

Oral Tora in its textual solidification. It would be the beginning that would lead us back to the original source and strength of halacha. It would be the beginning of its restoration to its original vitality and dignity, for the sake of which God concluded this covenant with Israel. What is needed is not less study of Tora, but better study of Tora; not less dedication to halacha, but more faith in halacha. Where there is greater faith, greater boldness is justified.

As in the past, because it was a time to act for God, shackles had to be placed on the Oral Tora in violation of God's command, so now the hour has come when the need to act for God places upon us the responsibility to free the Oral Tora from its shackles, in obedience to God's original command. There are risks involved in such an undertaking. Because of it we need not less but more fear of heaven. But possibly most of all, we need more love of all Israel, to illuminate our love of Tora. And to pray to God for his guidance.

## A JEWISH SEXUAL ETHICS

(1976)

IN THE CONTEXT of contemporary secular civilization, the sexual revolution had to come. It derives its energy, as well as its plausibility, from a variety of sources. Above all, however, it is the open manifestation of the rebellion against Christian sex ethics that had been occurring under the surface for several generations. It is a revolt against the Christian denigration of the human body and against the Christian approach to sexuality which for many centuries determined the official moral climate in the West. In spite of all the developments in Christian thought since its early days, Christian theology could not fully emancipate itself from the apostle Paul's teaching on sex, according to which "it is good for man not to touch a woman," and "if they cannot contain, let them marry: For it is better to marry than to burn."<sup>1</sup> Thus sex could never completely free itself from the tarnish which was attached to it, as well as to everything else that was of the body, in early Christian thought.

In fact, only because of this begrudging submission to sex on the part of the Western religious conscience could the ideas of repression and guilt gain such overwhelming importance as they were given in modern psychology. Yet the fact that the rebellion broke into the open with such self-assurance is

chiefly due to man's only more recently acquired self-understanding, which is inseparable from his view of the cosmos and his own place in the scheme of things. On the basis of modern scientific progress contemporary man has formulated his view of life and existence, views which, however, have not been—and cannot be—scientifically validated, and which are often no less dogmatic than the dogmas of the most religiously orthodox. One should not call this a philosophy, but rather a meta-science. According to this meta-science, the cosmos in its entirety is a chance event and man himself, of course, an absurdly insignificant chance event in the unlimited ocean of a basically meaningless universe. The shattering of the Tablets of the Law, also the direct result of this meta-science, and the subsequent relativization of all values, led in fact to a destruction of all standards, with man walled in on all sides by absurdity. As if this were not enough, modern psychology completed the reduction of man to the level of an animal, a rather complex one but still only an animal. Norman O. Brown, who in a brilliant volume attempts to give us a psychoanalytical explanation of the meaning of history in the Freudian tradition, has the following to say about the present age:

For two thousand years or more man has been subjected to a systematic effort to transform him into an ascetic animal. He remains a pleasure-seeking animal. Parental discipline, religious denunciation of bodily pleasure, and philosophic exaltation of the life of reason have all left man overly docile, but secretly in his unconscious unconvinced, and therefore neurotic.<sup>2</sup>

The affirmation that try as he might, man can never be anything but an animal presents him with only one choice: He can either strive to become an ascetic animal, and since he will never fully succeed, he will be a neurotic; or he can recognize himself for what he is, a pleasure-seeking animal, and live accordingly. That is what the contemporary sexual revolution is all about: Man, accepting himself as an "animal," wishes to get rid of his neurosis. Now, not all psychologists are Freudians who would accept Freud's meta-psychology, according to which man is fully comprehended by the pleasure principle. Yet all of them that dominate the climate of the age, following a meta-psychology of their own, reduce what used to be considered the essence of man's humanity to an accidental derivative of his specific animality.

Given this kind of a meta-science and meta-psychology, which are uncritically accepted by a generation that they begat, the sexual revolution against all repression and inhibition is fully justified. On the basis of its premises, the resulting principle of a liberated sex ethics—that every kind of sexual activity and relationship between consenting adults is permissible—cannot be gainsaid.

## II

As with every other aspect of Judaism, a Jewish sexual ethics cannot be maintained meaningfully without an understanding of the presuppositions on which it is based. The statement that the world is creation implies that all the vital forces in which human nature shares, that are present within man and carried into life through man, have their place within the scheme of all things. Thus, human sexuality has its Creator-intended function within the plan of creation; it is world-related, handed to man with a goal directed beyond the individual.

That God created man in his own image, that he breathed into man's form the breath of life, is of course an uncompromising rejection of all meta-science and all meta-psychology, which reduce man to a mere member of the animal kingdom. But that man is not an animal is a Jewish affirmation that cannot be given up without surrendering Judaism itself. Man's humanity is not something derived, an epiphenomenon of his animality; it is as originally given as his instinctual equipment and biological frame. Because of that man's "animality" too is human. Whereas the secularist of today animalizes the human, Judaism humanizes the so-called animal. Our great teacher Hillel considered caring for the body a *mitzva*, a religious responsibility, because it meant looking after the "divine image" in which man was created. Notwithstanding all the theological problems of anthropomorphism presented by the concept, it is the whole man, body and mind, instinct and spirit, that was created in God's image and as such, in his complex entirety, represents that image on this earth. Nor is this just teaching, unrelated to man's experience. It is more than doubtful that the reduction of man does justice to his existential reality. The reductionist theories are contradicted by the daily behavior of the human being. Man not only desires instinctively, he wills, plans, chooses, accepts responsibility,

and creates.<sup>3</sup> In a public debate with a "radical" Jewish theologian, I induced him to clarify his goal for man. He wanted man to be a healthy animal. What he was unable to grasp was that it is impossible for man to be a healthy animal, for the simple reason that in order to be that, man has to make a choice, a decision. But no healthy animal, because it is healthy, could ever *want* to be a healthy animal. Only a sick man could want to be a healthy animal.

The point of view presented here has been succinctly expressed by Ignace Lepp, who wrote:

Only a false reductive method, which takes the most rudimentary for the most natural, would permit us to speak of human instincts as if they were essentially identical with animal instincts. All human instincts are intimately penetrated by psyche. This is why purely psychic traumas can provoke respiratory and digestive troubles. And the more evolved man becomes, the more his biological instincts become bio-psychic. If we try to deny this state of things we will end not with "pure" animal nature but with a mutilation of human nature.<sup>4</sup>

Because of what man is, human sexuality cannot find its fulfillment in the simplicity of primitive satisfaction. As a rebellion against the repression and inhibitions of a society that has no spiritual, religious, or even mere philosophical basis for its sexual taboos, a "return" to primitive sexuality may have its validity. But because man is human and not animal, primitive, purely biological sexuality is bound to leave him empty and wretched. Ultimately a return to the purely biological is not open to him. The natural for man is never purely biological, it is always psychosomatic, or, to use Ignace Lepp's terminology, bio-psychic. Back to nature can only mean back to human nature. Any other kind of "return" is unnatural.

