular context of Judaism, such toleration is also stimulated by the wish to preserve the national historical community that overlaps with the theological community. Finally, retaining the heretic or sinner within the horizon of the community, leads inevitably to the pluralization of the community. Continued active engagement with those who hold different beliefs creates a more diverse society, in which pluralism is managed although not legitimated, and prevents the ossification of the community into a homogenous remnant of the faithful. Over time, pluralism ceases to be merely managed and expands the boundary of the normative community, transforming it in subtle ways.

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