JEWISH ETHICS AFTER THE HOLOCAUST

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ABSTRACT

This paper attempts to develop the foundations of a contemporary Jewish moral theory. It treats the Jewish legal and moral tradition as the object of an act of interpretive recovery that is carried out by contemporary Jews who are sensitive to the demands of their historical situation, a situation defined by the Nazi destruction of European Jewry and by the reestablishment of the Jewish state. In the course of the paper I develop an approach to post-Holocaust Jewish experience that derives from the work of Emil Fackenheim and try to show how Jewish moral imperatives arise within Fackenheim's account of the Jewish situation. The Jew's understanding of the role of God in moral obligation, his appreciation of the demands of the historical moment, and his interpretive recovery of the Jewish moral tradition – all are shown to depend upon and emerge from a reflective examination of Jewish moral and legal resistance during the Holocaust.

SITUATION AND CRITERIA

In his collected responsa (*teshuvot*), Rabbi Ephraim Oshry records Halachic decisions, made in the Kovno ghetto during the Nazi Holocaust, that adjust the Jewish legal tradition in order to oppose the deepest purposes of the Nazi state. In a rare case, for example, in which the permission to commit suicide is sought before the fact, Oshry overturns the dominant Halachic prohibition (Rosenbaum, 1976: 35–40). He permits the act. But to advocate suicide is to encourage a lack of trust in God and thereby to encourage the Nazis in their attempt to eradicate the Jewish soul together with the Jewish body. So he nonetheless forbids the publication of his decision, and his grounds are at once profound and moving. There is a subtle dialectic in R. Oshry's judgment, for a once-secure trust and hope in God, negated by the decision to permit the suicide, is reaffirmed in the refusal to allow a Nazi victory. A self-reliant acceptance of human initiative and need, affirmed by Oshry's permission, is negated by the reason for that permission, the uncompromising opposition to Nazi purposes. Finally, the religious conviction, recorded in the will to confide in Halachah and compromised by the intrusion of an utterly historical purpose, is ultimately reaffirmed by the nature of that purpose, to oppose evil by embracing its object, by clinging to God, tradition, trust, and hope.

Jewish law and Jewish integrity should characterize any serious, authentic

foundation for Jewish moral thinking today, but they will not be its starting point. Rather its beginnings will be the intellectual and historical situation of contemporary Jews and Judaism. This is one of the lessons of R. Oshry's experiences in Kovno. To be sure, there is an initial, almost intuitive presumption in favor of recovering the past, and in the domain of Jewish moral thinking that means, among other things, examining the tradition of Jewish law or Halachah and taking it seriously. In fact, however, even that presumption must itself be ratified, and that ratification must be historically situated. Furthermore, once it is agreed that it is necessary to recover the Jewish legal tradition for the present, that recovery—whether it is by an orthodox *posek* in New York, a member judge of the Israeli supreme court, or a Reform rabbi in Chicago—is determined by the historical and intellectual world of the contemporary Jew. History, on this account, intrudes itself both at the fundamental level where the obligation to recover the past is ultimately moored and at the derivative level of interpretation and appropriation. Contemporary Jewish thought as a whole should begin with that history and a sense of which events in it are determinative or orienting (Fackenheim, 1970: 8–9). I would like to propose that by starting with the Holocaust we can formulate an account of Jewish obligation and particularly of Jewish moral obligation that responds in a profound way to the deepest Jewish intuitions and to the most serious criteria for Jewish moral thinking today.[1]

Among modern discussions of Jewish ethics, there is an overriding uniformity. Natural law theories, Kantian-style rationalisms, and traditional divine-command moral theories—all rest on the convictions that the heart of a moral theory is its principles or obligations and that these principles ought to be universal and unconditional (for example, see Fox, 1975, 1979; Kellner, 1978). From Mendelssohn to Cohen, from Luzatto to Marvin Fox, Jewish moral thinkers have viewed ethical imperatives as immune to historical considerations. In this paper I take issue with this fundamental assumption. What is developed here is the foundation of a historically situated moral theory that in its own way attempts to mediate the extremes of relativism and absolutism.[2]

In a preliminary way this mediation can be characterized as follows. Like every divine-command theory, the ethical theory I shall sketch holds that moral imperatives derive their obligatory status from their source, God and the divine will. (For discussion of the logic of such theories, see Quinn, 1978.) It is because this source is an ultimate authority that obligations which express His will are themselves authoritative. But while the *status* of moral principles is fixed by their source, the *content* of such principles is determined by their formulation and articulation. And, on the view of revelation presupposed by the theory, that articulation is wholly human. (For the basis of this theory of revelation, see Buber, 1970, 1958: 75–77; Rosenzweig, 1970: 156–204; Glatzer, 1953: 208–9, 242–7, 285; Fackenheim, 1968: 13–17, 1967, 1970: Chs. 1 and

2, 1980: Ch. 3; Haberman, 1969.) This content is human interpretation that arises out of the historical situation of people who respond verbally and nonverbally to the Divine Presence. Hence, for the theory I shall outline, the ground of obligation is absolute, but the specific obligations are historical, conditional, revisable, and relative. Language, like action, does not constitute the revelation of the Divine Presence; the latter is given to man in itself and immediately.[3] Rather, language emerges as a human response or interpretation which articulates the meaning of the event of revelation for those who receive and accept it.

The more distant one is in time from an event of revelation, the more complex is the network of action and interpretation that serves as the bridge between those who directly and originally encountered the Presence and those who seek to respond at a later time. For one who comes after a religious tradition has grown up, then, the problems of appropriating the event and receiving the tradition are complex. In part, the moral theory here developed tries to explore how that appropriation and reception work in a particular case, the moral case. From this point of view, the study of Jewish ethics is a study of the continuity of the Jewish legal tradition insofar as it is a tradition that crucially depends on its reception and the conditions for that reception. At the same time, it is a tradition that shapes and determines, to one extent or another, the situation out of which that reception occurs and the character of those who receive it. In short, the study of Jewish ethics is in part a study of the nature and development of Jewish tradition.