### III

What are the consequences of these presuppositions? Firstly, just because even the biological and instinctual in man is not purely biological, but in its bio-psychic nature is altogether human, it is not to be rejected, but on the contrary, it is to be accepted. Judaism does not allow for any denigration of

the body. The body is not bad; it is not the source of all evil. Saadia Gaon, the outstanding talmudic scholar and Jewish philosopher of the tenth century, had occasion to state unequivocally:

As to the objection that is raised against the defilement and the contamination of the soul consequent upon its union with the body, we say, in reply thereto, that the body of man contains no impurity in and by itself. It is, on the contrary, entirely pure, for defilement is neither a thing subject to sense perception nor a requirement of logic. It is purely a decree of the Tora. This law has declared unclean certain secretions of human beings after their discharge from the body, although they do not defile while they are within the body. The aforementioned allegation can be maintained only if he that makes it will impose upon us rules that he has invented out of his own mind and make it obligatory upon us to consider as reprehensible what he so regards. That, however, we shall not permit him to do.<sup>5</sup>

In other words, while there are indeed in the Bible some ritual laws regarding certain bodily secretions, the body as such is "entirely pure" and as such, according to Saadia's understanding of Jewish teaching, is not only a worthy abode, but even an appropriate companion for the soul on this earth. Integrating Saadia's view with the idea of man as a bio-psychic unity, we would say that the body is body only in man's death, just as the soul is soul only after his death. In life, however, they are linked to each other in such a manner that they interpenetrate. Because of this psychosomatic unity, a denial of either one of them is a betrayal of both. Within Judaism, man is acknowledged in his bio-psychic reality. This is the basis of a Jewish sexual ethics. It excludes primitive biological sexuality as well as sophisticated asceticism.

This does not mean that there is no adequate appreciation of the power of internal drives, of the libido, especially in its sexual manifestation. On the contrary, there is a great deal of understanding for the struggle in which a person may be involved in trying to control his sexual desire. There is recognition for the fact that human beings may at times, in certain situations, not be able to control their sexuality. For example, a married woman who is forced to submit to sexual intercourse and, as the act proceeds, becomes cooperative is not considered an adulteress, because once she was

forced into that situation she was acting against her will—"clothed with desire"—and became powerless against her instinct.<sup>6</sup>

The rabbis in the Talmud are not a bit prudish when they discuss sex. According to their opinion, no one is secure in the face of sexual temptation. The most remarkable stories are told about some of the greatest teachers and their weakness of the flesh. Such a story is told of R. Amram the Hasid ("the pious"). One day they brought to Nehardea some women who had been kidnapped and ransomed. They put them up in the attic of R. Amram, taking care to remove the ladder to the attic. It happened that the flames of the fire illuminated the face of one of the women and R. Amram noticed her. He took the ladder that—according to a bit of exaggeration, we assume—could normally be moved only by the combined strength of "ten men," and set it in the opening in the attic. As he was climbing up, feeling that by himself he could not control his desire, he started shouting, "There is a fire in the house! There is a fire in the house of R. Amram!" thus arousing his neighbors and exposing himself to disgrace.<sup>7</sup>

While R. Amram was still able to save himself in the last minute by his own exertion, the matter was not so simple in the case of R. Akiva and R. Meir, two of the most distinguished teachers of the Talmud. It is told that each of them in his time had derided sinners who could not resist temptation. For their proud self-assurance they were tested by the Tempter. To R. Akiva he appeared in the shape of a woman in the top of a palm tree. R. Akiva went and started climbing the tree after her. To R. Meir, the Tempter appeared as a woman on the opposite bank of a river. There was no bridge, so the rabbi got hold of a rope that was tied to both sides of the river and started pulling himself across. According to the story, both rabbis were saved from sinning because the Tempter was ordered to desist. Because of their merits as great teachers of the Tora, they were protected by a special act of divine grace.<sup>8</sup> Yet, not always did temptation find such favorable resolution in the life of talmudic teachers. Occasionally there is failure which leads to spiritual tragedy.<sup>9</sup>

The rabbis in the Talmud had nothing to learn from Freud regarding the tremendous power of the libido. Nevertheless, they had a very positive evaluation of its function. R. Shmuel bar Nahman, for instance, comments on the words of the Bible that at the end of creation God saw everything that he had made and behold it was *tov me'od*, very good: *Tov*, good, that is

the *yetzer hatov*, the good inclination in man; *tov me'od*, very good, that is the *yetzer hara*, the evil urge in him. The question is, of course, asked: How is this to be understood, how is it possible to call man's innate inclination for evil "very good"? The midrash responds: "This is to teach you that were it not for the evil inclination, man would not care to build a house for himself, he would neither marry nor beget children, nor would he attend to the affairs of human existence."<sup>10</sup> What R. Shmuel calls the *yetzer hara* seems to be rather close to the Freudian libido, or id. It is the vital energy that sustains the life of man and is the source of the sexual drive. Its function is necessary; without it human life would not be possible.

The same idea is expressed in a rather moving story from the life of Abaye, one of the outstanding teachers in the post-mishnaic talmudic period. He once overheard a man and a woman making arrangements to set out together early in the morning on a journey on foot. Said Abaye to himself: I shall follow after them in order to keep them from sinning. He followed behind for three parasangs across meadows. It turned out that as far as the two travelers were concerned, it was a very innocent trip. As they reached their destination, Abaye heard them take leave of each other with harmless civilities: "It was a long way. Our company was pleasant. So long." Abaye was rather ashamed, recognizing that he himself could not have traveled with the woman so innocently. "Leaning against a door, he was visibly upset and pained until an old sage came by [to whom Abaye must have told the reason for his mental anguish] and taught him: The greater a man, the stronger his *yetzer*, his instinctual drive"—or perhaps we should render it, "the stronger his libido."<sup>11</sup> Sexuality is vitality; but human greatness is also a manifestation of vital energy. Normally, only non-vital people will enjoy comparative freedom from sexuality, but neither will they be burdened with creative potential for human greatness.

