Recovering Jewish Virtue Ethics
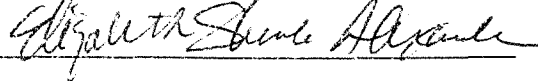
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A Dissertation presented to the Graduate Faculty
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of Doctor of Philosophy

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University of Virginia
August, 2004

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Abstract

This dissertation studies the evidence of a rabbinic concern for character, focusing on three goals. First, it serves as a corrective to studies of Jewish ethics that focus exclusively on act evaluation. Second, it demonstrates the importance of ethics to the general field of Jewish studies and especially to the study of rabbinic texts. Third, after a critical examination of the field of contemporary virtue ethics and its Aristotelian antecedents, this dissertation suggests that rabbinic ethics provides a new and valuable voice that needs to be heard within the field of virtue ethics.

Acknowledgements

I am happy to have an opportunity to thank those who assisted, encouraged, and comforted me throughout the arduous process of writing and editing this work and during the years of education that preceded it.

I would like to thank especially Professors Jim Childress and Peter Ochs for guiding me during the most recent stages of that journey. They readily shared of their immense knowledge and insight and encouraged me to pursue the studies leading to this dissertation. I began my graduate studies under Professors Childress and David Novak and owe my understanding of the field of ethics to them and my knowledge of Jewish ethics especially to the latter. All three continue to demonstrate, through their scholarship and leadership, the way study can lead to action and then to *Tikkun Olam,* mending of the world. I hope to emulate their model in my own work. I also am indebted to Professor Ochs for showing me new ways to study the rabbinic tradition and for introducing me to the warm intellectual communities of the Societies of Textual and Scriptural Reasoning.

Professor Jock Reeder introduced me to the writings of Alasdair MacIntyre and Stanley Hauerwas while I was an undergraduate student at Brown University. At the same time, Professor Wendell Dietrich introduced me to modern Jewish thought in the courses I took with him. It is their

encouragement and that of my wife that led me to pursue graduate work in ethics.

Elizabeth Shanks Alexander, John Arras, Yosefa Lebeau, and Chuck Mathewes, in addition to Professors Childress and Ochs, read through earlier drafts and provided numerous helpful critiques and suggestions incorporated into this final version. I thank them for both the severity of their criticism and the gentleness with which it was delivered. I also have benefited from responses to papers I delivered at the annual meetings of the Society of Jewish Ethics, the American Academy of Religion and the Association for Jewish Studies. I would like especially to thank Lawrence Kaplan, Jonathan Schofer, Hava Tirosh-Samuelson, Laurie Zoloth, and Elliot Dorff for their advice. Thinking of Hermann Cohen's teaching (in *Religion der Vernunft* /Religion of Reason) about the process of becoming an individual, I claim as my own any errors that remain.

My parents imbued in me a commitment to Judaism and education whose expression can be seen on these pages. It has been my great fortune to have found, in my wife's parents, two people with equally strong commitments to Judaism and ethics. My siblings and those of my wife, along with their spouses, encouraged me throughout this process. Without my extended family's support, both emotional and practical, this dissertation would remain unfinished.

I have loved my wife Yosefa for more than half my life, beginning when we were dating in high school. Here I wish to thank her for the way her wisdom and love have supported me through these long years of graduate school. In the face of setbacks and frustration, I could always rely upon her to cheer me up and convince me to continue this project. She has inspired me both with words and through her own many accomplishments. I am also indebted to her for my daughter Nesya and son Amitai. Nesya and Amitai continuously astound and delight me with their creativity, which has often been applied to distracting me from my work. It is to my wife and my children that I dedicate this dissertation.

I complete this manuscript, appropriately, just prior to *Shabbat Nachamu,* which marks the Jewish liturgical cycle's turn to consolation over the difficulties of the past and to counseling hope for the future. This Sabbath we read from Isaiah 40:

"Have you not heard?
...He gives strength to the weary, fresh vigor to the spent."

Dov Nelkin
Highland Park, NJ
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10th of Av, 5764

Introduction:

This dissertation suggests that Jewish ethical thought leads to a nuanced approach to virtue ethics that when fully elaborated provides valuable contributions to the field of virtue ethics. Supporting this claim, it argues that Jewish ethics has more in common with the burgeoning field of virtue ethics than generally has been acknowledged within the discourse of contemporary religious ethics. In fact, Jewish ethics traditionally has been concerned primarily with character development. Attentive to these facts, this dissertation responds to two trends that have shaped the discourse of contemporary religious ethics.

On the one hand, alternatives to act-evaluation, including virtue ethics, are gaining an ever-wider audience among ethicists of a philosophical bent and those working within Christian traditions.[1] On the other hand, the rise of bioethics has brought to the fore among Jewish ethicists almost exclusively those interested primarily in the legal texts of the tradition, since the field of bioethics is heavily case-driven and the Jewish legal tradition is able to supply eighteen centuries of apposite cases and commentary.[2]

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[1] Lee Yearley, writing in 1990, declared that "What only ten years ago was a cottage industry threatens to become an industrial giant" ("Recent Work on Virtue" *Religious Studies Review* 16 (1990):1.

[2] See David Novak, "Bioethics and the contemporary Jewish Community" *The Hastings Center Report* 20/4 (1990): S14-18. See also I. Franck "Understanding Jewish medical ethics: Reflections on the Papers" *Journal of Medicine and Philosophy* 8 (1983): 207-215 and Mark Levin and Ira Birnbaum, "Jewish Bioethics?" *Journal of Medicine and Philosophy* 25

It is quintessentially rabbinic to see the truth of two or more sides of an argument at once. I recognize, therefore, that this interest in legal texts as a source for Jewish ethics is very valuable. At the same time, I note that this focus on legal texts has isolated Jewish ethics from contemporary work in virtue ethics, to the detriment of both fields. That this division need not exist can be seen, for example, in Elliot Dorff's recent work, in which he argues that Jewish ethics should operate in a legal mode while declaring simultaneously that he is a proponent of "a character-based ethic.[3]

Virtue ethics is defined by Roger Crisp and Michael Slote as having "its focus on moral agents and their lives, rather than on discrete actions... construed in isolation from the notion of character, and the rules governing

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(2000): 469-84. Although focused on describing a Jewish bioethics relevant to secular bioethics, this latter essay recapitulates the error of understanding *Halakhah* as law and then subsuming ethics under *Halakhah*. It does recognize, however, that the Talmud uses case discussions as a philosophical enterprise, "the substance of Halachic discussion is rational and philosophic but the language and method is legal..." (475).

[3] Elliot N. Dorff, *Matters of Life and Death: A Jewish Approach to Modern Medical Ethics* (Philadelphia and Jerusalem: Jewish Publication Society, 1998), pp. 405, 412. Halakhic ethics and virtue ethics work together in Dorff's thought in part by displacing the virtues that would be expected by most proponents of virtue ethics of every agent onto the rabbi-ethicist: "It is therefore not surprising that contemporary decisions in Jewish medical ethics flow out of the continuing interactions among Jewish religious thought, law, and morality. To isolate any one of these is to distort Jewish tradition. But to see and apply their interactions to contemporary concerns requires knowledge of and commitment to all three; a developed moral and legal sense; and the capacity for sound judgment, compassion, and wisdom" (p. 404). The difficulty of this position, to which I am sympathetic, is its support for the more damaging versions of *da'at Torah*. This relatively recent doctrine accepted within some versions of Orthodoxy, but rejected by modern Orthodoxy as well as the Conservative Judaism of which Dorff is a leader, refers to the case in which a rabbinic legal scholar asserts on that basis that his opinions about non-legal matters are to be decisive for a community because he has been shaped, in all his opinions, by embodying the Torah.

these actions."[4] It often has been assumed that Jewish ethics is equivalent to Jewish law, but this assumption misrepresents the richness of Jewish ethics. For example, Crisp, by way of contrast with virtue ethics, writes "[Contemporary] morality is heavily influenced by the Judaeo-Christian tradition and has its roots in conceptions of divine law... Morality is seen as a lawlike set of principles which binds us to perform or not perform certain actions"[5]

This misrepresentation of Jewish ethics is particularly unfortunate since the majority of materials recognizable as works of ethics within the Jewish tradition, both in the Talmud and in ethical works ranging from Bahya Ibn Paquda's 11th century *Duties of the Heart*[6] to Moshe Hayyim Luzzato's 18th century *Mesillat Yesharim*,[7] are themselves more readily assimilated into virtue ethics than other ethical discourse. Furthermore, the emphasis on law in Judaism does not make it incompatible with virtue ethics. The texts just mentioned, along with others within the tradition of Jewish ethical writing, emphasize the importance of developing proper character traits, albeit in the

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[4]Roger Crisp and Michael Slote, eds., *Virtue Ethics* (Oxford: Oxford UP, 1997), 3.

[5] Roger Crisp, "Modern Moral Philosophy and the Virtues" in *How Should One Live? Essays on the Virtues,* ed. Roger Crisp (Oxford: Oxford UP, 1996, hereafter *How Should One Live*), pp. 1-18. On the misrepresentation of both Jewish law and ethics as Divine Command Morality, see Avi Sagi and Daniel Statman, "Divine Command Morality," *Journal Of Religious Ethics* 23 (1995): 39-67. On the multiple meanings of Torah, see Moshe Greenberg, "Three Conceptions of the Torah in Hebrew Scriptures," *Studies in the Bible and Jewish Thought* (Philadelphia: Jewish Publication Society, 1995), pp. 11-24.

[6] Bahya b. Joseph ibn Paquda, *The Book of Direction to the Duties of the Heart*, trans. Menahem Mansoor (London: Routledge and Kegan Paul, 1973).

[7] M. Luzatto, *Mesillat Yesharim.* Trans. S. Silverstein (Jerusalem: Feldheim Publishers, 1974).

context of proper observance of all aspects of Jewish law. It is the case that

not only may one develop a virtue ethics generally "out of the sources of

Judaism" but that Jewish ethics is directly concerned with character and the

development of virtue.[8]

Judaism no longer routinely faces charges of "hard" legalism,

according to which "the law" is allegedly a "web [which] chokes its weavers."[9]

Instead, a "soft" legalism, which, while rejecting the negative characterizations

of Judaism historically associated with "legalism," sees Judaism as

exclusively concerned with law. Surprisingly, this understanding has been

posited not by critics of Judaism, but by people working within the tradition.[10]

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[8] This is not surprising, since Talmudic ethics are very much commonsensical, while informed by considerations of Jewish law, and "Virtues are the stuff of which everyday moralities are made" (John Sabini and Maury Silver, *Moralities of Everyday Life,* (Oxford: Oxford UP, 1982), 82). This attitude extends to the rabbinic wisdom regarding the way of the world, as seen in the following text from the Babylonian Talmud, *Pesahim* 113a-b: "Rab said to his son Aibu: I have labored over your studies but without success, [so] come and I will teach you worldly wisdom…" which appears in the middle of general moral teachings such as "Three the Holy One, blessed be He, loves: he who does not display temper, he who does not become intoxicated, and he who does not insist on his [full] rights," as well as statements that form a middle ground, equivalent to Aristotelian practical wisdom, such as "Our Rabbis taught: There are three whose life is not life; the [over-] compassionate, the hot-tempered, and the [too] fastidious; whereon R. Joseph observed: And all these are found in me" This translation and all others taken from the Babylonian Talmud, unless otherwise noted, are from *The Babylonian Talmud,* ed. Isidore Epstein, 35 volumes (London: The Soncino Press, 1935-1952). The same is true of translations of the Mishnah, if reference to the Talmud folio on which it appears is given. This edition, if cited specifically, will be referred hereafter as *Soncino.* Citations will be to the folio and page of the Romm edition (Vilna, 1898).
[9] Joseph Fletcher, *Situation Ethics; the New Morality* (Philadelphia: The Westminster Press, 1966), 19.
[10] One might argue that it is not all that surprising since it was the work of two Jews, the famous apostate Baruch/Benedict Spinoza (1632-1677) and the Orthodox Enlightenment thinker Moses Mendelssohn (1729-1786) that cemented this understanding of Judaism as "revealed legislation" rather than religion among philosophers, including Kant. Of course, it is a questionable assertion that these two were working "within the tradition." For Spinoza, the falsity of the claim is obvious. With Mendelssohn, the apologetic nature of his work led him to

As will be seen, the basic error of this approach lies not in conflating Jewish

ethics with Jewish *Halakhah*, but in simultaneously alleging that all there is to

Halakhah is Jewish law.[11] Following Louis Newman, this dissertation argues

that the terms of the debate regarding Jewish law and ethics have suffered

from insufficient clarification.[12] As a result of this lack of clarity, some have

argued that Jewish ethics is identical to Jewish law.[13] By way of contrast, this

dissertation shows that a broad conception of *Halakhah* as incorporating that

which is not typically termed law is a necessary corollary to maintaining that

there is no ethical space outside the purview of the *Halakhah*. If God must

make do with only "the four cubits of the *Halakhah*" in this world (B. *Berakhot*

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sacrifice a certain amount of accuracy. A separate point: although there is support of a sort in some traditional sources for the position that one must intend fulfillment of a divine command when performing "ethical" activities, the contemporary debate on ethics and *Halakhah* or law is discontinuous with these traditional sources.

[11] Louis Jacobs gives the following definition: "The word '*halakhah*' (from the root *halakh*, 'to go'), [refers to] the legal side of Judaism (as distinct from *aggadah*, the name given to the non-legal material, particularly of the rabbinic literature) [which] embraces personal, social, national, and international relationships, and all the other practices and observances of Judaism. In the Bible the good life is frequently spoken of as a way in which men are 'to go,' e.g., 'and shalt show them the way wherein they are to go and the work that they must do' (Ex. 18:20)" ("*Halakhah*," *Encyclopedia Judaica* [CD-ROM], ed. Geoffrey Wigoder (Israel: Judaica Multimedia Ltd., 1997)). The tension between the word's root, "to go" or "the way," which speaks to a broad ethical demand, and its usual narrower definition as law is equally present in its usage within Jewish texts.

[12] Louis Newman, *Past Imperatives: Studies in the History and Theory of Jewish Ethics* (Albany: SUNY Press, 1998), pp. 17-62. Newman explains that the *Halakhah* has two essential poles, one of strict social and religious law and the other of "an 'open-ended' moral system" (p. 40).

[13] To give two examples: Marvin Fox, *Interpreting Maimonides* (Chicago: University of Chicago Press, 1990), 199ff and J. David Bleich, "Is There an Ethic Beyond Halakha?" in *Studies in Jewish Philosophy*, ed. Norbert M. Samuelson (Lanham, MD: Academy for Jewish Philosophy/University Press of America, 1987), pp. 527-546.

8a), those cubits need to be well furnished![14] Implicit in this argument is that positions in this debate that appear diametrically opposed are much closer than at first glance and that a major barrier is terminological obfuscation.

This dissertation provides a broader view of the vast ethical resources found within traditional Jewish sources by introducing and explicating representative texts from the Babylonian Talmud and other rabbinic sources that are best understood through the methodology of virtue ethics. The goal is to allow the voices of Jewish ethics to participate in ethical discussions beyond the legal or quasi-legal arena of biomedical ethics and as parties to work on virtue ethics in general. In this latter context, this dissertation argues that the balance, between the ethics of virtue that comprises the bulk of Jewish ethics and the *Halakhic* discussions and rulings on matters of ethics, is one that resolves many of the problems found within contemporary discussions about virtue ethics.

While acknowledging the contribution that Jewish legal texts make to the ethics of case studies, this dissertation demonstrates that much more is to be gained by additionally appropriating the streams of Jewish thought concerned with character and virtue and bringing these into dialogue with

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[14] Citations from the Babylonian Talmud or *Bavli,* completed around the year 600 C.E., will be indicated by "B." preceding the Tractate. Similarly, "M." will indicate a citation from the *Mishnah,* completed around 200 C.E. "P." will indicate a text taken from the Talmud of the Land of Palestine, traditionally referred to as the *Yerushalmi* and completed around 400 C.E. Finally, texts taken from the Moses Maimonides' (1135-1204) classic text, the *Mishneh Torah* will be indicated by M.T.

philosophical and Christian approaches to virtue ethics. Missing from many arguments in support of virtue ethics is a willingness to make space for other approaches to ethics, including act-evaluation and the codification of at least some ethical decisions into (moral) law. As a corrective to these narrow viewpoints, this dissertation describes a holistic approach to ethics based on central premises of Talmudic dialogue and which combines law, act-evaluation, and virtue ethics. This approach has advantages for the theory and practice of ethics over both deontological and pure virtue accounts.

I argue that Jewish law is both reflective of, and a source for, rabbinic virtue ethics. I also hope this dissertation, by illuminating rabbinic virtue ethics, will make these sources more accessible to Jews who are interested in their ethical tradition but not in the *Halakhah* as a source of law. An approach to the ethical resources that begins with the question "What kind of person do I want to be?" will prove to be more valuable than one that presents ethics as a list of specific rules of conduct for Jews who are committed to Judaism and its tradition, but not to its law.

Closely related are the advantages of virtue ethics to moral education. Virtue ethics provides both a motivating force and a method for pursuing moral development that is lacking in both deontological and utilitarian approaches to ethics. Virtue ethics and its near cousin, communitarian ethics, are also truer to the sense of community-belonging and communal striving for justice and ethical values that characterize liberal approaches to

Judaism.

My interest in studying rabbinic virtue ethics is two-fold. First, the descriptive: As I have indicated, I am interested in the task of correcting misperceptions of rabbinic ethics by way of comparing it to classical and contemporary virtue ethics. As it would contradict the dialogic nature of rabbinic texts to suggest that one can fully explicate "the" rabbinic understanding of virtue, my goal is to examine some of the similarities between contemporary virtue ethics and rabbinic ethical reflections in the Talmud as a prelude to further conversation. Second, the normative: By bringing this rabbinic virtue ethics into dialogue with contemporary virtue ethics and contemporary Jewish bioethics, I try to demonstrate where its voice might provide a perhaps better alternative to prevailing trends in these fields.

What follows is a work of comparative religious ethics, in which a contemporary approach to the study of philosophical ethics and Christian ethics is brought into dialogue with an approach to ethics that resides in an ancient, though still revered text. [15] I use the term "comparative religious ethics" advisedly, following the warnings given by David Little and Sumner Twiss in their *Comparative Religious Ethics: A New Method* (New York: Harper and Row, 1978), 1-23. They limit the term, not unexpectedly, to "the

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[15] David Little and Sumner Twiss, Twiss, *Comparative Religious Ethics: A New Method* (New York: Harper and Row, 1978). See especially 1-23.

study of religious ethics when the study is not confined to a single religious tradition."[16] Little and Twiss note, however, the difficulty of giving sufficient attention to the meaning of "comparison," not to mention "religion" and "ethics." Given their scathing review of much of the literature before them, it requires fortitude on the part of the author to subject his work to their attention. Nonetheless, I believe that the present study follows matches Little and Twiss's definition of comparative, insofar as it specifically attempts to break down a stereotypical understanding of Jewish ethics while drawing upon resources developed in the study of Christian and Philosophical ethics. However, I object to Little and Twiss's proposals for defining morality, ethics, and religion. The meaning of "ethics" and its distinction from law, specifically in the context of Jewish ethics will be discussed below. It should be noted that Little and Twiss's definitions of ethics and morality, though representative of a "new method" in 1978, were developed prior to the current wave of academic interest in virtue ethics and are oriented exclusively to act evaluation and therefore are unsuitable for a study of virtue ethics.[17]

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[16] While this study fits that definition, I would include in comparative religious ethics a study which considers a religious ethical tradition purely in comparison with a philosophical tradition.

[17] Little and Twiss, *Comparative Religious Ethics,* chapter 2 and esp. 28. See below for ways of distinguishing various contemporary approaches to ethics. Their definition of religion, necessary because they are developing a social-scientific approach and defense of the field of comparative religious ethics, seems to me to overlook to an extent the way that certain rabbinic (and in a different way Islamic) sources feel obliged to justify God's authority in terms of popular assent (e.g. one reading of B. *Shabbat* 88a).

There are many different purposes for comparative work in religious ethics. One of great importance is the illumination of points of commonality in thinking that serve to reinforce our sense of human community. Another is that such study opens one's mind to new patterns of thinking, enabling one to refine one's own reasoning. In my work within the Society of Scriptural Reasoning, in which Jews, Christians, and Muslims study each other's scriptures as a community, these two aspects of comparative work are emphasized. A third advantage to comparative work is that sometimes one discovers that a category correctly described in one has been absent from the study of another where it is equally applicable. My current work developed out of just such a discovery.

When I began studying approaches to ethics that focus on character and virtue, especially the work of Alasdair MacIntyre and Stanley Hauerwas, the former a philosopher and the latter a Christian theologian, I was surprised by how much this material resonated with what I knew of rabbinic ethics.[18] By

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[18] I share this history following the model of Menachem Fisch. Fisch describes the development of the thinking that led to his book *Rational Rabbis: Science and Talmudic Culture* (Bloomington and Indianapolis, IN: Indiana University Press, 1997)). This book was the subject of a meeting of the Society for Textual Reasoning and a selection, along with responses, will be included in a forthcoming issue, which I am editing, of the *Journal of Textual Reasoning* (http://etext.lib.virginia.edu/journals/tr/). Responding to an article by Jacob Neusner suggesting that scientific thinking and rabbinic logic were sufficiently contrary in method that they could not simultaneously exist in one person, Fisch argued that "contrary to Neusner, the Talmud's manner of halakhic reasoning seemed to me to resemble quite closely the type of discourse I had learned to associate with the scientific method of trial and error" (*Rational Rabbis*, x, discussing Jacob Neusner, *The Making of the Mind of Judaism: The Formative Age* (Atlanta: Scholars Press, 1987)).

rabbinic ethics I mean that ethics found in the formative texts of Judaism, the Mishnah and Talmud, which were developed primarily during the first six centuries of the Common Era.

To explain my surprise at the intersection of rabbinic and virtue ethics, I have to revisit briefly the way my intellectual encounter with the study of ethics developed. For me, as for many others educated in Orthodox Jewish schools, this development began even before I was aware of it, when during grade school, high school, and yeshiva I was introduced to a very Maimonidean understanding of Judaism. Unstated during most of this education was Maimonides' use of Aristotelian philosophy. As an undergraduate student, my study of philosophical and religious ethics led to successive stages in which I readily identified parallels between the schools of Western thought I studied with the Judaism I knew from childhood. This tendency was strengthened when I began my undergraduate studies of Jewish thought with Wendell Dietrich at Brown University. Judaism as a refinement of the Enlightenment? Of course, I thought while studying Mendelssohn. As a refinement of Kant? Of course, I thought while studying first Kant himself and then Hermann Cohen, Moritz Lazarus, and a variety of Orthodox thinkers. When I arrived in graduate school, I was less willing to see the principles of biomedical ethics as the essence of Judaism, but even these I was willing to understand as an approach consistent with Jewish teaching. More recently and culminating with the present work, I argue for the

relevance of virtue ethics to a study of rabbinic ethics. So, with the skepticism properly reserved for those who have undergone repeated intellectual transformations, one might ask of this dissertation "How long will this fad persist?"

The same question may be asked not only of those who consider religious traditions within the context of contemporary studies of ethics, but indeed of the mainstream proponents of whichever mode is currently in favor in the academic study of ethics. Indeed, John Arras has published several articles concerning "current" modes of ethical reflection which do just that and further ask what the approach claims to contribute to ethics. Even when Arras answers his own question, the articles as a whole point to "trendiness" within bioethics. Addressing the various camps within contemporary bioethics, Arras writes "Within the past ten years, though, the partisans of alternative methodologies—including casuistry, narrative ethics, and feminism—have subjected principlism to sustained and sometimes withering criticism. This chorus of critics has recently expanded to include the partisans of a 'new pragmatism,' who now stake their claim to methodological preeminence."[19] To give just one more, I point to the article whose title gives

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[19] John Arras, "Pragmatism in bioethics: Been there, done that" *Social Philosophy and Policy* 19/2 (2002): 30. Additional though non-exhaustive examples of John Arras' critique of "fashionable" approaches to ethics include his statement that, "in spite of the routine acknowledgement of Richard Rorty's ubiquitous influence, those who have invoked his name en route to advancing their case for a pragmatist bioethics have not given us a very clear picture of exactly how Rorty's work might actually contribute to methodological discussion in

the clearest example, "Nice Story, But So What?: Narrative and Justification in Ethics."[20] The sense of trendiness in ethics is wonderfully conveyed by the first sentence of this last article, "Everywhere one looks in the academy these days, theory is out and stories are in."[21]

This last statement, that theory is out and stories in, is at least partially true of the study of Rabbinics. The use of literary techniques to uncover lost meaning within rabbinic texts has itself become a cottage industry.[22] Furthermore, as will be discussed below, the emphasis on narrative in virtue ethics is stronger in approaches to Jewish virtue ethics. This point is explained by the importance of *aggadah,* the narrative portion of rabbinic texts, in developing Jewish ethics not entirely dependent upon the legal system. Jonathan Schofer, in his study of character formation in *Avot of Rabbi Nathan* (ARN), makes an even stronger point, noting that "scholars of

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this field" (Author's abstract, "Rorty's Pragmatism and Bioethics" *The Journal of Medicine and Philosophy* 28/5-6 (2003):597). Further, describing his critique of various approaches to developing a medical ethics entirely from within the practice of physicians (as opposed to that developed by 'ethicists), Arras writes, "I then argue that weaker versions of internalism avoid such problems [as are suffered by strong versions], but at the cost of failing to provide a clear sense in which their moral norms are internal or can ground a comprehensive approach to moral problems" (Author's abstract, "A Method in Search of a Purpose: the Internal Morality of Medicine" *The Journal of Medicine and Philosophy* 26/6 (2001): 643-663.

[20] John Arras, "Nice Story, But So What?: Narrative and Justification in Ethics" in *Stories and Their Limits: Narrative Approaches to Bioethics*, ed. Hilde Lindemann Nelson (New York and London: Routledge, 1997), 65-88

[21] Ibid., 65.

[22] To give just three examples of works in this vein that are mentioned in the present study: Daniel Boyarin, *Carnal Israel: Reading Sex in Talmudic Culture* (Berkeley: University of California Press, 1993); Jeffrey Rubenstein, *Talmudic Stories: Narrative Art, Composition, and Culture* (Baltimore: Johns Hopkins University Press, 1999); and Elizabeth Shanks Alexander, "Art, Argument, and Ambiguity in the Talmud: Conflicting Conceptions of the Evil Impulse in B. Sukkah 51b-52a" *Hebrew Union College Annual* 73 (2003).

rabbinics characterize the cultural production in terms of 'intertextuality' and 'the exegetical imagination,' rather than the 'rationality' of the tradition."[23]

But asking "How long will this fad persist?" of the present study would be a mistake. My own intellectual development parallels the development of contemporary Jewish philosophy in that we both lay claim to being "postmodern." That is, as is the case with contemporary Jewish philosophy, I do not see a need to identify "Judaism" or even "rabbinic Judaism" with one contemporary philosophical commitment or mode of scholarship as though these illuminated the essence of Judaism while all others failed to capture its adequately. The same is true of the literary approaches to the study of the Talmud and related rabbinic texts. As Elizabeth Shanks Alexander notes, "The different approaches are by no means mutually exclusive, and are often best employed in a complementary fashion. A scholar whose primary questions are historical, for example, would be ill-advised to neglect source

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[23] Schofer, Jonathan. *The Making of a Sage: The Rabbinic Ethics of Abot De Rabbi Natan,* Ph.D. Diss. (University of Chicago, 2000), 97. This sentence follows the statement that "the exegetical features of rabbinic traditions—particularly midrash—are based upon procedures of association that are far removed from any philosophical understanding of rationality." However, Schofer is not arguing here that the rabbis or rabbinic texts fail to demonstrate forms of rationality. His comment is limited to the rabbis' exegetical reasoning. This is important because, one might assume, this model of exegesis would predispose its adherents to create texts cognizant of such procedures of association, a point that would amplify the importance of literary context in considering the meaning of *sugyot* redacted by these adherents.

critical considerations. The newly emerging literary approach, then, adds to the scholar's arsenal of tools."[24]

Putting aside the obvious troubles of carving a monolith and naming it "rabbinic Judaism," it is clear that assimilating Judaism into contemporary philosophy leads to misconstruals of both. Lee Yearley considers the theoretical issues at stake in comparative work in his *Mencius and Aquinas: Theories of Virtue and Conceptions of Courage*.[25] Building off of what he describes as the "deceptively simple idea [that] the religious expressions of human beings are neither all the same nor are they all different," Yearley cautions against both homogenizing and Balkanizing the studies of various religions.[26] Yearley labels studies which engage in the former "univocal" and those which engage in the latter "equivocal."[27] Yearley writes,

> To my mind, neither the equivocal option nor the univocal option, used alone, provides a satisfactory base for comparative studies of virtue or probably for any illuminating cross-cultural studies. The former option, equivocity, makes such studies virtually impossible. Without some common reference, we cannot even know what to contrast much less compare.[28] The latter option, univocity, can help us clarify significant, common features, but it also produces a uniformity, often a deadening uniformity, that leaves little room for actual

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[24] Elizabeth Shanks Alexander, "Art, Argument, and Ambiguity in the Talmud: Conflicting Conceptions of the Evil Impulse in B. Sukkah 51b-52a" *Hebrew Union College Annual* 73 (2003).
[25] Lee Yearley considers the theoretical issues at stake in comparative work in his *Mencius and Aquinas: Theories of Virtue and Conceptions of Courage* (Albany: SUNY Press, 1990).
[26] Ibid, 1.
[27] Ibid., 188.
[28] Norbert Samuelson discusses Gersonides' critique, on similar grounds, of Maimonides' radical negation of any attribution to God. See below, note 194.

comparison and usually presents us with abstract, untextured ideas.[29]

It will not do, as Yearley's argument makes clear, to shy away from considering what contemporary philosophy and Jewish ethics have to learn from one another for fear of forcing one into the mold of the other. Rather, each development in philosophical thought, Western or other, may be seen as a new lens through which to view Jewish texts and traditions. Using a new lens reveals that which might have been hidden when using earlier lenses.[30] Just as importantly, comparing the various views also reveals flaws in the lens that might have remained hidden were "Jewish ethics" and "virtue ethics" remanded to separate disciplines.

In discussing Jewish virtue ethics, I mean to study the ways in which the study of virtue ethics and the study of Jewish texts may illuminate one

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[29] Yearley, *Mencius and Aquinas,* 188-189

[30] Deciding whether a given interpretation recognizes what has been overlooked in the text or is rather a misinterpretation creditable to theoretical commitments not intrinsic to the text or tradition will often be a challenge unanswerable by those engaged in the interpretation. Take, for example, Maimonides, according to whom much of the Torah legislation is intended as a refinement of pagan religion. David Novak writes, "Regarding institutions like the sacrificial system, whose reasons seem obscure, Maimonides resorts to a certain amount of historical speculation. He is convinced, for instance, that because of the Jewish people's long exposure to idolatrous practices with their emphasis on physical worship, the Torah could not have successfully commanded the Jews to adopt a purely spiritual form of worship, consisting solely in the adoration of the transcendent God. Essentially, the Torah had to make a kind of cultural compromise, keeping the form of worship to which the people were accustomed, but purging it of its idolatrous intentions" (David Novak, *First Things* 90 (February1999): 27-33). Maimonides' understanding is very appealing to those of us who have trouble squaring our sense of worship with animal sacrifice and the purity laws. His ruling that these remain in force of law is perhaps less appealing. But is he "correct" in his understanding of the rules or did his commitment to Greek thought and the preeminence of rational contemplation lead him to discount these very physical forms of worship?

another, the former by providing a vocabulary and set of concerns and the latter by providing a rich tradition of dialogue and practice embedded in texts which are concerned with shaping lives in a way very relevant to and perhaps corrective of the former.

In the most famous of the various stories concerning Moses' ascent to heaven at Sinai, he encounters God affixing crowns upon the Torah and asks "Sovereign, who is forcing you to such efforts (מעכב על ידך)[31]?" When God replies that R. Akiba will expound from each crown "piles and piles" of laws, Moses asks to witness this wonder. Unable to understand anything being taught, Moses grew faint, only to recover when R. Akiba cited "It was a law given to Moses at Sinai" (B. *Menahot* 29b).[32] This complex text then turns to issues of theodicy and divine fiat. It may be read within its *sugya* in B. *Menahot* as either a light-hearted take on—or dead seriousness[33] about—the *sugya*'s study of the laws concerning scrolls.[34] Taken as a self-contained

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[31] Perhaps a literal translation is better: "Sovereign of the World, who is restraining Your hand?" Rabbi Eric Yanoff suggested to me that this passage be read as humor, implying that God was running late in getting the Torah to 'press.' Rashi, without a hint of humor, implies something of the same. Interestingly, Job asks the same question of God, only rhetorically: "How can anyone restrain you." The Hebrew text is the same (B. *Baba Batra* 16a).

[32] Compare B. *Shabbat* 89a

[33] See, for example *Or Zaruah* (R. Yitzchak ben R. Moshe of Vienna, 1180-1250), vol. 1, sec. 1. The *Or Zaruah* writes of Akiba "You are fortunate, Akiba, that David wrote of you in his book" and then gives the present story as an example of Akiba's great fortune.

[34] This story immediately follows a narrative in which the response to a problematic scroll is "Go, fetch a child that is neither too clever nor too foolish." The scroll's usability is determined by the child's reading. This narrative is, however, not silly. Elsewhere I mention Saul Lieberman's contention that the Tanna should possess an excellent memory but not be too intelligent, so that he will have to repeat the Mishnah text verbatim and not attempt to make up his own text ("The Publication of the Mishnah," In *Hellenism in Jewish Palestine*

story, this text points to the way that the strictest adherents to tradition and text create worlds of meaning that expand far beyond their original sources. That is not to say that these latter-day interpreters have strayed away from the text. The narrative justifies the activities of later interpreters, while recognizing that their activities transform a text to the point that earlier generations, shaped by very different experiences of the world around them as well as of the text, may not recognize the relationship between the text and its present interpretation.

I share this story at the outset because this dissertation is concerned with the way a contemporary approach to ethics sheds light upon what rabbinic texts have to say about ethics and the importance of character. I recognize that such a study stands readily accused of importing foreign ethical concepts and categories and forcing the rabbinic texts to fit the shape implied by these materials. While I have been aware of this concern and have attempted to avoid misinterpreting the rabbinic texts because of my own affinity for virtue ethics, I cannot claim that my own theoretical biases have

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(New York: Jewish Theological Seminary Press, 1962), 83-99). Similarly, a young child who is neither so advanced as to know what the text should say nor so behind that he is unable to recognize letters is ideal for testing the scroll. I wonder if, at some point in the formation of this *sugya*, this text functioned to respond to a challenge that Moses wrote the Torah (or some of it) himself. Nor should such "deprecation" of the source of our Torah be seen as shocking: a similar deficit has been alleged of Mohammed by some Muslims as proof of the originality of the Koran. Understood this way, we misread God's refusal to answer Moses when asked why Akiba was not chosen to ascend Sinai as a declaration of Divine authority. Perhaps it should be read as a kindness, sparing Moshe the imprimatur of being one who "is neither too clever nor too foolish." As one who was asked to check a scroll as a child, I must confess a sensitivity to the issue.

not impacted the study. At the same time, I hope that it is recognized that no study could make such a claim.