What criteria must our moral theory satisfy? How shall we know if the theory is acceptable and authentically Jewish? These are very difficult questions to answer. Only a fully developed account of the nature of Jewish tradition and the character and conditions for its change, with a special eye to its deontic component, could begin to provide such answers.[4] Still, insofar as the theory arises out of a historical situation, it ought to encounter and successfully meet the needs of that situation. It cannot ignore modern challenges to God and revelation; nor can it neglect claims about human freedom, motivation, and purpose. In short, it cannot reject, without thorough examination, modern philosophy and thought. At the same time, it cannot ignore those events and situations that have shaped the experience of Jews today—Jewish history, literature, and practice; the Holocaust; the rebirth and defense of the Jewish state; and the changing character of Jewish life in America and of Western culture generally. All of these factors must be engaged and understood and either accepted or rejected, in part or as a whole. While we cannot perform these tasks here, we can, however, offer a pragmatic alternative. Our theory ought to satisfy certain intuitions that contemporary Jews might be expected to have about any acceptable Jewish moral theory and without which such a theory would simply not be compelling at all.[5] These intuitions might be captured in the following criteria:

1. An authentic Jewish moral theory must ignore neither the past nor the present. For to ignore the past is to cut oneself off from the historically developing destiny of the Jewish people, and to ignore the present is to court irrelevancy and anachronism.

2. An authentic Jewish moral theory must neglect neither God nor man. For Jewish ethics is by its very nature rooted in a Divine Command that is imposed and yet freely accepted.[6] To ignore or deny God is to cater to a thoroughgoing relativism that is pernicious or to pander to our failings and frailties rather than to take a stand in opposition to them. And to ignore man is to show disrespect for a liberal truth that Judaism itself has always endorsed, that Torah, at once divinely given, must be freely received in order to enrich and not stifle human living.

3. An authentic Jewish moral theory must ignore neither the Jewish people nor the needs of humankind. For to do the former is to lapse into an abstract universalism that is as insufficient in theory as its effects have been painful in fact. (See, on Judaism and the liberal democrat, Sartre, 1948: 55–58; Fackenheim, 1973: 203–13, 1978: Chs. 11, 14.) And to neglect the latter is to deny to others the concern and respect one wants and expects for oneself and thereby to lapse into a parochialism at least as intolerable as the universalism it opposes.

4. An authentic Jewish moral theory must be a part of a larger theory of Jewish existence and Jewish destiny today. For the moral ideals and imperatives that fall upon Jews should take their place among the variety of obligations and opportunities that shape and structure contemporary Jewish life.

5. An authentic Jewish moral theory must provide both an account of what Jewish obligations are—how they emerge, what their sources are, and how they are affected by history—and a strategy for identifying, interpreting, and communicating those obligations.

A Jewish moral theory that satisfied these conditions would be rich and fruitful. It would recognize the dramatic importance of the Holocaust for Jewish self-understanding today. It would, furthermore, appreciate the significance of Israel to that self-understanding and would, at the same time, confront with a proper sense of realism the moral sense of Jews outside of Israel. Such a theory would be continuous with the past, drawing on the riches of biblical, Halachic, and Midrashic literature, and yet it would recognize a central role for both Divine Command and human freedom. It would be a distinctly, unapologetically Jewish theory for which the contemporary historical situation of the Jewish people is essentially determinative. Hence, such a theory would sacrifice the security of moral absolutes and the comfort of an easy universalism to its own essential historicity, opening up honest access to others by shutting off the routes of a disingenuous brotherhood. This theory, in short, would found a Judaism that had learned to live with itself because it will have ceased avoiding its own flesh and blood reality.[7]

THE PROGRAM FOR THE THEORY

The framework for such a theory is available. (See Fackenheim, 1968: 17–20; 1970: Ch. 3.) The Holocaust and the historical situation of Jews in the modern world are its starting points, and they define the terms and method whereby the past is to be appropriated for the present and future. The Holocaust as part of the theory's historical center authorizes that very appropriation and gives it shape, for by its very character the Holocaust has altered our views about human nature, moral psychology, religious purpose, hope, trust, and resolve. The theory I have in mind develops from its core with due caution, a reserve that suits all too well the horror, the trauma, and the irredeemable evil that surely shatter the serenity of any sane person (see Améry, 1980; Des Pres, 1976). But once the theory finds its way beyond the Holocaust, not by negating it nor by diminishing its priority but rather by acknowledging its depth in a profoundly honest way, it emerges as a strategy for Jewish life today and in the future.[8] Jewish moral thinking finds its place within such a theory and develops as an attempt to provide an account of how moral imperatives arise for Jews, on what basis their moral force is founded, and how they are determined.

The reasoning in support of the theory begins with an initial desire to understand or comprehend the meaning of the Holocaust. What shape does the reasoning take? To be sure, it is neither deductive nor inductive in any standard sense. Rather it begins with an attempt to explain the Holocaust and, once that attempt breaks down, proceeds to ask what significance the event might still have for subsequent Jewish history and Jewish life. The strategy will be to invite the possibility that there *is* such a significance for subsequent Jewish life, to interpret Jewish conduct in terms of this significance, and finally to elaborate that significance by means of a "transcendental deduction" of the conditions within Jewish life and within the Holocaust without which this interpreted significance could not exist. This latter stage, moreover, develops as series of responses to four questions: What are Jews now doing? Can Jewish conduct be interpreted as responsive to the Holocaust? What is the precise character of that responsiveness? And what is the ground of that action as so interpreted and understood? This procedure is an example, in a sense, of the kind of interpretive enterprise one might engage in at any time in order to try to understand the role of a compelling event in its historical setting. Presumably it is reasoning initially motivated by a sense that the event *is* compelling and pursued when its significance becomes elusive and problematic. The reasoning proceeds as follows.

1. The Holocaust is *unique*.[9] This statement is neither trivial nor absurd. It is not trivial because it means more than that the Holocaust differs from all other historical events. And it is not absurd because it does not make the Holocaust *sui generis* in every respect, unlike every other event in every way.

What the statement of uniqueness does mean is that the Holocaust is sufficiently different from all *preceding* events—in terms of ideological purpose, technological manipulation, calculated administration, the character of the criminals, the dehumanization of the victims, and so on—to identify the time thereafter as a new stage in history.[10] Its claim on us, moreover, depends not on the event's uniqueness *per se* but rather on the particular features or constellation of features that make it unique.

