

## *Sanctifying Our Choices: The Solution to the Paradox of Orthodoxy<sup>1</sup>*

By: DAVID CURWIN

During his lifetime, Prof. Yeshayahu Leibowitz was regularly at the center of controversy. With unconventional philosophical and political views on nearly every subject, he was viewed as an iconoclast by some and a gadfly by others. This was certainly true in the Orthodox Jewish world. While committed to keeping the *mitzvot* as understood by Orthodox Judaism (in fact, accepting the “yoke of the commandments” was the definition of Judaism for him), he challenged nearly every other belief.

Almost 25 years have passed since his death in 1994. With no prominent heir apparent to his approach, he was truly *sui generis*. However, is he still relevant? Many claim that his thought was full of contradictions and was often holistically incoherent. For them, without Leibowitz making headlines through his controversial statements, his voice is no longer pertinent to today’s issues.

I will argue, however, that the paradoxes Leibowitz presented do not reflect logical inconsistencies of his own making, but rather expose the conflict embedded within Orthodox Judaism itself. Once we understand the nature of that conflict, Leibowitz’s approach will be shown to be extremely relevant to the challenges Orthodoxy is facing in our generation.

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A review of Leibowitz’s thought will help us understand, and perhaps even answer, a question that lies at the very foundation of Orthodox Judaism: How can we view the halakha as a system of divine authority if humans are the ones making the decisions?

This is particularly conspicuous in our post-modern era, where everyone feels empowered to decide what is right and what is wrong. And indeed, we find many cases today of people making their own halakhic decisions, in such issues as divergent as religious women serving in the Israeli army; Ashkenazim eating *kitniyot* on Pesach; and the ascent to Har HaBayit. People are deciding on their own how to act in regards to these

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David Curwin is a writer living in Efrat.

topics. This might seem contradictory to Orthodoxy, where we rely upon external sources: a *posek*, the rabbi of our community or our synagogue.

Yet in reality, the situation is more complex. On the most obvious level, the halakhic system is comprised of rabbis deciding how to interpret the laws. However, this extends beyond the rabbis, and applies to every Orthodox Jew. We all choose which rabbi to follow, whether it be by deciding which yeshiva to study in or what synagogue to attend. If we scrutinize enough, we will see that our choices determine nearly all of our halakhic practice.

It is not easy to grapple with the tension between divine authority and human agency. Many in Orthodoxy choose to avoid the issue, following an approach that recognizes the halakhic system as originating in the divine, while ignoring the fact that humans are the ones who decide what halakha is. However, it is insufficient to simply say that we need to follow God's law, since if we investigate further we will find human fingerprints—even our own—over all of our halakhic practice.

Avoiding the conflict in our time is especially problematic. As we face more and more examples of personal halakhic choice, the paradox of the whole system becomes increasingly exposed. If we tell people interested in taking a different halakhic path that individuals cannot decide halakhic issues, we run a risk of them pointing out that the emperor has no clothes. Without an explanation that justifies the structure of the halakhic system, the entire edifice is at risk of collapse. Following a divine command, even if difficult to perform, is easy to justify. But why follow halakha at all if you don't believe it is divinely instructed?

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Before we can understand how Leibowitz deals with this paradox, we must attempt to comprehend his overall philosophy. Perhaps the most fundamental principle in Leibowitz's thought is that God is so completely transcendent that He cannot be (and has not been) revealed in nature or in history.<sup>2</sup> For Leibowitz, the scientific revolution taught us that factual knowledge ("true or false") is compelled upon us by scientific observation of our world, whereas all values ("good or bad") are exclusively a result of human decisions. Knowledge is acquired against

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<sup>2</sup> See Yeshayahu Leibowitz, *Yahadut, Am Yebudi u-Medinat Yisrael* [Judaism, the Jewish People, and the State of Israel] (Tel Aviv: Schocken, 2005) p. 252, and Yeshayahu Leibowitz, *Ratziti lish'ol otkha, Professor Leibowitz: Mikhtavim el Yeshayahu Leibowitz u-mimenu* [I Wanted to Ask You, Professor Leibowitz: Letters to and from Yeshayahu Leibowitz] (Jerusalem: Keter, 1999) p. 103.

our will, and values are determined as a result of our will. Even faith<sup>3</sup> in God is, according to Leibowitz, a decision based on values. Since God is not of this world, there can be no knowledge or “proofs” of God. While this prevents any conflict between science and religion, it undermines one of the primary tenets of Judaism—that the Torah, and its *mitzvot*, were revealed to Moses by God at Sinai. Certainly, many modern Jewish thinkers rejected the idea of revelation. But unlike many of them, Leibowitz remained entirely committed to keeping the *mitzvot*, and in fact attacked anyone who tried to find any human justification for their practice.