Menachem Fisch describes his solution to a similar concern about his developing a (Karl) Popperian model of human rationality and then comparing it to rabbinic texts:

> Needless to say, the idea is not to *apply* the theory of rationality and progress developed in Part 1 to the Talmudic texts, but by building on existing exegetical and historical studies of these writings, to compare the two endeavors by allowing the Talmudic text, as it were, to speak for itself...There is no such thing as an innocent and truly impartial reading of any text, and I am well aware that my own philosophical convictions and religious commitment to Talmudic Judaism inevitably predispose me in ways I cannot fully control. Hard as I have tried to resist finding in the rabbis' writings what I expect of, even worse, would like to find, I will no doubt have inevitably done so in certain respects and to some degree. But the same applies to any such study.[35]

I follow Fisch both in attempting to minimize my imposition of meaning upon these texts and in recognizing that doing so completely is impossible. Additionally, in order to mitigate the impact of these concerns, I have attempted additionally to provide as much of any text being interpreted as space constraints permit and point out any conflicting interpretations that seem relevant to the topics considered.

As surprised as I was to discover similarities between my understanding of rabbinic ethics and the virtue ethics described by Hauerwas

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[35] Menachem Fisch, *Rational Rabbis,* xix.

and MacIntyre, I was even more surprised to discover that little had been written about virtue ethics in a rabbinic context. Indeed, S. Daniel Breslauer's comprehensive compilation, *Contemporary Jewish Ethics: A Bibliographical Survey*, includes no references to "character" and only one under "virtue."[36] The introductory essay notes several works that look for "a central virtue that is the foundation for all Jewish ethics."[37]

However, these studies are not concerned with an ethics of virtue, but of a ground for Jewish ethics in its relationship with Jewish law. Of the studies mentioned, the only scholarly work related to virtue ethics and Judaism is an essay by Ronald Green in the first issue of the *Journal of Religious Ethics* in 1973. Green discussed the virtues found in the Talmud, which provided a good entry into discussions of rabbinic virtue, but made no claims that the rabbis engaged in virtue *ethics*, meaning reflective reasoning about virtue and character.[38]

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[36] S. Daniel Breslauer and G.E. Gorman, Advisory Editor. *Contemporary Jewish Ethics: A Bibliographical Survey* (Westport, CT: Greenwood Press, 1985). The entry, "The Virtue of Obedience," points to the chapter of that name in Bernard Jacob Agus's, *The Vision and The Way* (New York: Frederick Ungar Publishing Company, 1966), in which the author considers the benefits of obedience in relationship to the ethical questions raised by autonomy, heteronomy, and 'theonomy.'

[37] Breslauer, *Contemporary Jewish Ethics*, 7.

[38] Ronald Green, "Jewish Ethics and the Virtue of Humility," *Journal of Religious Ethics* 1/1 (1973): 53-63. Green noted the variety of virtues esteemed by the rabbis, further arguing that their description of the virtue of humility was a better ground for Rawlsian ethics than any other he had seen, including those suggested by Rawls himself in *A Theory of Justice* (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 1971). This last point is disputed by Daniel Nelson, who criticizes to the earlier paper for suggesting the translatability of a religiously significant virtue into abstract philosophical terms ("The Virtue of Humility in Judaism: A Critique of the Rationalist Hermeneutic" *Journal of Religious Ethics*

In addition to Green's essay, the work of Walter Wurzberger, who sadly passed away while I was working on the present study, is relevant to the study of Jewish virtue ethics.[39] Wurzberger's work demonstrated the presence of virtue ethics in Judaism, but only in Judaism as it developed following its synthesis with Aristotelian philosophy in the 12th century by Moses Maimonides. Within the academy, the voice of rabbinic virtue ethics remained silent. During the time spent writing and revising this dissertation, Jewish virtue ethics has begun to experience the groundswell of support earlier experienced by Christian and philosophical virtue ethics. In addition to the present author's work, two names deserve special mention for helping to establish the field. These are Jonathan Schofer, whose dissertation develops character ethics in ARN, and Hava Tirosh-Samuelson, who recently

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13/2 (1985):298-311. At root is the problem of transferability of virtues that I address in a later section of this dissertation. In the same issue as Green's article, Frederick S. Carney recognized that religious ethics demanded both virtue and obligation ethics for an adequate expression ("The Virtue-Obligation Controversy" *Journal of Religious Ethics* 1/1 (1973):5-20. While not conceived in this way, it would not be inaccurate to see my work as a continuation of the projects established by these two authors.

[39] Walter Wurzberger, *Ethics of Responsibility* (Philadelphia: Jewish Publication Society, 1994). Wurzberger understands virtue ethics to develop in Judaism through the efforts of Moses Maimonides, the great philosopher and legal codifier, who was an inventive Aristotelian. See also Yitzchak Blau's review of *Ethics of Responsibility*, "Implications of a Jewish Virtue Ethic" *The Torah u-Madda Journal* 9 (2000): 19-41. Both, in discussing virtue ethics, seem to me overly concerned with distinguishing an *imitatio dei* of action from that of attribute, considering only the later a form of virtue ethics. Contemporary proponents of virtue ethics do not necessarily focus on "virtues" or anything that might implicate reliance on a (faulty) faculty psychology of will. During the past three years, Jewish virtue ethics has made some headway and should be the subject of a panel at the next meeting of the American Academy of Religion, in 2003.

completed a study of various accounts of flourishing in premodern Judaism.[40]

The present work extends this conversation by examining the way the rabbis

reflect on matters relevant to virtue ethics and incorporate these concerns into

the way they structure legal and narrative texts.

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[40] Jonathan Schofer's dissertation, *The Making of a Sage: The Rabbinic Ethics of Abot De Rabbi Natan* (Ph.D. Diss., University of Chicago, 2000), is cited in the present volume. Hava Tirosh-Samuelson, who included the present author on the first panel on Jewish virtue ethics at a major academic conference also includes the present work in a separate bibliographical review (*Happiness in Premodern Judaism: Virtue, Knowledge, and Well-Being* (Cincinnati: Hebrew Union College Press, 2003)).

Chapter 1: Virtue Ethics Reconsidered

In order to study the relevance of virtue ethics and rabbinic ethics to each other, we must consider how each is understood within its respective field. I begin by introducing the wide-ranging field of contemporary virtue ethics, which traces its ancestry to Aristotelian ethics, its origins to the publication of G.E.M. Anscombe's "Modern Moral Philosophy,"[41] and its burgeoning as a field to the publication of Alasdair MacIntyre's *After Virtue*[42] and similar works. It is not my intention to give theoretical precedence to virtue ethics and to then apply its insights to the study of rabbinic ethics. Doing so presupposes that the material of rabbinic ethics must be fit into prefabricated categories. Rather, I attempt to delineate the field of virtue ethics so that we have before us something to which rabbinic ethics may be brought into dialogue. In the first section of this dissertation, before I begin consideration of rabbinic ethics in its own right, I introduce some rabbinic texts that illuminate the aspect of virtue ethics under consideration. The work of demonstrating rabbinic reasoning about issues central to virtue ethics will follow.

The diversity present among proponents of virtue ethics makes it of little use to describe "camps" within the contemporary conversation: One critic

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[41] G.E.M. Anscombe, "Modern Moral Philosophy," *Philosophy* 33 (1958): 1-19, reprinted in *Virtue Ethics*, eds. Roger Crisp and Michael Slote (Oxford: Oxford University Press, 1997), pp. 26-44.
[42] Alasdair MacIntyre, *After Virtue* (Notre Dame, IN: University of Notre Dame Press, 1984).

wrote that she felt, after surveying the field, that "here, more than anywhere else, anything goes."[43] However, there is sufficient overlap between its various advocates to allow virtue ethics to cohere as a describable field of ethical inquiry. I will present some of the ongoing discussions in order to introduce the reader to the field. Some of these shared features will be addressed by comparison to a focused précis of Aristotelian ethics. The approach to virtue ethics I develop in this dissertation, which may be termed an "open" virtue ethic, makes room for other approaches to ethical reasoning.

What is virtue or character ethics? A brief answer was given in the introduction, that virtue ethics is an approach to ethics (or ethical theory) that considers primary the moral nature of a person rather than the moral status of a given action. Virtue ethics is concerned with the ethical life, rather than the ethical event. In its evaluative mode, rather than abstract analyses of specific actions or cases to determine which are right/good or wrong/bad, it is most concerned with understanding what makes a given person virtuous or vicious and how these characteristics are developed, in order to provide proper models for imitation. This, in turn, is a step toward developing oneself and

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[43] Sarah Conly, "Flourishing and the Failure of the Ethics of Virtue," *Midwest Studies in Philosophy* XIII, eds. P. French, T. Uehling, jr., and H. Wettstein (Notre Dame, IN: University of Notre Dame Press, 1988, 83-96), 84. This volume will be cited as *Midwest XIII.*

becoming virtuous, whether this is understood as reaching a goal of self-perfection or as undertaking a journey of continual self-improvement.[44]

One concerned with virtue need not on the basis of this definition, indeed I would argue should not, be either entirely inwardly directed that one becomes a moral narcissist or so concerned with "character" that individual actions count for nothing. On the first point, Hillel, whose many statements in the Mishnaic text *Pirkei Avot* (*Ethics of the Fathers*) are concerned with character, "used to say: If I am not for myself, who is for me, but if I am for my own self [only] what am I?" (*Pirkei Avot* 1:14). As for the second point, Roger Crisp notes that "Shifting the focus of debate to lives will not of course prevent discussions of actions, because, after all, lives contain actions."[45]

Aristotle's discussion in the *Nicomachean Ethics* understood virtue to comprise deliberation and practical reasoning.[46] Furthermore, he notes that

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[44] The topic of "perfectionism," where an individual is overly focused on self-perfection outside a communal context or is concerned with engaging only in unimpeachable activity rather than with responding to the immediate needs of those around him, is described as a an error corrected by an appropriately developed virtue ethics by James F. Keenan, S.J., "'Whose Perfection Is It Anyway?': A Virtuous Consideration of Enhancement," *Christian Bioethics* 5.2 (1999): 104-20. He notes, as a distinction between classical virtue ethics (i.e. that of Plato and Aristotle) and contemporary VE, that "Even though these classical virtues singularly promoted the preeminence of justice as the virtue by which all person were to have due regard of all living beings, still the very exercise of virtue was to perfect an individual's powers... Recent endeavors in virtue ethics have begun to see virtue perfecting not individual powers but rather the ways that we are related."

[45] Roger Crisp, "Modern Moral Philosophy and the Virtues," in *How Should One Live*, 6.

[46] Aristotle, *The Nicomachean Ethics*, trans. W.D. Ross, rev. by J.O. Urmson, in *The Complete Works of Aristotle*, vol. 2, ed. Jonathan Barnes (Princeton: Princeton UP, 1984), pp. 1729-1867)), used throughout this work unless otherwise noted. This text will be referred to as *NE*. Citations of Aristotle will be given in the text, according to the so-called Bekker numbers, except where whole chapters are discussed. Similarly, references to Plato will use the Stephanus numbers. Aristotle's focus on virtue as comprising deliberation and practical

the virtues are developed through activity and that people who just read

philosophy are like those who listen to the doctor's advice without actually

following through on it (e.g. *NE* 1103^{a}31, 1103^{b}6, 1103^{b}20, 1105^{b}12-18).

Henry Sidgwick recognized that the classical understanding of virtue was

dependent upon its being perceived as expressed in the "transient

phenomena" of "voluntary action."[47]

All judgments about character should be directed toward self-

improvement (or, more rarely, to helping another engage in the same

process). One sage emphasized the importance of putting one's own affairs

in order before presuming to judge others by interpreting Zephaniah 1:2 as

"Trim yourself and [only then] trim others" (B. *Baba Batra* 60b). Similarly,

"Our Rabbis taught: He who judges his neighbour in the scale of merit [הדן

חבירו לכף זכות] is himself judged favourably" (B. *Shabbat* 127b). The Talmud

illustrates this with three narrative illustrations of extreme examples of this

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reasoning is found especially in Book III, chap. 3. According to Aristotle, deliberation is about how to achieve a goal or end, not about what the goal should be. See *NE* 1112b15-31. This is where virtue ethics has need of principles and the like in applied (e.g. biomedical) ethics. The goal of acting properly is a given to anyone considering biomedical ethics; deliberation focuses on the means to accomplish that goal. Continuing the example of biomedical ethics, in a pluralistic society where "health care providers" and "patient-customers" have different, though often overlapping moral world views, deliberation is necessarily dependent on conversation. The use of principles and rules as starting points for framing ethical deliberation and discussion takes nothing away from the broader moral picture that virtue ethics provides. That these principles or rules lack the thickness that shared deep values can provide to virtues just demonstrates that liberal society calls for a different set of virtues than does, for example, an isolated religious community.

[47] Henry Sidgwick, *The Methods of Ethics,* 7th ed., (Chicago: U. Chicago Press, 1907), 223. Of course, Sidgwick rejects this classical understanding on the following pages and makes it abundantly clear that he is not a virtue ethicist.

principle in action. This rule does not apply to ethical tests of actions or situations, where primary concern should be paid to eliminating injustice and suffering.

From the definition of virtue ethics above, one can learn two facts about virtue ethics. One is that it moves the focus from the ethical event and centers it upon the person or persons involved. In medicine, for example, this would be equivalent to focusing on the person who is a patient as opposed to on the disease. The second detail one notices is that contemporary virtue ethics is opposed, by definition, to something else. What is it that virtue ethics opposes or attempts to correct?

The answer is that, despite the wide-ranging nature of contemporary virtue ethics, almost all proponents of virtue ethics, in understanding character and virtue to be an independent and basic component of morality, find themselves at odds with their understanding of deontological approaches to ethics, such as those of Immanuel Kant (b. 1724) and his followers. In what follows, I describe these approaches from the standpoint of their critics within the field of virtue ethics. It is not intended that these descriptions will capture the nuanced approaches that characterize proponents of deontology or utilitarianism. Rather, by exploring how virtue ethicists characterize their opponents, I hope to further illuminate the field of virtue ethics itself.

As virtue ethicists understand deontological ethics, it focuses exclusively or primarily on what actions are "right" and obligatory or "wrong"

and prohibited. Virtue ethics also critiques consequentialist approaches to ethics, such as the utilitarianism of Jeremy Bentham (b. 1748), John Stuart Mill (b. 1806), and Henry Sidgwick (b. 1838), that focus on what goods are desired and which actions should be taken or avoided in order to maximize those goods. Deontology and utilitarianism may be referred to jointly as "ethics of actions."

Virtue ethics, along with narrative and feminist ethics, criticizes these "ethics of actions" for their perceived reliance on abstract cases and abstract agents. Both deontological and utilitarian ethics are essentially procedural – one even uses the term "utilitarian calculus." That is, they claim that anyone given the right formulas and a minimum of intelligence will come upon the right solution to any ethical questions they encounter. Furthermore, they claim that the essence of ethical reasoning is to strip the "case" of all particulars so that any person can be substituted for any other in the case and still "yield" the same result. This substitutability is expected on two different levels: on the level of the ethical actor or "agent" and on the level of the persons acted upon. For both utilitarian and deontological approaches to ethics, ethical questions are expressible as 'Should X do A to Y?' Furthermore, the answer must remain the same as 'should Y do A to X?' Virtue ethics, by contrast, focuses on the person and considers of utmost importance all of those personal details that the ethics of actions strip away.

Martha Nussbaum, for example, argues for the use of narrative in ethics because abstract philosophy and abstract philosophical style misses what is crucial to morality: the thick, highly described content of the moral situation. For this reason, she appeals to literature, especially the descriptively rich novels of Henry James, suggesting that "the novel can be a paradigm of moral activity."[48] Nussbaum suggests that philosophical argumentation implies by its very form that only the universal is important. However, the opposite is true of morality which is therefore more adequately described within a novel that draws the reader into the deep factual level of highly concretized situations.

As a paradigm, the novel (or other morally focused narrative literature) provides moral examples, functions as a teaching text, and demonstrates correct or problematic responses to particular, concrete, ethically charged situations in which the reader might find him or herself. Perhaps more importantly, the novel teaches the reader the importance of the particular to the act of choosing one's actions or defining one's life. As Hilde Lindemann Nelson notes, this narrative approach to ethics expands the range of moral thought, rather than quickly leading to settled solutions to our moral quandaries. She writes "*my* fine-grained Nussbaumian perception may show me a person who courageously seeks to end her life with dignity, while *your*

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[48] Martha Nussbaum, *Love's Knowledge* (New York: Oxford University Press, 1990), 148.

fine-grained perception shows you that same person engaged in a selfish act of cowardly escape."[49] Out of such conflict, comes even greater attention to the details of our moral lives.

While many proponents of virtue ethics would accept at least some of the implications of Nussbaum's claim that "our whole moral task [is] to make a fine artistic creation," Nussbaum goes too far in asserting that the novelist, as novelist, accomplishes this moral task most adequately.[50] Leaving aside the likelihood of a disconnection between the moral world inhabited by the novelist and that of his or her creation, the novelist is necessarily a poor substitute for the moral actor who in fact acts exactly as principles and particulars demand. The novelist's creation contains within it myriad subtleties and complexities which, however, are nonetheless relatively simplistic before the infinite complexities of real life. It is important, especially within a theory of the particular, not to esteem too highly that which abstracts, even in the interest of the particular, from the realities of the world. Narratives richness is an important correction to eviscerated ethical cases, but not a substitute for reality.

Kantian and Utilitarian approaches to ethics strike proponents of virtue ethics as being overly concerned with application of rules and overly abstract

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[49] Hilde Lindemann Nelson, "Introduction: How to Do Things with Stories" in *Stories and Their Limits: Narrative Approaches to Bioethics,* ed. H.L. Nelson (New York and London: Routledge, 1997), xiii.
[50] *Op. cit.,* 163.

in their reasoning about ethics. This criticism was made sharply by Michael Stocker in an article entitled "The Schizophrenia of Modern Ethical Theory." In his article, Stocker challenged the morality of acting "for the sake of duty" and gave as an example someone who visited a sick friend only out of that sense of obligation and without any sympathetic feeling.[51] A similar charge would be lodged against one who visited her sick friend "to maximize the world's utility." Virtue ethics aims to avoid these problems by integrating ethics into the fabric of one's life and character.[52]

It has been alleged that virtue ethics cannot do the "real work" of ethics, namely solving "difficult cases." The account of virtue ethics that I have developed here and that I find most prevalent in rabbinic sources assumes just the opposite, that the "real work" of ethics is developing one's character and directing one's life to what is most holy.

According to certain accounts of virtue ethics, the virtuous never confront dilemmas, because their being virtuous is consonant with their seeing any given situation in all its particulars and recognizing, as a matter of second nature, what is most fitting for those particulars. However, according to the account I describe, as well as any virtue ethics that is valuable to those who have not yet achieved highest virtue, dilemmas remain possible. Solving

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[51] Michael Stocker, "The Schizophrenia of Modern Ethical Theory" *Journal of Philosophy* 73 (1976): 453-6.
[52] It makes no sense, as will be understood from the discussion below, to suggest that one visit one's friend in order to develop a virtue, for example of compassion.

difficult ethical problems, though only a part of one's ethical life, remains an important task. That it does not eliminate dilemmas is not a criticism unique to virtue ethics, although it bears the brunt of such charges. Despite numerous attempts to develop moral sciences or mathematics, no ethical system in fact resolves all ethical dilemmas – at most an ethics may provide tools that aid one to resolve such dilemmas as arise.

What this account of virtue ethics suggests is that by developing virtue through study and practice, one sharpens one's ethical perception and develops one's ability to attend to the situation in all its relevant concreteness, a requisite condition for a good decision. While virtue ethics is capable of being "applied" and provides insight when discussing ethical cases, it eschews the provision of simple answers to complex problems and the inappropriate abstraction these often require.[53]

Most accounts of virtue ethics describe the virtuous as one who almost seamlessly acts without requiring the deliberation and debate expected by other accounts of ethics. When applied, however, virtue ethics adds to act evaluation the question of whether a given action is "in character" or rather, whether it is compatible with, or demanded by, the virtuous character one

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[53] For examples of applied virtue ethics, see below and Philippa Foot, "Euthanasia" *Philosophy and Public Affairs* 6/2 (1977):85-112; Rosalind Hursthouse, "Virtue Theory and Abortion," *Philosophy and Public Affairs* 20 (1991): 223-46, "Applying Virtue Ethics" in *Virtues and Reasons*, ed. Rosalind Hursthouse, Gavin Lawrence, and Warren Quinn (New York: Oxford UP, 1995), pp. 57-75, and *On Virtue Ethics* (New York: Oxford UP, 1999); as well as James F. Keenan, S.J., "'Whose Perfection Is It Anyway?': A Virtuous Consideration of Enhancement," *Christian Bioethics* 5.2 (1999): 104-20.

claims or hopes to be.[54] In order to answer this question, one must have developed or begin to answer the broader question virtue ethics asks.

Virtue ethics rejects the claim it understands to be made by deontologists and utilitarians, that the move to abstraction in ethical thought and training is an advance. Rather, while abstraction has it purpose, one must be prepared to confront ethical reality in all its concreteness along with the messiness of emotions, the distance between knowledge and action, and the social and personal narratives that shape and give meaning to our lives. As will be seen in subsequent chapters, this concern for balancing general or universal ethical truths with the challenges of concrete reality is shared by Aristotle, Aristotelians, and the rabbis of the Talmud.

Another way of distinguishing Deontological, Utilitarian, and Virtue approaches to ethics is to look at the questions they typically ask. Deontological approaches to ethics ask the question "What is the right thing to do?" or "What does duty require here?" Utilitarian approaches ask "What is the best outcome?" or "What will generate the greatest good for the most people?" Virtue ethics asks "How should I live?" or, more verbosely, "What is the ideal way to live, given my social and historical context?"

Lee Yearley explains that for virtue ethics "…the crucial predicate we use in evaluating actions (except those in the realm of injunctions) is whether

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[54] See on this point Lee H. Yearley, *Mencius and Aquinas*, esp. 12-17.

they are 'in or out of character.' The good equals what a person does who possesses the appropriate character traits and the bad what a person does who lacks them (*sic*). Good and bad are defined in terms of what is and is not compatible with a certain kind of life."[55] It is important to recognize that, as Yearley parenthetically notes, such a definition of good and bad partially is compatible with accepting moral injunctions or rules. Additionally, this "compatibility criterion" for evaluating acts does not eliminate the possibility of absolute prohibitions or required actions. Just as refusing food and drinking poison are incompatible with the physical flourishing of a person, certain omissions and actions are incompatible with her "flourishing" as well.

Gary Watson distinguishes between these three approaches to ethics with the terms: "Ethics of Virtue," "Ethics of Outcome," and "Ethics of Requirement."[56] None of these describes a specific method of "doing ethics," but rather each is a family of overlapping ways of understanding the nature of morality. For example, one can readily find a utilitarian approach to ethics, such as that of Sidgwick, that considers virtues and the like important to the ethical project and which assumes that the greatest good is achieved by developing people's moral qualities. Likewise, one could describe a character utilitarianism, in which what counts as virtues are those qualities that

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[55] Lee H. Yearley, *Mencius and Aquinas*, 14.
[56] Gary Watson, "On the Primacy of Character" in *Virtue Ethics,* ed. Daniel Statman (Washington, D.C., Georgetown UP, 1997).

contribute to the greatest good. The major difference at the margins between the families will be in the way they approach the ethical project. For character utilitarianism, the basic question is still how to maximize "the good" on a societal scale. For virtue ethics, the question will be more localized and particular, asking how each person should live and how each may best develop his or her character.

Anscombe's Article and Its Impact

In order to provide a fuller account of contemporary virtue ethics, it is necessary to review some of the history of its revival, and to consider in brief several of the classical sources from which it draws its texts, as well as its inspiration. This will also help to distinguish virtue ethics from other approaches to ethics. This revival began with an article by Elizabeth Anscombe, "Modern Moral Philosophy," first published in 1958 in the journal *Philosophy*.[57] In it, she critiqued Kantian and Utilitarian ethical thought and paved the way for the revival of virtue ethics in its contemporary form.

While some proponents of virtue ethics, notably Alasdair MacIntyre and Stanley Hauerwas, see it as a response to the general failings of the

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[57] G.E.M. Anscombe, "Modern Moral Philosophy," *Philosophy* 33 (1958): 1-19, reprinted in *Virtue Ethics*, eds. Roger Crisp and Michael Slote (Oxford: Oxford University Press, 1997), pp. 26-44.

Enlightenment,[58] most understand virtue ethics to be an alternative to the prevailing approaches to normative ethics which are in one way or another either dependent upon the ethical writings of Kant or upon the works of the Utilitarians. Both of these movements began during the eighteenth century, the first in Germany, the latter in England. Both Kantian ethics and Utilitarianism have faced considerable criticism and subsequent refinement during the period that followed their initial appearance but they have remained dominant, either singly as competitors or in odd amalgamations, as methods of normative ethics since their first appearance. Many trace the development of contemporary virtue ethics to Anscombe's article and her critique of these approaches to ethics.[59]

In her essay, which is equally acerbic and insightful, Anscombe notes a sharp contrast between contemporary moral discourse and that of Aristotle and then proceeds to attack both Kantian and Utilitarian approaches to ethics. Roger Crisp and Michael Slote, in their introduction to *Virtue Ethics,* suggest that many of the lines pursued by Anscombe in her critique of Kantian and Utilitarian ethics are found in Arthur Schopenhauer's *On the Basis of Morality*

[58] See response to this anti-Enlightenment stance by Robert Wokler ("Projecting the Enlightenment," pp. 108-126) and Philip Pettit ("Liberal/Communitarian: MacIntyre's Mesmeric Dichotomy," pp. 176-204) in *After MacIntyre: Critical Perspectives on the Work of Alasdair MacIntyre,* eds. John Horton and Susan Mendus (Notre Dame, IN: University of Notre Dame Press, 1994).
[59] Charles T. Mathewes, "Agency, Nature, Transcendence, and Moralism: A Review of Recent Work in Moral Psychology" *Journal of Religious Ethics* 28 (2000):297-328. Mathewes describes Anscombe's essay as the DNA of MacIntyre's *After Virtue* (p. 298).

(1841).[60] However, Anscombe is actually both broader in the range of her criticisms and more specific in her critiques of ethical thinkers.

Anscombe dismisses Joseph Butler in one sentence, David Hume in three, and Kant in four. Her attack on consequentialists, by which term she denotes all of English moral philosophy from Sidgwick up to herself and which she describes as a more flawed form of utilitarianism, is the most scathing, since she understands the consequentialists to have created a system of philosophy according to which it is impossible to refute the statement "it is the right thing in this case to do injustice."

Anscombe, a Catholic,[61] finds fault in these approaches to ethics for their reliance on the concept of obligation or duty, terms she considers nonsensical once divorced from the religious ground upon which they grew. Anscombe's contention, pursued through an analysis of the terminology employed in ethical argumentation, is that the concept of ethical obligation is essentially a legal one and, as such, requires recourse to a lawgiver.[62] As Anscombe notes, this requirement is not a problem for systems of religious ethics on the Christian, Jewish, or Stoic models which maintain an allegiance to a Divine lawgiver.

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[60] Roger Crisp and Michael Slote, "Introduction" in *Virtue Ethics*, 2.

[61] John Haldane notes that the participation of Catholic thinkers in the rise of virtue ethics is profound, which perhaps may be attributed to the centrality of Thomas Aquinas in Catholic moral theology, as well as in the history of virtue ethics ("MacIntyre's Thomist Revival: What Next?" in *After MacIntyre*, pp. 91-107).

[62] Anscombe attributes this insight to the philosophical arguments that should have supported Hume's discovery of a division between is and ought language.

Likewise immune from this challenge are the classical ethical systems that were built upon identification of a human purpose or nature rather than a sense of legal obligation. So, for example, Aristotle's conception of human nature as implying a *telos,* or goal, and his development from that of a system of ethics may be problematic for other reasons, but not because it erroneously depends on a conception of law in the absence of a source for that law. The impact of her argument is to undercut the philosophical approaches to ethics that rely upon obligation or duty after having rejected a belief in a Divine lawgiver to give force to the terms.

To the Kantian who suggests that Kant does appeal to a lawgiver, Anscombe replies that the idea of legislating for oneself is absurd and that "legislation requires superior power in the legislator."[63] It is far from obvious that Anscombe is correct on this point. However, democracy as such is not a rebuttal to Anscombe as the force of law comes from the people as a whole, whereas it applies to the people as individuals. The challenge, rather, comes from the model of covenant, where the superiority of the legislator is nonetheless dependent upon an initial acceptance of that authority by the ruled. If authority can be transferred in this way, then there is no reason a similar model could not apply to a transfer of authority from desire to reason. Any claims from charges of the impossibility of impartiality similarly apply to

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[63] Anscombe, ""Modern Moral Philosophy," in *Virtue Ethics,* eds. Crisp and Slote, 27.

the model of covenant. That authority is properly constituted does not mean that it will always be properly executed.

This last critique is extended by Anscombe to the majority of "Protestant ethics" for having rejected for all practical purposes the idea of a divinely given law that is actually meant to be followed, rather than failed. Excepting from the term "Protestant Ethics" everything that falls under "philosophical ethics," which admittedly is a large exception, this seems to me to be an error. To take the limiting case of radical situation ethics such as that grounded by the thought of Karl Barth (b. 1886), even where nothing of the ethical can be predetermined, there remains an obligation to be attentive to God's freedom in the moment and to obey God's command.

Anscombe does not spend much time on the question of what is meant by a "law conception of ethics."[64] One might mistakenly distinguish this term from systems of virtue ethics and conclude that if Judaism and Christianity have this type of ethics than they cannot also be concerned with virtue. Anscombe does not make this error, noting that what is required under such a conception of law may be conformity with virtue. The example of stoic ethics, in which there is such a "legal" requirement without the notion of a revealed positive law, gives force to this point.[65]

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[64] Ibid., 30.
[65] One may return the favor of Anscombe's critique of Kant to her, by noting that a law to be virtuous without specification is not much of a law in the traditional sense.

It should be noted that Anscombe's characterization of Jewish and Christian ethics as being examples of Divine Command Morality does not give sufficient recognition to the complexity of the Jewish and Christian ethical systems and the way they are intimately entwined with these two religions. It is not just an accident within the history of philosophy that leads Maimonides and then Aquinas to develop Jewish and Christian ethics along a virtue model.

While I will not make the case for Christianity here, I will argue later that, as important as the legal structure and its metaphors of obligation and duty are to Judaism and its conception of ethics, virtue forms a separable and equally important ground for Jewish ethics.[66] In addition to elaborating this point, I will also demonstrate the way in which Jewish virtue ethics both grows out of and returns to shape the *Halakhic* legal system. The rabbinic paradigm, already found in the Hebrew Scriptures, is a morality built upon the relationship between God the Creator and Commander, the person, and the community.[67] By way of illustration, Genesis 2:15-18 ties together the idea of

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[66] Joseph J. Kotva provides *The Christian Case for Virtue Ethics* (Washington, D.C.: Georgetown University Press, 1996).

[67] I do not intend for this text (Genesis 2:15-18) to serve as a proof-text for my understanding of rabbinic or Jewish virtue ethics. Rather, following a paradigm well established in rabbinic texts, I am drawing on a text that may be read as though it were a proof-text for what is clearly and unabashedly an idea received through a tradition separate from the specific text. See, for example, the discussion of Exodus 35:1-3, in B. *Shabbat* 70a and elsewhere: "'And Moses assembled all the congregation of the children of Israel, and said unto them, These are the words which the Lord hath commanded . . . Six days shall work be done.' 'words' [debarim], 'the words' [ha-debarim], 'these [eleh] are the words': this indicates the thirty-nine labours taught to Moses at Sinai." This text, which is cited as part of an argument over

man in ethical relationship with the world (natural purpose), with God (as

recipient of command as law), and in the context of community (flourishing):

> The Lord God took the man and placed him in the garden
> of Eden, to till it and tend it. And the Lord God
> commanded the man, saying, "Of every tree of the
> garden you are free to eat; but as for the tree of
> knowledge of good and bad, you must not eat of it; for as
> soon as you eat of it, you shall die." The Lord God said,
> "It is not good for man to be alone; I will make a fitting
> helper for him."[68]

Anscombe's article pointed the way to alternative approaches to ethics

that might supplant or supplement the dominant Kantian and Utilitarian

schools.[69] For our purposes, the most significant of these is the revival, with

modifications, of the classical ethics of virtue and the neo-Aristotelian

renaissance in ethical reflection.

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whether each act of engaging in these prohibited labors is a separately punishable offense, finds the 39 prohibited labors within the text by adding up the numerical value of "אלה," which is 36 and the fact that words implies at least two, with the article "ה" indicating one more than two, i.e. 3. The combination of adding up the letters numerical values in one word and using an entirely different device (the numerical value of the article "ה" is 5) for obtaining the additional three removes any possibility that this is intended as a proper "derivation." Nonetheless, the use of a text serves not to prove the idea, but to indicate that it is not the intention of the idea's proponent to maintain fidelity to the traditional interpretation of the biblical text. Similarly, citing Shakespeare as a flourish to an otherwise well supported argument indicates allegiance to some aspect of the accepted canon of English literature, without claiming that Shakespeare "proves" the topic under immediate discussion.

[68] *Tanakh: The Holy Scriptures – the New JPS Translation According to the Traditional Hebrew Text* (Philadelphia and Jerusalem: The Jewish Publication Society, 1985). All biblical citations, other than those within other citations, will be from this translation unless otherwise specified.

[69] Anscombe also suggests that the work of ethics must be tabled until such time as we have a more fully worked-out moral psychology as well as fuller descriptions of human action, human nature, and what is meant by a "virtue" than are provided by Plato or Aristotle. Although this stands as a critique of classical virtue ethics, it functions as a call for further philosophical and scientific work to elaborate a biological or psychological substrate for virtue theory and is not akin to the structural criticism she lodges at Kantian and utilitarian thought. R.B. Brandt attempts to provide a contemporary psychology of virtue, with notable differences from that suggested by Aristotle ("The Structure of Virtue" *Midwest XIII*, 64-82).

Aristotle and Classical Theories of Virtue:

Most contemporary virtue ethics looks to Aristotle, especially in the *Nicomachean Ethics*, for at least some of its ancestry. This is so much the case that a synonym for virtue ethics, no matter how inapposite at times, is neo-Aristotelian ethics. However, Aristotle's project of identifying the way one should live with a life of virtue is a further development of that same project in Socrates and Plato.[70] Plato's Socrates suggests that the type of life one should live is "a question which has the highest conceivable claims to the serious interest even of a person who has but little intelligence" (*Gorgias* 500^{c}2-4).[71] In the first book of Plato's *Republic*, Justice is defined as the "proper virtue of man" and the attempt is made to demonstrate that the best way to live is a life of justice (*Republic* 335^c).

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[70] The relationship between Aristotle's thought and that of Plato and whether / how that changed over time is a long-standing debate, especially since the publication of W.W. Jaeger's *Aristoteles: Grundlegung einer Geschichte seiner Entwicklung* (Berlin: Weidmann, 1923), *Aristotle*, 2nd English edition (Oxford: Oxford UP, 1948). Jaeger relies on internal documentary evidence to support his historical account. Marjorie Grene, *A Portrait of Aristotle* (Chicago: U. Chicago Press, 1963) provides a somewhat slanted review of the pros and cons of Jaeger's understanding of Aristotle as a perfect Platonist in his youth who gradually grew to reject several key doctrines he learned under Plato and his school. As noted below, MacIntyre dismisses Jaeger's account, arguing for an Aristotle "whose own fundamental project was to complete, and in so doing correct, Plato's project" (*Whose Justice, Which Rationality?* (Notre Dame, IN: University of Notre Dame Press, 1988), 86). See 94ff for his discussion of Jaeger. The rhetorical strength of this point is undercut when we realize that Kant (and most philosophers in the history of Western philosophy) sought to complete and thereby correct Plato's project. Of course, Socrates and Plato are not the first to use the term *"arête"* or excellence / virtue. However, with them begins the distinctive project of developing a non-skeptical study of ethics and placing arête within that system.
[71] Plato, *Gorgias*, in *Lysis; Symposium; Gorgias*, Trans. W.R.M. Lamb (Cambridge, MA: Harvard UP, 1925), 445.