2. These features are so horrifying, so traumatic that they paralyze our capacity to explain them. To be sure, this paralysis is not going to be obvious or applicable to all. Surely our attempts to explain and understand the Holocaust will have to be examined and assessed. But for those who accept this judgment of paralysis, no matter how much we come to understand about the Holocaust's antecedent conditions, about the events that follow it, about human nature, or religious doctrine, the Holocaust defies comprehension. No philosophical, theological, psychological, or historical theory adequately explains a sufficient number of its central features to leave us with a confident sense that we have understood this event or have grasped its meaning (Fackenheim, 1970: 69–84; 1973: 192–95; 1980: Chs. 1 and 4). The Holocaust, in short, is as recalcitrant to intellectual as it is to emotional satisfaction. It permits no complacency of thought.

3. But explanatory meaning, comprehending why events occur, does not exhaust all meaning. A failure to locate an event within a theory, be it theological, historical, or whatever, does not entail that the event has no meaning at all for any or all of us.[11]

4. Indeed, all Jewish life subsequent to the Holocaust can be understood with respect to it. Some Jews have acted and do act in conscious response to the Holocaust. Others do not respond consciously or intentionally, but their conduct, too, can be interpreted as responses to it. The meaning that an event has for an agent differs from, and may be independent of, the meaning of the event as understood by a third party with respect to that agent. The former depends on the agent's beliefs and intentions, while the latter is the result of an independent interpreter's reflective comprehension. Indeed, actions can be described and interpreted in many ways; when actions are interpreted as responsive to a given event, whether or not the thought of that event is a conscious component in the agent's intentions, we can say that the event in question has a meaning with respect to that action.[12] This is the case with the Holocaust. Having no *explanatory meaning* for it, we nonetheless have discovered its *descriptive* or *interpreted meaning* for subsequent Jewish life. And since all description is situated, determined by the presuppositions, prejudices, and conditions of a time and a place, our description of Jewish conduct and Jewish life as responsive is not discredited by our reasons for so doing. Indeed, our reasons authorize and authenticate that description.[13]

5. These responses reflect an uncompromising opposition to the destruc-

tive goals of the Nazi regime. This is the answer to the third of the series of four questions that we listed earlier and now must proceed to answer. First, we notice that Jews today cling to Jewish survival and identification; they underwrite Jewish hope; they show guarded optimism in human goodness, or at least in human capacity, but an optimism nonetheless (Fackenheim, 1968: 19; 1973: 166–67). This conduct can be interpreted as responsive to the Holocaust in the way we have just described (4). All in all, then, the very strength of this responsive and responsible opposition to Nazi purposes makes one wonder about the *basis* for such stubbornness. It is not whimsical or arbitrary to understand this uncompromising opposition as a response to an obligation that is itself uncompromising, unconditional, and absolute. Indeed, in order to understand this action seriously, nothing weaker than such imperative force will do.[14]

6. Absolute imperatives come only from absolute sources, and in Judaism there is only one such source, the Divine Presence of the Commanding God who spoke at Sinai and who speaks still.[15] This is the answer to our fourth question. Now, to be sure, positing such a source, we resist seeing the Jewish responsiveness as conditional. We resist, too, identifying a human or natural source for the obligation, be it qualified or unqualified. (For arguments against such "humanly created ideals," see Fackenheim, 1970: 83.) Our resistance, however, while it may be premature, is not wholly unjustified. Indeed, as we shall see, it can be understood as an example of the very opposition which, in a sense, it grounds.

To this point, then, our account has identified the source of post-Holocaust Jewish imperatives as a Divine Commanding Presence situated within the Holocaust itself. However, for those interested, as we are, in understanding how Jewish moral thinking develops its imperatives in response to such a Presence, we have not proceeded far enough. How, then, does this program for a "transcendental deduction" of the Divine Commanding Presence at Auschwitz lead to a mode of Jewish responsiveness that is structured by moral imperatives of this Commanding God?

7. If we couple our conclusion with a concept of revelation as an immediate relation between God and man, and if the content of such a relation takes the form of a *command* and a *response,* both conceived not as divine contributions but rather as human interpretations of the *meaning* of the divine-human encounter, we can begin to see how particular obligations emerge from that encounter (for this concept of revelation, see Fackenheim, 1976, and other works cited above). Jewish moral obligations, like all obligations understood to emanate from that Presence, are, in one sense, absolute in their source but, in another, relative, human, and historical in their determinate content. The force or impact that founds them is Divine; the interpretive responsiveness that articulates them is human. The latter is a finite receptivity that is revisable and provisional, the former an Infinite Presence that uncondition-

ally demands that *some* response be made. Hence, because the response is imperative, it cannot be a response to the *mere* event, which, even though unique, is still but an event in the world, but must be a response to a Divine Voice. And because the response and the Voice are related only in terms of the event itself, the Voice must be present *there*.

8. For those who seek to identify the moral obligations of contemporary Jews, one must proceed to interpret what it is that the Commanding Presence at Auschwitz commands of us. This is no easy task. Since the articulation of such commands is a matter of human interpretation where the individuals, the situations, and the moments of revelation differ, there are no uniform formulae for how to proceed. Still, one needs some guidance, and our theory would be seriously wanting if it did not attempt to provide it.

OBJECTION, REVISION, AND GUIDANCE

In a sense, we have already begun to articulate the commands in step (5) of our reasoning (Fackenheim, 1970: 84–92). There we described the responses of Jews subsequent to the Holocaust not as responses to the event itself but rather as responses to an imperative or set of imperatives. We proceeded with such a description on the grounds that the uncompromising character of the responsiveness was only properly understood if we posited an obligation to mediate, as it were, the relation between the Holocaust and the Jews of today. If this were satisfactory and if the kinds of responses we had in mind—acts of opposition, whether conscious and intentional or not—were acceptable, then indeed we would already have begun to define Jewish obligation even prior to arriving at its source.

There are, however, questions about steps (4) and (5), and only when these questions are noted and answered can we actually begin to see how the imperatives of contemporary Jewish life properly emerge.