At this point, it seems that instead of resolving our paradox, Leibowitz is offering us a much greater one: How can someone who disregards revelation as the foundation of halakha justify a halakhic system that fully obligates us? If following God is a personal decision, where is the obligation?

This question was brought up in an interview late in Leibowitz’s life by Rabbi Joshua Haberman.<sup>4</sup> In his introduction to the interview, Haberman expresses frustration with the circular logic present in Leibowitz’s thought:

As far as [Leibowitz] is concerned, the revelation at Mount Sinai never happened. The people who witnessed it didn’t believe it. It was a total failure. The only communication between God and man occurs in the fulfillment of the *mitzvot*. I strenuously tried to get his view on how the *mitzvah* relates to God. “Who defines the *mitzvah*?” I asked. His answer: “The Halakhah.” And who defines the Halakhah? “The Halakhah defines itself,” was his reply. He refuses to say that Halakhah is conveyed by God’s revelation. What he is saying, it seems, is that the authority of the Halakhah rests upon the Jewish people’s will to obey it.<sup>5</sup>

In the interview itself, we see how Leibowitz avoided answering Haberman’s questions:

**Q:** Do you see anything of God in the moral standards or principles of the prophets? Do you think they expressed their own personal ideas or was there some operative revelation which they experienced and expressed?

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<sup>3</sup> In the sense of commitment, not belief.

<sup>4</sup> Joshua Haberman, *The God I Believe In* (New York: Free Press, 1994) pp. 131–161.

<sup>5</sup> Haberman p. 128.

**Leibowitz:** We accepted prophets as *kitvei ha-kodesh* [Holy Scriptures]. It is also a decision.

**Q:** But are their words *divrei Elokim* (words of God)?

**Leibowitz:** Which means *kitvei ha-kodesh*. It is my decision to accept it.

**Q:** But what is there in their words that make them *divrei Elokim*? Is it your own personal decision? Then why do you and I and many others see it?

**Leibowitz:** Most people don't see it. Why are people nationalists? Why are they ready to kill and die for their country and their nation?<sup>6</sup>

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**Q:** Does revelation, *hitgalut*, have any meaning for you?

**Leibowitz:** It proved to be a total failure.

**Q:** Do you believe there is any communication between God and man?

**Leibowitz:** Certainly.

**Q:** In what form?

**Leibowitz:** In the fulfillment of *mitzvot*.

**Q:** Only in the *mitzvot*?

**Leibowitz:** That's communication with God.<sup>7</sup>

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**Q:** That raises a very serious question. Who defines the *mitzvot* [commandments]? Do I myself choose what is a *mitzvah* and what is not? That is the position of Reform Judaism, a Judaism of choice. Where is the *metzaveh* [commander]? Am I the *metzaveh*? Or, is God the *metzaveh*?

**Leibowitz:** It is the Halakhah.

**Q:** Who defines the Halakhah?

**Leibowitz:** The Halakhah defines itself. It is a decisive point whether you recognize the authority of the Halakhah or you don't. The great break came in the nineteenth century.

**Q:** But that raises the very question which you have not answered. Who is the *metzaveh*? Is the Halakhah self-validating? Or, is there a higher source of the Halakhah?

**Leibowitz:** The Halakhah is the source. The Halakhah is the objectification of the Torah.

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<sup>6</sup> Haberman p. 132.

<sup>7</sup> Haberman p. 135.

**Q:** But then you are saying the Halakhah as part of Torah, is a book without an author.

**Leibowitz:** It is not a book.

**Q:** What gives it authority?

**Leibowitz:** Itself is the authority. That is the basis of historical Judaism for about two thousand and two hundred years. That is a matter of fact, the essence of Judaism.