It is worth asking why proponents of virtue ethics tend not to look at Plato and Socrates as sources for their development of contemporary virtue ethics. In the absence of specific accounts for authors' own preference for Aristotle, these speculations are of course tentative but work, minimally, to illustrate some aspects of contemporary virtue ethics. Of course, there may be historical or personal reasons that lie outside the philosophical realm that influence this sort of preference. M. Merleau-Ponty astutely notes that "It is true, as Marx says, that history does not walk on its head, but it is also true that it does not think with its feet."[72] We are justified, I think, in attempting to determine a philosophical reason for this choice even in the presence of known historical factors and, all the more so, in their absence.

In attempting to answer the question of virtue ethics' preference for Aristotle, one should be aware of the debate about whether there is a sharp distinction between Plato and Socrates on the one hand and Aristotle on the other. MacIntyre, importantly, suggests that the differences between these two sides have been overstated and that Aristotle extends and corrects the Platonic account of tradition and virtue rather than providing an unrelated alternative.[73] Nonetheless, some differences emerge that are important for characterizing contemporary virtue ethics: Socrates famously identified virtue

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[72] M. Merleau-Ponty, *Phenomenology of Perception,* Trans. Colin Smith (London: Routledge and Kegan Paul, 1962), xviii-xix.
[73] Alasdair MacIntyre, *Whose Justice, Which Rationality?,* 86ff. See note 38, above.

with knowledge and improper behavior with ignorance. Aristotle, for example, discusses what he took to be the Socratic understanding of this point in the *Eudemian Ethics* (1216b2ff). However, we are reminded of the second-hand nature of our knowledge of Socrates' own philosophical leanings when we compare Aristotle's account with Plato's *Meno*, where Plato has Socrates ask whether the identification of virtue with knowledge is erroneous, since history shows that virtue cannot be taught (*Meno* 89^c). More specifically, the challenge raised is whether history shows that virtuous parents have virtuous children, which one would expect, it is claimed, if virtue is knowledge.

I would suggest that this challenge as stated unfairly presumes its conclusion. This is the case because the model of knowledge suggested in the discussion in the *Meno* is craft knowledge but the question Socrates asks is predicated on knowledge of virtue functioning in the same manner as factual knowledge. Alternatively, it assumes a relationship between parent and child that could only have occurred to someone thinking in terms of the Forms and who allows, therefore, for the perfect transfer of knowledge. Whatever the merits of Socrates' argument in the *Meno,* Aristotle's theory of habituation seems to be a response.

As will be considered in the chapters on rabbinic virtue ethics, the question raised in *Meno* is also considered in the Talmud, which is itself, after all, both a record and method of transmitting religious-ethical knowledge, as well as a response to the problematics of tradition. While Aristotle perhaps is

not completely free of considering vice a function of error, several features of his account of ethics remain more amenable than that of Plato to contemporary virtue ethics.[74] These will be discussed below.

The association of Plato's world of Forms with the idealism running through modern philosophy from Descartes on perhaps pushes proponents of virtue ethics to look elsewhere. That virtue ethics focuses its criticism mostly on Kantianism, rather than on the equally act-centered utilitarianism, strengthens this argument, especially as Kant understood his idealism to be a development of platonic thought.[75] In any case, Plato's preferring of Forms as the truly real in contrast with the continuously changing and therefore deficient physical world and his use of these transcendent Ideas as a starting point for all thought about the world of experience are very much at odds with virtue ethics' attempts to avoid or minimize the role of top-down theory in ethics and to place emphasis on the lived narratives of people's lives.

T.H. Irwin argues that a proper understanding of how Aristotle's ethics hangs together as a system requires recourse to his discussion of the soul in *De anima.* This, he suggests, is dependent upon Aristotle's understanding of

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[74] G.E.M. Anscombe, "Thought and Action in Aristotle," from *New Essays on Plato and Aristotle,* 1965, reprinted in *Aristotle's Ethics,* eds. J.J. Walsh and H.L. Shapiro (Belmont: Wadsworth, 1967), 66. That Aristotle might have actually considered vice to be fundamentally a question of error due to lack of knowledge is considered and rejected quite effectively by Amélie Rorty "*Akrasia* and Pleasure: *Nicomachean Ethics* Book 7" in *Essays on Aristotle's Ethics,* ed. Amélie Rorty (Berkeley and Los Angeles: University of California Press, 1980), 267-284.

[75] Immanuel Kant, *Kritik der reinen Vernunft* (1781 (A) and revised (1787 (B)) / *Critique of Pure Reason*, A314ff B370ff).

the stuff of metaphysics, namely substance, form, and matter.[76] However, Aristotle worked top-down in his metaphysics alone, while working from the ground upward in both his biological work and his ethics. Aristotle recognized in these latter the importance of the individual as a starting point for reflection about a universal which was nothing more than the totality of individuals. J. L. Austin is remembered to have declared once that "one of the most refreshing features of Aristotle's ethics is its almost total lack of connection with his metaphysics."[77] The impact of Aristotle on contemporary virtue ethics is largely a function of the latter viewing Aristotle along the lines suggested by Austin.

Virtue ethics' understanding of ethics as intimately connected with lived experience makes problematic a Platonic ethic that is built upon a diminution of the changing world in favor of the eternal Forms. The difference between Plato and Aristotle on this point is illustrated in their differing understanding of the virtues. For Plato the virtues are eternal norms applicable to all beings and perceived to a greater or lesser extent by divine and human beings. See, for example, *Phaedrus* 247d, where he speaks of "absolute justice" (trans. H. N. Fowler) or "justice itself" (trans. M. Nussbaum).[78] Similarly, the Platonic

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[76] T.H. Irwin, "The Metaphysical and Psychological Basis of Aristotle's Ethics," in *Essays on Aristotle's Ethics*, ed. Amélie Rorty, 35-54.

[77] *Aristotle*, ed. J.M.E. Moravcsik (Garden City, NY: Anchor Books, 1967), 10.

[78] *Plato in Twelve Volumes*, Vol. 1, trans. Harold North Fowler (Cambridge, MA: Harvard UP, 1966). Nussbaum's translation appears in *The Fragility of Goodness* (Cambridge: Cambridge UP, 1986), 17. Nussbaum suggests that this "Platonic" approach exists in

conception of the Forms and their relationship to the Good leads him to the possibility that the ideal human life would be one that every person would find wholly unappetizing. The good life is disconnected from the world of experience, since the ultimate Good is proper apprehension of the Good. Even MacIntyre admits that for Plato, justice requires a social structure (*polis*) such that "it is extremely improbable that anyone will be able to construct."[79] To cite just one selection from *The Republic*: Socrates, recognizing that his recommendations concerning the females among the Guardian class would be scorned by the population, requests of his audience "Only allow me to feed my fancy like the solitary in his walks, with a dream of what might be, and then I will return to the question of what can be" (*Republic,* book 5, 457-458).

Aristotle, on the other hand, demands that we "reject, *as false*, conceptions of the good human life that strike us (or a sufficient number of reflective people) as such as to make life not worth living."[80] For Aristotle, virtue is expressed in action, and "an act is good only when accompanied by joy in the good."[81] Aristotle similarly understands the virtues to apply only to those beings who both reason and are finite – they arise out of the particular

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contemporary ethics by two routes. One is the "scientific" study of ethics which predominated so much of modern ethical studies and the second is Augustinian ethics, where the radical fallibility and fallenness of humanity means that "digging more deeply into ourselves is not the right way to proceed in ethical inquiry. For the possibility must always be left open that everything we are and want and believe is totally in error" (*Fragility,* 19).

[79] Alasdair MacIntyre, *Whose Justice? Which Rationality?,* 70.

[80] Martha Nussbaum, *The Therapy of Desire: Theory and Practice in Hellenistic Ethics* (Princeton: Princeton University Press, 1994), 62. Emphasis in original.

[81] W.W. Jaeger, *Aristotle,* 394.

nature of human existence.[82] Aristotle's approach therefore is more readily imitated by those who see in ethics, properly conceived, not the application of abstractions or Forms, but the study and consideration of concrete experience in all its specificity.

The virtues are intrinsically tied to concrete human existence and, just as importantly, to human sociality.[83] Aristotle acknowledges that there are things more important than humanity, "For it would be strange to think that the art of politics, or practical wisdom, is the best knowledge, since man is not the best thing in the world." (NE 1141a21-3) He rejects, however, the suggestion that humans should live their lives with reference to what might be the good of such beings. This would not be an objection to revelation or prophecy as a source of instruction in virtuous conduct, only to accounts that suggest humans should live according to norms appropriate to the superhuman realm.

This discussion of the relative importance of Plato and Aristotle to virtue ethics is necessarily speculative and intended primarily to indicate

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[82] The exception to the distinction that Aristotle draws is that both humans and the gods engage in contemplation. However, for the gods it is the only possible activity, whereas for humans, it is their chance to be closest to divinity, by engaging in that god-like activity (NE 1178b8-23). Nancy Sherman notes that this possibility only exists within the context of a political life of virtue, but nonetheless points to humanity's ability to transcend, if only temporarily, the world of effects while still developing our character (The Fabric of Character: Aristotle's Theory of Virtue (Oxford: Clarendon Press, 1989), 94ff). As explained by Sherman, the best life for humans, situated as we are with needs, dependencies and the ability to aid others with needs and dependencies, is the virtuous life. But, the contemplative life, not contingent upon these needs, is in some ways better and, in any case, available as a reminder of humanity's ability of self-transcendence.

[83] For an examination of the importance of human sociality in Aristotle's ethics, see Nancy Sherman, The Fabric of Character, especially chap. 4.

some of the key theoretical commitments of contemporary virtue ethics. Since so much of virtue ethics is an extension or modification of Aristotle's approach to ethics, it is helpful to describe some of the major features of his approach insofar as they are relevant to virtue ethics. I also will describe some areas in which contemporary virtue ethics rejects Aristotle's claims or conclusions.

My purpose here is not to provide a proper introduction to Aristotle's ethics, which would require, minimally, a thorough examination of the *Eudemian Ethics*, the *Nicomachean Ethics,* and *Magna Moralia.* We would also be obligated to consider in detail Aristotle's *Politics*, as he introduces the *Nicomachean Ethics* by saying that the subject matter under consideration in the work is that of which politics is the science (*NE* 1094^{b}11-12, cf. 1094^{a}27, also *Magna Moralia* 1181^{a}24-^{b}28, *Eudemian Ethics,* 1218^{b}11-12). Rather, my intention here is to provide an overview of Aristotle's understanding of ethics that is most directly relevant to contemporary virtue ethics.

Aristotle's *Nicomachean Ethics* is generally considered the most mature version of his approach to ethics and the citations that follow in this section are all drawn from that work.[84] The sense of progress and tentativeness is itself characteristic of Aristotle's study of ethics. He is equally clear that he intends to provide an outline of the subject "of the good" and that

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[84] This is the scholarly consensus, allowing that some sections of the *Eudemian Ethics* may be later.

time is our partner in the study (*NE* 1098[a]20ff). Aristotle also makes the point, which is picked up by contemporary virtue ethics, that precision in study is a function of the subject matter and, like medicine, ethics is not something that can be laid out with complete clarity and precision (*NE* 1104[a]1ff). Nussbaum suggests that Aristotle's understanding of ethics is similar to his understanding of humor, in which the audience impacts upon performance. In all of these cases, rules for behavior can never get beyond the very general because the element of application is too important.[85]

Aristotle's begins the *Nicomachean Ethics* by establishing the subject under inquiry as the search for the "chief good," which is to say "the end of the things we do, which we desire for its own sake" (*NE* 1094[a]18-19). The ethics that he develops is tied to human desires and actions, as they really exist. Aristotle's ethics is designed as a refinement and not a replacement for the way people live.[86] Aristotle also intends to consider and refine

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[85] Martha Nussbaum, *Therapy,* 67.

[86] The notion that 'experts' can only refine accepted modes of behavior is widely supported in rabbinic thought. Within the legal system, a rule follows from this understanding: The rule is described in the Bavli as "We [the rabbinic authorities] make no decree unless the majority can abide by it" is discussed in the context of overturning legislation that failed to pass that test: "R. Mesharsheya said: 'The reason [that there are eighteen prohibitions that cannot be overturned by a court superior to that of Shammai and Hillel] is because their prohibition has spread among the large majority of Israelites.' But [the case under discussion,] the prohibition concerning oil, did not so spread; ...they accordingly relied upon the dictum of Rabban Simeon b. Gamaliel and R. Eliezer b. Zadok who declared: 'We make no decree upon the community unless the majority are able to abide by it [יכולין לעמוד בה]" (B. *Avodah Zarah* 36a). The parallel text in the *Yerushalmi*, also citing R. Eliezer b. Zadok, declares that "any new rule [גזירה] declared by a *bet din* but not accepted by the majority upon themselves is not a rule" (P. *Avodah Zarah* 2:9/41d). Admittedly, this rule is established in the context of prohibitions on consumption and use, but it is understood to extend beyond this arena. In his

commonly accepted notions about ethics in developing his approach. He writes "it is not probable that...these should be entirely mistaken, but rather that they should be right in at least some one respect or even in most respects" (*NE* 1098^{b}28-29). Since Aristotle is working to analyze experience and correct opinion, he accepts that "every man has some contribution to make to the truth," although learning this truth may require "conversion" to a proper frame of mind in considering the subject (*NE* 1216^{b}30).[87] While Aristotle's approach to ethics is intrinsically elitist and sexist, its appeal to proponents of contemporary virtue ethics is strengthened by containing this structure for correcting bias within its own account.

As we saw, for Plato the good and the life in best accord with that good are not necessarily things that humans would find tolerable or even recognizable. Aristotle rejects this as well as accounts of excellence that are compatible with a lifetime of sleep, as one that would only be upheld by those "maintaining a thesis at all costs" (*NE* 1096^{a}1-2).

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introduction to the *Mishneh Torah,* Maimonides premises his distinguishing between authority during the Talmudic and Geonic eras on the possibility of popular assent prior to a worldwide dispersion. See below, note 175.

[87] Here and elsewhere, I do not correct the sexist language found in classical sources because the language in fact represents the belief of the authors in the inferiority of women. Nussbaum provides an interesting although speculative "insider's view" by imagining the role of an appropriately disguised woman, a Peripatetic Yentl, studying under Aristotle and various Stoic schools in *Therapy of Desire.* As she argues in more eloquent terms, we need not throw out the philosophy with the philosopher, and Aristotle's failure (like that of the rabbis overall) to consider the real possibility of a female equal need not lead to a wholesale rejection of everything he wrote, especially on matters of methodology.

In addition to rejecting the Platonic account of a Form encompassing the Good, Aristotle emphasizes the humanistic quality of his ethics by excluding from the subject both any inferior animals or superior beings (*NE* 1096^{a}12ff, 1217^{a}18ff). The study of the human good is so delimited "even if there is some one good which is universally predicable of goods or is capable of separate and independent existence, clearly it could not be achieved or attained by man; but we are now seeking something attainable" (1096^{b}32-34). Aristotle rejects the argument that this concept, though itself unachievable, would provide guidance, like a guiding star, for achieving that which is achievable. He suggests that the arts neither function in that way nor would in any apparent way be helped by such a notion.

All of this is another way of saying that the central concern in Aristotle's ethics is to describe the best *human* life possible and the process of how one develops oneself in order to live that life. Although not part of Anscombe's critique of modern ethical theories, their inability to consider a human life as a whole has been a powerful impetus to the contemporary recovery of Aristotle and virtue ethics. For Aristotle, the best life is one that is most ordered toward that which we find desirable in and of itself, and not because of its being a means to something else.

This statement is not meant to be argumentative. Rather it is scientific: By clarifying primary and subordinate goals, one can focus one's efforts on achieving that which is (subjectively) most important. To give an example,

one may erroneously believe that one's goals rest upon being accepted by a particular medical residency program, when this goal is actually secondary and not essential to the goal of becoming a competent or exceptional physician. By correcting one's bias toward a goal that is only secondarily desired, one is more likely to realize the main goal. To continue the prior example, one would still be able to accomplish one's primary goal at another program, so long as one does not erroneously believe that the goal is now unattainable. Even the hedonistic ethic that Aristotle considers unbefitting humanity presumably aims for maximal satisfaction and minimal frustration of desires, requiring some sort of hierarchy or at least (in a democracy of desire) organization.

Although Aristotle rejects the Platonic school's conception of Goodness as such, he assumes that rational human life (or activity) is directed toward some ultimate end or complex of ends. This is related to his understanding of the science of causality and movement. For example, in the *Metaphysics*, Aristotle rejects the possibility of infinite regression both in connection to Formal causation and as related to justification of aiming for *eudaimonia* (*Metaphysics* 994[a]1-19). Aristotle settles on a formal definition that he admits is platitudinous, that flourishing (*eudaimonia*) is the chief good (*NE* 1097[a]24-[b]7, [b]23). In other words, all human goals are subordinate to the goal of flourishing which is what is desired when one aims at other goals.

It seems obvious to Aristotle that one does not aim at flourishing in order to accomplish some other goal. One might structure an argument for achieving happiness or even fulfillment as an intermediate goal. However, the expansive sense of *eudaimonia* as used by Aristotle would incorporate these latter goals and subordinate them to tasks necessary in its pursuit and exercise. Any goal to which flourishing might be ordered would be subsumed into its definition. This is apparent, for example, when Aristotle considers the question of leisure in the *Nicomachean Ethics,* Book X. He considers that the active life of virtue seems to aim at a life of leisure, as the virtues of war, for example, aim at peace. In response, he notes that proper human flourishing is found in the life of contemplation (which is the highest form of activity, being human, yet close to divine). Thus, the leisure that virtuous activity (and therefore the life of *eudaimonia*) seems to aim at is in fact an intermediate goal on the way to the most flourishing (*eudaimonestatos*) of lives, that of active contemplation (*NE* 1177a8).

Some have dismissed Aristotelian and other classical approaches to ethics because of their concern with *eudaimonia.* Critics use *eudemonistic* as a derogatory term implying pursuit of personal "happiness," rather than the self-sacrifice or impartiality understood to be the basis of a "proper" moral system. Hedonism, however, is a mischaracterization of ancient virtue ethics

and even more so of contemporary virtue ethics.[88] This criticism is abetted by the standard English edition of *The Nicomachean Ethics,* in which *eudaimonia* is translated as "happiness."[89] This translation is problematic, as will be discussed below. Others suggestions include "fulfillment," "true happiness," "prosperity" and the like. The translation of *eudaimonia* as "flourishing," used by Nussbaum and others, seems to capture most successfully the meaning intended by Aristotle, especially as *eudaimonia* is defined by Aristotle as a state of activity. I also suggest "thriving," especially as it captures, like "flourishing," the sense of active (and exceptional in practice) strength but adds, in its medical use ("failure to thrive") the sense that this state is also the normatively "natural" state of the species. An advantage to "happiness" is

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[88] For a defense of Aristotle against this charge, see the work of Julia Annas, especially *The Morality of Happiness* (Oxford: Oxford UP, 1993), as well as her "Aristotle and Kant on Morality and Practical Reasoning" in *Aristotle, Kant, and the Stoics: Rethinking Happiness and Duty*, eds. Stephen Engstrom and Jennifer Whiting (New York: Cambridge UP, 1996). See also the articles by articles by T.H. Irwin, Stephen Engstrom, and John McDowell in the latter volume. The articles included in this collection, for the most part, suggest that the distinctions drawn between Aristotle and Kant are less pronounced than traditionally understood. One can see this charge made in H.A. Prichard, "The Meaning of Agathon in the *Ethics* of Aristotle" in his *Moral Obligation* (Oxford: Clarendon Press, 1949), 40-53, reprinted in *Aristotle,* ed. J.M.E. Morevscik (Garden City, NY: Anchor, 1967), 241-260. It is rebutted in an article by J.L. Austin, published posthumously in that same volume, "Agathon and Eudamonia in the Ethics of Aristotle," 261-296. See also Nussbaum, *Therapy of Desire,* 15, note 5, where she explains that in common usage, *eudaimonia* implies *action.* That it exhibits an affinity for eudemonism of a hedonistic bent is an absurd charge of contemporary virtue ethics, which is most open to the criticism that it pursues self-perfection to the detriment of other ethical concerns. (A similar charge has been made against Kant, for example on his instruction that one never lie, regardless of the consequences.) This charge may be true of some contemporary accounts of virtue ethics, but is answered either by a proper description of virtues that are other-considering or by a balanced account in which concern for character development takes place within a moral universe populated by a wide-ranging set of rules and principles. In the case of Jewish virtue ethics, both answers are present.

[89] *The Nicomachean Ethics,* trans. W.D. Ross, rev. by J.O. Urmson, in *The Complete Works of Aristotle,* vol. 2, ed. Jonathan Barnes (Princeton: Princeton UP, 1984), 1729-1867).

that it preserves the sense of platitude assumed by Aristotle which, at least to

my ear, falls flat when one of the other translations is used. Flourishing as

the goal of life is, however, circular in the sense that it lacks content until

further specified, which I believe is Aristotle's point in the *Nicomachean Ethics*

(1097^{b}23).

What this "platitude" reveals, however, is that the orientation of

Aristotle's ethics (and the virtue ethics built upon it) is different from that of

both Kantian and utilitarian approaches to ethics. Unlike Kant's system,

Aristotle's ethics begins from the starting point of determining the basic

character of a good human life. He assumes that the ideal life will be

developed out of an (admittedly corrected) account of what humans desire.

Aristotle's ethics is based on what a rational person would desire. Kant

instead begins with an account of what any rational person would admit is

right and explicitly rejects any role for desire or emotion in ethics.[90]

The utilitarian aims at maximizing happiness (or pleasure and

minimizing suffering, in the case of those concerned with animal rights) on a

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[90]The complexity of Kant on the emotions as motivators versus purity of rational motivation is addressed by Robert B. Louden, "Kant's Virtue Ethics" *Philosophy* 61 (1986): 473-489, reprinted in *Virtue Ethics: A Critical Reader,* ed. Daniel Statman (Washington, D.C.: Georgetown UP, 1997), 286-299. Stanley Hauerwas suggests that however one resolves the question of Kant as a virtue ethicist, Kant would be arguing for one central virtue, that of conscientiousness (*A Community of Character* (Notre Dame: University of Notre Dame Press, 1981), 261, note 5). At most, Kant might allow the emotions to function as motivators to action that is in accord with what reason has independently determined to be the appropriate action. For Aristotle, "the emotions themselves are modes of moral response that determine what is morally relevant and, in some cases, what is required. To act rightly is to act rightly in affect and conduct" (Nancy Sherman, *Fabric of Character,* 2).

global scale, rather than for the individual, whose existence is absent, at least in the classic utilitarian accounts. More important as a contrast is that utilitarians do not aim at developing a rational account of what is meant by happiness, accepting for the most part the whole complex of human desires as a given or rejecting some desires from their calculus without providing an account of how such decisions are to be made. Aristotle, on the other hand, notes the possibility of feeling "delight and pain rightly or wrongly" (*NE* 1105^{a}6) and provides an account of how to judge and correct (when possible) such fundamental responses.

Aristotle's account of *eudaimonia* builds upon his understanding of the proper function of a person, which follows from the principle that the good of a particular thing is excellence in its function. To use Aristotle's words, "a so-and-so and a good so-and-so have a function which is the same in kind" (*NE* 1098^{a}9). To add to the numerous examples explaining this concept, if one considers the purpose of plastic container to be holding food or supplies securely, then the good plastic container will be one that does a good job at this task.

This account is problematic but important for contemporary virtue ethics. It is problematic because the idea of a human "function" is treated with even greater skepticism in contemporary philosophy (especially after the existentialists) than it was for Aristotle. It is important because Aristotle develops a workable understanding of human flourishing despite the

weakness of his premise. Returning to the example of the plastic container, note that it follows the account of function in Plato's *Republic* (352dff) in that the good under consideration is that of an implement or tool.[91] Frederick Siegler suggests that there are three meanings to function: descriptive (what it does), evaluative (what it should do), and beneficial (what something does that also yields reflexive benefit).[92] Siegler argues that Aristotle, whose own example in the passage just cited is a musician, clearly incorporates the beneficial into his account of human function.[93] Without this the idea that *eudaimonia* requires discovering and developing one's function is problematic even within Aristotle's account.

Building a system of virtues upon human purpose is problematic given human malleability. The problem with the argument from purpose is made sharper by the recognition that even relatively simple objects, such as knives, do not readily yield a set of virtues. There are different types of knives, some for slicing, others for stabbing, still others for spreading, and the virtues of each (e.g. thinness of edge) are vices in the other. Considering professions instead of objects, one might suggest that "artist" is more amenable to a set of virtues. Here too, the varieties of goods internal to artistic pursuit require

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[91] See for example Plato's *Meno* (98c) where the good person is said to be useful (to others).
[92] Frederick Siegler, "Reason, Happiness, and Goodness," in *Aristotle's Ethics*, eds. Walsh and Shapiro, 35.
[93] Cp. Aristotle's discussion of the various purposes of authority in *The Politics* (1278^{b}31-1279^{a}22).

defining the ends of art, which raises a new set of questions. A cursory list might include: Does the artist speak for herself or her community? Does art aim to critique, illuminate, exalt, or exult? The response that all art requires, for example, attentiveness, begs the question of whether that is a virtue tied to a particular goal or to any possible goal.

Aristotle's discussion of human excellence as an expansion of human function is successful because of the broad strokes Aristotle uses to develop his idea of human function. Since for Aristotle the term "human" does not signify an obvious purpose in the way that "knife" or even "artist" does, Aristotle looks for that purpose by considering what it is that sets humans apart from the other forms of life. He concludes that the distinctively human has as its form an "active life of the element that has a rational principle" (*NE* 1098^{a}1ff, cf. 1177^{a}1ff, esp. 1177^{b}30-1178^{a}8). This Aristotle takes to be the minimum requirement of any candidate for being a characteristically human function, and *a fortiori*, as a possibility for the ideal human good.[94]

Aristotle's argument from human purpose in the *Eudemian Ethics*, Book II, chapter 1, is clearer than that in the *Nicomachean Ethics*. In the *Eudemian Ethics,* he suggests that the soul's purpose is to live and that therefore the good soul will live well, which better parallels the argument from function to excellence. As has been noted exhaustively by others, the term

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[94]Compare with Plato's *Republic* 352d ff.

soul in Aristotle does not mean soul in what is thought to be a religious sense, but rather a rational, animating force. Aristotle actually excludes from his discussion in the *Eudemian Ethics* any component of the soul that is not tied to reason ($1219^{b}20ff$). In both accounts what matters is that function and excellence are logically related and that function is more or less particular to a type.

As noted, this understanding of *eudaimonia* makes problematic its being translated as "happiness," since the latter is a state of being or an emotional state, whereas *eudaimonia* explicitly means a state of activity which would exclude the contemporary example of a person plugged into a "happiness" machine. That *eudaimonia* is an activity also draws a contrast between the sense of end-orientation of the utilitarians and that of Aristotle and virtue ethics. While some versions of utilitarian thought acknowledge an agent's inability to accurately predict consequences in a chaotic world, utilitarianism is concerned nonetheless only with end-states. Aristotle's ends remain ends of activity. There is no static state to be achieved, but a state of ongoing activity. Of course, for Aristotle, as for the utilitarians, there is a critical difference between the act intended and the act achieved. But for virtuous action, the action itself is desired, so it has value even when the goal is not achieved. For example, one wants to win the war, but there is still value to courageous action in battle, even when the goal to which the courageous action is directed is not achieved.

Aristotle continues his discussion of human good by locating that good within the totality of a life, "for one swallow does not make a summer" (*NE* 1098ª17). The extension through time does not however demand perfection from birth. Intrinsic to Aristotle's account is that ethics is developmental. Youth (in years or experience) are incapable of proper virtue for lack of occasion to develop it. Virtue or Excellence is developed by acting in a virtuous manner and creating habits of acting in such a way. Similarly, vice is developed by acting in ways that are not in accord with virtuous action so that improper habits are developed (*NE* 1105ª14-16). Of course, there are more roads to vice than to virtue, a point made by Aristotle in developing the idea that excellence is a mean between the errors of deficiency and excess (*NE* 1106ᵇ29-35). Much criticism has been reserved for the doctrine of the mean and its role in Aristotle's ethics. It seems to be the tragic destiny of every good idea that it will be attacked by those who take it to be of broader scope or greater importance than its author. The doctrine of the mean functions for Aristotle as a chapter heading: it provides an organizational device to allow analysis of a broad range of similar but unrelated ethical phenomena. Aristotle readily admits that it is not always relevant (*NE* 1107ª9-26, cf. 1109ª30-21).[95]

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[95] For a discussion of the doctrine of the mean that astutely distinguishes it from a doctrine of moderation, see J.O. Urmson, "Aristotle's Doctrine of the Mean," in *Essays on Aristotle's Ethics,* ed. Amélie Rorty, 157-170.

The virtuous person develops habits of proper action and, more importantly, the ability to discern the relevant features of a situation in order to know how to act while keeping an eye on the ordering of his life toward *eudaimonia*. As Sherman puts it, "Pursuing the ends of virtue does not begin with making choices, but with recognizing the circumstances relevant to specific ends. In this sense, character is expressed in what one *sees* as much as what one *does*."[96]

Since acting in a virtuous manner is the way to develop excellence, the road to virtue requires proper training and habituation from childhood (1103b20-26), a point Aristotle cites from Plato (*NE* 1104^{b}12, ref. *Laws* 653aff, *Republic* 401e-402a). To this must be added sufficient experience to understand the varieties of possible activity and situations one might confront. These requirements are enumerated in Aristotle's description of who might benefit by studying the material considered in the *Nicomachean Ethics* (1095^{a}1-12).

On the basis of these requirements, Aristotle is skeptical of the vicious or poorly educated person's ability to reform and turn to a life of virtue. Additionally, on Aristotle's account, "What vice has destroyed is the ability *to see* the proper goals of action; thus it is not merely ends that have been corrupted but, more significantly, one's access to them through perception

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[96] Nancy Sherman, *Fabric of Character,* 3-4. Italics original.

and reason."[97] Aristotle's skepticism is matched by a perhaps equally oversimplified expectation that the virtuous will continue to improve in their virtue, following the model that the strong are most capable of performing the exercises that increase strength (*NE* 1104^{a}27-^{b}4). While committed to a developmental-educational model of character, most proponents of contemporary virtue ethics are skeptical of much of Aristotle's elitism.

Just as *eudaimonia* is understood to refer to activity encompassing a whole life rather than a point in time, it also refers to an extended community of family and friends and, to a lessening extent as the circle widens, to the polity and presumably humanity in general. Aristotle notes an ambiguity in language when establishing that the highest good is self-sufficient, by which he means that it is independent of other goods or goals for its value. Aristotle takes pains to clarify that self-sufficiency is a characteristic of the good and not that self-sufficiency is a good human characteristic. The virtuous person is not an island. There are important benefits to one's own development that come from a friendship with another person working on virtue (see *NE* 1170^{a}11ff)[98] In the case of contemplation, which Aristotle understands to be

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[97] Ibid., 112.

[98] Alasdair MacIntyre expresses a similar idea when he argues that we cannot become independent rational thinkers without both the dependencies of our youth and those that continue into adulthood: "When we are unable to rely on coworkers and friends, then our confidence in our own judgments may always become a source of illusion. And in order to be effective practical reasoners we do need to have justified confidence in our conclusions" (*Dependent Rational Animals: Why Human Beings Need the Virtues* (Chicago: Open Court, 1999), 97).

the least social of activities, the wise man would nonetheless be able to advance further with the aid of companions (*NE* 1177^{a}32-34). Furthermore, Aristotle finds it odd that one would consider a life good in which one had no friends or family or in which one's friends or family did not share in the good (*NE* 1169^{b}4ff).[99]

Although Aristotle recognizes the importance of particulars to ethics and that ethics is very much context sensitive, he is not a relativist. Nussbaum notes that "the fact that a good and virtuous decision is context-sensitive does not imply that it is right only *relative, to* or *inside,* a limited context, any more than the fact that a good navigational judgment is sensitive to particular weather conditions shows that it is correct only in a local or relational sense."[100] This understanding of Aristotle is not uncontroversial and most neo-Aristotelians are in fact relativists, a fact which occasioned the article just cited.

Nussbaum's argument, which I find convincing is that Aristotle is a non-relativist since he believes there to be both a specific "human good" as well as patterns of life inconsistent with that good. Nonetheless, whatever the possibility of a life ordered to that good, it will be specified in the light of the particular circumstances in which one finds oneself. This means that systems

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[99] For a comprehensive discussion of the importance of friendship to Aristotle, see Nancy Sherman, *Fabric of Character*, 111ff.
[100] Martha Nussbaum, "Non-Relative Virtues: An Aristotelian Approach" *Midwest Studies* XIII, 45.

of virtue may be variations on Aristotle's theme, recognizable as such but not identical with his work.

When looking at normative approaches to virtue ethics, one is always struck by the fact that lists of virtues are always the hardest to generalize outside the author's historical-social context.[101] The variability in catalogues of virtues makes such catalogues very useful as a basis of descriptive ethics.[102] The rabbis recognized this fact, as demonstrated in an admittedly polemic text concerning the "virtues" of other nations. Implicit in the following text is that the sanctioning of actions is culture-specific and that from one culture's perspective, the virtues of another nation are in fact vices:[103] "Five things did Canaan charge his sons: Love one another, love robbery, love lewdness, hate your masters and do not speak the truth" (B. *Pesahim* 113b).[104] As one can learn something of a person by examining his or her

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[101] Stanley Hauerwas makes this point quite clearly in *A Community of Character,* esp. 112-3.

[102] See MacIntyre, *After Virtue,* 184ff, for the problem (and a solution) of conflicting accounts of what makes a virtue and attempts to delineate a coherent meaning for the term "virtue." Compare this with his revised account in *Dependent Rational Animals,* esp. 120. In the later work, MacIntyre attempts to describe a sufficiently broadly human goal (of becoming an independent practical reasoner who is aware of his or her dependencies) and the requisite virtues are similarly broad. Since I do not aim at a comprehensive account of Aristotle's ethics, discussing his list of virtues and the problems and strengths thereof is not important here.

[103] That is not to say that the rabbis admitted the possibility that Canaan was "correct." On the possibility of holding a past or foreign practice morally corrupt at all times and in all places while recognizing the sincerity of its practitioners' commitment, see Jeffrey Stout, *Ethics after Babel: The Languages of Morals and Their Discontents* (Boston: Beacon Press, 1988), 13-32. Stout argues forcefully for non-relativism consistent with pragmatic accounts of truth with partial affinities for rabbinic truth claims.