Step (5) arises after we turn to Jewish life subsequent to the Holocaust and, having understood that life as responsive to the Holocaust, try to discern the imperatives that ground that responsiveness. Clearly, however, even a casual consideration shows that contemporary Jewish life only poorly supports such a judgment. To be sure, it is *our decision* to interpret or describe Jewish experience as responsive that is at issue here and not a matter of empirical fact. Hence, one looks not for proof or evidence but rather for encouragement, support, or reason sufficient to justify such a choice and interpretation. But even this eludes us. Increased intermarriage, weakened formal affiliation with the Jewish community, and population depletion hardly encourage an interpretation of Jewish life as being in dramatic opposition to Nazi purposes, nor do they reflect an uncompromising will to survive. Even a distinction between actions intended as responses and those only interpreted

as responses does not save steps (4) and (5) as they are currently stated. For while any action or inaction could conceivably be interpreted as a response to the radical evil of Auschwitz, it is hardly satisfying or comforting to be restricted to interpreting actions or trends that so obviously seem to capitulate to that evil. Furthermore, such a strategy, if it did not fail for these reasons, would surely fail if the responses were *largely* unintentional. Some small justification, beyond our own aborted quest for meaning in the Holocaust, ought to recommend treating Jewish life as responsive to that event. This justification can only come with *intentional response* and, as we suggested earlier, with intentional, dedicated response that is as well intentional, dedicated opposition. As we look around us, however, too few models, if any, of such opposition come into view. Thought, paralyzed by the Holocaust, cannot seek refuge outside of that event. Perhaps, then, we are at a loss because we are looking in the wrong direction.[16]

These worries about steps (4) and (5) extend to step (6). Having derived and located a Divine Commanding Presence—even if somewhat prematurely—we confront a bewildering dilemma. A Divine Presence is present to persons in history. If *we* are those who hear, then the Presence must be present now, and one wonders what links it to the events of forty years ago. On the other hand, however, if the Commanding Voice we have identified speaks at Auschwitz, as we have argued, then how can we, now, some forty years hence, hear that Voice? If the Presence was there, then the event was there and the divine-human encounter as well. But how then can we, here and now, be participants in that encounter? How, indeed, can that Voice speak to us?

A moment ago we looked for paradigms of dedicated, intentional opposition to Nazi purposes and were disappointed. Now we find ourselves alienated from the very Presence whose force is to be the ground of our imperatives. What we seek is a solution to both our difficulties, and that solution must be a bridge between now and then and also between us and the Voice of the Commanding God. We seek a model of opposition whose actions are a listening to that Voice and a speaking to us; we seek a link between us and the Divine Presence at Auschwitz, a mediator who encounters God in the immediacy of the moment and, at the same time, makes possible our own mediated appropriation of that Voice today.

The stories of such mediators are being told and retold with increasing frequency (Bauer, 1979: 26–40; Des Pres, 1976; Berkovits, 1979; Fackenheim, 1973: 166–68, 1978: Ch. 13). They include the tale of Yossel Rosensaft and his fellow inmates in Auschwitz, who, in December of 1944, celebrated Hanukkah with a wooden menorah, carved with spoons, and with candles made of old cartons. Together they sang the traditional Hanukkah song, "Maoz Tsur Yeshuati," a song of praise for God's salvation, for the redemption from Egypt, for the relief from exile in Babylonia, for the foiling of Haman's plot,

and finally for the miraculous victory that Hannukah itself celebrates. A traditional song, to be sure, but a setting that is so untraditional as to make the singing of that song an act of transcending opposition to the masters of Auschwitz and their purposes. There is, too, the frequent repeating of the injunction of Rabbi Yizhak Nissenbaum, who, in the Warsaw ghetto of 1940–41, acknowledged that the tradition of Kiddush Ha-Shem, martyrdom as a sanctification of God's name, had been replaced by an imperative to sanctify not death but life. "In former times," he said, "when the enemy demanded the soul of the Jew, the Jews sacrificed their bodies 'for the sanctification of God's Name'; now, however, the oppressor wants the body of the Jew; it is therefore one's duty to protect it, to guard one's life" (quoted by Berkovits, 1979: 99–100). The true Jewish vengeance, a Holocaust victim once wrote, is the power of the Jewish soul and its faith, an abiding trust that cries out "Hear, O Israel" in the face of guns and gallows and that cultivates dignity in the face of every imaginable assault on it (Berkovits, 1979: 110–11). The cases are myriad, cases of dedicated, intentional opposition, but for our purposes it is their common core and not their number that matters. Indeed, in the midst of such hell even one such act would be sufficient encouragement for us. (See Rosenbaum, 1976; Bauer, 1979; Berkovits, 1979; Des Pres, 1976.)

When we look around ourselves for a paradigmatic opposition that is a responsive listening to the Divine Voice, we look in the wrong place. The right place is not here but there; the paradigmatic opposition is during and not after. We should look not at ourselves but rather at R. Oshry and all those who wrestled dignity and nobility from chaos itself. If anyone heard the Voice, it was they, and if anyone's response ought to guide and direct our own, it is theirs. Indeed, it is only because of them that we can respond at all, and only through them that we can begin to see how to interpret the meaning of the Divine Presence for ourselves.

How utterly unsurprising and unremarkable this is. It is the lesson of reception, tradition, and transmission, a lesson so integral to Judaism that it seems hardly necessary to draw attention to it. But because that reception must occur after a determinative event such as the Holocaust, it is indeed necessary to do so. Consider Sinai. The encounter between God and man was and always will be direct, but for Moses it was an origin, for those who followed him both an *origin* and a *goal.* For him it was once and for all an immediacy that resulted in responsive action and speech; for others, that encounter incorporates an impact to be felt only as it is appropriated through a tradition initiated by Moses and for which a new responsiveness is required to build on the old. And what is true for Sinai is true, in a more complex way, for every subsequent encounter between man and God within Judaism. Hence it is true for the Divine Presence at Auschwitz. The bridge between us and Sinai includes the vast, ramified, intercommentative network of pro-

phetic, rabbinic, and philosophical reflection that is called "Jewish tradition." But that link is rooted in Moses, in him who alone confronted that Presence *panim el panim,* face to face, and whose original response, whose words and actions, constituted the earliest Jewish life. That bridge includes as well all those epoch-making events when the same Voice was again heard and when new responses confronted and transformed the old. (On epoch-making events, see Fackenheim, 1970: 8–9; on reidentification of the Divine Voice, see Buber, 1965: 14–15.) The utterly momentous Presence during the Holocaust was Itself encountered, and those who experienced that encounter are the vital link, bringing together our imperatives, the event itself, and all of Jewish experience prior to it. Only through the actions and words of people like R. Oshry do we hear the Voice that spoke at Auschwitz, and beyond that do we hear the dim but certain echo of that same Voice in its original encounter with the Jewish people.