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**Q:** But once more I want to pinpoint the question. When I think of *mitzvot*, I imply a *metzaveh*. Who is the *metzaveh*? Is it Moses, Hillel, Shammai, Akiba?

**Leibowitz:** No, it is the Torah itself. Who is the authority for you to be honest and decent and not a scoundrel? Honesty and decency are the authority.<sup>8</sup>

This is indeed a paradox, and Leibowitz himself admitted to that.<sup>9</sup> His answer was that all matters of faith, including the *mitzvot*, are dependent on human decision, and cannot be determined by cognition based on external sources. As he said to Haberman, “Nothing in nature and in history imposes on a person the decision to be honest and decent; he can just as well be a scoundrel.”<sup>10</sup> We cannot even rely on morality accepted by previous generations, for “You can reject everything your father and mother taught you...You can reject all teachings, you can reject human history. It depends on whether you decide to be honest and decent.”<sup>11</sup>

How does he reconcile this with the concept of a holy text such as the Torah? If the Karaites accept only the Written Torah as their source

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<sup>8</sup> Haberman pp. 148–149.

<sup>9</sup> In *Judaism, Human Values, and the Jewish State*, Ed. Eliezer Goldman, Trans. Eliezer Goldman, et al. (Cambridge: Harvard University Press, 1995) p. 11, Leibowitz writes, “Halakhah is founded on faith, yet at the same time constitutes this faith. In other words, Judaism as a living religion creates the faith upon which it is founded. This is a logical paradox, but not a religious paradox.” Asa Kasher, in “Paradox —Question Mark [Hebrew],” *Iyyun* 26:4 (1975) pp. 236–41, claims there is no logical paradox, and in the same volume, “Replies to Critics” [Hebrew], *Iyyun* 26:4 (1975), p. 277, Leibowitz agrees with him. I confess that the distinction between a logical paradox and a religious one is lost on me.

<sup>10</sup> Haberman p. 131.

<sup>11</sup> Haberman p. 131. Leibowitz in *Ratziti* p. 52 goes even further and writes that “values cannot be taught—they must sprout from the person himself.”

for Jewish practice, then it is possible to call Leibowitz a “Rabbinic Karaites,” as he gives ultimate authority to the Oral Torah as transmitted and recorded by the Sages. For example, he said “we don’t live according to the five books of the Torah or the Bible”<sup>12</sup> and “Judaism—the same Judaism that arrived to us as a real, existing entity, because of which I put on *tefillin* in the morning—derives from the Oral Torah, and from its point of view the Written Torah is just one of the institutions of Judaism, and not the basis of Judaism.”<sup>13</sup>

He points out that just as the halakha (as dictated by human judgment) determines the calendar, and which days will be holy, so too did the rabbis determine which books to include in the Holy Scriptures, and therefore even the Bible is a product of human decision.<sup>14</sup> And in the end, “what characterizes Judaism as a religion of *Mitzvot* is not the set of laws and commandments that was given out at the start, but rather the recognition of a system of precepts as binding.”<sup>15</sup> For Leibowitz, the acceptance of the Torah is far more significant than the giving of the Torah.

But what are we to make of God giving the Torah at Sinai? The foundational book of *mitzvot*, the Torah itself, presents the Sinai revelation as the ultimate origin for the commandments! Here Leibowitz follows in the path of Onkelos and Maimonides and says that the events in the Torah, including the revelation at Sinai, need to be viewed allegorically.<sup>16</sup> On different occasions Leibowitz gave various answers as to the nature of the historical event of Sinai—he was generally evasive about

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<sup>12</sup> Leibowitz, *Yahadut* p. 13.

<sup>13</sup> Leibowitz, *Yahadut* p. 354. Leibowitz in *Ratziiti* p. 173 notes that it is incorrect to view the Oral Torah (merely) as a commentary on the Written Torah.

<sup>14</sup> Leibowitz, *Yahadut* p. 367. Leibowitz in *Judaism* 11 notes, “The decision about which books to accept as Scripture was not made behind the veil of mythology or pre-history, but took place in the full light of history and in the course of halakhic negotiation.” Leibowitz does not differentiate here between the Five Books of Moses and the rest of the Bible. This is a noteworthy omission, as there is no Talmudic debate as to whether or not any of those books should be considered Holy Scripture.