[104] The text cited is part of a series of declarations made by teachers and fathers to their disciples and children. Interrupting the series before the statement of Canaan to his sons is a subsection on affinities and aversions, which begins with those whom God especially loves

and hates and then moves to the question of whom among their brethren Jews are permitted to hate. The latter is connected to the question of God's hatred of certain sinners, not only by proximity but also because such hatred is supported, contra Lev. 19:17 ("You shall not hate your brother in your heart") by noting of sinners that "it is a duty to hate him, as it is said, 'The fear of the Lord is to hate evil' (Prov. 8:13)." Continuing the list of affinities and aversions are two statements about three who hate others within their group ("dogs, birds, and Parsee [Zoroastrian] priests (והחברין); some say, harlots too; some say, scholars in Babylonia too") and three who love other members of their group (proselytes, slaves, and ravens). (See the term translated "Parsee priests" by *Soncino*, החברין in M. Jastrow, *A Dictionary of the Targumim, The Talmud Babli and Yerushalmi, and the Midrashic Literature* (New York, G. P. Putnam's sons, 1886–1903; reprint, Brooklyn: Traditional Press, 1975), hereafter "Jastrow," under the entry "חבר." The term literally means friend or, here, associate [of an order]. In another context, the same term may be the plural of *Haver*, which refers to an "in-group" among the early rabbis. Thus, especially with the addition of the "some say, scholars in Babylonia," the category of intra-group hatred is applied reflexively). The Talmud then moves to Canaan's statement and then to a description of the vices and virtues of horses. Admittedly, the structure of the text may be mnemonic, collecting first texts that contained numbered groups and especially numbered lists of advice given by revered teachers. Such collections may contain meaning despite the appearance of being anthologies (Michael Fishbane, "Anthological Midrash and Cultural Paideia: The Case of *Songs Rabba* 1.2" in *Textual Reasonings,* 32–51). The texts focus, however, on practical advice in dealing with the problems a scholar-in-training might encounter or need to appraise, in the demonic world, the world of commerce, the world of the academy (among the more obvious statements, I believe this also the meaning of "R. Johanan say in the name of the men of Jerusalem: when you go out to battle, do not go out among the first but among the last, So that you may return among the first"), the divine order (in a supererogatory way and through avoiding common temptations (sexuality, wine, etc.); from human relations including intra-group dynamics and inter-group dynamics, and surprisingly difficult relations with a supposedly subjugated animal kingdom, represented by man's true best friend, 'the horse," who nonetheless tries to "slay its owner." Read this way, the conclusion of the text gains meaning. It reads: "A Tanna taught: Joseph of Huzal is identical with Joseph the Babylonian with Issi b. Gur Aryeh, with Issi b. Judah, with Issi b. Gamaliel and with Issi b. Mahallallel, and what was his [real] name? Issi b. 'Akabia. Isaac b. Tabla is identical with R. Isaac b. Hakla, and with R. Isaac b. Ila'a. R. Isaac b. Aha mentioned in legal discussions is the same as R. Isaac b. Phineas mentioned in homilies *(aggadah).*" And then further, "Rabbah b. Bar Hanah said in R. Johanan's name in the name of R. Judah b. R. Il'ai: Eat onions [bazel] and dwell in the protection [bezel] [of your house], and do not eat geese and fowls lest your heart pursue you; reduce your food and drink and increase [expenditure] on your house. When 'Ulla came, he said: In the West [Palestine] a proverb is current: he who eats the fat tail [allitha] must hide in the loft ['alitha], but he who eats cress [kakule] may [even comfortably] lie on the dunghills [kikle] of the town [i.e. If you overspend, you'll have to hide. If you do not, you'll rest at ease even in modest circumstances]." Since the connection of Joseph of Huzal's aliases with the preceding text is tenuous (he is mentioned once earlier on the page), I take his many names to represent the diversity of tasks set before the student, as I have describe the *sugya.* The sage with a different name when in legal and narrative texts represents the two primary creative outlets available to the student and the two main sources of authority are the academies in Babylon and "the East" (Israel). That the west and east agreed on the basic message being presented here (and that the message is consistent with the moderation advocated throughout the *sugya* might have been intended as a comfort to the student.

actions over time, one can learn the character of a virtue ethic or even a society by the virtues it esteems both in word and in actual distribution of honor and privilege.[105] One would in any case not expect all of the virtues esteemed by Aristotle, for example, to be the same as those esteemed by the Rabbis in the Mishnah and Talmud. There is, however, surprising overlap in their understanding of human character and the process of moral development as well as their understanding of the relationship between "the ethical" and other parts of a properly ordered life. This shared feature stands in sharp contrast to the way the dominant Kantian and utilitarian approaches understand ethics.

Education and Virtue

To understand the difference between procedural approaches to ethics and virtue ethics, it helps to contrast the training one receives in a typical undergraduate ethics class with that which one might receive as a child, whether at home or in a religious setting. In the ethics class, in addition to general introductions to ethical theories, one discusses cases or situations that are intentionally abstract in order to pinpoint some matter of ethical reflection. For the most part, these cases have very little to do with one's life

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[105] One looks in vain to find societies lacking some hypocrisy at this level and those that have been honest were likely honestly corrupt, adhering to notions that power and rightness are twinned.

and, with the exception of "hot topics" such as those involving sexuality,

reproduction, or sensitive matters in medicine, all too often there is little to

engage most students beyond their own interest in debate and the

gamesmanship that entails. The discussions are open to Cicero's critique,

> their narrow little syllogistic arguments prick their hearers like
> pins. Even if they assent intellectually, they are in no way
> changed in their hearts, but they go away in the same condition
> in which they came. The subject is perhaps true and certainly
> important; but the arguments treat it in too petty a manner, and
> not as it deserves. (*De Finibus*, 4.7)[106]

As a child, however, ethical training is more directly to the point.

Initially one is punished or rewarded for one's actions, which links self-interest

to moral matters directly. One then advances to the stage where approbation

or censure, whether internal or external, ensures, or tries to, proper behavior.

This developmental account is as present in Plato, Aristotle, the Rabbis, and

Maimonides (b. 1135) as in Lawrence Kohlberg. The classical and rabbinic

sources add to the developmental theory the idea that desires and tastes are

also shaped by the habits of youth. Finally, one develops, both from personal

and social influence, a sense of self identity and habitual action that

determines to a large extent, how one will think and act. During a year of

teaching, the high-school students I encountered, having reached the point

where their tastes and habits were partially established, were not readily

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[106] Cited and translated by M. Nussbaum, *Therapy*, 16. As mentioned above, Plato questions
whether virtue is teachable to which Aristotle replies by presenting his theory of habituation
as an elaboration of points Plato makes about education.

convinced by arguments concerning the right- or wrong-making

characteristics of a topic being considered. They were, however, concerned

with the "type of person" they were perceived to be by their peers and the

faculty.[107]

In criticizing narrow approaches to ethics and their overemphasis of

ethical problematics, Edmund Pincoffs coined the term "quandary ethics."[108]

A similar criticism is suggested by Stanley Hauerwas, who notes that ethical

problems are not "mud puddles" into which we either step or avoid, without

regard to our character and only with regard to our location.[109] Kantian ethics

is not incapable of responding to Pincoffs and Hauerwas on this point, as

Kant does more than simply consider hard cases in suggesting that ethics is

the application of rationality to will. Nonetheless, Kantian and Utilitarian

ethical systems are equally open to Pincoffs' criticism that for them "what is

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[107] I witnessed this distinction on several occasions during my admittedly brief experience with high-school students. On one such occasion, a colleague's student admitted to cheating by giving her work to another student to copy. While she did not accept the teacher's explanation for "why her action was wrong", allowing only that she had violated a formal rule, the student was most concerned that the teacher know that she was not "a cheater." In one of my classes, a student was utterly unconvinced by argumentation that common morality (including prohibitions on murder, torture, and the like) should trump commitment to her family. Her position changed only when she realized the shock her position elicited from her classmates.

[108] Edmund L. Pincoffs, *Quandaries and Virtues* (Lawrence, KS: UP of Kansas, 1986), 14.

[109] Stanley Hauerwas, *A Community of Character,* 114-115. Hauerwas further notes, "the virtuous life is not premised on the assumption that we can avoid the morally onerous; rather, if we are virtuous, we can deal with the onerous on our terms" (115).

relevant must have nothing to do with *me*, but only with the situation: a situation in which anyone could find himself."[110]

For the child (and the reflective adult) how to behave is directly tied to questions of self-identity. Pincoffs notes that,

> reference to my [own] standards and ideals is an essential, not accidental, feature of my moral deliberation. An act is or is not right from my standpoint, which is where I stand when I deliberate, not merely as it meets or fails to meet the requirements of an ideal universal legislation, but also as it meets or fails to meet the standards that I have set for myself.[111]

The child's character is shaped by her moral education, which is a combination of learning rules, following the examples set by one's parents, teachers, and peers and the stories with which one grows up. As the child grows, these interactions lead to and are interpreted through the prism of a nascent moral reasoning. These influences are then given permanence and deepened when the child repetitively acts in ways sanctioned by her developing ethical character. Of course, this applies for negative as well as positive character formation.

One might object that the very project of a university demands a less-involved approach to ethics than the education one receives as a child. Of course, that is in a certain sense the argument at the base of the disagreement between virtue ethics and other approaches to ethics. In any

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[110] Edmund Pincoffs, *Quandaries and Virtues,* 21. Italics original.
[111] Ibid., 28. Note that he says "not merely" and "also" rather than "instead." See also 35.

case we can reject at least one sense of this argument without being accused of bias in favor of virtue ethics. This is the objection that assumes that ethics, like religion, should only be studied scientifically/descriptively, but not as a normative quest.

This objection is nonsensical, since ethics, as applied philosophy, is always normative even when it is relativistic. The liberalism implicit in the purpose of universities speaks primarily to method, not subject. "Descriptive ethics" is simply another term for intellectual history, sociology, or psychology, depending upon whether one is looking at texts, groups, or individuals. To the objection that ethics then has no place in a university, one can only respond that the suggestion is akin to one that states that universities are places where only things of no importance should be discussed or taught.

The problem with most contemporary ethics is that it is different from these classroom discussions not in kind but only in the degree of refinement. Contemporary ethics is like other matters in the liberal arts in this regard. Their importance is mostly intellectual and only incidentally political. Of course, for ethics this relationship is internally inconsistent (as it would be for medicine or economics) in a way untrue of say, the study of literature or cosmology.

The claim of virtue ethics is that ethical education doesn't cease in childhood nor does it change radically in character as one ages. As noted, there is a change from early childhood in that early preferences shape one's

probable course of development in a deeper way than those developed later. However, the basic model remains constant: This model is roughly that of paths taken in a field. The more often one goes over a path, the more the field reflects that trend. Changing paths leads both to the creation of a new road as well as the slow removal of the one previously created. However, a well-worn path is never completely eliminated and the earlier the new path is begun the less time required to establish it. A similar idea was expressed by in the *Mishnah*: "Elisha b. Abuyah said: he who learns [when] a child, unto what is he [to be] compared?— unto ink written upon a new writing sheet; and he who learns [when] an old man, unto what is he like? — unto ink written on a rubbed writing sheet" (*Pirkei Avot* 4:20).[112]

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[112] This text, insofar as it requires interpretation, is understood by the various commentaries as indicating the receptivity of youth to education and the consequent permanence of such education. *Avot of Rabbi Nathan* (ARN), the earliest commentary to *Avot,* which may have preceded even the redaction of *Avot* into the form it has in the Mishnah, puts a different metaphor in Elisha b. Abuyah's mouth. ARN version B (chap. 35) uses the image of plaster laid over rocks for one who studies while young and plaster laid over [clay] bricks (לבנים) for one who studies in his old age. The metaphor appearing in *Avot* appears as a statement of R. Yehuda at the end of ARN B, chap. 35. The text of ARN version A (chap. 27) placed in parallel to this text in Schechter's 1887 edition of the two versions of ARN provides first a longer collection of Elisha b. Abuyah's statements but does not provide an alternative metaphor for studying in youth and during old age (Solomon Schechter and M. Kister, *Avot de-Rabi Natan* (Hebrew) (New York: The Jewish Theological Seminary of America, 1997). Rather, a collection of such metaphors, including (albeit without any mention of ink) writing on new versus old paper, appears in ARN A chapter 23. Interestingly, all of these metaphors avoid the grammatical difficulty of the printed editions of M. *Avot* by substituting other words for "הלומד ילד." Returning to the text of *Avot* itself, *Mahzor Vitry* (before 1105, with additions through 14th century) explains that writing on new parchment means that "the ink sticks to [the parchment] and the writing remains for many days" (Simḥah b. Samuel of Vitry, *Mahzor Vitry,* ed. S. Hurwitz (Nuremberg: 1889. Reprint: 1923), 427). Another of the classic commentaries, R. Yonah b. Avraham Gerondi (d. 1263), explains "just as writing on new parchment cannot be erased, he will not forget the Torah he learns in his youth." (Commentary of Rabbeinu Yonah to Pirkei Avot, ad. loc.).

In the previous paragraph, the paths represent habits or virtues, while the field represents character.[113] But what is a "virtue" and what is "character"? The use of these terms by proponents of virtue ethics does not necessarily move very far away from their meaning in ordinary language. In its broadest sense, a virtue is a trait inherent in a person or object that adds to its usefulness in a given task.[114] So, for example, having keen eyesight is a virtue in the sharpshooter, just as having a very sharp edge is a virtue in a knife. Virtues are contextual, and that same edge would be a vice if the knife were meant for buttering rather than cutting. The perfection of an ability is that ability's virtue. Aristotle's suggests that virtue will generally be found as a mean between two inferior options. Consider the question of eyesight. While it is not immediately obvious why one would not want the farthest-reaching sight (and therefore one of the extremes rather than a mean), it becomes clear that, so long as we are constrained by human limits, past a certain point this becomes farsightedness and requires optical correction just as much as nearsightedness.

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[113] The paths correspond to the ink and the field to the sheet in *Avot*. My inclusion of *Avot* 4:20 here does not require that study of Torah in fact be related to ethical training, although it is my belief that the Talmud expects an explanation when discussing the absence of such an effect following the study of Torah. This point is discussed at length later. I cite the passage from *Avot* to show a parallel understanding of the effects of experience and past actions (or inaction) on one's ability to transform ones character, understood as related to morally relevant habits (including, for the Talmud, study).

[114] As noted above, this form of reasoning from a given end or purpose of an object or organ, such as the ear, is found in Plato's *Republic* 352 through the end of Book 1 and Aristotle's *Nicomachean Ethics* 1106a14 ff.

On the other hand, when a virtue term is included in the description (e.g. "perfect sight") the mean has already been specified and it is nonsense to speak of a mean between insufficiently perfect and overly perfect. When we discuss the moral sense of virtue, we follow Aristotle in speaking of a state of character, some stable determinant of who we are and how we act and react (*NE* 1106a10).[115] Aristotle contends that the virtues must result in activity, or at least that there is a radical difference between the virtues as states of mind (potential action) and in action:

> And as in the Olympic games it is not the most beautiful and the strongest that are crowned but those who compete (for it is some of these that are victorious), so those who act win, and rightly win, the noble and good things in life (*NE* 1099a 3-5).

Nancy Sherman explains that by character Aristotle indicates not only a pattern of action, but also a particular type of responsibility and accountability.[116] An additional question is whether one understands a person's virtues to benefit society, herself, or both. The meaning of benefit is itself complex. Aristotle, for example, assumes that the virtues result in pleasure for the one who has them when they are exercised (*NE* 1104^{b}5). For example, the brave will delight, not in danger, but in standing their ground in the face of danger, which is to say the exercise of the virtue of bravery. Of

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[115] Lee Yearley similarly defines a virtue as "a disposition to act, desire, and feel that involves the exercise of judgment and leads to a recognizable human excellence or instance of human flourishing. Moreover, virtuous activity involves choosing virtue for itself and in light of some justifiable life plan" (*Mencius and Aquinas,* 13).

[116] Nancy Sherman, *Fabric of Character,* 1.

course, the brave may die on the battlefield. It remains a matter of debate among proponents of virtue ethics whether the virtues of necessity act for the benefit of the virtuous person or if a quality that only benefits the rest of the world is also a virtue.[117]

A focus on character development necessarily separates virtue ethics from any utilitarian account, even when a direct analogy is drawn between the knife and the person such that virtues are explained as strengths that benefit others. Aristotle notes a distinction between "the arts" and the virtues in that the former produce something of benefit if done in the right manner, regardless of the intention of the actor, while that is not the case for the virtues. For the virtues, not only must the act be of a certain character, so must the actor:

> The agent also must be in a certain condition when he does [acts of virtue]; in the first place he must have knowledge, secondly he must choose the acts, and choose them for their own sakes, and thirdly his action must proceed from a firm and unchangeable character (*NE* 1105^{a}27-1105^{b}10).

Robert Solomon calls our attention to Plato's *Symposium,* suggesting that "It is worth noting that Socrates objects to Phaedrus' speech, in particular, because he stresses only... love's good social consequences...

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[117] Whether this reflects tensions within the virtue ethics tradition, notably between the virtue ethics of Aristotle and that of the Stoics, or variations in the way proponents of virtue ethics incorporate other systems of ethics into their understanding of virtue is an open question.

virtues are not virtues by virtue of their consequences."[118] When we speak of

the virtues in a moral sense, the sense of utility remains, but the questions of

task and beneficiary remain open. What is the role or purpose of a person

such that one may define her virtues? The ready answer to this question is

one feature that distinguishes the virtue ethics of Aristotle (and of the Jewish

sources considered below) from those of contemporary philosophical

approaches to virtue ethics.

Of debate also is the question of whether the virtues are desirable in

and of themselves or because they lead to some other value. As we saw

above, it may take one out of the camp of virtue ethics to accept that virtues

are simply a predisposition to act in accordance with a propositionally defined

ethics.[119] This would reduce virtue ethics to a theory of moral education,

which while nonetheless a valuable contribution to the discussion of ethics,

diminishes its true impact. In fact, as Nancy Sherman has suggested of

Aristotle's virtue ethics, there is a third possibility, that the virtues are

intrinsically valuable while this value is at the same time tied to leading to

other values. In her words, "Virtuous action is not a production (a *poiēsis* or

making of some independent end) but a *praxis* (an action that is its own

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[118] Robert Solomon, "The Virtue of Love," *Midwest XIII*, 20.
[119] Indeed, this is just what William Frankena does as a critique of virtue ethics (*Ethics*, 2nd ed. (Englewood Cliffs, NJ: Prentice-Hall, 1973), 65.

end)."[120] This is admittedly a difficult point. Remembering that virtues are

contextual, one could not define the virtues without reference to their intended

effects.

Courage leads the virtuous to act instead of fleeing in battle (whether

real or metaphorical). In the absence of an end this virtue has no content.

However, the virtues, both latent and, even more so when active, are valued

by the virtuous even when they fail to achieve the external goal (e.g. victory

on the battlefield). Because the virtuous person cannot be assured that their

actions will yield the desired consequences, the exercise of the virtues aimed

at a goal and that goal itself are valued independently. Another expression of

the complex relationship between intrinsically valuable activity that

nonetheless leads to a desired consequence is the conclusion of the famous

debate at Lydda over which is more important, Torah study or performance of

the commandments. The unanimous declaration is "Study is greater, for it

leads to practice" (B. *Kiddushin* 40b).[121] This story is set in the upper portion

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[120] The quote continues, "…to act virtuously is to desire to bring about some external effect, and one's deliberation would be pointless if it were not tied to a concrete event or object in this way. In the truly virtuous agent, however, what comes to have primary value is not the particular state of affairs to be brought about, but the *action* which has this object and the character state of the agent who brings it about" (Nancy Sherman, *Fabric of Character,* 114). While I will defer to Dr. Sherman on the interpretation of Aristotle (see also *NE* 1169^{a}12ff), I think this goes too far in diminishing the significance of consequences. Since the virtues are meant to accomplish and not simply try, they cannot be exercised fully in failing to achieve a desired state.

[121] Jeffrey Rubenstein writes of such encounters as the one in Lydda, "To fully understand the nuances of this setting it is necessary to appreciate the symbolism of the upper-story. Rabbinic sources associate the upper-story either with Patriarchal power and privilege, especially that of Rabban Gamaliel, or with significant rabbinic gatherings, typically involving

of a house in Lydda (Lod). In it, two opinions are offered as replies to the question "which is more important, study or practice?" Each option is proposed, followed by the unanimous declaration given in the text above.

The *sugya* in which this discussion is placed is largely concerned with the results of merit earned through study and good deeds and whether such results might be seen within the world we live in or only the "world-to-come." If we look at only the section of the *sugya* set off between citations from the Mishnah, the text considers first the relative lives of the wicked and the righteous in this world. Each is compared to a tree planted in the impure and the pure, respectively. When the "bough is cut" at the departure from this world, each stands exclusively in his appropriate domain. Recognition here is made of the difficulties of being righteous within the real constraints of the world. The story mentioned above is then cited. According to earlier historians, this was a practical question in light of the Hadrianic persecutions.[122] Support may be drawn, not for the historicity, but for the implied setting of the narrative from the other mention in the *Bavli* of this particular location, "the upper-story of the house of Nitza." The other story set

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votes, edicts, and divine pronouncements" (*Talmudic Stories: Narrative Art, Composition, and Culture* (Baltimore: Johns Hopkins University Press, 1999), 186). The footnote adds, "Of course, a wide variety of stories, and not only about rabbinic gatherings, are set in upper stories."

[122] So notes *Soncino* to this text, citing Isaac Hirsch Weiss, *Dor Dor we-Dorshav (The History of the Oral Law)* (5 vols. 1871-1891. Repr. Berlin, 1924), vol. 2, 125 and Heinrich Graetz, *Geschichte der Juden,* (11 vols. Leipzig: O. Leiner, 1853-1870), vol. 4, 429. See, additional Graetz, *Geschichte,* vol. 4, 155 and 428 and following.

here is the vote and declaration that one should violate all but three categories of laws rather than be put to death (B. *Sanhedrin* 72a). Again, the point is that there is a distinction between what the righteous wish to accomplish and what is actually feasible within the present world. This is followed by a further declaration of the precedence of the Torah, as it preceded the laws it contains by various numbers of years. The concept of the Torah as primeval, a blueprint for creation, is not present in this text. It is rather understood as containing not the universe, but these laws. The point of this statement is that the Torah has value even when the practices it describes and mandates are not in fact practicable.[123] Again, Torah is greater than (i.e. prior to) the commandments to which it leads. Paralleling the arguments for the development of virtues that may never be needed (e.g. courage on the battlefield), this text functions, then, to ground Torah study even of commandments that may never be put into practice.

While some do argue for particular virtues, either suggesting a cascade of irreducible but related virtues or arguing for one particular virtue, such as justice, honesty, or openness, as the grounding of their virtue ethics, not every proponent of virtue ethics is concerned with identifying or working

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[123] This is the central innovation of the Judaism developed after the destruction of the Temple in Jerusalem and the loss of the central cult.

with specific virtues.[124] Rather, the concern is with virtue, understood as a habit of action or emotion or one of many "stable tendencies to act and feel in a certain way."[125]

The field of virtue ethics is unified by a refocusing of ethics on matters of character rather than particular acts and agreement with Aristotle that matters of ethics do not lend themselves to the same level of exactitude as do, for example, questions of logic (*NE* 1094^{b}12-15).[126] This does not lead necessarily to ethical relativism, and did not in the case of Aristotle, as the ambiguity in ethics does not extend indefinitely, but rather encompasses a field of proper and improper behavior and emotion that cannot be described adequately using precise, propositional language.[127]

Michael Slote presents a different distinction, contrasting "agent-focused" and "agent-based" virtue ethics.[128] For Aristotle, whom Slote considers an example of an "agent-focused" ethics, the person of virtue is not the measure of what is right or fitting, but one who is best equipped to recognize that independent quality in the variety of possible actions. This

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[124] As noted above, any list of particular virtues will be the part of an ethical theory most open to criticism of being too tied to the author's particular cultural context and therefore least applicable outside that sphere.

[125] The latter definition is from John Waide, "Virtues and Principles," *Philosophy and Phenomenological Research* 48/3 (1988): 455-472, 457.

[126] There is no need for such a declaration within the Talmud, because there system of logic itself recognizes ambiguity and multivalence.

[127] Martha Nussbaum, "Non-Relative Virtues: An Aristotelian Approach" *Midwest Studies* XIII, 32-53.

[128] Michael Slote, "Agent-based Virtue Ethics" *Virtue Ethics*, eds. Crisp and Slote, 239-262.

contrasts with an "agent-based" ethics, which "treats the moral or ethical status of acts as entirely derivative from independent and fundamental aretaic (as opposed to deontic) ethical characterizations of motive, character traits, or individuals."[129]

Of these two, a Jewish ethics, built upon revelation, can only allow for the first possibility, that the sage, for example, functions as an exemplar of proper character and behavior that could be independently determined from other sources. There is a third possibility, that the status of actions, as well as of character, is determined within the context of a community. Nor is this position incompatible with revelation, as has been shown by Christian communitarians, such as Stanley Hauerwas, so long as the community is formed by revelation.

Unlike with Christianity, it may be argued that for Judaism revelation enters into a preexisting community. However, the community that received the Torah could not help but be transformed and reborn by that experience. This concept of community as an organic aspect of revelation, extending it through its actions (albeit not infallibly) is incorporated into the *Halakhah* in the status accorded to community practice as binding so long as it does not

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[129] Ibid., 238.

explicitly contradict the law.[130] This approach avoids the concern some have

expressed about virtue ethics too readily leading to a dangerous relativism.

One might charge that by making the conduct and cognitive-emotional

states of virtuous people the model of proper living, agent-based virtue ethics

is committed to transcendental norms no less than Kantian deontology rather

than the situated, contextual ethics to which it lays claim. Worse yet, it makes

the virtuous into lawgivers for those who simply imitate them, so it is also a

heteronomous ethic with no more content than 'do as the virtuous do'. It is

also dependent upon casuistry (without providing the tools required for

casuistic analysis), because one will never be in the exact same situation as

the virtuous model, and must therefore move from the actions performed by

the virtuous exemplar to the present situation by means of casuistic

reasoning.

These criticisms fall flat for any virtue ethics that sees the virtuous not

as setters of morality, but as models of discernment and virtuous action.

Sidgwick notes in his *Methods of Ethics* that certain matters of ethics are like

complicated mathematical axioms, the truth of which is only prima facie

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[130] As will be seen in the following chapters, I argue that the ideal model for virtue ethics to
follow is the one provided by Jewish virtue ethics, in which virtue ethics is built upon a
foundation of law. This is similar to the rabbinic understanding that the *Mitzvoth B'nei Noah*
(the Noahide laws) were observed by the Israelites as a precondition for the possibility of the
higher revelation at Sinai.   Whether developing virtue ethics on top of law leaves too little an
area outside or above the Halakhic field is considered in a review of Wurzberger's *Ethics of
Responsibility* by Louis Newman, "Covenantal Responsibility in a Modern Context: Recent
Work in Jewish Ethics" *Journal of Religious Ethics* 25/1 (1997): 185-210.

obvious to the very gifted or developed but which is apparent to all once explained.[131] This point can be demonstrated by considering something like ethics that all agree is socially established: etiquette. While the boundaries between etiquette and ethics are not firm nor fixed, matters that clearly fall into the former lay no claim to divine or *a priori* rational sanction. Nor are they susceptible to justification on an agent-based model. While gratitude may be an ethical obligation or virtue in response to a favor or gift, whether one is expected to hand write a thank-you note on fine stationery, send an instant-message "TY," or reciprocate with an even more elaborate gift, is clearly a social construct. Yet, despite the fact that etiquette is dependent upon group expectations, there are still experts in etiquette and not simply because they are Miss Manners and know the "rules." We tyros of etiquette can merely assent after the fact to their gracious handling of some situations and attempt to imitate them with an eye toward improving our sense of etiquette to where we too have a sense of what "fits." The same is true of fashion and other less lofty social pursuits. It is also true of moral virtue.

Many proponents of virtue ethics argue that the standard account of ethics of actions is covertly beholden to virtue ethics in that both the recognition of relevant criteria for decision in cases and the application of

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[131] Henry Sidgwick, *Methods of Ethics*, 1st edition, (London, Macmillan and Co., 1874), Book III, chap. 2, 199.

relevant principles require virtues of perception, discernment, and wisdom.[132]

I would go further and say that these virtues are often required to recognize

that one is "in a case." This point is made, for example by John Waide, who

argues that the "legal metaphor" presupposed by non-virtue accounts is

untrue of the legal system itself.[133]

That this may be admitted outside the camp of virtue ethics may be

seen from the treatment of virtues in *Principles of Biomedical Ethics,* whose

authors state "the virtue of discernment thus involves understanding both *that*

and *how* principles and rules are relevant in a variety of circumstances."[134]

The execution of proper action likewise requires virtues that speak to

appropriate motivation and human sympathy. The Talmud expresses a

similar point: "Abimi, son of R. Abbahu recited: One may give his father

pheasants as food, yet [this] drives him from the world; whereas another may

make him grind in a mill and [this] brings him to the world to come!" (B.

Kiddushin 31a-b). The Talmud of the Land of Israel adds a narrative[135] to

illustrate through atypical examples how one might sin through an apparent

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[132] Edmund L. Pincoffs, *Quandaries and Virtues* (Lawrence, KS: UP of Kansas, 1986), 23, 30, 44, and 105. Alasdair MacIntyre, *After Virtue*, 154.

[133] John Waide, "Virtues and Principles" *Philosophy and Phenomenological Research* 43/3 (1988): 461.

[134] Tom L. Beauchamp and James F. Childress, *Principles of Biomedical Ethics,* 5th edition (New York: Oxford UP, 2001), 34. See also Joel Kupperman, "Character and Ethical Theory," *Midwest XIII*, 115-125, esp. 121. Kupperman also argues that virtue ethics benefits from adding on top of itself a moral theory, suggesting that moral theory helps test (and correct) both traditional morality and personal virtue.

[135] The narrative is paraphrased by Rashi (R. Solomon b. Isaac, b. 1040) in his commentary to the Babylonian Talmud under discussion.

act of generosity while another deserves reward for making his father engage in difficult labor (P. *Kiddushin* 1:7/61b).

The statement, located in the midst of exempla of extraordinary honoring of one's parents, stands on its own as an indication of the need to be virtuous both in attitude of execution and in perception of needs. It challenges a legalistic model for defining one's ethical obligations, for example in one's relationship with one's parent. One parent may be made to feel useless by dining on riches he or she did not earn and considers excessive. Another may feel honor by considering herself or himself continually productive – even if that entails harsh work. Distinguishing the particular needs requires one to have developed one's perception. This emphasis on context is also expressed in virtue ethics' concern for community, a topic to which we now turn.

Virtue ethics rejects the contention that the abstracted individual is the coin of the ethical realm. Rather, proponents of virtue ethics contend that a proper understanding of ethics is to be found not by an isolated mind that strips away all particulars through a series of Cartesian meditations but by a person with a particular history in a particular situation and particular historical-social context. This approach is drawn, in part, from Aristotle, who we noted above suggested that ethics was not subject to the abstract precision of geometry and was in fact advanced through dialogue and

discussion. Virtue ethics consequently notes the importance of community both as the source and occasion for ethical reasoning.[136]

Contemporary virtue ethics breaks with Aristotle in its recognition of dependence as a permanent and positive characteristic of human life. This is an extension of virtue ethics' critique of the atomism of other contemporary ethics. In addition to the feminist critiques of ethics built upon models of the independent (male) individual, important thinkers in this regard are Stanley Hauerwas and Alasdair MacIntyre.[137] MacIntyre unintentionally notes the difficulty of maintaining respect for particularity and individuality within a communitarian structure when he writes "…it is too often the case that the weight we give to a particular consideration in a piece of uttered reasoning is partly determined by who uttered it in what kind of voice and with what facial expression."[138]

Of course, that the meaning of any uttered reasoning is determined partially by the accompanying facial expression and voice, a point much discussed by the analytic philosophers but obvious within any account of language. Moreover, it would seem to be a distinguishing point between proponents of abstract reasoning and communitarian accounts that the latter

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[136] Edmund Pincoffs, *Quandaries and Virtues,* 34. Stanley Hauerwas suggests that moral theories that disregard or subordinate virtue "are attempts to develop ethical theory not founded on such a moral community" (*Community of Character,* 120).

[137] Stanley Hauerwas, *The Suffering Presence* (Notre Dame, IN: University of Notre Dame Press, 1994)*,* and Alasdair MacIntyre, *Dependent Rational Animals* (esp. 115ff).

[138] Alasdair MacIntyre, *Dependent Rational Animals,* 137.

give weight to the communal context of an utterance, where the former in theory do not. Of course, MacIntyre's point here is valid; we should not discount the opinions of those whose appearance belies the quality of their reasoning. This point seems to have been made by Aristotle (*NE* 1216^{b}30, cited above). Michel Foucault is well known for his critique of the way all (political) systems function by marginalizing some of their members.[139]

Contemporary proponents of virtue ethics and Hauerwas and MacIntyre in particular attempt to eliminate that bias both from the results of ethical thought (an attempt also found in liberal thinking about justice such as that as John Rawls) but also from the higher order thinking about ethics itself. This allows for, among other things, the recognition of disabled people as equal ethical actors rather than exceptions to be considered after developing systems of rules. In this they are allied with both communitarians and those who, following the studies of Carol Gilligan, advocate ethics of Care.[140]

MacIntyre has been an important proponent of virtue ethics and has pressed it in the direction of a strong communitarianism. This is a central

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[139] Michel Foucault, *Folie et déraison. Histoire de la folie à l'âge classique* (1961), trans. Richard Howard as *Madness and Civilization: A History of Insanity in the Age of Reason* (New York: Pantheon, 1965).

[140] An excellent volume on the ethics of care is Nel Noddings, *Caring: A Feminine Approach to Ethics and Moral Education* (Berkeley: University of California Press, 1984). Carol Gilligan is best known *In a Different Voice* (Cambridge and London: Harvard UP, 1993), a critique of L. Kohlberg's studies of ethical development. In that work, she took the position that there are two modalities of ethical development and decision making, one based on justice that focuses on rules and the other based on care that focuses on relationships. The latter was found more often in women, although both men and women were capable of reasoning according to either orientation.

theme of MacIntyre's work, from *After Virtue* through *Whose Justice, Which Rationality?* and *Dependent Rational Animals*.[141] In his most extreme statement, he writes, citing Ludwig Wittgenstein, "I can be said truly to know who and what I am, only because there are others who can be said truly to know who and what I am."[142] In this he is following, albeit radically, Aristotle's understanding of the importance of community to the possibility of virtue.

MacIntyre's position presents an interesting contrast with that of the late Emmanuel Levinas, who, while suggesting that one discovers – indeed becomes – oneself, only in encountering the other person, nonetheless asserts that one never truly knows the other. This last point, at least, according to Levinas is true in reverse. Where MacIntyre's position is not protected (on this point) from a dangerous totalitarianism, where the individual is subsumed by the definition proposed by the collective of others, Levinas' ethics creates an absolute demand for response to the individual other without this problematic.

The influence of MacIntyre on the field of virtue ethics is pronounced, as is its impact upon this dissertation. MacIntyre's strong point is in his constructive work on virtue and his explication, expansion, and correction of Aristotle. Unfortunately, what stands out, especially in *After Virtue,* is his

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[141] Alasdair MacIntyre, *After Virtue: A Study of Moral* Theory, 2nd edition (Notre Dame, IN: University of Notre Dame Press, 1984), *Whose Justice, Which Rationality?* (Notre Dame, IN: University of Notre Dame Press, 1988), *Dependent Rational Animals: Why Human Beings Need the Virtues* (Chicago: Open Court, 1999).
[142] Ibid., *Dependent Rational Animals,* 95.

critique of liberalism and Enlightenment thought as incoherent and destructive. These two projects, the constructive and the critical, are linked within MacIntyre (the failure of the Enlightenment proves the need of recovering Aristotle and virtue) but this link is neither essential nor unbreakable.[143] Rather, it is essential to sever the connection between the critique of liberalism and the development of a virtue ethics. On this point, MacIntyre has it backward: Of the current political configurations, excepting non-replicable pre-modern indigenous groups, it is entirely possible and in fact likely that virtue is only able to be developed within liberal society.