THE IMPERATIVES OF THE MORAL THEORY

For articulating contemporary Jewish imperatives, then, there are no ready formulae, but there are models and mediators. R. Oshry is one; there are many others, exemplars and advocates of an overriding imperative, a principle of opposition to Nazi purposes and of resistance to those purposes.[17]

R. Oshry himself is especially remarkable, for he enunciates that principle, celebrates it, and gives it quasi-legal status (Rosenbaum, 1976: 65–68). On November 3, 1941, the Jews of the Kovno ghetto (in Lithuania) had recently survived Nazi actions against the inhabitants in which 10,000 were killed. Those who remained asked Ephraim Oshry whether they were permitted to thank God for their deliverance by reciting the blessing *Ha-gomel* (the Bestower). The Talmud explains that *Ha-gomel* is said by the sick who recovered, the prisoner who was released, the sea-farer who landed, and one who crossed the desert. But Maimonides and Joseph Karo, in the *Mishneh Torah* and *Shulchan Aruch,* together with later commentators, disagree about exactly *when* the blessing should be recited. Some permit it even when the deliverance is only temporary; others require that it be complete and permanent. This is R. Oshry's conclusion:

> It is quite possible that the cruel murderers had already condemned these who had escaped that particular *aktion* to death. The reason they let them remain alive was because they deliberately conducted their murderous operation in 'cat and mouse' fashion, always allowing some Jews to remain alive for a time. They did this in order to delude them with false hopes so that their despair might be all the greater when the truth became known to them.
>
> Time after time they would lead the ghetto residents astray with all sorts of false rumors of salvation and deliverance in order to instill in them the vain

> hope that the destroyer's hand had finally been stayed. So, too, when they took them out to be killed, the Germans would lead them to believe that they were simply being transported from one point to another so the Jews should not try to escape or resist.
>
> Therefore, one certainly ought not to instruct those who escaped to recite *Ha-gomel* after having been saved from destruction in this one *aktion.* For these unfortunate ones may begin to imagine that the threat of death is truly over and that salvation is at hand. *In this fashion we would be helping the cursed murderers in their foul plot and would simply be making it easier for them to destroy our sisters and brothers.* Therefore, I ruled that they must not recite *Ha-gomel.* (emphasis added)

Based on a meticulous consideration of Jewish legal texts and precedent cases, Oshry's decision suggests a principle of opposition that is remarkably present and indeed dominant in his mind. And that principle recurs in other of his Halachic judgments (cf. Rosenbaum, 1976: 17–21, 24–31, 50–51, 64–65, and 92–95). When, for example, a group of students from a nearby rabbinical seminary are threatened with execution, R. Oshry encourages a Jewish official to risk his own life to intercede in their behalf. These students, he says, are the bearers of the Jewish spirit and the Jewish soul. To try to save them—even at the risk of one's own life—is especially meritorious, for to do so is to oppose the Nazi plot to destroy not only Jews but Judaism itself. Recall, too, Oshry's unusual decision to permit a suicide with the proviso that his authorization not be publicized. Together these decisions reveal a conviction that Halachah must be served but only when it is made to satisfy a fundamental obligation to oppose what Hitler sought to accomplish—to satisfy, that is, an imperative to keep Judaism alive, to maintain trust and hope, dignity and honor.[18] The spectrum of cases of resistance during the Holocaust, widely and increasingly documented and recalled, here finds both an explicit formulation and, more importantly for us, a role within Halachic reasoning itself. Moral-legal decisions, on which permissions and obligations are based, themselves incorporate the principle of opposition to Nazi purposes and indeed give it priority.

The role of R. Oshry's Halachic decisions in our practical reasoning as Jews—indeed, the role of the vast, rich reservoir of observations, judgments, insights, and decisions by victims and survivors in general—is a complex one. On the one hand, this testimony helps us to appropriate the urgency and impact of an encounter, at least a sense of obligation and necessity, which we can only appropriate through such mediation. In addition, however, these decisions and comments become a guide for us as we try to identify the imperatives of Jewish life today and a component in such interpretative articulation as well.

Oshry's sensitivity to the Nazi objectives, for example, reveals itself in the obligation to preserve the tradition of law and lore and the imperative not

to endorse the abandonment of an other-worldly hope and trust. In the very act of studying the legal literature, carefully collecting precedents from the literature available to him, and interpreting their sense and applicability, Oshry attempts to satisfy this obligation. To confront the complexity of moral-legal dilemmas without recourse to the Halachic tradition is to serve the Nazis and not to oppose them. As is clear from Oshry's own reasoning, this is not an obligation to adopt the Halachah as it presents itself, even if a specific obligation is uniformly endorsed. It is rather an obligation to consider this tradition, to study it and incorporate its judgments and reflections as components in one's own deliberation. To appropriate the Halachic tradition so far as one is able, then, is part of what it means to accept the obligation to keep Judaism alive, to maintain the continuity of a historical tradition of moral and legal reasoning that stretches between the Jew of today and the Voice that spoke to Moses himself. And that obligation is a fragment of an imperative of opposition to the Nazi plot (Fackenheim, 1968: 20; 1970: 84–92). That imperative here expresses itself in a particular way by the conviction that the survival of Judaism is jeopardized if the deliberations and decisions of the past are not given due respect in the deliberations and decisions of the present. This is the weight of the obligation to take the Halachic tradition seriously; it is an intermediate position between neglect and complete submission. Indeed, I think that R. Oshry himself, whatever his *formal* commitment to the authority of the Halachah, in those years in the ghetto felt the weight of just this obligation.[19]

One role of Oshry's decisions and testimony akin to them is to show us the way to an understanding of the primary obligation that arises out of the Holocaust. A further role is to help us elaborate its ramifications, i.e., to clarify what opposition to Nazi purposes means and how one might set out to enact that opposition. But there is a further role still and one of profound, immediate importance. For since we, confronting the complexities of Jewish life today, seek to act, having considered the Halachic tradition as a component in our deliberations, we must realize, too, that we can only appropriate that tradition as it existed prior to the Holocaust *in terms of* the way its content was, on the one hand, appropriated during the Holocaust and, on the other, transformed at times by the event itself. Not only do Oshry's Halachic reflections and decisions guide our interpretation of the general obligations of Jewish existence; they also contribute to the specific ways in which we can and should appropriate that tradition in order to arrive at the precise imperatives for our own lives. The meaning of the Halachic tradition is mediated for us by Oshry's understanding of it and even by the very situations which Oshry had to confront.