<sup>15</sup> Leibowitz, *Judaism* 3.

<sup>16</sup> See Leibowitz, *Judaism* p. 140. For a fascinating midrashic parallel to this approach, see *BT Sukkah* 5a, “R. Yose stated: The *Shekhinah* never descended to earth, nor did Moses or Elijah ever ascend to Heaven.” I am unaware if Leibowitz ever discussed this *midrash*.

the question.<sup>17</sup> However, he does clearly state that “all prophets were total failures”<sup>18</sup> and “revelation at Mount Sinai was a total failure.”<sup>19</sup> So then why did the Torah include the Sinai event? Precisely because of its ineffectiveness. “The people who were witnesses of this revelation didn’t believe it. They made the Golden Calf.”<sup>20</sup> And if the people who witnessed the miracle of the Splitting of the Sea and the revelation at Sinai were not convinced, then why should the memory of those miracles convince future generations?<sup>21</sup>

According to Leibowitz, revelations and miracles cannot compel a person to believe in God or accept His commandments.<sup>22</sup> The story of Sinai is proof of that. When did the Jews accept the *mitzvot* and persist in following them? Only following the biblical period, when prophecy no longer played a role.<sup>23</sup> Whether or not the event at Sinai happened, we are to learn an important lesson—it cannot be the model for our faith.

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<sup>17</sup> See his answers given in a forum, transcribed in Yeshayahu Leibowitz, *Emunah, Historiah, ve-Arakhim* [Faith, History, and Values] (Jerusalem: Academon, 1982) pp. 154–155.

<sup>18</sup> Haberman p. 132.

<sup>19</sup> Haberman p. 134. Leibowitz in *Emunah* p. 151 describes it as “the biggest failure in history.”

<sup>20</sup> Haberman p. 134.

<sup>21</sup> Leibowitz, *Emunah* p. 144.

<sup>22</sup> Leibowitz in *Ratziti* p. 172 points out that even for one who does accept that the Torah is from heaven, knowledge of that fact is not sufficient to compel him to keep the *mitzvot*. People recognize that civil laws have an authorized source, yet continue to violate them. A person will only keep a law if he views doing so to be a value that he has accepted upon himself.

<sup>23</sup> Leibowitz, *Emunah* 144. This idea is found earlier in *BT Shabbat* 88a, “Rabbi Avdimi bar Hama bar Hasa said: The Jewish people actually stood beneath the mountain, and the verse teaches that the Holy One, Blessed be He, overturned the mountain above the Jews like a tub, and said to them: If you accept the Torah, excellent, and if not, there will be your burial. Rav Aha bar Yaakov said: From here, there is a great protest to the obligation to fulfill the Torah. The Jewish people can claim they were coerced into accepting the Torah, and it is therefore not binding. Rava said: Even so, they again accepted it willingly in the time of Ahasuerus, as it is written: “The Jews undertook and irrevocably obligated themselves and their descendants, and all who might join them” (Esther 9:27), and he taught: The Jews ordained what they had already taken upon themselves through coercion at Sinai.” Rashi comments that in the time of Ahasuerus the Jews accepted the Torah out of love of the miracles of Purim. Leibowitz might have said (I didn’t find any discussion of this passage by him), it was not because of miracles that the Jews accepted the Torah at that time, but precisely despite them.

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Once again, we have resolved one problem, but a more difficult one remains. Without revelation, how do we know what to do?

While Leibowitz makes it clear that accepting the *mitzvot* is a human decision, he does not explain how we can extrapolate the commandments from such a decision, without the intervention of divine revelation. There is such an attempt made by a student of Leibowitz, the philosopher, Prof. Asa Kasher. He first presented it in Leibowitz's lifetime in the 1977 essay "Theological Shadows"<sup>24</sup> and then more fully developed it in his 2004 book *Judaism and Idolatry*.<sup>25</sup> Kasher explains that even if theologically we can know nothing about God (for as Leibowitz claimed, we cannot know God through history or science), we can still know what God is not. God is not anything in this world. Quoting *BT Megillah* 13a—"anyone who denies idolatry is called a Jew"—Kasher equates Judaism with the opposition to idolatry, and therefore defines the central tenet of Judaism that nothing in this world be worshipped or treated like God. He then explains how all of the *mitzvot* come to teach us and train us not to relate to anything in this world like God.