In this dissertation I defend an approach to virtue ethics that resonates with that of the rabbinic Jewish tradition and that is also compatible with both liberal theory and the political reality shaped by liberalism. It is not surprising that an ethics developed out of rabbinic thought should be compatible with liberalism (which functions as a form of philosophical federalism) when we consider the rabbinic experience of being/guiding a polity without direct access to real political force. With that in mind, let us turn to MacIntyre's two projects, construction and critique.

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[143] This point has been made by Jeffrey Stout (*Ethics after Babel: The Languages of Morals and Their Discontents* (Boston: Beacon Press, 1988), 266ff).

For MacIntyre the revival of Aristotelian ethics, beneficial on many levels, has two crucial purposes.[144] The first is "that a part of modern morality is intelligible only as a set of fragmented survivals from that tradition" and so a return to a corrected Aristotelian tradition provides the best hope for an escape from the moral confusion prevalent after the Enlightenment.[145] The second is that Aristotelian ethics does not suffer from the problematics of liberal (post-Enlightenment) moral thought and consequently, according to MacIntyre, is not subject to Friedrich Nietzsche's devastating critique of that project. Each of these points will be explained in further detail.

In *After Virtue*, MacIntyre extends Anscombe's critique of modern moral thought, suggesting that its use of terminology divorced from its original meanings is much more profound and widespread than the problems Anscombe noted. Building upon his idea that moral thought cannot be understood without first understanding the history involved, a central point of his *A Short History of Ethics*, MacIntyre suggests that one can only understand the depth of the problem with contemporary ethical discourse by

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[144] MacIntyre's turn to Aristotle represents a fairly developed stage in a long running battle with liberal moral thought which began with loyalty to Marxist thought. Overviews of this development may be found in *The MacIntyre Reader,* ed. Kevin Knight, (Notre Dame, IN: University of Notre Dame Press, 1998), 1-30 and in *After MacIntyre: Critical Perspectives on the Work of Alasdair MacIntyre,* eds. John Horton and Susan Mendus (Notre Dame, IN: University of Notre Dame Press, 1994), 1-15.
[145] Alasdair MacIntyre, *After Virtue,* 257.

recourse to the history of that problem.[146] He provides a narrative account of how philosophy came to disregard the strength of a tradition of reasoning, only to find itself unknowingly trapped in a morass of disconnected and incommensurable ethical terms and concepts. This willingness to turn to narrative and example rather than to to a totalizing foundation, while admittedly not completely satisfying, is at least a refreshing change from the repeated failed attempts at such foundationalist thinking of which MacIntyre accuses the enlightenment thinkers.

MacIntyre's narrative begins with the rejection of Aristotle and the loss of theologically grounded certainty, a double-barreled loss of *teloi,* and the subsequent cycle of attempts at finding a new foundation. It is only through telling this story of the corruption of moral reasoning that MacIntyre can point to two of his core claims. The first of these is the claim that the modern moral project has failed. MacIntyre does not claim that the modern project logically must fail, only that it has over and over again. He explains the justification for this type of argument by suggesting it is the same as that brought against the existence of witches and unicorns, namely that "every attempt to give good reasons for believing there are such... has failed."[147] Since he is unable to provide a proof for the failure of the modern moral project, MacIntyre must

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[146] Ibid., *A Short History of Ethics*, (New York: Macmillan, 1966) and the earlier "Notes from the Moral Wilderness," *The New Reasoner* 7&8 (1958-9) reprinted in *The MacIntyre Reader*, ed. Kevin Knight, 31-49.
[147] Alasdair MacIntyre, *After Virtue,* 69. This same argument would hold true against both believers in God and in evolution.

rely on a narrative to provide convincing evidence that the modern project will likely never succeed. I do not mean to suggest a criticism by the wording of my last sentence. MacIntyre is certainly right to claim that "Arguments in philosophy rarely take the form of proofs; and the most successful arguments on topics central to philosophy never do."[148] In this critique, MacIntyre finds himself fighting alongside Nietzsche, who similarly critiques modern morality as a mask for personal preference. When MacIntyre turns to attack his wingman, he admits that there is no decisive proof of the failure of Nietzsche's theory, just as there is none that decisively dispatches modern morality.

Again, MacIntyre notes that Nietzsche's ideas have never been successfully put into practice and provides an explanation for this failure which points toward future failures as well. Attempts at acting directly upon one's will to power without any attempt to hide behind a facade of common morality are likely to result in annihilation by the public. It is even more certain that Nietzschean theory isolates the actor by destroying the possibility of moral interaction. The claim that the only rational thing to do is to act directly on one's will to power is self-realizing, because, even were

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[148] Ibid., 259.

Nietzsche's critique of modern morality untrue, the "great man" creates a situation in which a shared morality is impossible.[149]

The second of MacIntyre's core claims which rely on using narrative as his form of argumentation is his assertion that the only possibility for recovering a non-anarchic morality lies in a return to virtues. This return is construed in an Aristotelian way as being tied to shared practice and community. MacIntyre's historical narrative is intended to show that, while Aristotle's works were rejected, this rejection is not decisive, except for non-crucial aspects of Aristotle's ethics and politics. Through a retelling of the history of philosophy, MacIntyre argues that only some of the specific content of Aristotle's theory needs correction, and that excision of the same leaves Aristotle's ethics sound.

Narrative, then, is central to MacIntyre's critique of the state of moral deliberation and of liberal philosophy in general. MacIntyre's contention here echoes that of Stanley Hauerwas and one can speak of MacIntyre criticizing liberalism for having either no story or, since liberalism has a failed history of attempting to prove the validity of its humanistic foundationalism, a bad story. MacIntyre in his critique can be seen as attempting to present the "truth" about liberalism, with this truth intended to be a corrosively illuminating investigative history. MacIntyre errs in extending this method of argument

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[149] Ibid., 257-259.

against liberalism, which he understands to be the political philosophy of the Enlightenment.

It is not surprising that MacIntyre attacks liberalism (by which he does not, of course, mean "liberal" as opposed to "conservative" political thought – both Democrats and Republicans, embrace, or at least pay homage to, "liberalism"). Liberalism is the idea that we enter into society as free individuals, usually for the purpose of self-protection and the common good understood as the collected good of all individuals, rather than the good of the collective. Since MacIntyre suggests that tradition is essential to morality, the absence of any real power for tradition in pure liberalism is naturally a problem for him. The inability to philosophically defend liberalism, combined with a history of theoretical chaos, suggest to MacIntyre that Liberalism is an attempt to hide personal preferences underneath the academic gown of moral philosophy. But even if liberalism is logically dependent on Enlightenment thought, one must consider other factors when considering political history. This last point should have been apparent to MacIntyre, as it is central to his rewriting of the intellectual history of philosophical ethics.

Liberalism is self-justifying in terms of the societies built upon it as compared to those built upon other political philosophies. MacIntyre has to accept this form of argument on pain of self-contradiction, since he introduces narrative and the proof from example as evidence in his critique of the Enlightenment. He is similarly wrong to suggest that human rights are as

absent as witches and unicorns.[150] We do in fact have evidence of rights and "rights language" has even successfully infiltrated the language of its most notorious abusers in their attempts to ward off international censure and sanction. Furthermore, liberalism *in practice* is not as radically atomistic or individualistic as the underlying theory would suggest, which is, for example, why there are national temperaments to the liberal democracies.

These errors point to what seems to me to be a central weakness of the critique of liberalism in *After Virtue* and elsewhere in MacIntyre's work. MacIntyre notes the importance of contingency and also how failed attempts at a disembodied, non-particularized sense of the truth (i.e. the modern project) lead quickly to the absolute relativism of emotivist theories. Furthermore, he repeatedly notes that failed attempts at describing the human condition and behavior *as such* are often successful if understood to represent an empirical account of the human condition *at that moment* (or the one immediately preceding the philosophical interpretation under consideration).

MacIntyre, however, describes his history of philosophy as *fact*, rather than a (defensible) narrative generated as a way of understanding salient aspects of the past as he sees them. Narrative, as he notes, fills in the "connections" between what would otherwise be a laundry list of isolated,

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[150] Ibid., *After Virtue*, 67.

incoherent points. Even if we accept MacIntyre's claim that "the concept of an intelligible action is a more fundamental concept than that of action as such," and were to extend it to history, we would still be left with the possibility of writing a different history. This would be true even if we accepted his articulation of which historical moments were those significant to our history.[151]

It is therefore possible to understand the history of philosophy not as MacIntyre does, but as the history of shifting power structures or, for that matter, as a random series of movements brought on, not with reference to any coherent philosophical movement, but along the lines of a shifting, bored, capricious humanity which chooses a new philosophy at random when the old one is recognized as old. This, in fact, is what an emotivist history of philosophy would look like.

What comes out of this understanding is that the history of philosophy written by MacIntyre already presupposes his conclusion that we must now form small communities and wait out the storms of confusion currently sweeping across the moral desert of liberalism, continuously destroying and building new foundations in the sand. The history he writes is one that can serve as the pre-history of such a community. Such a history would claim

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[151] *AV*, 209.

that before the forming of this community, morally "the earth was a formless void and darkness covered the face of the deep..."

MacIntyre's critique of liberalism is distorted by his goal of creating new communities in which virtue might flourish. He recognizes, for example, in his discussion of the Supreme Court's decision in *Bakke,* the possibility of a government binding together people even though the nation lacks a shared morality, let alone shared first principles.[152] However, he understands from this "that modern politics cannot be a matter of genuine moral consensus."[153] While on a certain level that is true, MacIntyre errs when he concludes the paragraph, "Modern politics is civil war carried on by other means." The avoidance of civil war despite profound differences in fundamental beliefs is what modern politics is actually about. It is this function we must recognize as essential to the pursuit of any form of moral consensus, even where such consensus is only found within subgroups of the larger society.

Like Stanley Hauerwas, MacIntyre considers a commitment to liberalism inconsistent with a true moral life. Also like Hauerwas, MacIntyre sees the only hope of sustaining ethics and a moral tradition as being within a self-enclosed community. It is interesting to note that this debate echoes that which raged within Orthodox Judaism between those who sought to maintain

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[152] It might seem as though shared first principles should have been more common than shared moral practice. This assumption, empirically false, proceeds from a belief that morality *is in fact* deductive when at best one can make the claim that morality *should be* deductive, a normative claim shared neither by the author nor the Talmudic rabbis.
[153] Alasdair MacIntyre, *After Virtue,* 209.

strict adherence to Jewish law while living within modern society and those who attempted to recreate the separation from non-Jewish society that had been enforced before the Emancipation. MacIntyre writes,

> What matters at this stage is the construction of local forms of community within which civility and the intellectual and moral life can be sustained through the new dark ages which are already upon us.[154]

The problem with this claim is not its positive content, the call for building communities of virtue and shared values, although the temptation to racism and other forms of prejudicial exclusionism is worrisome. The error that MacIntyre and Hauerwas share is that they do not see liberalism as a structure in which communities may be formed, because they are so afraid of the possibility of liberalism erasing all such communities. The communities that MacIntyre and Hauerwas aim to protect against moral barbarism (here taken to mean babelism) are utopian since they are understood to float without an external power structure guarding them from real barbarians. Greece may fall not only because of internal pressures, but also from invasion. MacIntyre is more subject to this critique on coherence grounds than Hauerwas, who would argue that the community is protected from dissolution by its commitment to Divine truth.

Hauerwas writes,

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[154] Alasdair MacIntyre, *After Virtue,* 263.

The hallmark of such a community, unlike the power of nation-states, is its refusal to resort to violence to secure its own existence or to insure internal obedience. For as a community convinced of the truth, we refuse to trust any other power to compel than the truth itself.[155]

A more realistic form of communitarianism and one more likely to engender an environment conducive to the development of virtue is that proposed by Michael Walzer.[156] Walzer recognizes that the language of liberalism is "thinner" than that of "thick," value-rich communities. He explains that we develop our values within these thick communities and only thin them out in order to either understand what other communities are saying or in order to justify ourselves in intercommunal dialogue. Walzer and MacIntyre are in agreement, then, on the basic relationship between the type of communities that can engender virtue and liberalism, but Walzer acknowledges the value of liberalism for the inter-communal arena where MacIntyre cannot.

Here, MacIntyre's argument against liberalism on the basis of the failure of all past attempts to justify it and the obvious incoherence of its adherents turns back upon the community which he seeks to create. The community he desires requires the groundwork of liberalism in order to survive.

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[155] Stanley Hauerwas, *Community of Character*, 85.
[156] Michael Walzer, *Spheres of Justice: a Defense of Pluralism and Equality* (New York: Basic Books, 1983) and *Thick and Thin: Moral Argument at Home and Abroad* (Notre Dame, IN: Notre Dame Press, 1994).

Furthermore, the strength of liberalism is found not in its abstract justification (which is the point at which MacIntyre attacks it) but in the fact that it alone has shown itself able to sustain multiple communities of virtue even when those communities disagree on fundamental premises. It also should be recognized that liberal society as a practice of living alongside those with whom one disagrees demands and creates its own set of virtues.

Similarly, MacIntyre criticizes economists for failing to recognize that any commercial transaction depends upon some element of community, giving as humorous counterexample the customer who upon discovering his butcher suffering from a heart attack decides to visit a competitor to complete the transaction. The same logic applies to liberal society: at a minimum, the requirements of negotiation engender and demand a basic level of community and commonality. I would argue that in fact liberal society goes beyond this minimum. It has been suggested that the greatest hope for peace in the Middle East arises in the context of normalizing commerce.

Virtue ethics, as I construe it, is capable of recognizing the importance of both community and nation and of locating the resources for developing virtue and the value-thick community it requires within the context of a broader society. If contemporary virtue ethics is uncertain about this possibility, it will need to learn this lesson from Jewish virtue ethics, the subject of the following chapters.

Chapter 2: Rabbinic Ethics Reconsidered

The chapters that follow will show that the Talmud and other early rabbinic texts are concerned with character to the same extent as Aristotle and contemporary virtue ethics. Furthermore, I will demonstrate that the rabbis engage in discussion and debate about several of the problems that currently engage proponents of virtue ethics. Although the rabbinic concern with developing the *Halakhah* (Jewish legal system) cannot be overstated, it is an error to assume that this emphasis on law is matched by an equal de-emphasis of matters of character and virtue.[157] Indeed, even the activities required for legal debate are characterized in "virtue" terms. While detailing the centrality of debate to the rabbinic Judaism and especially the Babylonian Talmud, Louis Jacobs provides a long list of such examples:

> Some time before the Amoraic period, the debate in Torah matters was described in military terms—*milḥamta shel Torah* (*Sanhedrin* 111b). On the verse, 'And he carried away all Jerusalem, and all the princes, and all the mighty men of valour' (II Kings 24:14) the *Sifre* (to Deuteronomy 32:25) comments: 'What mighty deed could have been accomplished by men taken into captivity and what kinds of warfare could men bound in chains have engaged in? But "all the mighty men of valour" means, in the warfare of the Torah.' This enabled the Rabbis to interpret Biblical verses glorifying military prowess as referring to battles of the mind. For instance, on the verse 'Happy is the

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[157] I will often refer to the "rabbis" collectively, but it should be understood that, while there are some core concepts (e.g. God's existence and revelation of Torah) that are shared by all, the variety of opinions represented in the many layers of rabbinic texts makes this shorthand for "some rabbis" or "at least one relatively authoritative rabbi." I indicate where the disagreement is relevant to the discussion.

man that hath his quiver full of them: they shall not be ashamed, but they shall speak with the enemies in the gate' (Psalm 127:5), a Rabbi commented: even father and son, master and disciple, become enemies of one another when they are on opposing sides in the Torah debates (*Kiddushin* 30b)....R. Judah interprets (*Sanhedrin* 93b) the verse praising David's qualities as referring to his skill in debate: 'that is cunning in playing'—knowing the right questions to ask; 'a mighty valiant man'—knowing the correct answers; 'a man of war'—knowing how to give and take in the battle of the Torah; 'prudent in manners'—knowing how to deduce one thing from another; 'and a comely person'—who demonstrates the proofs for his opinions; 'and the Lord is with him'—the ruling is always in accordance with his views.[158]

Jacobs further notes the way that "Torah debate was also compared to the skill exhibited by a competent craftsman," for example weavers, emphasized by the name for a tractate, *massekhet* or 'web.'[159] To one familiar with the relationship between martial strengths and the development of Greek virtue ethics, it would come as no surprise, given this emphasis on developing oneself as a warrior-rabbi, if the rabbis were focused exclusively on a parallel version of virtue. As we shall see, a significant body of material within the Mishnaic and Talmudic corpuses concerns matters of character rather than

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[158] Louis Jacobs, "The Talmudic Argument." In *Essential Papers on the Talmud,* ed. Michael Chernick (New York and London: New York University Press, 1984), 58-59. On the use of military metaphors in connection with the Evil Inclination, see also Jonathan Schofer, *The Making of a Sage* (2000), 188-194.

[159] Ibid., 59. Maimonides, in an interesting passage, suggests that medicine is the exemplar of professions (*Eight Chapters*, chap. 5, in *Ethical Writings of Maimonides*, 75-6):
On the basis of this reasoning [that all should be oriented to the highest Good, namely God], the art of medicine is given a very large role with respect to the virtues, the knowledge of God, and attaining true happiness. To study it diligently is among the greatest acts of worship. It is, then, not like weaving and carpentry, for it enables us to perform our actions so that they become human actions, leading to the virtues and the truths.

the permissibility of discrete actions, despite the Talmudic interest in

exegetical and legal exercises.

Character is revealed most clearly by observed actions, but the

Talmud and contemporary virtue ethics also are concerned with character

apart from actions, recognizing that "what is hidden is hidden, what is

revealed is revealed" but that all is revealed before "the Great Tribunal" (B.

Sotah 22b). This focus on character as a central ethical concern is perhaps a

result of the expansive nature of the legal materials, which encompass so

wide a range of possible actions that what is left to the extra-legal material is

that which cannot be touched by law – the internal concerns of character and

virtue.[160]

The concern for virtue found in the vast array of Jewish ethical texts

from the Middle Ages to the present was not imported along with the

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[160] For the expansive nature of "matters of Torah," see for example B. *Berakhot* 62a on proper behavior in a washroom or a bedroom. It is true that some classes of activity are themselves outside the legal framework, including matters of *lifnim m'shurat ha'din*. However, there is a tendency in the Talmud and later Jewish tradition to incorporate what was initially an ethical exhortation into the legal structure. This fact may be partially responsible for the belief that Jewish ethics is legalistic, when in fact the converse is true (i.e. Jewish law is ethical). Relevant here is the distinction between the poles of the *Halakhah* described by Louis Newman and discussed below. As guardians of the tradition through ordination and banning, the rabbinic establishment was concerned with assessing when character flaws became significant enough to raise questions of suitability for positions of authority. For a Talmudic example, consider B. *Moed Katan* 17a. On the primary importance of directing one's heart to heaven, see e.g. M. *Menahot* 13:11, B. *Berakhot* 5a, 17a, B. *Menahot* 110a. From the other side, it may be argued that the *Halakhah* does in fact embody (or at least recognize) in law that which is internal, since it is open to the Divine Court to judge what is hidden from man (B. *Sotah* 22b).

Aristotelian corpus by Moses Maimonides and others.[161] Rather, as will be

shown, reflection on character represents an indigenous mode of Jewish

ethical reasoning. By asserting that such an approach is indigenous, I do not

mean to imply that the rabbis could not have been influenced by non-Jewish

sources in developing their approach to character. The question of Greek

philosophical influence on the Talmud appears unresolved. Saul Lieberman,

the preeminent scholar of rabbinics of the previous generation, notes that the

rabbis made use of some Greek knowledge, in particular for classification of

their own hermeneutical rules, and that further,

> The Rabbis resorted to well established devices which were
> current in the literary world at that time. Had the Rabbis
> themselves invented these artificial rules in their interpretations,
> the 'supports' from the Bible would be ineffective and strange to
> the public.[162]

While a general (second-hand) knowledge of Stoic thought may be

assumed, Lieberman notes that the only pre-Christian Greek philosopher they

mention is Epicurus and that, following Harry A. Wolfson he can definitively

state that "Greek philosophic terms are absent from the entire ancient

Rabbinic literature."[163] Lieberman notes that this is not true of Greek and

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[161] Even as I develop the virtue ethics present within the rabbis, it would be nonsense to avoid the classical commentaries for fear of reading them back into the text.

[162] Saul Lieberman, *Hellenism in Jewish Palestine* (New York: Jewish Theological Seminary Press, 1962), 78.

[163] On the influence of Stoic thought on the rabbis, see Henry A Fischel, *Rabbinic Literature and Greco-Roman Philosophy: A Study of Epicurea and Rhetorica in Early Midrashic Writings* (Lieden: E.J. Brill, 1973).

Latin legal terms and that, while it is certain that Greek philosophy must have

had some impact on rabbinic thought in Palestine, how much is unclear.[164]

Josephus adds the interesting twist of citing a lost fragment from Aristotle's

student Clearchus, in which the latter says that Aristotle learned more from a

Jewish sage he encountered than vice versa.[165] Lieberman's work does not

address Greek influence on Jewish ethics but nothing within his work would

suggest that rabbinic ethics is anything other than indigenous. Wolfson, for

his part wrote that:

> What most characteristically distinguishes Jews and Greeks, is
> their respective views of life. That of the former was ethical, that
> of the latter was cosmological. Of course, neither was
> exclusive. In the process of the development of their respective
> ideas, Jews became interested in cosmology and Greeks in
> ethics... Yet the emphasis has always been laid on the point of
> view with which they started. Jewish cosmology has always
> been ethical, while Greek ethics has always been
> cosmological.[166]

Judaism as we understand it is rabbinic and, even if the earliest

rabbinic texts were to reflect Greek philosophical influence, it is to these

sources that we turn in order to examine Jewish ethics.[167] The rabbis

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[164] Saul Lieberman, "How much Greek in Jewish Palestine," in *Biblical and other Studies*, ed. Alexander Altmann (1963), 124, 129-132.

[165] Josephus, *Contra Apion* 1:176–182.

[166] Harry Austryn Wolfson, "Maimonides and Halevi: A Study in Typical Jewish Attitudes towards Greek Philosophy in the Middle ages" in *Studies in the History of Philosophy and Religion*, eds. Isadore Twersky and George H. Williams (Cambridge, MA and London: Harvard UP, 1977), 120.

[167] Or, as Daniel Boyarin frames this point with greater eloquence, "It is important to emphasize that the term *rabbinic Judaism* refers not to the Judaism practiced by the Rabbis

recognized that there was wisdom among the nations (B. *Megilah* 16a). The

narratives in which Rabbi Judah, who redacted the Mishnah, declares of a

semi-historical roman emperor "This thing Antoninus taught me" likewise

illustrate this belief (e.g. B. *Sanhedrin* 91b). This idea is amplified and

balanced with the requirement of maintaining fidelity to one's own tradition in

a later Midrash: "If a man says, 'There is wisdom among the nations,' believe

it...'There is Torah among the nations' do not believe it."[168]

Recognition of the wisdom of the nations did not guarantee that such

wisdom would take hold within the tradition, of course. R. Ishmael, for

example, told his nephew Eleazar b. Dama that Torah study is required

during both day and night, and that he could only devote to Greek wisdom a

time that was neither day nor night (B. *Menahot* 99b). Rather, the close

proximity to a culture caused by political subjugation allowed for incorporation

of that which was appealing and articulation of that which was objectionable.

This point is made self-consciously in the following passage:

> [I]s Greek philosophy forbidden? Behold Rab Judah declared
> that Samuel said in the name of Rabban Simeon b. Gamaliel,
> ...There were a thousand pupils in my father's house; five
> hundred studied Torah and five hundred studied Greek wisdom,
> and of these there remained only I here and the son of my
> father's brother in Assia! — It was different with the household

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but to the Judaism practiced by the Rabbis and by those who considered the Rabbis their
spiritual authority" (*Carnal Israel: Reading Sex in Talmudic Culture* (Berkeley: University of
California Press, 1993), 2-3, note 2.
[168] *Lamentations Rabbah,* ed. Buber 2:9; Vilna 2:13, citing Obadiah 1:8.

of Rabban Gamaliel because they had close associations with the Government

(B. *Baba Qama* 83a / B. *Sotah* 49b)[169]

I am not claiming here to return to a Judaism before any external influence was felt. Part of any cultural genius, and this is especially true for rabbinic Judaism, is the oyster-like transformation of external influence. Consider the following *Mishnah*:

> Ben Zoma said: Who is he that is wise? He who learns from every man, as it is said: 'from all who taught me have I gained understanding, when Thy testimonies were my meditation' [Ps. 119:99]. Who is he that is mighty? He who subdues his [evil] inclination, as it is said: 'he that is slow to anger is better than the mighty; and he that ruleth his spirit than he that taketh a city' [Proverbs 16:32]. Who is he that is rich? He who rejoices in his lot, as it is said: 'when thou eatest of the labour of thy hands, happy shalt thou be, and it shall be well with thee' [Ps. 128:2]. 'Happy shalt thou be' — in this world, 'and it shall be well with thee' — in the world to come. Who is he that is honoured? He who honours his fellow-men, as it is said: 'for them that honour me I will honour, and they that despise me shall be lightly esteemed' [I Samuel 2:30].
> *(Pirkei Avot* 4:1)

Absent external cues to color the meaning of the text, as it appears in *Avot*, it represents a straightforward response to antecedent (though unspecified) accounts of virtue. Ben Zoma's statements collection of disparate biblical statements displaces either common or imported ethical. By

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[169] Saul Lieberman analyzes the early sources (i.e. *Tosefta)* which the Talmud draws upon here, concluding that no ban ever existed on the *study* of Greek wisdom in "The Alleged Ban on Greek Wisdom" in *Hellenism in Jewish Palestine,* 100-114.

suggesting non-literal answers to these questions, Ben Zoma asserts the

primacy of scripture – but only as interpreted by the rabbis—over other

sources of ethics. In doing so, he borrows from these other sources the types

of questions that are to be asked of, and answered by, formulation of ethics.

I approach the Talmud as an ethicist. The ethicist must consider the

meaning of history and text for the community for which they are canonical.[170]

David Novak notes that the ancient Greeks, first to use the term "philosophy"

to describe what they were doing, denoted by that term the application of

reason to the unchanging, which is to say, nature. Within the Talmud,

according to one school, the unchanging Torah takes the place of unchanging

nature.[171] None of this discounts the importance of historical research for

clarifying the texts upon which I draw. However, even the historian must

examine the past through some lens, making it impossible to take seriously

pretensions to a theory-neutral and community-free objective account. As an

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[170] The distinction between the way historians and communities approach the past has been analyzed by Michael Morgan, *Dilemmas in Modern Jewish Thought: The Dialectics of Revelation and History* (Bloomington and Indianapolis: Indiana University Press, 1992), especially chapter 1. Of course, this does not entirely resolve the question of different manuscript editions or other concerns raised by the tradition itself about the fidelity appropriate to an imperfect text. These matters are intrinsic to any encounter with a canonical text and focus the community/individual on the relationship with tradition rather than positing it/him as an aloof and judgmental outsider

[171] David Novak, "The Talmud as a source for philosophical reflection" in *History of Jewish Philosophy.* Eds. Daniel H. Frank and Oliver Leaman (London: Routledge, 1997), 62-80. This relationship between nature and Torah as unchanging was developed by S.R. Hirsch, in *Neunzehn Briefe ueber Judentum* (*Nineteen Letters*), first published pseudonymously in 1836 (see especially note to letter eighteen). For traditional Judaism, one can add that the Talmud, in particular the Babylonian Talmud, can be the subject of philosophical reflection itself, since its canonization as the last universally accepted stage of the oral Torah.

ethicist, one must go beyond this recognition of subjectivity and actively

consider the community's subjective understanding. Instead of examining the

past as past, the ethicist considers its significance as an ongoing influence

upon the present.

My examination of these sources draws upon a recent trend in the

scholarship of Jewish studies that Peter Ochs has termed "Textual

Reasoning."[172] One of the developments coming out of Textual Reasoning

and the Talmudic research out of which it developed is the recognition that

the seemingly haphazard *sugyot* (plural of *sugya*, discretely coherent

subsections) of the Talmud represent logical systems in a mode not initially

perceived through the lenses of western philosophy.[173] In considering the

Talmud as a source of philosophical reasoning, I join other Textual

Reasoners in attempting to recover these logics in order to find new methods

of reasoning about contemporary issues.

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[172] Peter Ochs, "B'nei Ezra: An Introduction to Textual Reasoning" in *Contemporary Jewish Theology,* ed. Elliot Dorff and Louis Newman (New York: Oxford University Press, 1999), 502-11.

[173] M. Guttman collected the Talmudic sources dealing with the "ba'ya," where both sides of a debate are seen to be perfectly balanced , arguing that these are examples of intellectual exercises or "academic questions" ("*Sheélot Akademiot ba-Talmud*" Dvir, I (Berlin, 1923): 38-87; 2 (Berlin, 1924): 101-64). Louis Jacobs, to whose text I owe this reference, noted that the importance of dialectical skill and creativity within the academy in *The Talmudic Argument: A Study in Talmudic Reasoning and Methodology* (New York: Cambridge UP, 1984). David Weiss-Halivni, quoting David Kraemer, notes that there was a tendency within the Amoraic corpus away from apodictic statements and toward argumentation. Furthermore, he notes a parallel tendency for the apodictic statements to be "explanatory [rather] than halakhic" ("The Amoraic and Stammaitic Periods" in *Essential Papers on the Talmud,* ed. Michael Chernick (New York and London: New York University Press, 1994), 127-150, n.3).

There is risk involved in discussions of ethics that draw upon several

strata of rabbinic sources simultaneously.[174] Most significantly, doing so

potentially flattens the differing perspectives of the multiple historic periods

present in these texts whose creation spans one thousand years. The fact

remains that these strata commingle within the more-or-less edited text of the

two Babylonian (*Bavli*) and Palestinian (*Yerushalmi*) Talmuds. The Bavli

attained canonical status in (very close to) its present form (subject only to

textual corrections not permitted of the Biblical canon). The canonical status

of the Talmud is noted, for example, by Maimonides in his introduction to the

Mishneh Torah.[175] Joseph Caro (1488-1575), the author of the authoritative

legal code the *Shulhan Arukh*, similarly suggests as a reason the rabbis in the

Talmud (*Amoraim*) wouldn't disagree with statements by rabbis in the

Mishnah (*Tannaim*) and that latter authorities would similarly defer to their

predecessors that at the time of the redactions (of the Mishnah and Bavli), the

Jews "accepted as at Sinai - *kimu v'kiblu*" not to argue with those established

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[174] Many of the concerns have been summarized, with suggestions for moving forward, by Jack N. Lightstone, "Problems and New Perspectives in the Study of Early Rabbinic Ethics" *Journal of Religious Ethics* 9/2 (1981):199-209.

[175] Maimonides distinguishes between the Talmud and its predecessors, on the one hand, and all later authorities and texts, on the other. The distinction is justified by the existence of a rabbinic court of universal authority for the majority of the earlier period, but primarily on the unity of the Jewish people in accepting the authority of the sages who legislated and interpreted for them: "And every *bet din* extant after the [Babylonian] Talmud...its actions did not gain acceptance throughout Israel, because of the distance between settlements...and because that *bet din* of a given place is [comprised of] individuals [for] the great *bet din* of seventy [i.e. the Sanhedrin] had ceased several years before the compilation of the [Babylonian] Talmud" (M.T. *Introduction*). On the simultaneous canonization and deemphasizing of the Talmud by Maimonides, see Halbertal, *People of the Book*, esp. 103-109.

authorities.[176] These texts are authoritative as a body of work for Judaism and historical interest in distinguishing among the layers need not prevent our considering the text as a whole.

The same argument holds, albeit not as strongly, for discussions of "rabbinic ethics" that bring together the various sources of the Tannaitic and Amoraic corpora. When discussing Jewish ethics, a holistic approach to rabbinic texts is justified by the way these texts are viewed within rabbinic Judaism, understood per Daniel Boyarin's definition "that the term *rabbinic Judaism* refers not to the Judaism practiced by the Rabbis but to the Judaism practiced by the Rabbis and by those who considered the Rabbis their spiritual authority."[177] Looking at these texts in the same way as the communities associated with rabbinic Judaism, one encounters a coherent but boisterous super-text that is a source of ethics as well as the starting point for further ethical reflection.

There are certainly times for discussing these texts independently of one another, especially when one is trying to demonstrate a feature of the text or to develop meaning that can only be uncovered by attention to the literary features exclusive to a given rabbinic corpus.[178] For example, one might

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[176] R. Joseph Karo, *Kesef Mishneh* to M.T. *Mamrim* 2:1.

[177] Daniel Boyarin, *Carnal Israel: Reading Sex in Talmudic Culture* (Berkeley: University of California Press, 1993), 2-3, note 2.

[178] Jonathan Schofer provides a brief explanation of the issues involved in treating the rabbinic corpus as a uniform text by way of introducing his approach to the study of virtue ethics in *Avot de Rabbi Natan* (*Making of a Sage* (2000), 45-47. He notes that "Many recent

overlook the fact that the Babylonian Talmud and the Talmud of the Land of

Israel are different texts which often use the same materials in very different

ways if one simply excerpts brief selections of material. One might

adequately explain the meaning of the brief selection while misunderstanding

how it is used by the *sugya*. Thus, one's explanation, for example, of a

beraita from the *Bavli* might capture the claim made by the *beraita* while

failing to consider how the *Bavli* intentionally subverts that meaning in its

construction of a *sugya*.

The complexity of rabbinic texts, especially the two Talmuds and, of

these, the Babylonian Talmud, makes it impossible, or at least ill advised, for

any reader to claim without hesitation to have properly understood the text,

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American studies, while not facing this issue explicitly, address a general topic through the analysis of one particular text, with the implication that the analysis is more-or-less exemplary, but not necessarily comprehensive" (ibid., 46). While I recognize the impetus behind abandoning the approach of G.F. Moore and Ephraim Urbach which collects disparate texts and decontextualizes them, there are two strengths to their studies lacking from the contemporary approach. First, the process is imitative of the materials being considered. The rabbis decontextualized and recontextualized materials as they saw fit in their construction of *sugyot* and intertextual meaning. Second, it seems logical that a broader study of lesser depth would more accurately characterize a diverse set of materials than a deep study of what may or may not be representative. Indeed, Schofer notes that Max Kadushin, perhaps the first to apply the contemporary approach, chose as his exemplary text *Seder Eliyahu* and that "the one thing that contemporary scholars agree on concerning *Seder Eliyahu* is that the text is not representative of rabbinic thought, but in some way 'stands on the side' of talmudic literature" (ibid.). It would seem that human limitations require us to choose between the forest and the trees. Fortunately in Jewish studies we have Rabbi Dr. Jacob Neusner, who seems unbound by human limitations and "who has published more than 850 books and is the most published humanities scholar in the world" ("What Is The Talmud?" (http://www.come-and-hear.com/editor/whatis.html), accessed 7/1/04). A better claim for the contemporary studies is that they illustrate critical aspects of the way rabbinic texts construct meaning overlooked by the older studies, as illustrated in Neusner's monograph, *How Adin Steinsaltz Misrepresents the Talmud : four False Propositions from his "Reference guide"* (Atlanta, Ga. : Scholars Press, 1998).

even when that scholar has considered an entire section of material. *Sugyot,*

the discrete units of meaning discussed in Talmudic scholarship, are not

delineated by the text. Neither, for that matter, are sentences or paragraphs.