The positive value of universal sexuality is maintained with a sense of humor in the following tale. On a propitious occasion, the Jews asked for merciful support against the *yetzer hara* of sexual excess (or as we might also say in modern parlance, against the sexual libido). Their prayer was granted, and the *yetzer hara* was handed over into their power. However, a prophet warned them: "Look out now! If you kill this one, the world will be destroyed." They tied it up for three days. At the end of the three days, when a fresh egg was needed for a sick person, they searched for one in all the land of Israel but could not find a single one. What to do now, they

wondered. Should they kill it? They would destroy the world. "Let us then ask that it be reduced to half size [meaning that the sexual drive should be limited to marriage alone]. But no half things are granted by heaven." So they decided to blind its eyes, which helped somewhat to reduce its strength.<sup>12</sup> There is in this tale an understanding of sexuality as a universal principle that serves life, as well as of the interrelatedness and unity of all life forces. One has to accept the *yetzer hara* in its universal reality, for without it man could not maintain himself. He depends on nature's "libido" for his sustenance. But one cannot desire it for the life of nature and limit it only to certain forms of personal life. No half things are granted by heaven. One has to acknowledge the *yetzer hara* in the wholeness of its universal function.

#### IV

However, just because sexuality is a universal life force, it surfaces in man originally as an impersonal drive. It is not what man does, but what is happening to man. One could very well leave it at that, if man were nothing but nature—that is, an animal. There is reason to assume that in the animal kingdom sex is indeed utterly impersonal. It is not what an animal does, but something cosmic that enacts itself through the animal (although the talmudic teachers were able to discern signs of the personal in the sex act in certain cases even in the animal world).<sup>13</sup> However, since the sexual instinct finds its normal satisfaction in union with a member of the other sex, this fundamentally impersonal drive points powerfully to another person. In the animal realm it is essentially a pointing from genital to genital; in the human experience it is a call from one bio-psychic being to another—in other words, a call from person to person.

True enough, just because man is not merely instinct but also will, not only pleasure-seeking but also meaning-pursuing, he may, if he so chooses, consciously attempt to reduce himself to the genital level of sexuality, and thus instead of becoming a healthy animal become a sick human being. But if he accepts himself in the fullness of his bio-psychic reality, he will find that this most impersonal drive of his nature directs him to the realm of the personal in the most fundamental of all human encounters. The contact between two human beings is never so close, never so intimate or so total as

with bio-psychic union between a man and a woman. Unless one sees clearly how in the sexual union the crudely impersonal calls for its accommodation within the most fundamentally personal, one fails to understand the nature of human sexuality. Joseph Fletcher, possibly the most influential protagonist of situation ethics, writes for instance, with true "pharisaic" self-assurance:

The ethical "pharisees" ... fail to see that the most evil and destructive traits are not those of the sexual appetite, which is biologically given and morally neutral in itself, but the irrational emotional passions such as hate, fear, greed, ulcerous struggles for discreet status—all of our self-regarding ("sinful") and antisocial impulses.<sup>14</sup>

What Fletcher apparently does not understand is that while what he says about the sexual appetite is indeed true on the animal level, it is not true at all on the level of man. Because in the human experience this most impersonal of all instincts demands its satisfaction in the most personal of inter-human relationships, what is biologically given loses its natural innocence and moral neutrality. In the context of the most intimately personal, the impersonality of the sexual impulse becomes, due to its incomparable energy and driving power, the most self-regarding and the most antisocial of impulses which man has to personalize. Because the sexual union is the most elementary of all inter-human encounters, in which the most impersonal instinct seeks its satisfaction in the most intimately interpersonal realm of human existence, the manner of its satisfaction cannot but fatefully determine the resolution of the conflicts as they arise when the other "self-regarding and antisocial impulses" break into the interpersonal domain. It may therefore very well be that how man deals with personalizing the impersonal in his sex life is the core of all human morality.

It should be obvious by now that the fundamental principle of the sexual ethics that we have in mind is to personalize the impersonal. It is Jewish because it derives from the two presuppositions of the Jewish worldview that we indicated earlier, namely that the world is creation, and that man is a bio-psychic being. We shall now attempt to develop in more detail the consequences that follow from the basic principle in the light of the two presuppositions. What is the significance of the idea that the cosmos is creation in this context? We saw that the rabbis in the Talmud saw

sexuality as a universal force that sustains the life of the world. Its function in nature is quite obviously procreation in its universality. However, what in nature is a given function, in creation is a purpose intended by the Creator. In support of the idea, the Talmud quotes the verse from Isaiah:

For thus says the Eternal that created the heavens,  
He is God;  
That formed the earth and made it,  
He established it,  
He created it not a waste;  
He formed it to be inhabited...<sup>15</sup>

To that last line of this verse the Talmud attaches the comment that the purpose of creation, as far as man is concerned, is to understand that the earth must be sustained not as a wasteland but as a place to be inhabited. But since the earth as an inhabited place can be maintained only by procreation, the rabbis were able to formulate their insight by saying: The world was created for procreation. Obviously they do not mean the absurdity that the purpose of the creation was human procreation. The phrase on which they base their interpretation is set in the cosmic context of the creation of heaven and earth. They have in mind "procreation" as a universal purpose. Nevertheless, from these words of Isaiah they derive man's responsibility "to multiply and to increase."<sup>16</sup> The universality of the sexual instinct places man by way of his sexuality in the universal context; only this time the universe is creation. The impersonal drive that takes hold of man seeks the realization of divine purpose through him. But the purposeful, the goal-oriented, is found only in the realm of the personal. In man the impersonal, universal sex impulse seeks its satisfaction in a personal world. Once again the impersonal points to the other, only this time the other is God. Once again the impersonal is to be personalized, this time in an encounter with God by accepting responsibility for the function of the sexual instinct that was allocated to man by the Creator, by consciously making oneself available for God's purpose in life.