How does this approach reconcile the frequent appearances in the Torah of God commanding Moses with the various *mitzvot*? Another student of Leibowitz, Prof. Avi Sagi, provides the following solution:

Thus, for instance, the statement 'God commands' means that individuals take upon themselves this command as divine.<sup>26</sup>

Thus, the proposition 'God gave the Torah' means that the individual assumes the yoke of the Torah so as to worship God.<sup>27</sup>

To help explain this framework, both Kasher and Sagi relate to the works of the American philosopher John Searle. Sagi writes:

The link between Leibowitz's approach to Jewish religion and Searle's notion of 'constitutive rules' is worth noting. For Leibowitz, nothing precedes this legal system; rather, the law itself

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<sup>24</sup> Asa Kasher, "Theological Shades" [Hebrew] in *The Yeshayahu Leibowitz Book*, Ed. Asa Kasher and Jacob Levinger (Tel Aviv: Papyrus, 1977) pp. 66–75.

<sup>25</sup> Asa Kasher, *Yahadut Ve-elilut [Judaism and Idolatry]*, (Tel Aviv: Ministry of Defense, 2004).

<sup>26</sup> Avi Sagi, "Yeshayahu Leibowitz: A Breakthrough in Jewish Philosophy: Religion without Metaphysics," *Religious Studies* Vol. 33, No. 2 (June 1997), p. 209.

<sup>27</sup> Sagi p. 213.

constitutes and defines a new realm of activity.<sup>28</sup> For Searle, the notion of ‘rules of the game’ is an instance of such a system. Thus, chess or basketball would not exist were it not for a system of laws that defines them and determines their purpose. The antithesis of a constitutive system of laws is a system of regulative rules, of which traffic laws are a classic example. Traffic is not conditioned by the rules of traffic, and the purpose of traffic laws is determined by the fact that there is traffic. Since the purpose of these laws is given, they can indeed be criticized and compared to other legal systems meeting similar needs, and even replaced by other laws that might serve this purpose better. Leibowitz thus claims that Halakha is a constitutive system—it is not judged by its match to some extrinsic datum but is actually coextensive with its intrinsic activity.<sup>29</sup>

Since, according to this explanation, halakha is constitutive, like basketball, we do not need to question the rationale of any particular rule. The details of the *mitzvot* do not need to be justified on the basis of their benefit or impact on those who keep them, any more than the rules of a game have significance outside that game.<sup>30</sup> This works well for Leibowitz, who rejected the idea that the *mitzvot* served human aims.<sup>31</sup>

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<sup>28</sup> Kasher, in “Paradox—Question Mark,” argues that the halakha created all the institutions of the faith—membership in the nation, the Bible, the Land of Israel. There is nothing other than what the halakha has created—nothing inherent in Judaism outside what it created. This can help explain Leibowitz’s famous denials of the holiness of those institutions, despite the fact that numerous sources in Judaism describe them as being holy. Leibowitz is claiming they have no inherent value outside the closed constitutive system of Judaism. To someone on the outside they have no preeminence, and those on the inside should not conduct comparisons as to which land, people, etc. are more important.

<sup>29</sup> Sagi p. 211.

<sup>30</sup> Kasher in *Yabadut* p. 100 explains how viewed from outside the system, the rules might appear strange or even pointless, but within the system they have value. He compares it to another constitutive system—official government ceremonies, which have many small details about how to perform each action. Those details grant the concepts the system promotes a greater sense of importance, which cause those in the system to care about them more.

<sup>31</sup> See Leibowitz, *Judaism*, “Any attempt to ground the *mitzvot* in human needs—cognitive, moral, social, and national—deprives them of their religious meaning. If the commandments were expressions of philosophical cognition, had a moral function, or were directed at the perfection of the social order or the conservation of the people of Israel, the observant Jew would be doing service to himself, to society, or to the nation. Instead of serving God he would be

But as Kasher points out, while the individual *mitzvot* are locked within a constitutive system, there is a need for a system of *mitzvot* to regulate human behavior (in his case to prevent idolatry in all its forms.)<sup>32</sup> So in the basketball parallel, we might have a regulatory need for exercise, and so a game involving exercise was established. However, the need for exercise does not determine the details of how many points are earned for each basket, and what determines a foul. Those details are contained in the constitutive system of the game. Kasher describes a similar relationship between the *mitzvah* of Shabbat (which regulates our propensity to idolize work) and the actual laws of Shabbat (which do not need to be sensible outside the constitutive system of halakha).