The first step in constructing a defensible reading of the text, then, is to set

markers up to show what the text is that one is considering.[179] Defining the

boundaries of a text is already a move that requires defense and an

explanation as to why the boundaries should not be drawn differently.[180] This

is as true of an individual text as it is for canons as a whole.[181] Adding to the

complexity of interpreting the Babylonian Talmud is that it may be seen as an

esoteric text which hides its true meaning.[182] Even more complicated is the

suggestion of Menachem Fisch that the Babylonian Talmud contains one

meaning for the qualified student and an opposite meaning for the exceptional

student. Menachem Fisch writes, for example,

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[179] I am not arguing for a return to the molecular approach of studying rabbinic texts, in which a tiny unit contains within it all its meaning and would have that meaning wherever found in the supposed analogically arranged miscellany of the Babylonian Talmud. However, in a sense, those who stand accused of extracting selections of a rabbinic text might retort that even the best literary scholarship does the same, only the selections are longer.

[180] Outside the realm of texts, the most obvious proof of the power involved in delineating boundaries is found in the effects of gerrymandering in deciding elections.

[181] On the various purposes and meanings of canon, with particular attention to Judaism, see Moshe Halbertal, *People of the Book: Canon, Meaning, and Authority* (Cambridge, MA: Harvard University Press, 1997).

[182] On esoteric versus exoteric texts, see Leo Strauss, *Persecution and the Art of Writing.* (Glencoe, IL: Free Press, 1952). Strauss's explanation that errors in a text created by a master should suggest to us the possibility of exoteric content should also provide a caution against imagining ourselves capable of deriving meaning hidden for all but the finest of students. In other words, if we recognize that humility demands that we not think we can catch mistakes in the text of a master writer, it is an allied humility that cautions against belief that we have uncovered hidden meanings.

...Berakhot 19b is seen as an instructive, explanatory effort on behalf of one of the framers of the Bavli's many other *sugyot* of its kind, rather than that of an antagonistic critic. It is, I urge, the work of an antitraditionalist doing his best to *explain* the Bavli's antitraditionalist project, rather than that of an antitraditionalist aspiring to ridicule a traditionalist one. All of this, however, is ingenuously concealed. There is little chance that innocent beginners will be deprived of their innocence by studying *Berakhot* 19b in its immediate context, any more than practiced, committed traditionalists are liable to be forced to rethink their former commitments.[183]

Given these challenges to reading rabbinic texts, I embrace a pragmatic model, where the only claim to truth allowed of reading(s) of a text is persuasiveness. The texts discussed in this dissertation with reference to the rabbis' debates related to the field of virtue ethics are drawn primarily from the Babylonian Talmud. Additional texts, mostly drawn from *Pirkei Avot,* are cited to give a sense of the variety of rabbinic reflections on virtues and ideals.

The Interplay between Ethics and Halakhah

It has been argued that there is no such thing as Talmudic ethics, that properly both Hebrew Scripture and Talmud may be considered only sources out of which one does Jewish ethics, rather than as examples of Jewish ethics themselves. This, for example, is the position taken by Menachem

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[183] Menachem Fisch, *Rational Rabbis,* 161.

Marc Kellner in "The Structure of Jewish Ethics."[184] However, this generally

accepted statement needs revision in light of more recent scholarly

developments. Rather, as postmodern Jewish philosophers gathered under

the banner of "Textual Reasoning" have argued, the Talmud engages in

philosophical dialogue (or a text-based rational inquiry) as well as the

refinement of concepts and terms both for exegetical/theological reasons and

for more recognizably philosophical concerns.[185] The literary approach to the

study of Talmud, which derives meaning not only from the subunits of a text

but from the way these subunits are arranged and cemented together is

related, though not identical with this approach.[186] It is clear that many who

use the literary approach would reject the term "philosophy" or "theory" as a

way of characterizing the rabbinic project.[187] However, Textual Reasoners,

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[184] Menachem M. Kellner, "The Structure of Jewish Ethics," in *Contemporary Jewish Ethics,* eds. Elliot Dorff and Louis E. Newman (New York: Oxford UP, 1995), 13. The author adds a note excepting from his statement the Mishnaic collection of rabbinic aphorisms, *Pirkei Avot* (*Ethics of the Fathers*). Allowing such an exception, even were it a unique case, would distort the canon in the same way as saying that the rabbis did not consider the laws of Passover, except in the tractate of that name.

[185] For an embryonic form of this approach, see the various "Talmudic Lectures" by Emmanuel Levinas, for example in *Nine Talmudic Readings*. Translated by Annette Aronowicz (Bloomington: Indiana University Press, 1990). Peter Ochs and Robert Gibbs's "Gold and Silver: Philosophical Talmud" is a more developed study (in Peter Ochs and Nancy Levene, eds., *Textual Reasonings* (Grand Rapids, MI and Cambridge, England: William B Eerdmans Publishing Company, 2002), 90-102). Ochs's introduction to the book serves as a good explanation of the underlying commitments behind Textual Reasoning, while that of Nancy Levene addresses some of the tensions raised by the approach (2-14 and 15-27). See also Peter Ochs, "B'nei Ezra: An Introduction to Textual Reasoning" in Elliot Dorff and Louis Newman, eds., *Contemporary Jewish Theology* (New York: Oxford University Press, 1999), 502-11. Menachem Fisch's *Rational Rabbis* is a book-length study exemplifying the approach of Textual Reasoning.

[186] See pages discussions on p. 13ff and 113ff, above

[187] Private communication to me by Jonathan Schofer.

as well as most who apply literary analysis to the Talmud see the rabbis as engaged in a process of rational inquiry and conceptual development through a process involving directed exegesis and the structuring of antecedent texts into *sugyot* that transform these texts to allow for dialogue and the creation of new meaning.

The contention that the rabbis were not concerned with ethics, interestingly enough, has polemic appeal for certain segments of both Reform and Orthodox Judaism. Orthodox and Reform rejection of the Modern project of identifying Judaism with ethics has led many within those movements to suggest that what appears to be a rabbinic ethics is simply part of the rabbinic legal system. From one side, this represents contemporary Reform Judaism's self-critical reflection on its origins in Jewish Modernity. The assertion that classical Judaism had no concept of ethics is a rejection of the claims made by the early Reform movement for continuity between traditional Jewish sources and its own project of refiguring Judaism as ethical monotheism. This project had its origins, absent the polemics of the early Reform movement, in the Jewish Enlightenment generally and in particular in Moses Mendelssohn's *Jerusalem: oder, Ueber religioese Macht und Judenthum* (1783). The early Reform movement took Mendelssohn's arguments for the preservation of the purely religious aspects of Judaism and transformed them into arguments for the rejection of the same.

While the early Reform movement went too far in reworking all of
Judaism into a Modernist ethics, it is similarly wrong to swing all the way to
the other side and fail to recognize ethical thought in rabbinic (and earlier)
texts. From the other side, this objection represents an Orthodox challenge to
an ethics independent of *Halakhah* in favor of subsuming ethics within the
framework of Jewish law. The function of this argument is to prevent the
application of ethics as a judgment of the *Halakhah* in order to force change.
Several problems with this latter contention will be discussed below.

An example of the Reform critique of classical Jewish ethics is
provided by Eugene Borowitz, in his *Exploring Jewish Ethics: Papers on
Covenant Responsibility.* Developing a position akin to that of Kellner,
Borowitz writes:

> Traditional Judaism has not addressed the abstract concern
> with conduct called "ethics." No book of the Bible or the Talmud
> has ethics as its topic or major theme; however, once one thinks
> in terms of ethics one becomes aware of the strong ethical
> thrust found in the Written and Oral Torah. Ethics is, of course,
> a Greek way of looking at duty, a duty derived from reason.[188]

It is clear, however, that more than one biblical or rabbinic text "has
ethics as its topic or major theme." To name just one example, book of
Proverbs emphasizes reliance on wisdom over and against commandment as
its central value. To understand his statement, Borowitz must be seen as

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[188] Eugene Borowitz, *Exploring Jewish Ethics: Papers on Covenant Responsibility* (Detroit:
Wayne State U.P., 1990), 27.

using "ethics" to refer to a moral system based exclusively on Modern conceptions of rationality and universality, independent of any concrete conception of God and, even more so, revelation.

Borowitz's supposition that ethics as rational obligation is not found in Jewish sources but only in Greek sources misconstrues the nature of both Jewish and Greek ethics. The concept of abstracted "obligation" or "duty" is not central to the ethics in the schools of Plato or Aristotle, where virtue held pride of place. The problem of so constraining the term "ethics" even in ordinary speech is evidenced by the fact that the use of the term "ethical thrust" as applied to biblical texts in this quote requires a different meaning for ethics than that upon which the beginning of Borowitz's statement is premised.

If we take a less loaded definition of ethics, recognizing there to be forms of rationality that are not Modern but nonetheless contribute to "ethics," we allow for the possibility of Talmudic ethics and, by extension, Talmudic virtue ethics. According to Textual Reasoners, the Talmud engages in philosophy in a style not necessarily familiar to students of Plato and Kant, or even Aristotle.[189] Martha Nussbaum, notably a scholar of Greek ethics, has

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[189] See note 185. My claim here is not the same as that of Jacob Neusner's concerning "Judaism as philosophy." Neusner's convincing though controversial understanding of the Mishnah is that it represents as complete a philosophical system as though presented by the Greeks, where "philosophical system" is understood to mean "logical process of taxonomy." In preparation for this conclusion, Neusner asks the following questions, which he then answers in the affirmative: "[Is the Mishnah p]hilosophical in method, medium, and

suggested in another context that the recognizable discourses of academic philosophy represent neither the only nor the ideal form of ethical discourse.[190]

The *Aggadah*, or non-legal portion of the rabbinic corpus comprised of homiletic and narrative material, is an example of rabbinic philosophy, as Maimonides argued in the 12th century.[191] *Sifre Deuteronomy,* a rabbinic work compiled after the 4th century of earlier materials, recognized that the *Aggadah* contained rabbinic theology, declaring "If you wish to know God (lit. the One who spoke and the world [thereby] existed)", study the *Aggadah*"(*Piska* 49).

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message—yes. But is the Mishnah to be read as philosophical not in its context but in the setting of conventional philosophy of its time and place? By that I mean, by the criteria of method and message generally deemed philosophical, can we classify the Mishnah as philosophical? These are the questions that yield answers about the context in which the philosophy of the Mishnah is to be located. As to method, can we classify the taxonomic method—premises and rules—of the sages in the same category as the method of Aristotle? As to substance, can we identify the fundamental propositions of the philosophy of the Mishnah with the premises and points of acute engagement of Plato in the version that would emerge in the third century as Neo-Platonism?

"Without for one minute claiming the Mishnah's sages read Greek philosophy, past or present, I turn to Aristotle and to Neo-Platonism. Comparison and contrast by definition acknowledge no barriers of culture or historical context. By rights and by simple logic we can compare and contrast anything that falls into the same classification with anything else in that same classification" *Judaism as Philosophy: The Method and Message of the Mishnah* (Columbia, SC: University of South Carolina Press, 1991), 243.

[190] Martha Nussbaum, *Love's Knowledge* (New York: Oxford University Press, 1990), 148.

[191] Moses Maimonides, *The Guide of the Perplexed*, III: 17. In the translation by Shlomo Pines (Chicago: Univ. of Chicago Press, 1963), vol. 2, 470-1. Leo Strauss notes this in his introduction to *Persecution and the Art of Writing* (Glencoe, Il.: Free Press, 1952), 20.

Rabbinic theology, however, is practical and is therefore one of the forms rabbinic ethics takes.[192] Steven Fraade notes the way the *Sifre* transforms the mystical hope but practical impossibility of attaching oneself to God by substituting the real possibility of attaching oneself to the sages.[193] Studying "divine attributes" thus leads to a moral doctrine of *imitatio dei.* The same *Sifre* (Piska 49) explains that knowledge of God is knowledge of His virtues and leads to their emulation: Asking "can a person 'follow in God's ways?'"[194] *Sifre Deuteronomy* answers "As God is merciful, so should you be

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[192] Practical theology in the sense used here, as being concerned with human behavior, is indistinguishable from practical philosophy, at least in the context of belief in the radical separation between the human and the divine. Both issue in an ethics wholly dependent upon that which is knowable to humans.

[193] Steven Fraade examines half of this section in his *From Tradition to Commentary: Torah and Its Interpretation in the Midrash Sifre to Deuteronomy* (Albany: State University of New York Press, 1991), 92-93. Of the preeminence of *Aggadah*, Fraade writes here "The teachers of that branch of rabbinic Torah to which the present text may be said to belong...claim that it is only through the rabbinically guided study of the scriptural narrative of Israel's sacred history that God the creator may be known. At this point God's voice reenters the discussion...only when you, Israel, do your part---now understood as attachment to the sages in their study and practice of the Torah—will 'the Lord dislodge before you all these nations' ([Deut.] 11:23). Such social attachment is the most realizable route not only to the mystical goal of attachment to God, but to the political fulfillment of God's promises to redeem all Israel from the rule of the nations."

[194] The extent to which one could know anything about God was of course a matter of considerable philosophical debate and discussion, especially in the middle ages. Norbert Samuelson discusses an interesting version of this debate in "On Knowing God: Maimonides, Gersonides, and the Philosophy of Religion," *Judaism* 18/1 (1969): 64-78. He cites Gersonides' critique of Maimonides' radical negation of any attribution to God: "It is self-evident concerning any predicate that it is affirmed of a certain thing because it exists in some other thing. It [the predicate] is not predicated of both things in absolute equivocation, because between things related to each other in absolute equivocation there is no analogy" (R. Levi b. Gershom (=Ralbag =Gersonides, 1288–1344), *Wars of God* (Leipzig 1866), 128-130, cited and translated by Samuelson, 70). The point Gersonides makes, as Samuelson explains, is that terms have to mean the same thing when applied to disparate things (God and humanity) or there would be no way of discussing the difference between them, or to negate the relation. This presents a challenge to Maimonides' argument that God and humanity don't share a genus and that we cannot therefore know anything about God. For example, Gersonides notes that one couldn't, e.g., say that God has no body w/o the term

merciful; as God is compassionate, so should you be compassionate; as God is just, so should you be just; as God is kind, so should you be kind."[195] Similarly, in the Talmud: "Abba Saul interpreted [through a pun of Ex. 15:2], and I will be like him: be thou like Him: just as He is gracious and compassionate, so be thou gracious and compassionate" (B. *Shabbat* 133b and parallels). My point here is that the understanding of *imitatio dei* is widespread within the rabbinic corpus as a goad to action and perhaps character formation.

Although the method the Talmud employs to consider "philosophical" matters differs in form from contemporary debate, most significantly in the weight given to Biblical law and narrative as sources of data,[196] the give and take nonetheless corresponds to philosophical debate, as will be seen below. That is not to say that one side in any such debate is likely than to convince the other camp. As with contemporary (and classical Greek) philosophy, much of what passes for debate and/or dialogue is the specification and clarification of the opposing sides of the debate.

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body meaning the same thing with reference to us and to God. The extension of his argument is that to say anything about God or God's knowledge, whether positively or in negation, necessitates that God and God's knowledge be in some way similar to ours. Such an understanding makes a doctrine of *imitatio Dei* conceivable.

[195] This translation is abridged to remove the citation of biblical verses extraneous to the discussion.

[196] With the rise in narrative approaches to ethics, one is justified in asking why we should privilege the insight of Henry James, for example, over that of the Biblical authors.

Some Orthodox Jewish thinkers reject the idea of a rabbinic ethics not coequal with *Halakhah*. This phenomenon is better understood when it is recognized that the authors of such articles intend to defend the "sovereignty" of the *Halakhah* against challenges from the realm of autonomous ethics.[197] In other words, some proponents of Orthodox Judaism have described Jewish ethics as merely a subset of the Jewish law as a defense against ethically based criticism of that law by religious liberals. This is an extension of Orthodox arguments that the *Halakhah* is unchanging presented in the face of clear evidence of dramatic legal change.

A certain amount of this defensiveness may be justified as a response to historicist approaches that look for any change within the *Halakhic* system (even where that change is grounded within the rules of the *Halakhah*) as justifying any other change (including those clearly deviant from an *Halakhic* perspective). However, these positions are as unfortunate as they are reactionary and fail properly to attend to the approach the rabbis took to reconciling ethical and legal matters.

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[197] Walter Wurzberger, arguing from within Orthodox Judaism against the identification of Jewish law and ethics, lists among his interlocutors: The Chazon Ish (A.Y. Karelitz, 1878-1953), Yeshayahu Leibowitz, Marvin Fox, and David Bleich (*Ethics of Responsibility*, Philadelphia: Jewish Publication Society, 1994), 115, n. 4). That opposing an extra-legal ethics represents a circling of the wagons against a presumed moral challenge to the law's authority is apparent in J. David Bleich, "Is There an Ethic Beyond Halakha?" in *Studies in Jewish Philosophy*, ed. Norbert M. Samuelson (Lanham, MD: Academy for Jewish Philosophy/University Press of America, 1987), 527-546. It should be noted that Bleich, in that essay, recognizes that there is an aspect of ethics that, while grounded in the law, supports what I term virtue ethics in this dissertation. He writes, "Man, then, is commanded to emulate the essence of the Deity. In doing so, man aspires to a standard of conduct which, of necessity, is not spelled out in formal, legalistic codes" (540).

The standard text used to establish the precedence of law over ethics is

"אין חכמה ואין תבונה ואין עצה לנגד ה - No wisdom, no prudence, and no counsel can prevail against the Lord" (Proverbs 21:30). The Talmud cites this text, for example, to support the view that one must strip naked in public if one's clothing is found to contain a biblically forbidden mixture of fabrics despite the loss of dignity accompanying such an act (B. *Berakhot* 19b).[198] Although it is possible to see the Talmudic discussion here as pitting ethics against law, it actually pits human dignity against Divine dignity. This is evidenced by its used of the phrase "wherever a profanation of God's name is involved no respect is paid to a teacher/rabbi (אין חולקין כבוד לרב)" (B. *Berakhot* 19b).

Even according to the understanding that this text does subjugate ethics to law, it at most supports the view that the Rabbis were incapable of seeing the law as conflicting with morality.[199] However, even this is not strictly true. Rather, the Rabbis were aware that law could conflict with

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[198] See Menachem Fisch's intriguing analysis of this *sugya* as an example of "anti-traditionalism" in the Talmud: *Rational Rabbis* (Bloomington and Indianapolis: Indiana UP, 1997), 119ff. This same point was made in his paper. "*Berakhot* 19b: The Bavli's Paradigm of Confrontational Discourse," delivered at the AAR, 2002. In this text which supposedly crushes human thinking under the weight of the Divine, Fisch discovers an affirmation of human legal innovation as profound as that described in narrative of the controversy surrounding the Oven of Aknai (B. *Baba Metzia* 59b, which Fisch also discusses, 78ff). In that source, after a voice from heaven is overruled by the rabbinic court, God happily exclaims "My children have defeated me" in the standard translation. An alternate translation reads the text as "My children have made me eternal."

[199] See Louis Newman's discussion of Halivni, *Past Imperatives*, 50-51

morality, but confident that God's law would never do so. Only the latter

understanding could yield the following text:

> Our Rabbis taught: Three things [God] willed to
> come to pass, and *if He had not willed them, it*
> *would be but right that He should will them* (ואם לא
> עלו - דין הוא שיעלו). And these are they: Concerning
> a corpse, that it should become offensive; and
> concerning a dead person, that he should be
> forgotten from the heart; and concerning produce,
> that it should rot; and some say, concerning coins,
> that they should enjoy currency (B. *Pesahim* 54b,
> emphasis added).[200]

This text is included in a longer list of the finishing touches God put on

creation, with these being among those necessary for humanity to exist and

prosper.[201] The rabbis are affirming what might have been taken to be

negative features[202] of the world as they earlier within the *sugya* affirmed the

goodness of the creation of *Gehenna*.[203] This text makes the point that we

understand God's creation as conforming to the needs humans have in order

to flourish. Therefore, if we see ethics as comprising that which is necessary

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[200] On coinage, compare to *NE* 1133^{a}2-1133^{b}28.

[201] That is also how Rashi explains "דין הוא שיעלו". The *sugya* is introduced by the question of how one is to perform the *havdala* ceremony separating the Sabbath from the week that follows. One issue is the inclusion of a blessing over fire, which raises the issue of when fire was created in relation to the Sabbath. This leads to a discussion of all the finishing touches added to the creation in anticipation of the Sabbath (and for the benefit of humanity who were also created then). Our text continues that discussion.

[202] As for why one might have thought coins were detrimental to humans, see John Locke, *Two Treatises of Government* (London: Awnsham and John Churchill, 1698), Book II, chap. 5, paragraphs 45-51.

[203] One might follow Menachem Fisch's interpretation of dual levels to the *Bavli* by noting that in asserting the goodness of God's creation the rabbis are also asserting the right or necessity of humans judging what is in fact necessary for their own existence and flourishing.

for humans to flourish within their communities, it is impossible for God's law to contradict the ethical.

In any case, there is no reason to believe that the rabbis were averse to reinterpreting the law with reference to ethical concerns. David Novak has provided a full study of this phenomenon. He shows convincingly, for example, that the legal category of *mamzer* developed historically as the result of ethical concerns.[204] It becomes clear that the rabbinic belief in the law's inherent morality acted as a powerful engine for new understandings of the law that accorded with their ethical sensibilities.

There is nothing intrinsically objectionable in the statement that Jewish ethics is a subset of the *Halakhah*.[205] The term, even when used to delineate a body of texts separate from the Aggadic materials, is sufficiently fluid as to encompass both law and ethics. Louis Jacobs gives the following definition:

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[204] "*Mamzer*," is usually translated as "bastard," reflecting the final rabbinic understanding of the term. For a more complete definition and a discussion of the rabbinic ethical concerns leading to this redefinition, see David Novak, "Some Aspects of Sex, Society, and God in Judaism" in *Jewish Social Ethics* (New York: Oxford UP, 1992).

[205] For example, in one article David Novak conflates *Halakhah* and ethics, but does so in a way that acknowledges that Jewish ethics is not simply a question of law. Novak writes ""If 'ethics' be defined prima facie as a system of rules governing inter-human relations, then, of course, there is a Jewish ethics. That Jewish ethics is called *halakhah*. More precisely, *halakhah* includes ethics among a system of rules that also governs relations between humans and God. Ethics, which pertains to the interhuman realm (*bein adam le-havero*), is as integral a part of *halakhah* as are the Sabbath rules or the dietary rules or the rules of prayer, which pertain to the divine-human realm (bein adam le-maqom)" ("Jewish Ethics and Natural Law" *Journal of Jewish Thought and Philosophy* 5 (1996): 205-217. Elsewhere, Novak defines ethics as the distinguishing of mid-level principles out of normative practice and notes that ethics, so defined, can be shared with non-Jews in a way that the *Halakhah* understood as law cannot (*Natural Law in Judaism* (Cambridge: Cambridge UP, 1998).

> The word '*halakhah'* (from the root *halakh*, 'to go'), [refers to] the legal side of Judaism (as distinct from *aggadah*, the name given to the non-legal material, particularly of the rabbinic literature) [which] embraces personal, social, national, and international relationships, and all the other practices and observances of Judaism. In the Bible the good life is frequently spoken of as a way in which men are 'to go,' e.g., 'and shalt show them the way wherein they are to go and the work that they must do' (Ex. 18:20).[206]

The tension between the word's root, "to go" or "the way," which speaks to a broad ethical demand, and its usual narrower definition as law is equally present in its usage within Jewish texts. It is interesting that the term "ethics" may be defined in many different ways. As with the equivocality of "*Halakhah*," how one defines the terms shapes the course of the debate. The same is true of the term "law." Aristotle, for his part, notes the etymological relationship between habit (*ethous*) and character (*êthos*), both of which share the same root as ethics (*êthika*) (*Eudemian Ethics* 1120a39-b10).

Despite the flexibility of the term *Halakhah,* it is misleading to rely on the expansive definition of *Halakhah* while simultaneously suggesting that everything that falls within *Halakhah* is therefore to be understood as law. As noted previously, Louis Newman argues that the terms of the debate have

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[206] Louis Jacobs, "*Halakhah,*" *Encyclopedia Judaica* [CD-ROM], ed. Geoffrey Wigoder (Israel: Judaica Multimedia Ltd., 1997).

suffered from insufficient clarification.[207] One result of this lack of clarity is

that some have argued that Jewish ethics is identical to the law.[208] Some of

this confusion is caused by a complexity within the *Halakhah* itself. Louis

Newman explains that the *Halakhah* has two essential poles, one of strict

social and religious law and the other of "an 'open-ended' moral system."[209]

These poles point to the dual role of the rabbi-legislator as civil administrator

and religious leader as an important factor contributing to the complexity of

the *Halakhah*. As civil administrator, the rabbi legislates the minimum law

required to maintain a society in keeping with the divine legislation. As

religious leader, the rabbi is responsible for constantly improving the

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[207] Eugene Borowitz makes a similar point in "The Authority of the Ethical Impulse in "Halakha" in *Studies in Jewish Philosophy*, ed. Norbert M. Samuelson (Lanham, MD: Academy for Jewish Philosophy/University Press of America, 1987), 489-505.

[208] To give one example: Marvin Fox, *Interpreting Maimonides* (Chicago: University of Chicago Press, 1990), 199ff. This sentiment is exhibited in the practice of labeling non-reflective responsa concerning issues of contemporary interest, "Jewish Medical Ethics." That many Jewish sources see ethics as supported by command (e.g. the position of Moses b. Nahman (= Nahmanides = Ramban, 1194–1270)) does not mean that the elaboration of rabbinic ethics arises within (or is even directly a concern of) the law.

[209] Louis Newman, *Past Imperatives*, 40. For the above point generally, see 17-62. See also, "Woodchoppers and Respirators," in which Newman argues against the claim of some Orthodox (and Conservative) thinkers that Jewish ethicists need merely look to self-interpreting legal texts in order to "reveal" Jewish ethics. Rather, he argues, "The function... of the contemporary Jewish ethicist, then, is not to filter out his or her own interpretive framework, but rather to use that framework to create a coherent tradition, encompassing both the body of legal precedents and the case at hand" (181, also printed in *Contemporary Jewish Ethics,* 154.) I would add that this definition of the contemporary Jewish ethicist is sufficient only in the context of ethical casuistry Newman is discussing in this text. In addition, recognition of the ethicist/responsa writer's reliance upon an interpretive framework requires an explication of the virtues and character required by that role.

community and its members and therefore demands (and commands) more and more beyond that minimum.[210]

In addition to the issues raised by Newman's analysis, there is the question of what the rabbis were attempting to do in their own analysis of the law. This question cannot be answered singularly for the entire rabbinic corpus. It would do violence to the Talmud, for example, to claim that it is entirely academic. The practical focus of the rabbis shines through, even as we are frustrated by the frequent absence of legal decisions in the Talmud. However, it is equally clear that at times the rabbis were attempting to determine not the law to be practiced but the "pure" law derivable from Scriptural warrant:

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[210] One should also note that the rabbis understood certain violations of what we would term "private morality" or even "etiquette" as health risks, as seen in the Berakhot passages concerning washroom behavior mentioned above (note 116, B. Berakhot 62a). As a result, these fall into the legal system under the rules prohibiting self-injury. The Rabbis had no problem restricting by law behavior that only affected the individual, prohibiting many things that had negative effects on the body. To give just one such example, "'The venom of a young one sinks to the bottom'. — What practical application has this? — That of the following teaching: If a barrel was uncovered, even if nine persons drank of its contents with no fatal consequence, the tenth person is still forbidden to drink thereof. It happened indeed that nine people drank of such and did not die but the tenth one died; and R. Jeremiah said: It was a case of the venom sinking to the bottom. Likewise if a [cut] melon was left uncovered and nine persons partook thereof without fatal consequences, it is forbidden for a tenth person to partake thereof, for it once happened that nine persons ate of such a one and did not die and the tenth one who ate it died; and Rab said that it was a case of venom that sank to the bottom" (B. Avodah Zarah 30b).

> R. Simeon said: Though [the Sages] ruled [such and such]...that however, is only the halachah [here presumably meaning the statutory law] but they [also] said, He who punished the generations of the Flood, and of the Dispersion, the inhabitants of Sodom and Gomorrah, and the Egyptians at the [Red] Sea, He will exact vengeance of him who does not stand by his word; and he who enters into a verbal transaction effects no title, yet he who retracts therefrom, the spirit of the Sages is displeased with him.   (B. *Baba Metzia* 48b)

Following Newman, I would suggest that the critiques of Jewish ethics by both liberal and traditional Jews suffer from insufficient attention to the meanings being used for the terms "*Halakha*," "law," and "ethics;" allied with the apologetic concerns mentioned above. In order to understand and adjudicate positions in the debate over the relationship between Jewish law and ethics, first one has to cut through the terminological obfuscation and considerations secondary to the debate.

In summary, the term *Halakhah* may be used to refer simply to the rabbinic legal system, in which case it may be argued that there is a traditional Jewish ethics independent of *Halakhah*. It may be used to refer to the entire corpus of normative Jewish thought and practice, in which case we understand Jewish law and Jewish ethics to be independent subheadings within the broader framework of *Halakhah*. In either case, it is clear that Jewish ethics and Jewish law are separate, though intertwined, entities. To say otherwise is to make the same mistake as those who, following the

Septuagint, understood Torah (= teaching) to mean *nomos* (= law). Such a

misunderstanding leads to the false critique of Judaism as legalism. Equally

important is the fact that just as Jewish ethics cannot be fully submerged

within the legal system, "Jewish ethical reasoning cannot be fully separated

from the religious legal system of halakhah."[211] Law and ethics are siblings

within the Torah, which is understood to be both a commandment to and an

inheritance for Israel (Deut 33:4).

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[211] Laurie Zoloth, *Health Care and the Ethics of Encounter: A Jewish Discussion of Social Justice* (Chapel Hill and London: University of North Carolina Press, 1999), 160. Cf. B. *Baba Batra:* "All [the professions, by which are meant the Aggadist, the Homilist, and the master of Traditions] are dependent upon the master of the wheat – that is of the Talmud." This position may be contrasted with that taken by James F. Keenan, S.J., "'Whose Perfection Is It Anyway?': A Virtuous Consideration of Enhancement," *Christian Bioethics* 5.2 (1999): 104-20. Keenan contrasts the emphasis on developing interhuman relationships and their attendant virtues that is demanded by virtue ethics with a "legalistic" stance requiring perfection of permitted conjugal acts taken by the Roman Catholic Congregation for the Doctrine of the Faith in prohibiting artificial insemination by husband. While sympathetic to Keenan's specific critique, which would find ready parallels in a critique of the issues emphasized in certain contemporary Orthodox communities, I find questionable (and believe rabbinic materials support me in this) the implied requirement that we choose between virtue ethics and absolute fidelity to law.

Law and Character

If we were, for the sake of argument, to consider tenable an understanding of *Halakhah* as purely legal and yet still comprising the whole of Jewish ethics, we would still have to admit that there is room for virtue ethics within the *Halakhah*.   First, as Aristotle noted, all legislators hope their legislation will inculcate virtue (*NE* 1103^{b}3-6). While Aristotle may have been overly optimistic in assessing the intent of human legislators, his statement must be true within the biblical and rabbinic account of the Divine legislator, whose "Torah revives the soul and whose statutes bring joy to the heart" (Ps. 19:8-9). In other words, the rabbinic consensus is that God's Torah was given to benefit humanity and it follows from that understanding that it should serve to inculcate virtue and lead to flourishing.[212]

In fact, the belief that the commandments had the purpose Aristotle ascribed to all proper legislation is repeated in several places in the rabbinic corpus.

> R. Hananiah b. Akashia says: the Holy-One, blessed be He, desired to make Israel worthy [לזכות], therefore gave He them the law [to study] and many commandments [to do]. For it is said: the Lord was pleased, for His righteousness' sake to make the law great and glorious.'
> (M. *Makkot* 3:16, quoting Isa. 42:21)[213]

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[212] See the discussion on page 125, above.
[213] Cited on B. *Makkot* 23b.

In *Genesis Rabbah,* Rab states this relationship more forcefully: "The

commandments were given only to refine humanity – לא נתנו המצות אלא לצרף

בהן את הבריות" (44:1, interpreting Ps. 18:31).[214] This text has numerous

parallels, notably *Leviticus Rabbah* 13:3 which limits the giving of

commandments for this purpose "to Israel." This text, from one of the earliest

Midrashic works (5th century), ties לצרף to Proverbs 30:5, " כָּל אִמְרַת אֱלוֹק צְרוּפָה

מָגֵן הוּא לַחוֹסִים בּוֹ"

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[214] Maimonides surprisingly struggles with the phrase in the *Guide*, presumably translating
לצרף (here translated as "to refine" as "to test" or "to burn," as he understands it to imply that
the commandments have no particular purpose (*Guide of the Perplexed*, 3:26). I thank Dr.
Lawrence Kaplan for bringing this to my attention as the respondent to a paper delivered at
the Association for Jewish Studies annual meeting, 2001. Maimonides homogenizes this
understanding, which on the face of it conflicts with his own opinion about the purpose of the
commandments, by concluding that it teaches that one should not over-explain the particulars
of the commandments, such as why a given sacrifice involves a sheep rather than a ram.
Elsewhere, e.g. B.*Shabbat* 41b, לצרף implies an action imparting a quality, in this case
tempering steel. See Jastrow, 1303, "צרף". The complexity of this term is highlighted by a
discussion on B. *Yoma* 72b

מר רבי שמואל בר נחמני: רבי יונתן רמי, כתיב (תהלים יט) פקודי ה' ישרים משמחי לב
וכתיב (תהלים יח) אמרת ה' צרופה, זכה - משמחתו, לא זכה - צורפתו. ריש לקיש אמר:
מגופיה דקרא נפקא, זכה - צורפתו לחיים, לא זכה - צורפתו למיתה.

The first part of the text implies (assuming a parallelism with the text it follows that contrasts
Torah as healing and as killing) that לצרף is a punishment. One could perhaps less
convincingly read even this text to say, "if he is worthy, the Torah makes him happy [as he
sees confirmation of his actions] and if he is not, it purifies him [by showing him the proper
course]. That said, the text concludes with Reish Lakish arguing that לצרף is inherently
ambiguous – it may lead either to life or to death, suggesting a reading of לצרף as testing in
the sense of "proving." It should be noted that the phrase "מצות לאו ליהנות ניתנו," misleadingly
translated by Soncino on at least two occasions as "the commandments were not given [to
men] to derive benefit from them" (B. *Eruvin* 31a) is not understood by the Talmud to imply
that we do not (or may not) benefit (as by developing our character). Rather, it means that
the performance of a commandment is not, per se, a source of bodily pleasure. This latter
ruling has implications where the performance of a commandment requires use of a
prohibited object (e.g. a *lulav* or date palm from a condemned city). The Talmud
distinguishes performance of the commandment from its associated effects, ruling that one
who swears off deriving pleasure from a well may perform ablutions only during the rainy
season and not during the summer (B. *Rosh Hashanah* 28a, also cited by the Ran (Rabbeinu
Nissim ben Reuben Gerondi, b. 1310) in his Commentary to B. *Nedarim* 15b).