Among contemporary moral problems that have generated widespread discussion both in scholarly journals and in popular publications and forums, the problem of abortion holds a special place (see Feinberg, 1973). Notwith-

standing its controversial nature, however, the abortion question is agreed to turn on two issues: the status of the fetus as a moral person and the boundaries of justifiable homicide. The discussion of both these matters in the Halachic literature is complex and provocative; yet out of this variety emerges a dominant view and several minority views (see Feldman, 1968: Chs. 14–15; Bleich, 1968). According to the former, the fetus is a person at birth and indeed, for certain legal purposes, only thereafter. Nonetheless, taking its life, the act of feticide, is serious enough to require substantial justification. The dominant view is that only mortal threat to the mother will provide that justification, but minority views allow greater leniency, even to the point of permitting abortions in order to save the mother mental anguish and social disgrace. Throughout the Halachic literature, then, attention is focused on the mother and her needs and thereby on the needs of the present.

If, however, we are to take with utter seriousness the obligation to sustain the Jewish people and, in so doing, to oppose a fundamental Nazi purpose, we ought to consider with equal concern the welfare of the fetus and its future, a future that represents the future of the Jewish people itself. To be sure, such a requirement by itself can produce no precise picture; no simple resolution of cases is forthcoming. But appreciating the primacy of the obligation to oppose Hitler and his designs, we notice that certain considerations relevant to a moral decision play a more important role than they might otherwise have. This is starkly highlighted by the following incident.

On May 7, 1942, the Nazis passed a decree prohibiting pregnancy among the Jews in the Kovno ghetto. It was a law aimed at killing hope and joy among the Jews of Kovno and a law aimed at cutting off the Jewish future as well. Punishment was to be immediate and absolute; any Jewish woman found pregnant was to be executed on the spot. On August 9 of that year R. Oshry was confronted with the following problem: given the Nazi decree, could a Jewish woman who found herself pregnant abort the fetus in order to save her own life? Oshry's response is a moving testimony to the power of law to preserve dignity and order where chaos threatens. Carefully examining the legal literature, he chooses to permit the abortion, for to forbid it would be to accept the deaths of both mother and fetus as a virtual certainty. The point to notice here, however, is not Oshry's decision but rather the diabolical purpose served by the Nazi decree. In effect it forced the Jews of Kovno to cancel in advance their own future and hence the future of the Jewish people. And for those women unfortunate enough to become pregnant, it forced them to cut off their own future in order to save the present. In short, the Nazi cunning was not satisfied to annihilate the Jewish future, to instill fear and remove joy; it enrolled the Jews, the victims themselves, in its terrible plot. And more awful still, in cases where pregnancy did occur, it enlisted Jewish women as the assassins of their own hopes, joys, indeed of their future. The effect of this realization on those who took seriously the obliga-

tion to oppose Nazi purposes must be profound. Who now can fail to consider the future as well as the present? Who can neglect the importance of the fetus together with the needs of the mother? To be sure, there is no ready formula that will tell us how this important consideration will or should influence particular decisions. What is nonetheless clear, however, is that no facile appropriation of the lenient Jewish tradition is any longer possible. To abort without serious threat to the mother may very well be to betray that woman whose case Oshry was asked to consider and to betray, too, all the Jews of Kovno (see Fackenheim, 1980: 216–17).

COMMENTS AND PROBLEMS

Having said this much in sketching a theory of moral obligation for contemporary Jewish life, we have not yet said enough. The reasoning that supports this theory and the procedure for its application are not without difficulties.

First, the derivation of the obligation to recover the Halachic tradition as a component of moral deliberation for the contemporary Jew depends on one's understanding of the connection between *Jewish survival,* in particular the survival of Judaism, and *the recovery of the tradition.* Some may take that connection to be accidental and arbitrary; they may see no obstacle to a Judaism completely severed from the traditional round of Jewish conduct and the laws that define it. Indeed, to some the interpretation of this connection may seem to be a factual matter and one not easily decided. It is, of course, not a factual matter; nor is it a matter of simply defining Judaism in such a way that traditional Jewish law, even if not authoritative, is essential to Judaism. Rather the justification of the imperative to secure Judaism by recovering Jewish legal literature rests in the paradigmatic opposition to Nazi purposes expressed self-consciously in the actions of R. Oshry and many other Halachic authorities and in the respect given those authorities and their decisions by those who solicited them. To ignore that literature is to impugn these individuals as our only link to the Divine Commanding Presence and hence to cut ourselves off from any authentic response to that Presence. Indeed, it would be to cut ourselves off from any *need* to respond at all, at any rate from a sense of the uncompromising imperative that issues from the Holocaust itself. In short, then, we are bound to accept R. Oshry's respect for the Halachic tradition unless something decisive supersedes it, i.e., unless we have some good reason for thinking that Judaism today can survive without any respect for Halachic decisions and the legal tradition.

Secondly, we ought to notice that since specific Jewish obligations derive from a single principle or, perhaps more accurately, are nonhierarchical determinations of this principle, conflicts are bound to arise.[20] One can easily

imagine being bound to oppose injustice or to advance the achievement of human dignity in a situation where the necessary action would compromise the Jewish people. In such cases, there can be no neat resolution of the conflict.[21] Contemporary Jewish ethics does not try to avoid the reality of genuine moral conflict or, indeed, of conflict between any pair of Jewish obligations. Nor does it venerate such conflicts. Rather, Jewish ethics acknowledges the authenticity of such paradoxes when they occur and respects the courage and the anguish that mark our encounter with them (see Buber, 1970: 144; Fackenheim, 1970: 89–93; 1978: 252–72).