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Once more, we may find ourselves frustrated. If we can extrapolate proper halakhic behavior without revelation, what is the need for the Written Torah in this system? Kasher quotes a number of Talmudic sources<sup>33</sup> which describe how the rabbis canonized the works in the Bible, including some controversial books and excluding others. Those canonized texts were therefore established as holy, and as such, the directives included within them were granted the status of worshipping God, and opposition to idolatry.<sup>34</sup> In his response,<sup>35</sup> Leibowitz says he agrees with Kasher, and provides the following diagram of the closed circuit:

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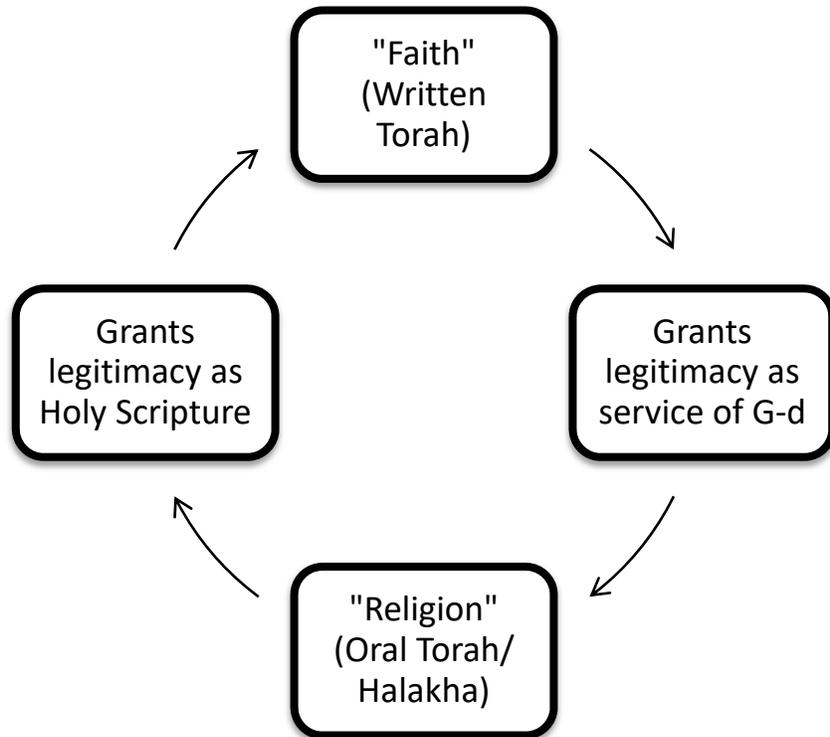
utilizing God's Torah for his own benefit as an instrument for satisfying his needs" pp. 17–18.

<sup>32</sup> Kasher, *Yahadut* p. 99.

<sup>33</sup> BT *Shabbat* 13b, BT *Shabbat* 30b, and *Avot D-Rabbi Natan* 1:4 in Kasher, *Yahadut* pp. 166–167.

<sup>34</sup> Kasher, "Paradox—Question Mark." This can also explain the earlier quote from Leibowitz that "the Written Torah is just one of the institutions of Judaism, and not the basis of Judaism." The United States Constitution is part of (literally) a constitutive system, but the Constitution itself is an institution within that system (including rules about how to amend it, etc.). The Constitution is not the system itself, and neither is the Written Torah in Judaism.

<sup>35</sup> Leibowitz, "Replies" pp. 277–8.



In Leibowitz's diagram, authority is granted twice—the Oral Torah grants the Written Torah its status as Holy Scripture, and the Written Torah grants the Oral Torah (as expressed in the halakha) the status of Service of God (as opposed to merely doing “good deeds.”)