To personalize the impersonal sexual instinct is thus a twofold responsibility, towards God and towards one's partner in the bio-psychic encounter of the sexual union. However, on the level of the interpersonal encounter, responsibility stems from the biblical commandment: "And you shall love

your neighbor as yourself,"<sup>17</sup> which in the area of the God-man encounter receives the formulation "You shall love the Eternal your God with all your heart, with all your soul, and with all your might."<sup>18</sup> Rather significantly, the rabbis in the Talmud interpreted the phrase "with all your heart" to mean with both your inclinations, with the *yetzer hatov*, the good inclination, and with the *yetzer hara*, the evil inclination. But we have seen earlier that they also identified the evil inclination with the libido.<sup>19</sup> Indeed, through the personalization of the libido in its sexual manifestation by using it consciously in the service of a God-intended purpose, one loves God with one's whole heart, even with one's *yetzer hara*. (Of course, the sexual instinct is not only the manifestation of the *yetzer hara*.) It is doubtful whether in the entire course of man's history anyone has degraded the reality of love in the world more than Freud, who saw in it nothing but libido energy displacement resulting from frustrated sexuality. We owe him the delightful idea that, for instance, tenderness between mother and child is nothing but the energy residue from aim-thwarted sexuality. It is the unavoidable deduction from the reduction of man to the animality of the pleasure principle. The truth that we affirm is the recognition of love as an originally given force in the wholeness of the bio-psychic reality of man. It is the most truly personal, as the libido is the most truly impersonal. It is through love in the interpersonal encounter that the libido in its broadest meaning is redeemed from the prison of its impersonality.

## V

The fully personalized sexual union is the fully humanized one. It relates one at the same time to the Creator as well as to a fellow being in the wholeness of each other's humanity. What in nature is assumed to be purely biological is integrated in its humanized form into the bio-psychic structure of man. However, since humanization implies also the acknowledgment of the divine purpose of the sexual function, the personalized and thus humanized sex act becomes a *mitzva*, legalistically formulated, a divine commandment; in its existential quality, it is an ethical deed within the structure of a deocentric personal life. In fact, talmudic texts occasionally call the sex act a *devar mitzva*, a matter of *mitzva*, not only in its God-relatedness, but also as what takes place on the interpersonal level between a man and a

woman.<sup>20</sup> Similarly, one might call any act of kindness and care for another human being a *devar mitzva*. It is rather different a phrase from the four-letter word which designates the sex act in its biologically impersonal and, we might now say, dehumanized form. As a *devar mitzva*, the biologically impersonal is transformed into the human and personal. Jewish sexual ethics can perceive the sexual act in its most humanized and personalized transformation as an act of sanctification. To sanctify oneself at the moment of intercourse is the ideal of sexual fulfillment.<sup>21</sup>

One may even say that the humanized transformation of the impersonal quality of the sexual instinct is the climax in man's striving for sexual liberation. We indicated earlier in our discussion that the contemporary sexual rebellion that wishes to do away with the taboos of this civilization has its justification. A civilization which has brought upon itself the collapse of all value standards, which has exiled meaning from the cosmos, whose summation is correctly expressed in the idea of the absurdity of existence, has indeed no grounds on which to base those restrictions on sexual activity which were accepted in the past. However, liberation from sexual codes that can no longer be supported by the basic affirmations of contemporary society throws man back once again into the domain of the biologically impersonal. Because of the tremendous power of the sexual instinct, man falls into the thrall of mighty impersonal forces when he liberates himself from social taboos. The sex act is not so much an act as a letting go. It is not man who acts; rather it is something that happens (the impersonal does not act) through man. This, of course, may be enjoyable for a while, but as man allows free entrance to the impersonal into his life, and as the impersonal gets hold of him with its powerfully driving energy, in the long run it cannot but depersonalize man as a whole, "dehumanizing" him far beyond the sexual aspect of his life. Freedom, like love, is of the very essence of personal existence. He who submits to the biologically impersonal is held captive by necessity, the essence of the impersonal. It is not enough to free oneself from meaningless taboos. If one wishes to be human, one has to commit one's freedom to personalizing the impersonal within man's bio-psychic reality.

The humanizing of the impersonal does not in any way take away from enjoyment of the sexual act. It does not attempt to "spiritualize" the act. It wants what it says, to humanize it, including also its full enjoyment within the bio-psychic human reality. In fact, the enjoyment itself is part of the

living realization of Judaism. In talmudic times, a *talmid bacham*, a Jew who leads a life of piety informed by Jewish learning, would engage in the sexual act once a week. But it was customary to do so on the night of the Sabbath. R. Shlomo Yitzhaki (Rashi), the classical commentator on the Talmud who lived in the eleventh century, explains the reason for the custom thus: "It is the night of joy, of rest, and of bodily pleasure."<sup>22</sup> The context into which humanized sensuality is integrated brings about its joyous sanctification.

Such affirmation of earthly needs and vital impulses is characteristic of the whole system of Jewish law. The Sabbath and holy days are not observed "spiritually," nor should they be so observed. Man is not a spirit. On the Sabbath, therefore, not only the soul should find peace, but the body too should rest. One celebrates the day not only by meditation and prayer, but also by wearing Sabbath clothes and by partaking of the Sabbath meals. The Sabbath meal itself is a *mitzva*; it is divine service. And if properly performed, it is a service of a far higher quality than that of prayer and meditation alone; it is the service of the whole man. The enjoyment of the Sabbath is neither spiritual nor material; it is *wholly* human. Body and spirit celebrate the Sabbath in communion. The Jew who keeps the Sabbath may say that the material enjoyments of the day enhance his spiritual elation, and his spiritual elation renders the material enjoyments more gratifying. In the unifying act of the *mitzva*, the Sabbath acts as a "spice" to the palate and as an uplifting joy for the spirit of man.<sup>23</sup>

All this may well be said also of the sensual joy of the body. The spiritual in man is never purely spiritual, as the biological is never purely biological. Thus, we may say that it is not only the pleasure of the body that enhances the *oneg shabbat*, the joy of the Sabbath; it is also the joy of the Sabbath that dignifies the pleasure of the body. However, what is said here in the special case of the Sabbath may only be so stated because of its applicability to the widest range of Jewish living. Sensual enjoyment is fully accepted within the purposefully directed experience, which is the essence of its personalization. The biblical commandment "and you shall rejoice before the Eternal your God"<sup>24</sup> is addressed not to the spirit of man or to his soul, but to his entire bio-psychic reality. To rejoice before God in the wholeness of human nature is the *mitzva*.

The Talmud tells the story of a man who was extremely careful in the observance of the commandment of *tzitzit*, of wearing ritual fringes on the

four corners of one's garb. Once he heard that there was a prostitute in a city by the sea whose fee was four hundred gold pieces. He sent her the four hundred gold pieces, and a time was arranged for him. When the day arrived, he went to the door of her house. Her maid went in and told her: "That man who sent you the four hundred pieces of gold has come and sits at the door." Said she: "Let him enter." He entered.