Thirdly, insofar as the real substance of Jewish obligation reveals itself only when the principle of opposition to Nazi purposes is ramified and given its precise interpretation, it is manifest that this ramification produces a collection of moral, religious, and prudential commands that all have a common source. There is a sense, then, in which the moral and prudential obligations are themselves religious and the religious obligations at least prudential, if not moral as well. Thus for reasons deeper than those we can point to here, our account of Jewish ethics rejects any sharp distinctions between religion and morality and between religious imperatives and prudential, political, secular necessities (see Fackenheim, 1973: 166–67, 1978: Chs. 13, 17; Greenberg, 1977: 45–52). While we can only notice this feature of our theory here, it is a feature well worth careful scrutiny. By appreciating the ways that the Holocaust has markedly altered our very conceptual tools, we reinforce our original conviction of its momentous importance.

Fourthly, the Jewish ethical theory I have sketched takes the interpretation of Jewish moral commands to be the result of the historically situated deliberation of individuals, appropriating the Jewish legal tradition as they consider the needs and requirements of their own situation. These commands, therefore, are always in principle revisable, although in fact they are, when accepted, treated as unconditional. But, one might ask, by treating them as absolute, are we not just deceiving ourselves? Why not simply accept the historicism of our theory? Why indulge in counterfeit absoluteness when an honest relativism waits in the wings?

Perhaps no hasty resolution to this objection will satisfy. But we can certainly caution against accepting it too uncritically. For the objection assumes that no moral obligation can be both divine in origin and human in formulation and hence that none could be both unconditional and revisable at once. But the Jewish moral theory I have sketched is founded on a conception of divine-human encounter that permits, indeed invites just that cooperation of wills. For this reason, the status of the obligations we have been discussing can only be understood when that conception of revelation is critically considered. Others have done this, and we can only hope that their treatment begins to cope with at least some of the reservations noted here (Fackenheim, 1973: Ch. 2). It is nonetheless worth observing that the historicism and rela-

tivism of our theory are not self-liquidating. For we view the articulated commands as human interpretations of what is in itself a Presence that no words or concepts can capture. It is hardly surprising, then, that such interpretations, historically particularized both in source and in application, are in fact taken to be unconditional even when they are in principle subject to modification and even rejection.

Fifthly, our theory must pay the price of historical situatedness in yet another way. Consider once again the reasoning that supports the theory and especially step (2) of that reasoning. It is crucial to the account as a whole and to that step in particular that explanation of the Holocaust fail and that explanatory failure eventually lead to a different kind of meaning. But explanation is contextual; given a certain phenomenon, an explanation of it is satisfactory or not relative to a given person in a particular situation at a certain time and for a certain purpose. This relativity of explanation infects the argument at least in steps (2) and (3), and this means that the move to step (4) and beyond is justified only for individuals who accept (2) and (3). The purpose of the reasoning, however, is to identify the source of a general obligation for all Jews and then to show how that obligation can be formulated and articulated. In short, the argument wants to derive a general obligation, but, as it stands, it simply cannot do so.

This objection rests on a deep misunderstanding. To be sure, the argument is subjective in the sense that the dissatisfaction that leads from explanatory failure to descriptive meaning is relative to subjective needs. But the result is nonetheless general and objective, for the obligation's ontological status is not impugned by the method through which we come to perceive it. What is impugned is the recognition of the generality of the obligation: for some a much weaker explanation will account for the character of resistance both during and after the Holocaust. Not everyone, that is, will agree with R. Oshry that opposition is an obligation, especially one based on Divine Command. To expect a generally recognized obligation, however, seems far too ambitious to me. It is one thing to claim that an obligation is objective; it is quite another to require that everyone acknowledge and accept it. Indeed, since the proof for the obligation, and for its specific articulation or interpretation, is admittedly human, historically influenced, it is not reasonable to expect that everyone will recognize such an obligation or, indeed, any obligation holding for all Jews. What is reasonable, however, and also possible is to know that there is such an obligation, and this knowledge our reasoning provides.

CONCLUSION

The Jewish moral theory which we have sketched does, I think, satisfy the intuitive criteria we set down earlier. It is responsive to the past and to the

present, to God and to man, to the Jewish people and to all humankind.[22] As a theory that issues in particular moral imperatives, it is part of a larger theory of the imperatives that define Jewish existence today. In short, this is a moral theory that a post-Holocaust Jew, immersed in Western culture yet sensitive to the needs of the Jewish people, of the Jewish state, and of their faith, could endorse.[23]

In the modern treatment of religious ethics there is sometimes a tendency to want the same universality and objectivity for religious ethics that many have found in popular rationalist moral theories. This paper doubts that in the case of an authentic Jewish ethics such unanimity can be discovered. Many will surely find this result unsettling, if not simply wrong. They would prefer a moral theory that begins with a transhistorical Torah and imposes itself uniformly on Jews of all times and all places and indeed on all people as well.[24] This is not the place to debate their preference. What I have done instead is to offer an alternative with the hope that its virtues will impress the discerning reader.

NOTES

1. It is one of the assumptions of this paper that Jewish moral obligations are a subset of Jewish obligations in general and that though moral, these obligations are also *Jewish* in important ways.

2. There are many recent examples of both relativist and absolutist moral theories. As an instance of an absolutist theory, one might look at Alan Donagan's natural law theory (1977). On the side of relativism, there is J. L. Mackie's *Ethics: Inventing Right and Wrong* (1977). The theory of Jewish ethics outlined in this paper claims that Jewish moral obligations are objective and unconditional in status but relative and conditional in content.

3. The role of language in the modern Jewish account of revelation has not been thoroughly discussed. Gershom Scholem, however, has treated the linguistic character of the Kabbalistic theory of revelation (1972).