But he adds that the entire structure is dependent on the decision by man to serve God (i.e., accept the yoke of the kingdom of heaven.) “Only with that decision does a person enter the circuit ... and that decision itself is faith.”<sup>36</sup>

This halakhic system is not static, and continues to develop over time. How can the system preserve its independence and integrity? As Leibowitz wrote, the constitutive nature of the halakha guides those rabbis who determine it:

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<sup>36</sup> Yeshayahu Leibowitz in *Emunato shel ba-Rambam [The Faith of Maimonides]* (Tel Aviv: Ministry of Defense, 1980) p. 28 finds support for this view in Maimonides. Unlike Ibn Ezra and Abarbanel, who say faith in God is a condition for the *mitzvot*, Maimonides says that faith is commandment on its own (which means that it must be a decision, since every *mitzvah* can be chosen to be kept or not).

It is the intention of realizing the Torah in life that distinguishes the shaping of Halakhah by the preceptors of the Oral Law from its modification at the hands of the Reformers. In rendering their decisions, the former are guided by considerations which appear to them grounded either in the Halakhah itself or in the conditions necessary for halakhic observance. The latter act out of motives which reflect not a sincere attempt to understand the Halakhah itself but rather a desire to adapt the Halakhah to a variety of human needs, cultural, moral,<sup>37</sup> social, and even political.<sup>38</sup>

Just as a referee in a basketball game is only concerned about considerations within the game itself, so too does the rabbi only (according to Leibowitz) consider “the conditions necessary for halakhic observance.”

And yet after all of his efforts, the paradox remains intact. For if all religious acts and beliefs are ultimately dependent on human decision, then why can't we decide to change or abandon the *mitzvot*? If we can instill divinity on commands, why can we not remove that same divinity?

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A solution can be found in an article by Prof. Shalom Rosenberg.<sup>39</sup> Rosenberg discusses Maimonides, whose approach to *mitzvot* also aroused significant controversy. In *The Guide for the Perplexed*, Maimonides gave historical explanations for the *mitzvot*, writing that many of them were responses to the idolatrous practices prevalent at the time the Torah was given. Many writers opposed this approach, saying that by making the *mitzvot* the consequence of historical circumstances, a change in those

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<sup>37</sup> Leibowitz did not oppose moral considerations, and frequently castigated the Israeli government and society on moral grounds. But as Goldman writes in the introduction to Leibowitz's *Judaism* xvi, “He is not claiming that a religious person cannot be a moral agent. At no point does he maintain that religious demands upon the person or the community are total in the sense of all-inclusive. On many matters the Halakhah is silent. At such points, moral considerations may very well come into play and ought to govern one's actions ... Leibowitz does insist that a person acting as a moral agent cannot be acting as a religious agent and that a religious action cannot be simultaneously a moral action ... The religious character of an action is determined by the motive of worshipful service of God. The same external act may on one occasion be moral and on another religious, depending upon the agent's motivation.”

<sup>38</sup> Leibowitz, *Judaism* 4.

<sup>39</sup> Shalom Rosenberg, “Bible Exegesis in the Guide [Hebrew],” *Jerusalem Studies in Jewish Thought* 1:1 (1981) pp. 157–185.

circumstances would render the *mitzvot* irrelevant. In his *Mishneh Torah*, Maimonides immortalized all of the *mitzvot*, by codifying even those not practiced after the destruction of the Temple. Some of those opposed to what he wrote in the *Guide* said the *Mishneh Torah* represented a different, non-historical approach.

As a proof of this explanation, they quote what Maimonides wrote at the end of *Hilkhot Me'ilah* (8:8) where he wrote that we need to perform the *mitzvot* even when we do not understand the reasons for them:

It is appropriate for a person to investigate the laws of the holy Torah, and to know their ultimate purpose according to his capacity. If he cannot find a reason or a motivating rationale for a practice, he should not regard it lightly. ... One's thoughts concerning them should not be like his thoughts concerning other ordinary matters. Come and see how stringent the Torah was regarding trespass [of sanctified objects]. Now if wood, stones, dust and ashes become sacred because God's name has been proclaimed merely by words, so that whoever commits a trespass by treating them as profane things has to bring a trespass offering and requires atonement even if he did so unwittingly, how much more so with regard to the *mitzvot* which the Holy One, blessed be He, has ordained, that no man should reject them because he is unaware of their reason.