She had prepared for him seven beds, six of silver and one of gold. They were arranged one above the other, and between each there was a ladder made of silver. The highest bed was the one of gold. She climbed up to the top and lay down naked in the golden bed. Then he too climbed up to sit beside her in the nude. At this moment the *tzitziot*, the four fringes of his garb, came and slapped him across the face. At this, he broke away and sat down on the ground. She too came down and sat on the ground. Said she to him: "By the Capitol of Rome! I shall not let you off until you tell me what blemish you saw in me."

Said he to her: "I swear I have never seen a woman as beautiful as you, but there is a commandment that God commanded us, and its name is *tzitzit*. The words in which it is written contain the phrase 'I am the Eternal your God' twice, meaning: I am the one who calls to account; I am the one who will reward. Now, the *tzitziot* appeared to me as if they were four witnesses."

Said she to him: "I shall not let you off until you tell me your name, the name of your city, the name of your rabbi, and the name of the school where you study Tora." He wrote it all down and placed it into her hand.

Then she got up and divided all her property into three parts: A third for the government, a third for the poor, and a third she took with her, apart from "that bed linen" (which was included in the division). She proceeded to the study house of R. Hiya and said to him: "Rabbi! Command that I be made a convert." Said he to her: "My daughter, is it perhaps that one of the students appealed to your eyes?" She took the note that the man had given her from her hand and gave it to R. Hiya. After reading it, he said to her: "Go and take possession of what you have acquired." The story concludes with this moral: "And so the same bed linen that she once spread out for the man to serve his lust, she now spread out for him in consecrated union. This was the reward for the *mitzva* of *tzitzit* in this world. How much in the world to come, who can tell?"<sup>25</sup>

Apart from a very few stylistic alterations, I have intentionally told the story with the same simplicity as it is found in the Talmud, because every part of it and almost every phrase is important for understanding the teaching that is being communicated.

The story begins with a full recognition of the almost irresistible force of the sexual instinct. The young man is a talmudic scholar, a pious man. As used to be customary, in addition to observing the commandments of the Tora as befits a student of the Tora, he dedicates himself to the strictest observance of one specific commandment. His sexual desire in this case is not a momentary temptation. The prostitute is extremely expensive, and he has to sacrifice a small fortune in order to get to her. He has to wait for the appointed day, and he has to go on a long journey, for she lives in a city "by the sea." When he arrives, he has to undergo the indignity of having to sit at her door until he is admitted. None of this deters him. He is like one possessed. It is not accidental to the story that the young man had chosen the commandment of the fringes for especially conscientious observance. For of this commandment the Bible says:

And it shall be unto you for a fringe, that you may look upon it and remember all the commandments of the Eternal, and do them; and that you go not about after your own heart and after your own eyes, after which you used to go astray.<sup>26</sup>

Now, quite clearly, sexuality is that instinct in man which is most likely to lead him astray after "his own heart and his own eyes." If our young Tora student dedicated himself to the strictest observance of the *tzitzit* commandment, it was due to the fact that he realized his own weakness in the face of temptation and was struggling to overcome it.

As he enters the prostitute's boudoir there is no meeting between them. It is nudity that meets nudity; his sexual desire meets her greed. It is an accommodation between a man who has been reduced to the pleasure principle, and a woman who has been reduced to cupidity. It is sex in its classically impersonal manifestation. What could be more impersonal than an appointment between lust and greed?

The fringes that take on a life of their own and slap his face are the symbolic expression of his own resistance. The merit of the *mitzva* saves

him from complete failure. As he is about to sink into the ecstasy of impersonality, a kind of an ego death, he is called back to the personal level of his being, and tears himself away and sits on the ground. The sight of him on the ground calls her from the impersonality of prostitution. She sits down with him on the ground. They sit there, still naked, but no longer in the nudity of lust and desire, but in the nakedness of their frail humanity, amidst the ruins of their human dignity. And now, *mima'amakim*—from the depths—to use a phrase of the psalmist, they call to each other. “She said to him” and “he said to her,” and so again and again. When he first heard about her, she was the celebrated prostitute whose fame was spread across the lands. He had not even set eyes on her; she was the anonymous symbol of sex to him. But now, sitting opposite each other on the ground, he recognizes her as the most beautiful woman he ever saw. He acknowledges her in her full feminine dignity and is able to appreciate her beauty without the eyes of lust. When he first appeared at her door, he was nameless. He was “that man who sent her the four hundred pieces of gold.” That was enough, nothing else mattered. But now she asks him about names: His name, the name of his city, the name of his rabbi, the name of the house of study where he learns Tora—so many names! Having emerged from the wilderness of impersonality, she is longing for personalization: Who are you, where do you come from, who made you what you are, and how was it achieved? As she meets him as a person, she finds herself as one. It is one of those revelational I-Thou encounters about which Martin Buber has taught us and which have within themselves the mystery of sudden transformation. It is redemption from impersonality. She comes out of it a changed human being. And so, we assume, does he. Finally, his struggles with the heart and the eyes that lead one astray are over. He has gained himself a new heart and he sees with new eyes. Now, the *mitzva* of *tzitzit* is fulfilled, not only in ritual observance, but also in recovered personal dignity.

The understanding between the man and the woman is subtly hinted at in the story. She says to him: Tell me your name and all the other names. But he does not tell. He writes it all down for her on a piece of paper, and “placed it into her hand.” The text does not simply say that “he gave her the note,” for that would have meant the mere technicality of conveying an object from one person to another, the purely physical act of handing over a piece of information. “He placed it into her hand” is the entrusting of

something precious into safekeeping. It is not just handing over, it is communication. He did not answer her questions by word of mouth. He wrote it all down. “Please, do not forget—this is who I am. That is where I come from. This is how I became what I am. All this I place into your hand. Keep it.” The importance of the note is revealed at the end of the story. The rabbi asks her: is it perhaps that one of the students appeals to your eyes? Once again the eyes appear in the story as doors of temptation, against which the young man sought protection by means of the *mitzva* of the fringes. Now, this is actually what she wants, one of the rabbi’s students. But she does not answer, she does not explain, she does not defend herself. She is silent. And as he, without answering her questions, entrusted the note into her keeping, so now she, in silence, hands over the note to the rabbi. And once again the phrase is used which corresponds exactly to the phrase used for his entrusting the note into her hands. The text does not say, “she gave the note to him,” but instead, that she brought the note out from her hand and gave it to him. The rabbi sees it and accepts her.