"Every word of God is pure, A shield to those who take refuge in Him." Here, with לצרף referring to a positive quality of God, it seems untenable to me to read לצרף as anything other than purify. In the majority of these parallel texts, including these two, the text specifically rejects God's concern with the action itself (or its physical consequences).

In a homily the Talmud presents as a comment to the M. *Makkot* just cited, R. Simlai ties the Torah legislation to human embodiment and temporality:

> Six hundred and thirteen precepts were communicated to Moses, three hundred and sixty-five negative precepts, corresponding to the number of solar days [in the year], and two hundred and forty-eight positive precepts, corresponding to the number of the members of man's body (B. *Makkot* 23b).

R. Simlai's discussion suggests, through citation of Psalms and works from the prophets, that the temporal and physical breadth of the legislation functioned to encompass all of human nature, but that its essence was moral perfection:

> Isaiah came and reduced [the 613 further than David had in the Psalms,] to six, as it is written, [i] He that walketh righteously, and [ii] speaketh uprightly, [iii] He that despiseth the gain of oppressions, [iv] that shaketh his hand from holding of bribes, [v] that stoppeth his ear from hearing of blood, [vi] and shutteth his eyes from looking upon evil; he shall dwell on high (Isaiah 33:15-16)...

> Micah came and reduced them to three [principles], as it is written, It hath been told thee, O man, what is good, and what the Lord doth require of thee: [i] only to do justly, and [ii] to love mercy and [iii] to walk humbly before thy God (Micah 6:8)...
> (B. *Makkot* 24a)

Ethical purpose also was seen as motivating rabbinic legislation. Explaining the position of R. Huna in the name of Rab that a woman who does not wish to work for her husband is entitled to forgo the maintenance he owes her, the Talmud comments "[assigning] her handiwork [to her husband] was due [only to the Rabbis' desire to prevent] ill-feeling (משום איבה)" (B. *Ketubot* 58b, cf. 46b-47a). Similarly, the Talmud explains a rule prohibiting donating slices of bread where others might donate loaves as being instituted only to avoid ill feeling (B. *Eruvin* 81a).

Such perfection is a goal of virtue ethics and there is always an implicit virtue ethic (or ethics of vice) within a legal system. In the same manner that virtue ethics examines a persons' actions, understanding these to be indicative of that person's character, a similar examination of a society's laws (both as legislated and as enforced) provides for the possibility of judging a society's character. A further point of interest would be to study the actual character of people living under a giving set of laws. While the question of inter-cultural critique would take us outside the scope of our study, this point is raised because the rabbis clearly understood the Torah laws to be the

foundation of the ideal society with the greatest potential to properly form character.

As noted above, legal systems and rules minimally require an extra-legal description of the ethics of decision making and an ethical penumbra to account for and prevent the possibility of being what Nahmanides termed "a scoundrel within the law."[215] Nahmanides expands upon the *Sifra Qedoshim* 1 to note that the commandments included in "You shall be Holy" are the underpinnings of the majority of the Torah. He explains that after giving many examples, the Torah had to emphasize that where it does not specify how one is to act, one must "do the right and the good." Nahmanides sees the possibility of being a scoundrel as indication that one must in fact develop a special saintly ethics in order to avoid "sullying oneself with the permissible."[216] I cite Nahmanides not as an authority here, but as a legal theorist.

Contemporary examples such as Enron and Rite Aid prove the need for virtue to maintain the law; the scandal of corporations and individuals legally fleeing taxation by incorporating off-shore proves the need for virtues to fill in spaces within the law. These requirements are even more important

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[215] Ramban, *Commentary to Leviticus* 19:2. On the role of seemingly extra-legal concerns into the ethics behind Halakhic decision-making see Elliot Dorf's interesting discussion, "A Methodology for Jewish Medical Ethics," in *Contemporary Jewish Ethics and Morality,* eds. Elliot Dorf and Louis Newman (New York: Oxford University Press, 1995), 171.
[216] Ramban, *Commentary to Leviticus* 19:2 and *Commentary to Deuteronomy* 6:18, s.v. "*V'asita.*"

where the legal system encompasses matters hidden from the public, as does the rabbinic legal system.

I do not want to give the impression that laws are relevant only to the unjust, as is supposed by certain versions of virtue ethics. Laws define a society and the more virtuous the population, the better the legal system will function. Certain classes of laws, such as those concerning murder, are important even among the virtuous for their ability to delineate philosophical/religious values. This is a plausible reading of the anonymous *b'raitot*—early rabbinic texts not incorporated into the Mishnah whose authority is secondary only to that text's—that assert that the laws of the rebellious son, the condemned city, and the leprous house refer to cases that "have never been and will never be," explaining their value in terms of the reward gained by their study (B. *Sanhedrin* 71a). Even the virtuous need laws and all legal systems require, to function properly, that their constituents (as well as their legislators and judges) have at least the beginnings of virtue.

Moreover, the rabbinic legal system explicitly appeals to such an extra-legal ethics. An extra-legal ethics is required to explain, for example, the rabbinic concept of *"Avera Lishma,"* which appears twice in the Babylonian Talmud (B. *Horayot* 10b and B. *Nazir* 23b). The phrase *Avera Lishma* is not easy to translate. *Avera* means transgression or a violation of the law. *Lishma,* which means "for its sake" lacks in this case a clear antecedent indicating to what the "it" refers. It is tempting to understand the "it" as

referring to the Torah generally, meaning that the phrase indicates a violation

of the law that is done for the sake of preserving the law on a grander scale.

Rashi explains *lishma* in this vein, as "for the sake of a *mitzva*"[217] However,

in the parallel phrase *"mitzvah lishma,"* the antecedent is the commandment

itself and the phrase refers to performing the act for the sake of observing the

commandment. Similarly, *"lishma"* as it appears elsewhere in the Talmud, for

example in reference to performing sacrifices and executing certain

documents, signifies an action done with the proper intentions. Raba, one of

the *Amoraim*, introduces a related concept while explaining the verse "In all

your ways acknowledge Him and He will make your paths smooth" (Proverbs

3:6).[218] He states that this demand applies "even for a matter of

transgression [*avera*] – אפילו לדבר עבירה" (B. *Berakhot* 63a).

Aharon Lichtenstein suggests that "the term *avera* refers, then, to an

act which is proscribed under ordinary circumstances and yet, its usual sinful

character notwithstanding, here becomes superior to a *mitzva.*"[219] This

"violation" is an act that normally is prohibited but which technically is not a

violation according to a strict reading of the law and which is done with the

intention of accomplishing a proper and significant end. Thus, according to

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[217] Rashi, B. *Nazir* 23b, s.v. *Gedola Avera.*
[218] This verse is introduced by Bar Kappara, who suggests that it contains all the rules of the Torah within it.
[219] Aharon Lichtenstein, "Does Jewish Tradition Recognize An Ethic Independent of Halakha?" in *Contemporary Jewish Ethics,* ed. Menachem Marc Kellner (Sanhedrin Press, New York, 1978), note 25.

Lichtenstein, *avera lishma* is the limited, private version of the principle that

the leadership may temporarily abrogate the law as required by extreme

situations.[220]

The tradition, Lichtenstein implicitly argues, may allow religious

leaders, at least those with legitimate authority, to momentarily suspend the

law in order to accomplish a greater good. The individual, however, may

never actually violate the law, even when circumstances seem to demand it.

However, the individual may bend the law or exploit such loopholes as exist

when her intention is that great good will result. The law, however, cannot

provide an explanation as to when it must be bent or read for loopholes. The

virtues required of religious leaders for determining when the law must be

suspended are equally required of the individual who merely leans on

leniencies in order to accomplish a good unattainable within the confines of a

strict reading of the law.

Much has been written about going beyond the law by going and of the

various categories of supererogation within the rabbinic texts. However,

surpassing and transgressing the law are related in that they point to

limitations within law and the possibility of justifying transgression with

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[220] "It is time to act for the Lord: they have violated Your Teaching" (Ps. 119:126). The exegesis of this phrase appears here, on B. *Berakhot* 63a, as well as M. *Berakhot* 9:5, P. *Berakhot* 9:5/12d, B. *Temurah* 14b, and elsewhere.

reference either to a person's character or to an external good.[221] The

interplay between these different types of "transgressions" is found in the

following passage:

> [After offending R. Haninah,] Rab went to him on thirteen eves of the Day of Atonement, but he would not be pacified.
>
> But how could he do so, did not R. Jose b. Hanina Say: One who asks pardon of his neighbour need not do so more than three times?
>
> — It is different with Rab [of whom more is required].
>
> But how could R. Hanina act so? Had not Raba said that if one passes over his rights, all his transgressions are passed over [forgiven]?[222]
>
> — Rather: R. Hanina had seen in a dream that … that authority will be given to [Rab], and so he would not be pacified, to the end that [Rab] departed to teach Torah in Babylon [leading to the greater spread of Torah and preventing R. Hanina's death].
>
> (B. *Yoma* 87b).

This *sugya* identifies Rab as having transgressed by offending a sage

and teacher. It then describes his attempts to obtain forgiveness even by

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[221] While examples of utilitarian thinking can be found in rabbinic sources, this passage does not point to utilitarianism but to the idea that certain individuals are capable of understanding those rare occasions when that activity most fitting to the situation is not the one specified in the law. Clearly there is more flexibility in the "law" when dealing with ethical norms (as is the case here) than when dealing with matters of law based on the Torah and the "fences" the rabbis built around it.

[222] This is but one of innumerable examples where the Talmud takes an Aggadic passage as normative and requiring a particular practice.

going beyond the limits the law sets for such attempts and justifies this

supererogatory action with reference to Rab's own status as a moral

leader.[223] Finally, the Talmud asks how the offended R. Hanina could fail to

live up to a different extra-legal rule that was apparently itself binding upon

the elite and responds that he was justified by the particular situation.

Aaron Kirschenbaum identifies three terms used in the Talmud to refer

to different levels of extra-legal morality:[224] 1) *Middat hassidut* ("the

character/standard of saintliness"), 2) *Ein ruah hakhamim nohah hemenu*

("the spirit of the Sages is not pleased with him") and 3) *Lifnim mishurat hadin*

("Beyond the lines of the law"). Kirschenbaum distinguishes these from one

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[223] Such transgression requires justification, even if the bar is low. Although there are several reasons the rabbis limited one's right to exceed the law even to do good, Maimonides' explanation is the one most appealing to virtue ethics. In the introduction to his commentary to *Avot*, known as the Eight Chapters, he suggests that the Torah always commands the middle ground between extremes. Building from this Aristotelian thought, he suggests that deviation from the mean is only justified where human nature inclines (in the opposite direction) from the mean. Between gluttony and starving oneself, the former error is more tempting, and so Maimonides considered it a legitimate hedge to eat the minimum healthy amount. This type of hedging he termed *lifnim* (*Eight Chapters,* chapter 4).

[224] Aaron Kirschenbaum, "Categories of Morality in Jewish Law: Some Clarifications", *Mélanges à la mémoire de Marcel-Henri Prévost* (Paris: Presses Universitaires de France, 1982), 158-170. Kirschenbaum disagrees with Ephraim Urbach's understanding of *lifnim* and *middat* as synonyms, since Kirschenbaum sees *lifnim* as carrying some weight of obligation, while *middat* is always supererogatory (a difference Kirschenbaum asserts is amplified in the responsa literature). Compare E. Urbach, *The Sages: Their Concepts and Beliefs,* 2 vols., Trans. I. Abrahams (Jerusalem: Magnes, 1971), 159-160. Kirschebaum's argument for the complete absence of obligation in the case of *middat* is tenuous within the rabbinic corpus, although convincing as an analysis of later responsa. For example, he writes of the absence of a blessing preceding acts in accord with *middat hassidut*: "There could be no clearer indication how far removed *middat hassidut* is from the norms of Jewish conduct" (160-1). However, there is no blessing recited before the giving of charity, itself an obligation at the core of "norms of Jewish conduct." For a more extensive division of more-or-less extra-legal moral terms (although, on the author's account, still grounded in the law), see J. David Bleich, "Is There an Ethic Beyond Halakha?" in *Studies in Jewish Philosophy,* ed. Norbert M. Samuelson (Lanham, MD: Academy for Jewish Philosophy/University Press of America, 1987), 527-546.

another, explaining 1) to be always supererogatory, but praiseworthy, 2) to be morally required but outside the formal legal system, and 3) to be supererogatory but required of an elite.

Interestingly, Rashi, commenting on B. *Baba Qama* 94b, understands the phrase "the spirit of the sages..." to indicate a character flaw. Rashi seems to understand *nohah* (נוחה) as "rest upon," (from *lanuah* - לנוח, to rest). He thus explains that such a transgressor is described as lacking a spirit of sagacity or piety. A closely related term, as indicated by their conflation in the Rashi just cited, is *ein ruah hasidim nohah hemenu* ("the spirit of the pious is not pleased with him"). The two come into conflict with typical Talmudic flair in the following passage:

> A tanna recited before Rabbah son of R. Huna: 'If one kills snakes or scorpions on the Sabbath, the spirit of the pious is displeased with him.' He retorted, 'And as to those pious men, the spirit of the Sages is displeased with them' (B. *Shabbat* 121b).[225]

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[225] The conflict is related to the topic of the *sugya* which is what otherwise prohibited actions are permitted on the Sabbath because of injury that will follow. The question of possible versus likely injury is raised and this leads to the question of animals (whose future actions and paths may or may not be determinable). While *middat hasidut* can refer to any supererogatory behavior, the "pious" were distinguished by extreme attention to fulfilling ritual obligations, even in the face of physical danger (See *EJ* entry "Hasidim"). In this text, Rabbah b. Huna rejects the quoted law as representing such piety and supplants it with a law based on greater precision of interpretation associated with the "Sages". (The law recited is not rejected at this point in the text). The importance of knowing what is permitted even to the most minor detail rather than merely avoiding any questionable practice is emphasized by the *sugya*'s structure as well. After various arguments over the permitted trapping and killing of harmful animals and the covering of noxious materials, the following story is inserted on the same page:

Abba b. Martha, who is Abba b. Minyomi, owed money to the house of the Resh Galutha. [So] they brought him [before the Resh Galutha]; he distressed him [and] [Abba b. Martha/Minyomi] spat out saliva, [whereupon] the Resh Galutha ordered, 'Bring a vessel and cover it . Said [Abba b. Martha/Minyomi] to them, 'You do not need this, [for] thus did Rab

The relationship between the strict law (i.e. that which can be explicated within the rabbinic interpretive system) and the law as practiced is itself complicated, as the declaration that "we compel a person not to act in the character of Sodom (*middat sdom* מדת סדום)" indicates. This phrase indicates that the rabbis compel a person not to enforce a legal right which accrues him no benefit and reduces benefits that would accrue to another party.[226] The concept of "character of Sodom" undergirding this legal principle/rule of equity finds its most interesting explication in *Avot* 5:10. First one who declares "what is mine is mine and yours is yours" is declared an average person and then the opinion is proffered that such a declaration was in the "character of Sodom." Similarly, R. Johanan declared that "Jerusalem was destroyed only because they judged according to the laws of the Torah" To which the Talmud objects: "Should they have judged according to untrained magistrates (i.e. according to those who did *not* know the Torah)?" The response is that it was failure to judge (and act) beyond the limits of the

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Judah say: One can tread down saliva incidentally.' 'He is a scholar,' remarked [the Resh Galutha]; 'let him go'. Thus, just as knowing that one is permitted to trap or kill dangerous insects on the Sabbath can save one's life, knowing the details of the laws can save one's "life" by keeping one from being punished in court or trapped in a debtors' prison (See B. *Ketubot* 86a-b. See *EJ* for conflicting accounts of the collection of debt under entries for "Slavery" and "Imprisonment for Debt").

[226] This phrase appears seven times in the Babylonian Talmud, three of which are on B. *Baba Batra* 12b (see also B. *Baba Batra* 59a and 168a, B. *Eruvin* 49a). B. *Ketubot* 103a presents both an interesting example of rabbinic casuistry and the furthest extension of this principle to the point of conflict with contemporary understanding of "loss."

law (*Lifnim mishurat hadin*) that led to the destruction (B. *Baba Metzia* 30b).[227]

This tension between the law as written and the law's own expectations indicates that the law requires a standard of conduct and character that cannot be specified by the law itself. The critical point in all of these cases is that both individuals and religious authorities require recourse to an extra-legal ethics to determine when the law is to be abrogated and when it is to be exceeded, since the law itself cannot give sufficient guidance in this regard.[228]

Such an extra-legal ethics must be a form of virtue ethics; it makes no sense to expect this extra-legal ethics to be legalistic in form, because then

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[227] My translation. For a full treatment of *Lifnim*, see Louis Newman *Past Imperatives*, 17-49.

[228] Marvin Fox argued against many of these points in "The Mishna as A Source for Jewish Ethics," in *Studies in Halakha and Jewish Thought Presented to Rabbi Prof. Emanuel Rackman*, ed. M. Beer (Ramat Gan: Bar Ilan Press, 1994), English section 33-48. His argument is weakened by the odd decision to focus on the Mishnah, rather than the Talmud, as a source for Jewish ethics, when he recognized that the Mishnah is a code of positive law (34). He does consider the related question of natural law in the Talmud (regarding Noahide Law) in "The Philosophical Foundations of Jewish Ethics: Some Initial Reflections" reprinted in the third volume of Fox's *Collected Essays on Philosophy and on Judaism*, ed. Jacob Neusner, (Binghamton, NY: Binghamton UP, 2001), 51-74. Several points could be made challenging his assessment of the Mishnah as a source for Jewish ethics. To give a minor one: Fox suggested that the Mishnah lacks a moral system because it does not apply rules uniformly, giving among others the example of R. Yose's ruling that each person will assess the quantity meant by the legal measure "the size of a medium egg' (M. Kelim 17:6, p. 35). What an odd assertion about ethics when one recognizes that we are discussing a system of law, about which such a criticism could be considerably more potent! (In fact, the flexibility of both the ethical and legal systems is a rabbinic strength which nonetheless has not prevented contemporary problems in their interpretation and application.) The definition of "ethical theory" used by Fox in this and other articles is objectionable for the reasons given above. The key point of Fox's article is that "the law is responding to internal principles, not to external moral considerations" (47). For a brief response to Fox's position, see David Shatz's review of *The Collected Essays*, "Remembering Marvin Fox: One Man's Legacy to Jewish Thought" *Tradition* 36/1 (2002): 73-77.

the ethics would suffer from the same flaws it is expected to correct. My argument is that the unfolding nature of Jewish law in which the law is modified with regard to ethical considerations, internal or otherwise, requires recourse to people whose character is formed by and responsive to (but not reducible to) the values internal to the legal system (understood as a discursive universe).

The legal system cannot exist as a living entity without proper interpreters whose character traits cannot be fully defined by the legal system they seek to interpret. Not only does the *Halakhic* legal system require recourse to an extra-legal ethics, the Mishnah and Talmud are cognizant of this point and devote extensive space to the question of what character traits a sage/student or Jew is expected to have and develop.

If we understand ethics to be a system concerned with proper development and governance of personal character, conduct, and interpersonal behavior that is independent of, although frequently overlapping with, law, it becomes clear that the Talmud recognizes a realm of ethics. The law establishes the arena in which virtue may develop and provides a framework to guide people toward that goal. To borrow a phrase from Rabbi J.B. Soloveitchik, "the Halacha is a floor, not a ceiling."[229]

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[229] R. Joseph Soloveitchik, quoted by Wurzberger, *Ethics of Responsibility*, 32.

Communities committed to the rabbinic tradition that forms the focus of this dissertation have a responsibility to their tradition's riches, to recognize that the stringencies of the law developed out of a commitment to aligning personal and communal character in accord with those ethical commitments perceived within the Divine legislation and teaching of the Torah. In light of this recognition, the community can hope and should expect that further *Halakhic* development and practical ethical teachings will not only reflect plausible readings of legal precedents but will exemplify the concern for communal and personal virtue central to the rabbinic texts.

J. D. Bleich, in making the case for *Halakhic* formalism, draws a distinction between the opinions of Rabbi Mordechai Jacob Breisch and Rabbi Moses Feinstein on the question of artificial insemination.[230] He suggests that, whereas Feinstein's responsa on the subject appear to be examples of legal formalism, pure and simple, Breisch appears to incorporate a concern for the ethical by emphasizing "what he perceives to be the morally reprehensible nature of the procedure."[231] Bleich then suggests that "the casual reader could well be left with the impression that Rabbi Feinstein is concerned [sic] only with technical formulation of the law and rejects the notion of an ethical standard which transcends Halakhah, while Rabbi

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[230] These letters are included in Rabbi Breisch's collection of responsa, *Chelkat Ya'akov* (Tel Aviv, 1992), *Even ha-Ezer,* 14-21.

[231] J. David Bleich, "Is There an Ethic Beyond Halakhah?" in *Studies in Jewish Philosophy,* 536.

Breisch, unwilling to assume that his legal prowess will enable him to make his point convincingly within the confines of Halakhah itself, appeals to a standard of moral behavior which is not rooted in narrow technicalities of law."[232] It is unclear to me why any reader, casual or otherwise, would have such an uncharitable reading of Breisch. The casual reader might have read Breisch to have appealed to an ethics independent of *Halakhah* because he felt the particular example required, for whatever reason, a stricter moral standard than provided by the relevant *Halakhah.*

Bleich recognizes that this is a misreading of the debate, but fails to recognize the direction in which it is being misread. He concludes,

> In actuality, each of the arguments advanced, including an appeal to concepts of abomination (to'evah) and sanctity, is an argument based upon technical, formal provisions of Halakhah and supported by proof-texts designed to show that the ethical standard which is posited is, in reality, a halakhic standard.[233]

To Bleich, this indicates that there is no such thing as an extra-legal ethical standard. If we accept Bleich's reading, we are faced with a choice between Feinstein, who is concerned only with legal technicalities, and Breisch, who is concerned with the way the law encapsulates ethical requirements. It is clear that, based on the concern for virtue and character expressed in the rabbinic texts above, those committed to rabbinic Judaism can only choose the latter.

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[232] Ibid.
[233] Ibid.

However, this is in fact a misreading of the debate. Both Breisch and Feinstein express concern for the ethical significance of the law, only they choose to emphasize different aspects of the ethical penumbra developed on top of the law. Whereas Feinstein emphasizes the importance of maintaining the sanctity of familial bonds, Breisch's initially focuses his concern on the sanctity of the Jewish people as a whole.

Although each expresses his opinion with reference to legal minutiae, what one finds in the dialogue between Breisch and Feinstein is that both are concerned with interpreting those minutiae so that the ethics pervading the *halakhah* can be best expressed.[234] Each explicitly examines the issues involved in artificial insemination with a concern for properly shaping properly the character of the Jewish people. While the particular points raised remain subject to debate, it is this model that a study of rabbinic virtue ethics suggests should be demanded both of future deciders of *Halakhah* and of writers of Jewish practical ethics. If this demand is answered, one can expect Jewish law and ethics to contribute to a life consonant with the exhortation of *parshat Qedoshim*: "You shall be holy, for I, the Lord your God, am holy" (Lev. 19:2).

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[234] I am not expressing a judgment about the quality of ethical reasoning expressed in these responsa, I only note that ethics and character are specifically raised by both authors.

Chapter 3: Character, Virtue, and Narrative

The reader who at this point accepts the premise that Jewish ethics is

not merely Jewish law renamed may remain skeptical that an ethics so

closely related to a legal system can speak a dialect of virtue ethics. Let me

illustrate the shared concerns of virtue ethics and rabbinic ethics by

juxtaposing a description of virtue ethics by Michael Stocker with the first few

mishnayot [= plural of *Mishnah*] of the second chapter of *Pirkei Avot, The*

Ethics of The Fathers, which, according to one opinion in the Talmud, is the

guide to becoming a *Hasid*, a pious person (B. *Baba Qama* 30a).[235] My goal

in bringing these texts together is not to show that Stocker and *Pirkei Avot*

agree about the details of virtue ethics or understand the virtues in the same

way. Rather, the juxtaposition that follows is intended to show that the rabbis

are concerned with questions similar to those that are the focus of

contemporary virtue ethics.

Stocker writes:

> The main focus of virtue ethics is the person,
> primarily [in the sense of] character, especially as
> this bears on the nature and value of our lives. Its

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[235] *Soncino* translates חסידא as an adjective, "conscientious." However, M. Jastrow and others (e.g. *Ethical Writings of Maimonides,* eds. R. Weiss and C. Butterworth (New York: NYU Press, 1975), 60) understand it as a noun, suggesting another layer of virtue ethics here. There is a disagreement among commentaries over the relationship between *Pirkei Avot* 1:1 and the rest of the Mishnah. Obadiah Bertinoro (c. 1450) suggests that the chain of tradition is included here to show that these ethical insights are also revealed. Others suggest that the absence of proof texts in the Mishnah shows that these are distillations of human, rather than Divine, wisdom.

questions include What is a good human life, What are the social, political, and psychological conditions for a good life...[236]

Stocker asks "What is a good human life?" and the chapter in *Pirkei Avot* begins:

Rabbi said: which is the right way that a man should choose unto himself?
(Pirkei Avot 2:1).

Stocker asks "What are the social, political, and psychological conditions for a good life?" and *Pirkei Avot* continues:

Rabban Gamaliel the son of R. Judah the Patriarch said: excellent is the study of the Torah together with a worldly occupation, for the energy [taken up] by both of them keeps sin out of one's mind; and [as for] all [study of the] Torah where there is no worldly occupation, the end thereof [is that] it comes to nought and brings sin in its train *(Pirkei Avot* 2:2).

Be ye circumspect [in your dealings] with the ruling authorities for they suffer not a man to be near them except it be for their own requirement; they show themselves as friends when it is to their own interest, but they do not stand by a man in the hour of his distress (2:3).

Many other examples of direct answers to these questions can be found in the Talmud, indeed in *Avot* itself.

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[236] Michael Stocker, "Self-Other Asymmetries and Virtue Theory" *Philosophy and Phenomenological Research* 54/3 (1994): 693. The passage continues to ask what the good life is like for one who lives it, which roughly parallels the statements by the sage Hillel in the following two *mishnayot*, *Pirkei Avot* 2:4-5.

The law itself takes consideration of character. Following a *Mishnah* declaring the ethical failings of certain professions, the Talmud lists several other professions whose practitioners have a "bad character" (סורי רע).[237] It then rules that that neither kings nor High Priests are to be selected from among these professions. The Talmud elaborates on its ruling, explaining that it is "not because [these individuals] are unfit, but because their profession is mean" (B. *Kiddushin* 82a).[238] The understanding of this *sugya* is that while all professions are essential, some, whether intrinsically or because of the social setting, impair the character of their practitioners.[239] The declaration that these professionals are excluded even though they are not "unfit" indicates that the law is cognizant of vices that are not themselves legal violations.[240]

It is apparent that the Talmud comprises a legal system that, because of its vastness, also incorporates areas that today fall out of the legal purview and are considered matters of ethics, as well as a relatively independent arena of morality that fits better within a virtue framework than a legal one. Leo Strauss indirectly addresses this point in distinguishing between medieval Christian, Jewish, and Muslim thought:

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[237] The common denominator, taken from the beginning of the *Mishnah*, is that these are professions dependent upon commerce with women.

[238] Cf. B. *Sanhedrin* 24b, beginning with the *Mishnah* cited there.

[239] The *sugya* reminds one of Aristotle in its privileging of certain practices as well as men, even as it recognizes that society depends on all the practices and on women as well.

[240] Of course, the rabbis recognized the matter of prejudice in determining what professions were suitable. "Every man's trade seem fine in his own eyes" (B. *Berakhot* 43b).

[W]hat first came to the sight of the Islamic and Jewish philosophers in their reflection on Revelation was not a creed or a set of dogmas, but a social order, if an all-comprehensive order, which regulates not merely action but thoughts or opinions as well.[241]

The understanding of the Torah, both written and oral, as constitutive of a social order, rather than merely being a legal document or set of laws is ancient, and is reflected in the rabbinic concern for virtue. The flip-side of MacIntyre's argument, discussed earlier, that virtues can only arise in the context of community is that the existence of community is always expressed in its recognition (tacit or explicit) of some set of virtues.

The extra-legal morality finds its clearest expression in the *Aggadic* (narrative) material, especially that of a biographical nature. Just how much of a mistake one makes in understanding Jewish law to comprise the whole of Jewish ethics is clear when one realizes that two thirds of the authoritative Babylonian Talmud is devoted to this narrative material, while only a third is clearly legal in nature.[242]

The use of narrative as a form of ethical training is a natural extension of the use of narrative to define and make sense of the world. Hebrew scripture demands this use of its narrative, although the relationship between the biblical narrative and its ethics is complex, since the narrative voice is

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[241] Leo Strauss, *Persecution and the Art of Writing*, (Glencoe, IL: The Free Press, 1952), 9-10.

[242] Eliezer Berkovits, "Babylonian Talmud" *Encylopedia Judaica* [CD-Rom].

very subtle in its censure or praise. This demonstrates a concern for

character over deed, since there is a strong sense of who the righteous and

the wicked are even though the righteous are nonetheless shown to sin on

isolated occasions.

This allowed Maimonides, for example, easily to bring into his system

of virtue ethics the narratives concerning Moses' anger at the Israelites. He

cites narratives such as:

> Moses and Aaron assembled the congregation in front of the
> rock; and he said to them, "Listen, you rebels, shall we get
> water for you out of this rock?" And Moses raised his hand and
> struck the rock twice with his rod. Out came copious water, and
> the community and their beasts drank. But the Lord said to
> Moses and Aaron, "Because you did not trust Me enough to
> affirm My sanctity in the sight of the Israelite people, therefore
> you shall not lead this congregation into the land that I have
> given them.
> (Numbers 20:10-12)

Maimonides explains that Moses' sin was to fall away from proper

mean of patience when here and on other occasions he lost his temper. His

sin was severe, according to Maimonides, because he was understood to be

the paragon of virtue and therefore his becoming overwrought led the people

to think anger was a proper habit to develop.[243]

The Talmud also reveals a particular narrative ethics, reading the

biographies of certain biblical personages with a charitable eye and those of

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[243] Maimonides, *Eight Chapters*, chapter four.

others with sharp criticism. B. *Shabbat* 55b, for example, lists "Reuben, the sons of Eli, the sons of Samuel, David, Solomon, and Josiah" among those whose sins are to be understood as in fact less severe than the way they are recorded in Scripture. The *sugya* in which this text appears discusses whether punishment, especially of death, is always deserved. Related to this is the broader question of whether we can tell if a person has sinned or not. The conclusion is that we cannot, for we cannot know from punishment nor even written record what has transpired. Even the wholly righteous are punished with the only culpability that they might have protested in vain against the wicked (B. *Shabbat* 55a). On the other hand, "[Would] Scripture speak disparagingly of the righteous?" is proposed elsewhere as a hermeneutical tool (B. *Baba Batra* 123a). Understanding that there are moral reasons to make public one interpretation rather than another, even when both fit a set of facts of words, the Rabbis declared:

> For all is his anger is not turned away, but his hand is stretched out still [Isaiah 9:16]. What is meant by, 'but his hand is stretched out still'?-Said R. Hanan b. Rabbah: All know for what purpose a bride enters the bridal canopy, yet whoever disgraces his mouth and utters a word of folly — even if a [divine] decree of seventy years of happiness were sealed [and granted] unto him, it is turned for him into evil.
> (B. *Ketubot* 8b, *Shabbat* 33a)

Even evil-doers are to be treated with some respect (or privacy):

> Mar, the son of Rabina, said to his sons: In the case of all [those mentioned as having no portion in the future world] you should not take [the Biblical passages dealing with them] to expound them [to their discredit], excepting in the case of the wicked Balaam: whatever you find [written] about him, lecture upon it [to his disadvantage].

> (B. *Sanhedrin* 106b)

Maimonides clarifies the rabbinic position and, in doing so, completes the circle suggested by *Qohelet*, who noted that there is "a time for silence and a time for speaking" (Eccles. 3:7):

> If the purpose of vilifying defective men and denouncing their deeds is to belittle them before the people so that they will be warned about them and not perform their actions, then that is necessary and is a virtue. Have you not seen His statement: *Like the deeds of the land of Egypt where you dwelled [you shall not do] and like the deeds of the land of Canaan* [Lev. 18:3].[244]

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[244] Maimonides, *Eight Chapters*, chap. 5, in *Ethical Writings of Maimonides*, trans. and eds. Raymond L. Weiss with Charles Butterworth (New York: Dover Publications, 1983), 77. One might see more cautious approach presented (and challenged) by B. *Shabbat* 96b:
"Our Rabbis taught: The gatherer was Zelophehad. And thus it is said, and while the children of Israel were in the wilderness, they found a man [gathering sticks, etc.](Num. 15:32); whilst elsewhere it is said, our father died in the wilderness (Num. 27:3); just as there Zelophehad [is meant], so here too Zelophehad [is meant]: this is R. Akiba's view. Said R. Judah b. Bathyra to him, 'Akiba! in either case you will have to give an account [for your statement]: if you are right [Soncino note: Lit., 'if it is as your words'], the Torah shielded [Soncino note: Lit., 'covered'] him, while you reveal him; and if not, you cast a stigma upon a righteous man.'"
Whether this interpretation is meant to *pshat* or *midrash* hinges upon how one understands the declaration of Zelophehad's daughters, "he was not in the company of those who gathered themselves together against the Lord in the company of Korah; but *died in his own sin.*" If "dying in one's own sin" refers to the general human condition as considered, for example, by the discussion on B. *Shabbat* that follows "Four died through the serpent's machinations," then a *midrashic* reading is required. If it refers to a particular sin, then Akiba's declaration is a reasonable simple interpretation of the text, which points to a specific sin without identifying it. My inclination is to read it as a declaration of individual and not inherited responsibility, paralleled by the use of "his sin" in Deut. 24:16, 2 Kings, 14:16, and 2

The rabbis developed this narrative ethics because they recognized the power of *Aggadah*. The fact that *Aggadic* narrative is not *authoritative* does not reduce its importance or impact, so long as we distinguish between the *Aggadic* legends of fancy, such as the sailors' tales found on B. *Baba Batra* 73a-74b, and those discussed in this dissertation.[245] Robert Cover, in his famous article "*Nomos* and Narrative," noted the impact that shared narratives have on law, both as grounding and as interpretive filters.[246] How one understands oneself, one's community, and the community's laws will profoundly influence the move from the laws as written to the laws as practiced. This is particularly true given the rabbinic approach to the world and text. As Christine Elisabeth Hayes notes,

> [I]n the rabbinic world of late antiquity the reading and interpretation of sacred or authoritative texts were real and powerful forces in the construction of culture, and in the generation of Halachic developments—as real and powerful as

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Chronicles 25:4. The simplest reading is that "his sin" contrasts with that of Korah, which the daughters imply would have deserved loss of a portion. On this last point, however, see Num. 15:31, which immediately precedes the incident of the wood gatherer.

[245] These legends of the sea follow a brief legal discussion of the Mishnah, which explains which components of a ship are understood as included when the sale is not further specified. One such legend is of a fish whose landing on shore destroyed 60 towns and whose meat fed 60 other town. Even such fantastic *aggadot* may be relevant to (although certainly not decisive for) ethics. Does a hydra legend (applied to the Leviathan) have implications for the acceptability of brain death? What if taken with pronouncements concerning those executed through decapitation which declare that were it not for infection [a possible reading] the heads could be reattached with an appropriate salve (B. *Baba Metzia* 107b, Rashi, loc. sit., s.v. "*avadei*")?