Rosenberg points out the interesting *mashal* (analogy) that Maimonides provides. Maimonides compares the *mitzvot* to “wood and stones” which did not originally have value, but once they were consecrated to the Temple have permanent holiness. Rosenberg writes:

If a stone, which was sanctified by someone, has holiness that obligates me, then certainly a *mitzvah* will [obligate me], even though in both cases the specific, incidental reason that led to that sanctification—is no longer valid.<sup>40</sup>

The analogy of Maimonides comes to teach us that even if the *mitzvot* arose in a particular historical circumstance, their holiness is also permanent, and will remain regardless of future developments.

This answer can apply to Leibowitz as well. Even if ultimately the authority of all of the Torah lies in the human realm of the Oral Torah, once a decision is made, the holiness is immutable.

I would add a parallel can be found in marriage. The partners enter the partnership via a free decision, not because they are compelled by observation of objective proofs. Yet once the marriage is ratified, both

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<sup>40</sup> Rosenberg p. 142.

spouses are fully obligated to it (unless the marriage is terminated by divorce). Neither can say that because they entered into the agreement by their own decision they are free to change the terms and conditions. And what is the Hebrew term for betrothal? *Kiddushin*—i.e., sanctification, making holy. When we take upon ourselves such an obligation, we create holiness, and we can turn the decision of man into the will of God.

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This journey through the philosophy of Leibowitz has now offered us a framework that can help us confront the challenge of these new scenarios of halakhic choice. These issues are the climax of a progression from the beginning of the modern era. Before the challenge of modernity, to a very large extent people lived like their parents and grandparents did. With emancipation, a Jew needed to decide whether or not, and in what way, to continue observing halakha. In earlier times, the confrontation of halakha with modernity generally led either to abandoning the halakhic yoke, or to a disregard of any elements of the changing world and the significance of personal decision.<sup>41</sup> However, this most recent trend involves both aspects—acceptance of authority of halakha together with personal choice being a critical component. (Religious Zionism's push for *aliya* as a religious obligation is an earlier parallel to this.)

Those grappling with these halakhic controversies find themselves in a paradox. They know that ultimately the observance of halakha is dependent on their own decisions. Yet, to have their practice of halakha be the service of God (and not for their own benefit), the action needs to derive from an external command.

Their paradox is the same that contemporary Orthodoxy finds itself in today. While perhaps in earlier times, one's religious practices and authorities were determined at birth, that has not been the reality across the Orthodox spectrum for decades (aside from some Hassidic circles). Leibowitz's closed circuit provides a solution. We do not need to accept his contentious philosophical premises regarding revelation, but we can recognize that once the Torah did arrive in our hands we must decide

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<sup>41</sup> I am distinguishing between the confrontation of halakha with modernity and the confrontation of Jewish thought with modernity. In the latter case, there have been many ideologies that strive to integrate the two—as exemplified by Modern Orthodoxy. Yet overall, there were not many overt differences in halakhic practices between those who embraced and those who rejected modernity. Both generally kept the same laws of *Shabbat*, *kashrut*, etc.

what to do with it. By accepting the obligations that emerge from our decisions, we have in fact sanctified them.

Is there a risk in this approach? Certainly—if we tip the scales to the side of human decision, some might decide not to follow the path of halakha. Haberman asked Leibowitz that question:

**Q:** Why would you say that the conscience, the decision of the Reform Jew to set aside much of the Halakhah is less valid than your conscience which tells you that Halakhah is the authoritative written and oral tradition as formulated by the Orthodox rabbinate and binding as such?

**A:** That is my decision, I accept it as valid.

**Q:** I think that is your final word.

**A:** It is my final word. The same goes for decency and honesty. Exactly the same thing.<sup>42</sup>

Just as no external proof—scientific, historical or otherwise—can compel a person to be honest or decent, so too must the decision to follow the traditional path of halakhic observance be based on personal decision alone. Could we decide to change the *mitzvoth*? We do have that power, but for those who are committed to the system such decisions should be taken no more impetuously than a decision to change the rules of chess.

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In Leibowitz's lifetime, his inflammatory rhetoric pushed away so many people that his message for Orthodoxy was not often heard, let alone understood. But time has passed, and we can now take a more detached, less emotional approach to his work. By showing us how to recognize both human authority and a divine *metzaveh*, he is more relevant than ever. ❧

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<sup>42</sup> Haberman p. 150.