What did R. Hiya see? How was his question answered? There was a beautiful woman in front of him who could have had the great ones of Rome at her feet. Yet she was coming to his door to be converted. It is a matter of ultimate importance to her, yet she does not plead her cause. Is there a man involved? She is silent, but with one of those silences that tell more than any words could tell. A silence of truth and trust. Yes, indeed, there is a man. She hands him his paper. The rabbi notices that she had been treasuring it as a trust, which she now surrenders from her hand into his safekeeping as it was entrusted to her. The rabbi reads: There is a man who desired to be known by this woman for what he was, a Jew, who has a master, a student of the Tora. And who wanted her not to forget him. She kept his trust and now placed their joint destiny into the rabbi’s hands. Not a word is said. The rabbi understands. Strangely, as he gives his blessing to their union, the rabbi uses what one might think is most inappropriate language in the situation: “Go and take possession of what you have acquired.” It would seem to us that these words are chosen intentionally to make the point of her transformation. Originally, in her state of impersonality, she wanted possession in its impersonal form. She did not want him, but his gold pieces. But now that the impersonality of their relationship has been redeemed, it is person who takes the place of possession.

There is one more aspect to this story. Though redeemed from his lust, the man is fully open to the woman's beauty. She, on the other hand, does not hide the fact that she desires the man, but the whole man, in his bio-psychic completeness. The story ends with a statement of the sensual enjoyment of their union, that is seen as the this-worldly reward for the careful observance of the *mitzva* that protects a man against going astray after his "heart" and his "eyes."

This story contains all the basic principles of a Jewish sex ethics. It recognizes the force of the sexual instinct while illustrating how this instinct in its impersonal givenness depersonalizes a human being. It need not be repressed. Indeed, it can be raised to the personal level of human existence as the natural outcome of the personalization of the relationship between a man and a woman who encounter each other in the completeness of their bio-psychic being. Finally, as in our earlier systematic presentation, so in the story too, personalization is twofold. It is accomplished between the Jew and his God, and between the man and the woman. Thus they are rejoicing together in the presence of God. Once redeemed from the bondage of the impersonal, neither the eye nor the heart has to be denied. They lead, but do not lead astray.

One might ask: Is this kind of a transformation of the sexual instinct possible? In answer, one might point to the sex life of the Jewish people through the many centuries during which they remained within the structure of their own religious culture and civilization. This kind of personalized sensuality has indeed been generally practiced by Jews through many generations, and has been one of the main sources of the effectiveness of the sexual morality of the Jewish people. Whereas, for instance, according to Freud's theory of instincts, as civilization progresses, the guilt feeling continues to be intensified and increased, there is nothing of this found in the moral history of the Jewish people.<sup>27</sup> This is no argument against the Freudian psychoanalytical technique of treating neurosis, but it is indeed a refutation of the fantastic meta-psychological myth created by the genius of Freudian imagination. We have to remember that Freud, though himself a Jew by birth, was creating the meta-psychological superstructure to his psychoanalytical technique against the background and within the confines of a non-Jewish civilization. As we indicated at the beginning of our discussion, it was a civilization that in its religious manifestation equated sex with sin and in its secular expression reduced man to the level of an

animal. Within such a worldview, guilt, repression, and inhibition have, of course, an entirely different quality and force than within the Jewish worldview we have outlined. Where sex as such is accepted as the positive, life-sustaining principle of divine creation, the thought of it does not automatically generate a feeling of guilt. The woman in our story divided all her property, but "that bed linen" she carried with her along the long road of her own transformation, which in the end led her to her man.

The idea of repression as it is used by Freud may have its place within a culture that sees the body as bad and fallen; it has, however, no place at all beside the recognition of the validity and dignity of physical human existence. Within a Jewish sexual ethics one might speak of inhibition, but not of repression. However, in Judaism even inhibition has significantly less negative a connotation than within the Freudian construction. With Freud, inhibition is altogether imposed from without. When the pleasure principle clashes with the reality principle, civilization is born as a result of the inhibition of the id. Inhibition is not a choice, but a necessity, and since man is an animal, completely comprehended by his libido, the necessity is alien, external to his nature. No wonder, then, that with the progress of civilization, inhibition becomes more and more oppressive, the sense of guilt deepens, and finally, one day, the individual may no longer be able to bear the burden, and civilization itself will collapse in a universal neurotic conflagration. However, where inhibition is not altogether alien to human nature, when it is not altogether externally imposed, when it is not only a necessity but a choice of man, then inhibition is not merely repressive but also positively formative. It has a positive, intrinsically goal-inspired direction.

The fifteenth-century Jewish philosopher R. Joseph Albo has an interesting comment on human nature, which has some bearing on our discussion. In the story of the creation the Bible says at the end of each day: And God saw what he had made, and behold it was good. However, after the creation of man, this statement is missing. Albo explains: There are two kinds of perfection, of nature and of man. Nature's consists in its being, man's in his becoming. Nature is always in the present; therefore judgment could be passed upon it. As it was created, so it was completed. Man, however, is goal-directed; he was, therefore, incomplete at his creation. The evaluation had to be left in abeyance.<sup>28</sup> For the purposes of our discussion we might say an animal is a creature of an enduring present. It lives

completely in the "now." A human being, on the other hand, is open to the future, goal-oriented. Inhibition is a denial of the "now." If one sees man as an animal, inhibition is denial. An animal, because the future is closed to it, cannot tolerate delay in the satisfaction of its instincts, but within the Freudian meta-psychology the progress of civilization is a progressive delaying of satisfaction, a progressive violence done to a creature that is completely enrapt in its "now." On the other hand, within a religious culture like Judaism, man as a bio-psychic entity is seen as essentially future-oriented. Inhibition in such a context is not delay, but postponement. But whereas delay is frustration, postponement is growth; whereas delay is violence against the "now," postponement is care of tomorrow; whereas delay is denial, postponement is promise. Within the Jewish sexual ethics one should replace the term inhibition with that of discipline. Inhibition imposed upon a creature of "now" is oppression, while discipline chosen by the future-oriented man is liberation.

Herbert Marcuse explains that Freud found his theoretical analysis corroborated by the great diseases and discontents of contemporary civilization: "An enlarged cycle of wars, ubiquitous persecution, anti-Semitism, genocide, bigotry, and the enforcement of illusions, toil, sickness, and misery in the midst of growing wealth and knowledge."<sup>29</sup> Could it not be that, rather than the "diseases and discontents" corroborating the theory, it is the theory that is responsible for them; not just Freud's theory of the instincts alone, but it, too, within the scientism of the modern age, which for several generations now has been disabusing man of his "illusions" regarding his human status and teaching him with such pervasive intellectual lucidity that man is really "nothing but"? Small wonder that he is acting more and more like one who is "nothing but."