4. The justification of a moral theory is an enormously complex matter. Such theories are normally assessed and criticized in a piecemeal fashion and then in terms of their simplicity, consistency, utility, satisfaction of our moral intuitions, compatibility with our understanding of human nature, rationality, and so on. By far the most elaborate recent attempt to develop and justify a moral theory can be found in John Rawls, *A Theory of Justice* (1971).

5. This is a pragmatic alternative in the sense that the theory is being tested not against fully developed views on human nature, etc., but rather against our conception of an ideal moral agent and his or her beliefs, intuitions, etc., on these matters. In the present case, the ideal agent will be characterized by a keen moral sensibility and shaped by the Jewish and non-Jewish worlds in which he or she lives.

6. The relation between Divine Power and human freedom is articulated within

the theory of revelation on which the moral theory is based. Buber comments that the philosophical antinomy of necessity and freedom here finds its real nemesis in the "lived" paradox of "the reality of [a person's] standing before God" (1970, 144; cf. Fackenheim, 1970: 15–16).

7. Such a Judaism, then, would be quite different from the "eternal people" derived and described by Rosenzweig in *The Star of Redemption* (1970), a people *in* but not *of* history.

8. Jewish thought that confronts the Holocaust as an event determinative for our time is often castigated as wholly negative. This paper is an attempt to belie that criticism. To begin with history is a philosophical necessity; the unavoidable evil of the event which constitutes that historical beginning need not corrupt the thinking that reflects on it or the life that follows it.

9. This claim must not be misunderstood, as I try to explain. Rather than the more accurate term "unprecedented," I use the term "unique" intentionally, in part so that my explanation may serve to place its extensive use in perspective (see Fackenheim, 1978: 244–251, 278–281, 1982: *passim;* Arendt, 1951: 437–459).

10. The key to the Holocaust's uniqueness, then, is its historical location together with its character. Fackenheim, in the passages cited above (note 9), calls the Nazi Empire "a *novum* in human history" (1978: 245). Time is of the essence.

11. Philosophers of language distinguish between language and speech, and between the meaning of a word in a language and its meaning for a person in a particular situation. The distinction I am drawing in the text is akin to this one. For a celebrated discussion of the meaning of "meaning," see H. P. Grice (1957).

12. Examples are not difficult to give. John is fired because he is untidy, cantankerous, and always late for work. But he is also the union organizer in his shop. The press and his supporters take the firing to be an attack on the union.

13. Later we shall see that what finally authenticates the description and our interpretation of the meaning of the Holocaust for subsequent Jewish life and thought is an exposure of our thinking to the event itself *via* the diaries, memoirs, and accounts of its victims and survivors.

14. I.e., those who oppose Nazi purposes do not do so conditionally or on a whim (see Fackenheim, 1970: 83).

15. In fact, this is surely too bold and anticipatory a claim to make at this point. What one can legitimately say is that there is a need for *some unconditional* ground for the obligation. It is at this stage unwarranted to identify this ground as the Commanding God. Until one articulates an obligation to maintain continuity with Jewish tradition, to identify *this* Voice as the *same* Voice that spoke at Sinai is premature. Buber discusses the question "Who Speaks?" and this problem of reidentification of the Divine Presence, though without reference to this precise situation, in "Dialogue" (1965: 14–15).

16. Action in defense of Israel is an important exception (see Fackenheim, 1978: chs. 13 and 17).

17. This is not, of course, to say that R. Oshry himself took this principle as the commandment of a God present to him then. Rather he is evidence for us as we seek to interpret what our obligations are. The identification of the Divine Presence is part of our response to the event and need not have been part of his.

18. The effect of these decisions is to *qualify* the authority of Halachah in two ways: (1) it is binding *only because* it is *now* obligatory to appropriate it, and (2) it is binding *only as* interpreted in the new situation.

19. R. Oshry and others doubtless sought relevant precedents that would enable them to comply with and obey explicit Halachic commandments rather than merely respect them and give what look like contrary judgments. The effect of the principle of opposition, when treated as itself a divine command, is that even these seemingly contrary judgments become authoritative—and not merely because an authorized decisor made them.

20. It is important to notice that the subsidiary principles derived from this one initial principle are non-hierarchical. This is unlike the application procedure for the principle of utility, say, where every application to a specific case (whether it be to an action or practice) must result in an exclusive ordinal ranking of the possible alternatives. If avoidance of moral conflicts is an advantage to a moral theory, which I doubt, then it is an advantage that our theory does not have (see Williams, 1973; Nagel, 1972).

21. In *Fear and Trembling,* Kierkegaard maintained the distinction between moral and religious obligations and then, in his famous formulation, advocated the "teleological suspension of the ethical." Insofar as our theory treats moral obligations as a species of religious ones, the Kierkegaardian strategy is undercut.

22. The way in which opposition to Nazi purpose involves a fidelity to humanity has not been developed in the current essay. But that the principle of opposition should result in a vigorous defense of human rights and dignity follows naturally from any responsible assessment of the nature of the concentration camps. Hannah Arendt (1951), for example, speaks of the camps as the central institutions of Nazi totalitarianism, laboratories for an assault on human nature. Améry (1980) sees the camps as destructive of human dignity and as institutionalized attempts to annihilate any sense of human trust and solidarity.

23. It is not necessary to belabor the details. The theory respects the Jewish past (historical and Halachic precedents) and present (the contemporary Jewish situation), Divine Command and human freedom, the needs of the Jewish people and the struggle for human dignity. It identifies a central obligation and requires interpretation of it by an exposure of our thinking to the Holocaust and the experiences of its victims and survivors.

24. Modern liberal Jewish thinkers, like Moses Mendelssohn and Hermann Cohen, take the moral principles of Judaism to be identical with rational ethical obligations and hence binding on all rational agents. Of ritual laws, only those included in the Noahide commandments could possibly be incumbent upon non-Jews. Like traditional thinkers, both Mendelssohn and Cohen treat the Torah as containing a set of timeless commandments. Where they differ between themselves is over the authority of ceremonial law, and where they differ with orthodox thinkers is over the reasons that might underlie this authority. For Cohen, the core of the biblical teaching is morality. For Mendelssohn, the ritual law is instrumentally tied to the moral law. To orthodoxy, the entire Torah is authoritative as the Divine Word (see Morgan, 1981).

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