## VI

Two consenting adults engaging in intercourse have little to do with any kind of ethics. It is an arrangement, admittedly more civilized than rape. Jewish sexual ethics is not about sex, but about the union between a man and a woman that includes sexual fulfillment. But why marriage? Could the personalized relationship between them not be realized in the presence of God and yet within the privacy of their consciences? What need is there for

its official legalization? In all honesty, one would have to say that the ethical character of the union, as we have defined it, may not automatically require such public recognition. And indeed, some of the leading rabbinical authorities, like R. Abraham of Posquieres (died 1198) and Nahmanides (died 1263), were of the opinion that such a union was in theory permissible.<sup>30</sup> Nevertheless, it was frowned upon and generally forbidden in actual practice. Nahmanides was of the opinion that if allowed, it would lead to promiscuity. By this he meant that while the ethical character of the union may not in itself require public sanction, given human nature, and leaving the conclusion and termination of the union completely to the individual conscience, it would in most cases lead to unchastity, to the pursuit of sexual activity on the impersonal level. It may not be true in every case, but the ethical rules and laws of a culture and society have to be formulated with a view to the anticipated behavior of the generality of mankind.

However, there is something more profound involved. The highest form of the personalization of the relationship between a man and a woman finds its expression in their complete dedication to each other. It includes unquestioning trust in each other, the full acceptance of one's partner in his or her comprehensive humanity. A love that does not have the courage to commit itself "forever" is lacking in trust, in acceptance, in faith. Love fully personalized desires to be final, ultimate. But how can one commit oneself forever? Only by accepting the bondage of the responsibility of the commitment. In the ups and downs, in the struggle of daily existence, the trust and the faith are tested, often as if by fire. The highest form of personalization of the union is the ultimate of love; but it does not come easy. It is a continuous challenge, it is a task at which man and woman have to work unremittingly. It is not simply a matter of working at sexual compatibility, but at the realization of the potential of their mutual humanity. To persevere often in difficult situations, when it might seem that one's original hopes have faded, is the highest expression of trust in the human potential of oneself as well as one's partner.

To persevere with the task of personalization is an expression of one's faith in the possibility of renewal and regeneration. It is faith in man's capacity for interpersonal care, trust, and love. It is trust that this capacity can be awakened through faith in its existence. It is love in its universal significance. It is confidence that notwithstanding frustrations and disappointments, there is a basic quality of preciousness present in the human

being to whom we originally committed ourselves "forever," on which one may continue to work for the realization of the meaning of the original commitment. And this is decisive. This is the secret of personalization of the bio-psychic relationship. It is not an event that is achieved in one moment of grace, but a process that may take a lifetime, requiring a lifelong commitment. Bearing in mind the power of the sexual instinct, and in recognition of the demanding task of its personalization which is inseparable from the continued maturing and deepening of the interpersonal relationship between a man and a woman in the widest sense, the official character of the marriage bonds is an ethical requirement for the surrendering of one's freedom to dissolve the union at a whim, because of a momentary disaffection or disillusionment. It is indeed a serious business. The binding formality of the marriage is the mutual acceptance of the responsibility to persevere in the task of the full actualization of each other's potential for the interpersonal life; it is a commitment to the trust in that potential and as such an affirmation by innumerable daily deeds of one's faith in the human being on the universal plane. The formal marriage is not to be based on the present love that at this moment unites two human beings, but on the trust in the self-transcending power of that love, in its as yet unfathomed potential which, through care, devotion, and the practice of basic humanity and decency, will carry two human beings to the richest fulfillment of which they are capable. However, just because personalization is the goal, the Jewish marriage does not include the commitment "till death do us part." Failure is always possible, mistakes are often made, and the relationship may degenerate into such an abysmal failure of impersonality that divorce may become a moral necessity.

Thus far, we have discussed marriage only from the angle of the purely personal and, in a sense, self-centered relationship between a man and a woman. However, as we saw, personalization has to be pursued also on the cosmic level, by relating the interpersonal union to the divine purpose of creation that seeks its realization through it. It includes the conscious identification of a man and a woman with that purpose, of merging by choice with the cosmic stream of continued propagation of new life, thus becoming partners of God in the work of creation. This new life, the life of a new generation, is no longer a purely personal matter. Because of its manifold implications and consequences, it is a matter of communal relevance and concern. This aspect of the task of personalization asks for the

integration of the Jewish marriage within the religious ethics of the totality of Jewish living. This is the public share in every marriage. In the interest of the new life, it has to ensure, as far as humanly possible, the durability of the union. However, there is a specifically Jewish concern with every Jewish marriage. One might say that at the start of the way of the Jews through history stand the words which God said of their father Abraham:

For I have known him, to the end that he may command his children and his household after him, that they may keep the way of the Eternal, to do righteousness and justice; to the end that the Eternal may bring upon Abraham that which he has spoken of him.<sup>31</sup>

The conscious identification with the divine purpose of the life-propagating cosmic principle is not simply a commitment to the biological transmission of life from generation to generation. This would still be an act of impersonality. As far as the Jew is concerned, the cosmic principle is personalized when it is made to serve the transmission of the life of Judaism from generation to generation. What God had "spoken of Abraham" was never meant to be "brought upon him" in his own lifetime. It was to find its fulfillment in the course of the fullness of the bio-psychic history of all his children. Judaism is a process through history, beginning with Abraham, the father, moving towards its culmination in Abraham's child, the Messiah, when all history will be fully redeemed from the bondage of the impersonal. Because, in history, Judaism is forever striving for its realization, it is always lived with a sense of the "not-yet." It is forever lived in the future and with responsibility toward that future. It is what it will yet be. A Jew, who desires to be one, is always a link in the generations, a child who receives and a parent who transmits with the intention and the freely accepted responsibility of furthering through time the bringing about at the end of time of what God had "spoken of Abraham." Personalization of the union between a man and a woman is to be sought on the interpersonal level, in the presence of God, with the acceptance of responsibility for the historic destiny of all Israel. That is what Jewish ethics means by marriage and family. That is what we mean by the marriage formula: "You are sanctified to me in accordance with the law of Moses and Israel."

## VII

We have analyzed what we consider to be the basic principles of a Jewish sexual ethics that may be crystallized from Jewish tradition. We shall now deal with some of the consequences for actual behavior that follow from these principles.

Originally, it was customary for marriages to be arranged by a matchmaker or even through a *shaliach* (an agent with the power of attorney), without the groom and bride seeing each other first. However, Rav, one of the most authoritative teachers of the Talmud in the second century, taught: "It is forbidden for a man to espouse a woman without having seen her first, for he might find some blemish in her that might alienate him from her." Significantly, the reasoning why such a situation should be prevented from arising is based on the biblical verse: "You shall love your neighbor as yourself."<sup>32</sup> In other words, not simply because of possible disappointment, but because the personal relationship of love between one human being and another may be prevented from becoming a reality.

Another teaching of Rav should be read in a similar light. Child marriages were once an acceptable practice, but Rav declared: A father is forbidden to give his minor daughter in marriage until she has sufficiently grown to be able to say: "This is the man I want to marry."<sup>33</sup> Rav also warned people against marrying for the sake of money.<sup>34</sup> The words of the Bible, that you should not go astray "after your own heart and after your own eyes," were interpreted a generation earlier by Rav's teacher, R. Yehuda Hanasi, editor of the Mishna, as including the warning: "A man shall not drink from one cup while setting an eye on another." Several generations later, another teacher in the Talmud applied this not only to a case when a man is intimate with his wife while thinking of a strange woman, but even to a case of polygamy where a man is thinking of another one of his wives.<sup>35</sup> Another talmudic teacher, R. Asi, taught that a man is forbidden to compel his wife to have intercourse. Others before him had already enjoined that a man should be extremely considerate in intimacy with his wife. He should be aware of her needs, he should please her before the intercourse, he should communicate with her before the act and even during it, bringing joy to her.<sup>36</sup> In a striking passage, R. Levi, also of the second century, gave a rather

surprising interpretation to the following words of God through the prophet Ezekiel: "And I will purge out from among you the rebels and them that transgress against me..."<sup>37</sup> Says R. Levi: "These are the people who compel their wives into intercourse, who are intimate with their wives even though they hate them... who quarrel with them when they are together, who have sexual relationships while drunk, who engage in the sex act even though they have already divorced their wives in their hearts..."<sup>38</sup> The medieval commentators explain this passage with particular reference to the drunk. One says: His sex act is not true union but an act of prostitution, for he is bent only on the act itself. Another says: Because of his drunkenness, he does not consider his wife at all.

Because of the nature of the relationship between man and woman, all these rules of sexual behavior are enjoined on the husband. But there are also some statements which speak of the conduct of the wife in the sex act. For example: "Our masters said: 'When a woman lies with her husband and thinks of a man whom she saw in the road, there is no greater lewdness than that.'"<sup>39</sup> The very strong phrasing is an indication that from the point of view of the most intimate interpersonal relationship, this was considered a worse degradation of its moral character than even the act of outright sexual unfaithfulness. All these rules and principles of behavior have one thing in common: They all aim at the elimination of the impersonal from the sexual union and its consecration through personalization. They are equally binding on both sexes. They are directed against using another person as a sex object. In accordance with talmudic methodology, the rules are usually derived from, or homiletically related to, some verse in the Bible. Most impressive, however, is the statement of R. Levi, who, as we saw, applied the terms "rebels and transgressors against God" to people who degrade the satisfaction of their sensual desires to the level of the wholly impersonal. It is considered rebellion and transgression against God. This is in keeping with our main thesis. Personalization includes relatedness to the divine purpose. Sex indulged on the impersonal level is not only a degradation of one's sexual partner, but also a rejection of what God intended sex to be.

A few more words have yet to be said on the question of birth control. Does our presentation not exclude it completely? This is not the place to give a comprehensive or even somewhat adequate discussion of the subject.<sup>40</sup> It should be stated, however, that Jewish sexual ethics does not insist that the sex act always be directed towards procreation. If that were so,

marriage could not continue beyond the wife's childbearing age. Marriage to a woman who was not fertile would then be against Jewish law. While at one time such a marriage was to be dissolved after ten years, the custom is—as explicitly stated in the *Shulhan Aruch*—no longer to be observed.<sup>41</sup> Cases of actual birth control, permitted or even required, are discussed in the Talmud and ruled upon in the codes.<sup>42</sup> Special cases of rape, of threat to the health of the mother, and numerous others have been discussed in the rich responsum literature through the ages. It is not the intention of our presentation to give rulings in specific cases. What we should bear in mind is that whenever birth control is permissible or even mandatory, or when a certain union, even though childless, is yet to be maintained, what then follows in practice is, just because it is done in the light of the teaching of the Tora, still an act of personal relatedness to God, the creator of life. Because it is undertaken in conscious accord with Judaism, one acts then in full awareness of one's responsibility towards the divine purpose that seeks its realization through us.

Jews today disagree as to what extent Judaism requires of them that they adhere to the interpretation of halacha as promulgated by one or the other trend within Judaism. It seems to us, however, indisputable that anyone who desires to live his life as a Jew will have to adopt a sexual ethics whose goal it must be to personalize his sexual relationship on the threefold level that we have indicated: The interpersonal, as between man and woman; the cosmic, as between God and man; and the historic, as between the individual Jew and the destiny of the Jewish people through the ages. Of a union established on such foundations, R. Akiva would say: If a man and a woman are worthy, the divine Presence dwells in their union.<sup>43</sup> Through their achievement in the personalization of their relationship, their life together makes room for God within the bio-psychic fulfillment of human existence—for a God not of asceticism or of life-denying spirituality, but of life-affirming and life-desiring sanctification.

## 5

## THE BIBLICAL IDEA OF JUSTICE

(1969)

TO UNDERSTAND what is meant in the Bible by justice, it is necessary to examine the various uses to which the noun *mishpat* ("justice") and the verb *shafat* ("to judge") are put. *Mishpatim* are rules, laws, or ordinances, which are often mentioned together with *hukim*, statutes, which God gave to the children of Israel that they perform them and live by them. They cover a wide area of civil, criminal, and ritual law.

Often *mishpat* is the case before the court, the entire process of administering the law. When the Bible says, "You shall not respect persons in *mishpat*; you shall hear the small and the great alike; you shall not be afraid of the face of any man,"<sup>1</sup> the term is not used in the narrower sense of judgment. The injunction refers to the entire conduct of the case in court. *Mishpat* is the suit before the judge. When the daughters of Zelophehad made their claim to the possession which was due their father, the Bible says: "And Moses brought their *mishpat* before the Eternal."<sup>2</sup> Moses brought their case before God, as well as the question of whether their claim was justified or not. We do not think that King Solomon asked God for an understanding heart to discern judgment or justice in the abstract.<sup>3</sup> He asked for understanding *lishmoa mishpat*, to hear wisely, with the proper insight, the suits brought before his court.

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