[246] Robert Cover, "*Nomos* and Narrative," *Harvard Law Review* 97/1 (1983-4): 4-68.

famines and wars. Rabbinic texts are, certainly formally speaking, fundamentally exegetical.[247]

The *Aggadah* could not fail to have a profound impact upon the law. A direct example of this effect is found in M. *Eduyyot* 1:13, where the school of Hillel reverses it opinion and follows that of the school of Shammai after the latter explains its opinion in terms of a narrative understanding of the world's creation.[248] The *Aggadah* also provides insights into the ethical import of the law, a point cited by J.L. Ginsburg to ground his project of finding a moral to every law.[249]

Cover notes that one of the functions of the court, in deciding which law should be enforced, is the "destruction" of narratives (especially of those about the law) that challenge the court's official narrative.[250] The rabbinic pluralism (at least from the Mishnah on) recognized the distinction between

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[247] Christine Elisabeth Hayes, *Between the Babylonian and Palestinian Talmuds: Accounting for Halakhic Difference in Selected Sugyot from Tractate Avodah Zarah* (New York and Oxford: Oxford UP, 1997), 8.

[248] One could read the passage as an appeal to a law of nature, but the extended (for the Mishnah) explanation lends greater credence to the above interpretation.

[249] J.L. Ginsburg, *Musar HaMishnah*, 2 vols. (St. Louis, Mo.: Quality Printing and Publishing Co., 1939-1943), vol. 1, 4. Ginsburg cites as a typical precedent for his project some statements in the Midrash *Ecclesiastes Rabbah*, compiled around the eighth century primarily of earlier material. In an interesting example, M. *Tamid* 2:3, which permits burning on the altar all wood except that of grape and olive vines, is understood to teach that children can (and have a responsibility to) redeem their sinful predecessors through their virtue. What is particularly fascinating about Ginsburg is that his intention in connecting the law to ethics is to interest his contemporaries in the whole gamut of Jewish legislation, since his contemporaries were only concerned with practical law and the self-improvement *mussar* movement.

[250] My own sense is that Cover went too far in his criticism of the Supreme Court at several points in the article. He recognizes that texts change within their cultural contexts ("*Nomos* and Narrative," 4, n. 4) but fails to apply this lens to his discussion of the Court's opinions.

variability in theology, narrative, and legal theory, on the one hand, and law as practiced, on the other. Within the former, this freedom was the norm, with exceptions including only violations of the relatively limited list of rabbinic dogmas, such as belief in God's existence and concern for the world, the event of the Torah's revelation, and the like. The pluralism within the *Aggadah*, a function of its being non-authoritative, allows for the move from law to ethics to incorporate the greater sense of individuality necessary for rabbinic virtue ethics.

Narratives are allowed almost entirely free reign where they do not lead to violations of standards of practice.[251] However, this pluralism is governed by the *Aggadah* (as practice as well as text) being a public activity. The limits of interpretation are broad, but limited by the text being considered. This is true whether the interpretation is a *Midrash,* or loose exegesis of a scriptural text, or is an extension of the broad "text" of rabbinic culture and law. Remembering that dreams are understood by some sages to be a minor form of prophecy (*Genesis Rabbah* 17:5),[252] we will recognize that this hermeneutical rule in the following text:

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[251] For example, the use of "Were it possible to say" (כביכול) to hypothesize about God's absence (B. *Sanhedrin* 97a), that God face will show his anger (that he is waiting to pick a fight) (B. *Eruvin* 22a), that God 'stood' while giving Moshe the Torah (B. *Megillah* 21a).
[252] For a discussion of three rabbinic stances vis-à-vis the validity of dreams, see Abraham Arzi, "Dreams" *Encyclopedia Judaica* [CD-ROM], ed. Geoffrey Wigoder (Israel: Judaica Multimedia Ltd., 1997).

> Is the statement that 'all dreams follow the mouth'
> [i.e. interpretation determines meaning] Scriptural?
> Yes, as stated by R. Eleazar. For R. Eleazar said:
> Whence do we know that all dreams follow the
> mouth? Because it says, 'and it came to pass, as
> he interpreted to us, so it was' [Gen. 41:13]. Raba
> said: This is only if the interpretation corresponds
> to the content of the dream: for it says, 'to each
> man according to his dream he did interpret' [Gen.
> 41:12].   (B.
> Berakhot 55b)

Interpretation transforms and indeed to a certain extent substitutes

itself for the texts it explains.[253] This interpretive freedom places a deep

responsibility on the interpreter. This point is made very clearly in the

continuation of this *sugya*, in which Raba curses the dream interpreter Bar

Hedya for his cruel interpretations (B. *Berakhot* 56a). Additionally, Aggadic

freedom is of course "limited" by two factors. The first is that the range of

possible narratives is limited by what one might see growing up and learning

within a particular community. This is a necessary and inescapable function

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[253] This was a preoccupation of the rabbis who saw themselves as the conduit of the Oral
Torah which constitutes the only proper way of viewing the written Torah. See, for example,
the beginning of *Pirkei Avot* or the discussion on B. *Eiruvin* 54b, both of which give a "history"
of the Oral Torah's transmission from Moses. It is especially interesting to compare these
two sources to see how the story functions differently in each context. In *Avot,* the
transmission history extends the authority of Moshe upon the *specific* sages of the Mishnah,
even to their seemingly secular maxims. The concern in B. *Eiruvin* is decidedly more
practical. It looks at the transmission history at its earliest stage, from Moses to the people.
While asserting the existence of the Oral tradition, it so strongly assumes the continuous
tradition from Moses to the sages that it looks to Moses as a model for how contemporary
education should be conducted. On the substitution of interpretation for text, see also note
193 and Moshe Halbertal, *People of the Book.* While teaching high-school students, I found
almost humorous the extent to which Rashi's commentary has been substituted for the
biblical text in students' minds. That said, within many Jewish communities, both Orthodox
and Conservative, the "true" meaning of the text can only be discovered in agreement or
argument with Rashi.

of human nature and sociality. The second, more open to criticism but again unavoidable within the confines of human limitedness, is that we only have access to narratives thought worthy of collection or repetition. This is an even more efficient form of suppression of heretical materials than direct repression, provided the materials have not yet gained a critical mass of acceptance.[254]

As a form of discourse, Aggadic reasoning is open to debate. This may be seen, for example, when R. Hana demonstrates the superiority of his own interpretation by showing its greater congruence with the verse being discussed. His interlocutor R. Sheshet, recognizing the greater plausibility of the R. Hana's expert interpretation, concedes "Why should I argue with Hana in Aggada?"(B. *Sukkah* 52b). Even where two conflicting *Aggadot* are accepted, the preferred narrative or homily is more likely to endure within the community.

Aggadah was very popular and, because of its moral power and function as an accessible form of Torah study, highly esteemed (B. *Sotah* 40a).[255] "When R. Meir used to deliver his public discourses, a third was

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[254] In earlier eras (including that of the rabbis) this limitation was a function of the expense (monetary or labor) of publication (oral or written). In light of the internet, the limitation is a function of the expense (monetary or labor) of retrieving materials out the heaps created by the fact that publication is now essentially free.

[255] The declaration here on B. *Sotah* 40a that the *Aggadah*'s popularity is attributable to its being like small wares (i.e. accessible) rather than like the gem of *Halakhah* (valuable) must

Halacha, a third *Aggadah*, and a third consisted of parables" (B. *Sanhedrin* 38b).[256]

The Talmud goes so far as to suggest that one of the reasons the world continues to exist is the recital of Kaddish after the study of *Aggadah* (B. *Sotah* 49a).[257] Despite its accessibility, the creation of *Aggadah* was a skill not vouchsafed to all, nor even to the greatest rabbinic legal scholars. Rabbi Akiva, foremost among the scholars, is rebuked for his *Aggadah* and told to return to his legal studies (B. *Sanhedrin* 38b).[258]

It has been noted that the biographical material in the Talmud is, to say the least, problematic as a source for history.[259] One thing we learn from the

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be understood within the passage's overriding theme of the humility of the Aggadic master. See also B. *Hullin* 60b.

[256] The necessity of both law and narrative is made clear in the statement of Rabbi Isaac b. Pinchas, "One who has in hand *midrash* and does not have in hand laws, has not tasted the taste of wisdom. And one who has laws in hand and does not have in hand *midrash* has not tasted the taste of "fear of sin" (ARN A 29). רבי יצחק בן פנחס אומר כל מי שיש בידו מדרש ואין בידו הלכות לא טעם טעם של

חכמה. כל מי שיש בידו הלכות ואין בידו מדרש לא טעם טעם של יראת חטא."

[257] The *Kaddish* is a prayer praising God, recited at the conclusion of prayers and study, as well as a form of memoriam for one's deceased relatives. See also Rashi, loc. cit., s.v. "a-kidusha."

[258] What is true of its creation is not necessarily true for its presentation. Halakhic lecture perhaps requires greater concentration than the Aggadic narrative (Cf. B. *Ta'anit* 7a). Oratory skill is not to be underestimated, of course. A strength of the *Aggadah* is that it is more readily grasped than the finer details of the *Halakhah*.

[259] For a review of this subject, I recommend Jeffrey Rubenstein, *Talmudic Stories: Narrative Art, Composition, and Culture* (Baltimore: Johns Hopkins UP, 1999), 1-33. Jacob Neusner is generally credited with challenging the reliance on Talmudic narrative for biographical history. For an interesting study that demonstrates the use of "biography" as exempla, see Louis Jacobs, "How Much of the Babylonian Talmud is Pseudepigraphic?" in *Structure and Form in the Babylonian Talmud* (Cambridge: Cambridge UP, 1991), 6-17. On the other hand, Moshe David Herr suggests that many of the stories dismissed as rabbinic fantasy are in fact historically plausible. He demonstrates this by comparison between rabbinic and other sources, noting that in all sources some allowances must be made for genre ("The Historical

argument against the use of "Talmudic biography" for history is that the narratives function primarily as moral educational tools, examples for imitation or aspiration. This is particularly true of those stories which have no clear *Halakhic* implications. A growing body of scholarship suggests that even the *Halakhic* passages in the Talmud function primarily as models for imitation.[260]

Cover also notes that "A legal tradition is hence part and parcel of a complex normative world. The tradition includes not only a corpus juris, but also a language and a mythos – narratives in which the corpus juris is located by those whose wills act upon it. These myths establish the paradigms for behavior."[261] The *Aggadic* texts function therefore to ground the legal texts within the larger interpretive framework that shapes the community and its members.

Whether the stories secondarily relate real history (or allow, along with *Halakhic* attributions, for the dissection of Talmudic strata) is something I will leave to scholars of that field. The Talmud, in any case, recognizes the power of narrative as an educational force, noting that *Aggadah*

Significance of the Dialogues between Jewish Sages and Roman Dignitaries," *Scripta Hierosolymitana: Studies in Aggadah and Folk Literature* 22 (1971): 123-151). The division between "real" history and that recorded in the text, critical to contemporary scholarship, was not necessarily felt by the rabbis. See the statement by Christine Elisabeth Hayes above, page 156.

[260] On the *Halakhic* sections as a training manual, see Jack Lightstone, *The Rhetoric of the Babylonian Talmud: Its Social Meaning and Context* (Waterloo, ON: Wilfrid University Press, 1994).

[261] Cover, "*Nomos* and Narrative," 9.

paradigmatically draws the heart near (B. *Shabbat* 87a). That the *Aggadah*

was understood to inspire its audience to imitation is also indicated by its

inclusion at the close of the Geonic period (which followed Talmudic period)

by Isaac Alfasi (the Rif, b. 1013) in his abridged version of the Talmud,

despite his focus on matters relevant to contemporary practice and exclusion

of *Halakhic* material irrelevant to exilic Judaism.[262]

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[262]The Rif's work, *Sefer haHalakhot* became known as *Talmud HaKatan*, the little Talmud. It was almost universally accepted as authoritative, enjoying wider study than the Talmud as the result of the latter's being banned, as in Italy from 1553 through 18th century ("Alfasi, Isaac ben Jacob," *Encyclopedia Judaica* [CD-ROM]).

Habit and Character

The Talmud is deeply concerned with habit and character, two broad subjects which are fundamental to virtue ethics. The rabbis understood the value of physical engagement in the commandments and Torah study, especially as such engagement leads to habituation. This point is emphasized by a narrative that explains the requirement of physical engagement even in study:[263]

> Beruriah once discovered a student who was learning in an undertone. Rebuking (lit. Kicking) him she exclaimed: 'Is it not written: Ordered in all things, and sure: [II Sam. 23:5]. If it [the Torah] is 'ordered' in your two hundred and forty-eight limbs it will be 'sure', otherwise it will not be sure'?
>
> (B. *Eruvin* 53b-54a)[264]

Beruriah, in my opinion the most remarkable woman mentioned in the Talmud, teaches that by physically engaging the material, involving the eyes, mouth, and ears in studying a text aloud, the student causes it literally to become part of himself. Activity transforms the one so engaged, which is

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[263] A different take on the physicality of Torah study is expressed in the following passage: "R. Hiyya rejoined: 'Would you dispute with me, who achieved that the Torah should not be forgotten in Israel? What did I do? I went and sowed flax, made nets [from the flax cords], trapped deer, whose flesh I gave to orphans, and prepared scrolls [from their skins], upon which I wrote the five books [of Moses]. Then I went to a town [which contained no teachers] and taught the five books to five children and the six orders [of the Talmud] to six children And I bade them: "Until I return, teach each other the Pentateuch and the Mishnah;" and thus I preserved the Torah from being forgotten in Israel" (B. *Baba Metzia* 88b).
[264] Cf. *Avot* 3:9.

equally true for ordinary actions and for the activity of study. This point is
implicit in a Talmudic legend that describes moral virtue in physical terms.

> R. Ammi b. Abba also said: [First] Abram
> [numerical value = 243] is written, then Abraham
> [numerical value = 248]: at first God gave him
> mastery over two hundred forty three limbs, and
> later over two hundred forty eight, the additional
> ones being the two eyes, two ears, and the
> membrum.
> (B. *Nedarim* 32b)[265]

These texts consider mastery over the body and its relationship to
study and wisdom. The B. *Nedarim* text is followed by an interpretation of
Ecclesiastes 9:14 ("A little city") and 7:19 ("a poor wise man") to refer the Evil
Inclination's attempt at controlling the body and the possibility of wisdom
marshaling good deeds to take control of the body back. The development of
virtue through habituation, as noted in the discussion of Aristotelian ethics, is
neither purely mental nor purely physical.

A similar point is made in a discussion of the law that requires a
shokhet[266] to know the laws of ritual slaughter (B. *Hullin* 9a). Responding to
the objection that this requirement is so obvious as not to require stating, the
Talmud notes that it is not enough that an expert can attest that a given
shokhet's slaughter has properly executed on this or even several occasions.
Rather, there must be proof that the *shokhet* will continue to do so when not

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[265] Cf. *Genesis Rabbah* 67:3.
[266] One who performs the ritual slaughter required for meat to be kosher.

observed, which requires the proper actions be habitual. As Aristotle writes of

the virtues:

> The agent also [in addition to executing the action properly] must be in a certain condition when he does them; in the first place he must have knowledge [and] his action must proceed from a firm and unchangeable character (*NE* 1105^{a}30-1105^{b}1).[267]

The Talmud ties these two requirements together, noting that repetition

is not a guarantee of proper action unless guided by knowledge.

It is not my intention to suggest that slaughter exemplifies rabbinic

virtues – the sages' disdain (readily reciprocated) for the professional *shokhet*

is well attested. Rather, this passage indicates that the rabbis understood the

relationship between knowledge and practice in the process of habituation.

Aristotle uses examples of grammar and the arts, noting that in the case of

the arts, some goodness exists in the production, so the connection is even

more important for the virtues. The same is true of ritual slaughter (the meat

from the observed slaughters is presumably kosher, with the warning applying

only to those future unobserved cases).

Habituation requires a particular manner and purpose of the activity

(*NE* 1105^{a}18-1105^{b}18). The rabbis distinguished between actions that were

demonstrative and/or causative of real change in character and those that

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[267] The other conditions listed by Aristotle, that the action must be intentional and chosen for its own sake, apply, more or less, to ritual slaughter as well.

were merely empty ritual.[268]   In the Mishnah, R. Joshua declares that "the

plague of Pharisees" (מכות פרושין) destroys the world and the Talmud explains

the phrase to refer to hypocrites (M. *Sotah* 3:4, B. *Sotah* 20a, 22b). The

Talmud there also cites King Jannai (Alexander Jannaeus) as telling his wife:

"Fear not the Pharisees and the non-Pharisees but the hypocrites who ape

the Pharisees" (B. *Sotah* 22b). Likewise, the hypocrite is singled out as one

whom God hates (B. *Pesahim* 113b). The ironic use of terms of piety extends

beyond the polemically charged "Pharisee." The term *Hasid* (pious) is used

with similar irony in describing the sins of a priest who held himself to be a

Hasid (*ARN* A 12).[269]

As a further example of the importance of character over and above

mere activity, when drought was so severe as to require the declaration of a

public fast day, an elder was to remind the populace that they were fasting in

order to bring themselves into a state of repentance and not because fasting

itself was of value:

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[268] Daniel Drubach brings some of the rabbinic, especially post-Maimonidean materials on habituation into dialogue with contemporary neuroscience in "Judaism, Brain Plasticity and the Making of the Self" *Journal of Religion and Health* 41(2002): 311-322.
[269] The same story is told with more subtle irony in *Avot of R. Nathan B* 27.

> The elder among them addresses them with words
> of admonition [to repentance] thus, 'Our brethren,
> Scripture does not say of the people of Nineveh,
> "and God saw their sackcloth and their fasting,"
> but, "And God saw their works, that they turned
> from their evil way" (Jonah 3:10); and in the
> prophets it is said, "And rend your heart and not
> your garments" (Joel 2:13).
> (M. *Ta'anit* 2:1, B. *Ta'anit* 15a).

Even study, the activity most esteemed by the rabbis, is only valuable

when it transforms the student. Regarding Saul's servant Doeg (who is

reviled in the *Aggadic* material as knowledgeable but evil), the Talmud reports

"R. Ammi said: Doeg's learning was only from the lips without" (B. *Sanhedrin*

106b).[270] The same section of Talmud takes note of the greater scholarship

of contemporary academies in comparison with their predecessors. It then

explains that the previous generations were nonetheless held in higher

esteem by the Heavenly court because: "the Holy One, blessed be He,

requires the heart" (B. *Sanhedrin* 106b, citing I Samuel 16:7). The same idea

is expressed by "a favorite saying of the Rabbis of Yavneh" (who, according

to tradition, were responsible for establishing both the Biblical canon and the

central, thrice-daily prayer, the *Amidah*)[271]:

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[270] Elie Wiesel notes his shock concerning the inefficacy of education in preventing evil: "I couldn't understand these men who had, after all, studied for 8, 10, 12, or 14 years in German universities, which then were the best on the Continent, if not in the world. Why did their education not shield them from evil? This question haunted me" (Foreword, *The Nazi Doctors and the Nuremberg Code,* eds. George Annas and Michael Grodin (Oxford and New York: Oxford UP, 1992), vii).

[271] Moshe Halbertal writes, "Nonetheless, the canon seems to have been established during the second Temple era, apparently during the late Persian or early Hellenistic period,

I am God's creature and my fellow is God's creature. My work is in the town [at the study hall] and his work is in the country. I rise early for my work and he rises early for his work. Just as he does not presume to do my work, so I do not presume to do his work. Will you say I do much and he does little? One may do much or one may do little; it is all one, provided he directs his heart to heaven.
(B. *Berakhot* 17a)

Further illustration that the Talmud is concerned not with discrete actions alone but with how the actions are tied to the person's character can be seen, for example in the use of the legal terms טומאה (impurity) and טהורה (purity) when not literally relevant as metaphors for the effects of sin, suggesting something inherent in the person rather than the deed.[272] When Nahmanides interpreted "you shall be holy" as an ethical exhortation, he was expanding upon rabbinic materials, not inventing a new interpretation.[273]

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perhaps as early as 150 B.C. Remnants of all the biblical books (aside from the book of Esther) were found among the Dead Sea Scrolls... The disagreements among the Sages, recorded in the Mishnah in the Tractate *Yadaim*, are about whether to exclude books already part of the canon, and not whether to include new items in the canon. Interestingly, none of the opinions censoring the existing canon was accepted" (*People of the Book: Canon, Meaning, and Authority* (Cambridge, MA: Harvard UP, 1997), 16-17).

[272] For example, the statement of Resh Lakish in B. *Yoma* 38b, B. *Menahot* 29b.

[273] Nahmanides, *Commentary to Leviticus* 19:2, *Commentary to Deuteronomy* 6:18. Interestingly, Matthew 5:48 rewrites this verse as "So be perfect, just as your heavenly Father is perfect" (New American Bible). I owe this reference to James Keenan, "'Whose Perfection is it Anyway?' A Virtuous Consideration of Enhancement" *Christian Bioethics* Vol.5, No.2 (1999):104-120 (The only other use of "perfect" in the Gospels, as noted in the New American Bible is also in Matthew , where Jesus tells would-be disciple, "If you wish to be perfect, go, sell what you have and give to (the) poor, and you will have treasure in heaven. Then come, follow me" (Matthew 19:21). The NAB also notes that Luke 6:36, the parallel to Matt. 5:48, reads "Be merciful, just as (also) your Father is merciful." The term translated "perfect" is *teleios*, which like Aristotle's *telos* means an endpoint. Keenan explains that "telios, refers to an end point, a point of completion or fulfillment. The word basically means that we are called to be as complete as God is. It does not mean that we should achieve

As noted above, the Talmud rarely seems uncomfortable with philosophical or theological differences, so long as unity can be found in practice. Consider this dialogue on the fixity of character:

> Abaye said: We have a tradition that a good man does not become bad.[274]
>
> But does he not? Is it not written, But when the righteous turneth away from his righteousness and committeth iniquity [Ezek. 18:24]? — Such a man was originally wicked, but one who was originally righteous does not do so.
>
> But is that so? Have we not learnt: Believe not in thyself until the day of thy death [*Pirkei Avot* 2:4]? For lo, Johanan [John Hyrcanus, 135–104 B.C.E.] the High Priest officiated as High Priest for eighty years and in the end he became a Min.[275]
>
> Abaye said: Johanan is the same as Jannai [Alexander Jannaeus, John Hyrcanus 3rd son, c. 126–76 B.C.E].[276]
>
> Raba said: Johanan and Jannai are different; Jannai was originally wicked and Johanan was originally righteous.
>
> On Abaye's view there is no difficulty, but on Raba's view there is a difficulty? — Raba can reply: For one who was originally righteous it is also possible to become a renegade.
> (B. *Berakhot* 29a)[277]

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some sort of constructed excellence or that we are to appropriate another's ideal way of acting" (104-105). Keenan's article is important for its critique of sharp divisions between moral commandments and counsels of perfection.

[274] The context for this debate is the question of whether or not Samuel haKatan, the author of a blessing decrying renegades, should have been suspected of having become one himself. In explaining the decision not to remove Samuel haKatan from the reader's lectern, Abaye suggests that Samuel haKatan was immune from the suspicion that he refused to recite the blessing for fear of it referring to himself because "a good man does not become bad."

[275] Cf. Josephus, *Antiquities* 13:288ff.

[276] See also B. *Kiddushin* 66a.

[277] The last line does not appear in the manuscript versions cited by Raphael Nathan Rabbinovicz, *Dikduke Sofrim*, Vol. 1 (Jerusalem: Or he-Hokhma, 2002). Its absence does not change the overall tenor of the debate.

The *sugya* ends without reaching a conclusion on this anthropological / philosophical question.[278] Note, however, that the *sugya* studies this topic philosophically. Even though there are texts cited as supports, they do not function here as proof-texts by virtue of their authority, although that authority is acknowledged. Rather, the biblical text is cited by the *sugya* as history – to prove empirically what we know about the righteous becoming sinners. In other words, in response to "we have a tradition," the response is, citing history, "we have long known otherwise." The text is taken to be authoritative but not self-interpreting and provides the occasion for further reasoning, in this case the development of Abaye and Raba's argument over the (im)permanence of character.

The absence of any appeal to authority on the matter of philosophy is also seen in the way the reference to the story of Johanan is considered an appeal to a source of empirical data. Aristotle similarly cites antecedent Greek histories and contemporary philosophers cite materials from the social sciences. Its relevance depends not on an interpretation of a word, but on a disagreement concerning the historical facts of the narrative. This is all the

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[278] An example of the same discussion in a philosophical mode can be found, for example when, Gilbert Ryle argues that "learning right and wrong" is in fact a form of learning that is not susceptible to *forgetting*, although it is to deterioration (though not rustiness), like tastes and cultivated preferences ("On Forgetting the Difference between Right and Wrong" in *Aristotle's Ethics,* eds. Walsh and Shapiro, 70ff).

more striking when we consider that the narrative is used to support a

Tannaitic quote from the Mishnah *Pirkei Avot.*

Unlike a matter of law, in which the *Tannaitic* material would be

decisive in the absence of an equally authoritative source, for the question of

philosophical anthropology it is not even considered a separate datum.[279]

The relationship Abaye and Raba have with the text as redacted is therefore

very similar to (or prototypical of) that of contemporary Text Reasoners: the

text is treated as authoritative, but in a way that grounds further philosophical

reflection about a contemporary concern.

Similarly, the Talmud mentions that R. Johanan wept after reading "He

puts no trust in His holy ones" (Job 15:15), asking "If He does not put His trust

in His holy ones, in whom will He put his trust?"(B. *Hagigah* 5a). His

understanding of the verse was transformed by seeing a man gathering figs

who left the ripe figs and collected the unripe. The man explained that he

needed the figs for a journey and that the unripe would keep while the ripe

would spoil. Drawing upon this experience to make sense of the text, R.

Johanan then explained it to mean that God cannot trust even the righteous

to keep from sinning (and so they die early). The Talmud then asks whether

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[279] See the discussion of the canonical status of the Mishnah and Babylonian Talmud above.
Menachem Fisch argues that the Bavli maintains a fiction that *Tannaitic* statements are
immune to challenges arising from Amoraim in practice while betraying an implicit "anti-
traditionalist" theory of interpretation (*Rational Rabbis* and "*Berakhot* 19b: The Bavli's
Paradigm of Confrontational Discourse").

R. Johanan's understanding is merely theoretical or "empirical" and argues over the "facts" of the narrative cited.

The question about permanence of character reappears in various forms in numerous locations in the Talmud. Two related topics illustrate this rabbinic concern: the sinning sage and the question of whether merit protects one from future sin.[280]

A précis of the debate over whether Torah study and/or good deeds protect one from sin appears on B. *Sotah* 21a.[281] This discussion develops from the declaration in the Mishnah that Torah study suspends the deadly effects of the "Ordeal of Jealousy" on an adulteress (Numbers 5:10-31). This, it seems, is a subject matter that would have precluded the conclusion

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[280] These questions both arise as part of an ongoing philosophical discussion of the question of theodicy with particular reference to the explicit scriptural promises of reward and punishment that were no less problematic for rabbinic and (especially) Judaism after the destruction of the Temple than for post-Holocaust Judaism.

[281] The preeminent example of the Torah scholar who sins is Elisha b. Abuya, known after his sin as *Aher*, "the Other." The *sugyot* primarily concerned with *Aher* has been dealt with masterfully by Jeffrey Rubenstein in "Elisha ben Abuya: Torah and the Sinful Sage (Hagigah 15a-15b)" in *Talmudic Stories: Narrative Art, Composition, and Culture*, 64-104. Rubenstein reads the issue as primarily about "the intrinsic merit of Torah and whether it is jeopardized by sin" (*Talmudic*, 64). As Rubenstein's analysis demonstrates, the issue is more complex than simply the intrinsic merit of Torah. Elisha b. Abuyah's response to losing both merit and the possibility of repentance is logical, even according to the logic used by the rabbis to assert responsibility for the Torah in a world that seems oblivious to its merits. Rubenstein points out the way the narrative structure demonstrates many lessons the Talmud wished to teach, but one not addressed by Rubenstein is that this also emphasizes the need for repentance and for a belief that one's Torah study will be actualized either in at least one of the worlds. As I discussed above, one develops a virtue (and this is true for intellectual virtues and meritorious habits) for the purpose to which that virtue intends. While actualization of the virtue is not necessary for the virtue to remain a virtue, the impossibility of a virtue ever being actualized under any circumstances may change its status.

that Torah study protects from sin if the meaning of Torah study were limited to acquisition of knowledge.

It may seem odd that any of the rabbis should be surprised that a sage should sin. In the Mishnah, "R. Simeon b. Yohai said: only he can be called 'crooked' who was straight at first and became crooked. And who is this? — a disciple of the sages who forsakes the Torah" (M. *Hagigah* 1:7, B. *Hagigah* 9a). The existence of the category of *zaken mamre*, the rebellious elder, who by definition is an authoritative scholar, would seem to establish this possibility beyond a doubt.[282] However, this question of character remained unsettled because the rabbis had a ready explanation for scholars who sinned, namely that they lacked "fear of God" (*Yirat Shamayim* – יראת שמים).

The rabbis had distinguished between knowledge and fear of God, indicating by way of metaphor that scholars lacking in fear of God are susceptible to sin (B. *Shabbat* 31a-b). This conclusion is not surprising as fear of God is one of the essential virtues described by the rabbis. Among other metaphors, fear of God is compared to a preservative that is assumed to be required to protect the grain of Torah knowledge. Its absence renders

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[282] The category is derived from Deuteronomy 17, especially 17:12. Maimonides discusses the *zaken mamre* in M.T. *Hilkhot Mamrim*, chaps. 3-4.

the rest useless and subject to decay.[283] The rest of the *sugya* reinforces the

idea of the priority of "fear of God:"

> R. Hanina b. Dosa said: anyone whose fear of sin
> precedes his wisdom, his wisdom is enduring, but
> anyone whose wisdom precedes his fear of sin,
> his wisdom is not enduring.
>
> Rabbah b. R. Hannah said: Every man who
> posseses learning without the fear of Heaven is
> like a treasurer who is entrusted with the inner
> keys but not with the outer: how is he to enter? R.
> Jannai proclaimed: Woe to him who has no
> courtyard yet makes a gate for same! Rab Judah
> said, The Holy One, blessed be He, created His
> world only that men should fear Him...
>
> R. Simon and R. Eleazar were sitting, when
> R. Jacob b. Aha came walking past. Said one to
> his companion, 'Let us arise before him, because
> he is a sin-fearing man.' Said the other, 'Let us
> arise before him, because he is a man of learning.'
> 'I tell you that he is a sin-fearing man, and you tell
> me that he is a man of learning!' retorted he.
>
> (B. *Shabbat* 31a-b)

However, the open question is whether the character of people who

truly fear God will protect them from sin. That one might develop an

unassailable habit of avoiding sin was a position taken by some of the rabbis.

For example,

> R. Hiyya b. Abba said further in the name of R. Johanan: When
> the majority of a man's years have passed without sin, he will no

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[283] This theological concept is related by this *sugya* to a legal rule, according to which a
person is permitted to sell as unadulterated grain that which has a set amount of preservative
mixed within it. On the importance of "fear of heaven [i.e., of God]," see also *Pirkei Avot* 3:9.

more sin, as it is said: 'He will keep the feet of His holy ones' (I Sam 2:9). In the school of Shila it was taught that if the opportunity for sin has come to a man the first and the second time and he resisted, he will never sin, as it is said: 'He will keep the feet of His holy ones'

(B. *Yoma* 38b).[284]

A *sugya* in B. *Kiddushin* (80b and following) so strongly opposes this conclusion that reading one after the other gives the impression that the latter was redacted as a rebuttal to the statement of R. Johanan cited by R. Hiyya b. Abba. The *sugya* relates several stories in which great sages face temptation. It begins with the case of R. Amram, who, overcome with desire,

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[284] A similar idea is expressed in B. *Gittin* 7a which suggests that God protects the righteous and, citing B. *Hulin* 7a, even their animals from falling into unknown sin (such as arises when one eats something while mistaken as to its status). Interestingly, the *sugya* in B. *Kiddushin* 80b that is cited on the following pages concludes with a reference to the tragic possibility of unknown sin. It thereby rebuts the claims made in B. *Gittin* in the same way that it responds to the claims cited here from B. *Yoma*. This passage appears in the context of a chapter dealing with wickedness and righteousness which arises out of a Mishnah describing people and families who are remembered as wicked for apparently preferring their own honor to the public good. This collection of statements attributed to "R. Hiyya b. Abba in the name of R. Johanan" attests to the sometimes unclear position the rabbis took on the nature of righteousness. On the one hand, there is a belief that: "No righteous man dies out of this world, before another, like himself, is created" and that "The Holy One, blessed be He, saw that the righteous are but few, therefore He planted them throughout all generations." These statements imply that righteousness is a creation of God, a problematic position logically but one that captures our hope and experience that we always find some righteous people even in darkest and most wicked times. On the other hand, the statement, "Even for the sake of a single righteous man does the world endure" implies that righteousness is an accomplishment worthy of reward. We are then led to reinterpret the first statements to suggest that the question is not one of pre-ordained righteousness but of God's foreknowledge leading God to spread out the distribution of those God knows will be righteous of their own free will. An interesting Midrash of uncertain date relates the case of the renowned authority, Mattiah b. Heresh being tested by Satan after God describes him as a perfect saint (צדיק גמור). To protect himself from temptation, he blinds himself, only agreeing to be healed after securing a guarantee that he would not yield to temptation (*Midrash Tanhuma*, ed. Solomon Buber (Vilna: Romm, 1885), *Addition to Hukat*, 1). This Midrash simultaneously supports the view that one might be sinless (although such a rarity inspired jealousy in Satan) and yet still subscribe to the dictum that one not trust in oneself until the day of one's death.

sounds an alarm and is rescued from sin by his students who expected to rescue him from fire. The sages in the other narratives are not so fortunate and succumb to temptation (B. *Kiddushin* 81a-b). The first two described, R. Meir and R. Akiva , are among the greatest of the sages and are rescued from death only because of their heavenly reputation.[285] While their Torah study and virtuous character protected them from punishment, it did not protect them from temptation, as would have been expected by Aristotle's account of virtue. As will be seen, despite the pronounced rabbinic use of habit and training as part of education and self-development, there is a skeptical undercurrent that challenges reliance upon one's character.

The conclusion of this *sugya,* which focuses on R. Hiyya b. Ashi, argues this point even more strongly by positing that temptation is always a risk, even when one is righteous, even when one is old, and even when one

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[285]Another way of reading these two stories is by seeing the rabbis as being punished for "scoffing (מתלוצץ) at evil doers" in their belief that sinners had merely to desire not to sin in order to avoid temptation. Similarly, later on B. *Kiddushin* 81b, a student who scoffed (ליגלג) at R. Tarfon's declaration, "guard me from my daughter-in-law" soon succumbed to that sin. Although it occurs in a different context, this idea might be expressed on B. *Avodah Zarah* 18b: "Raba used to say to the Rabbis: I beg of you, do not scoff (תִּתְלוֹצֲצוּ), so that you incur no punishment." Also on that page is a reference to the "incident with Beruriah" which Rashi s.v. *V'lkah d'amri* explains along similar lines: Beruriah *scoffs* (ליגלגה) at a statement concerning women and is punished by falling prey to the temptation she considered unthinkable. This also accounts for the inclusion of the story of Pelimo who runs afoul of Satan for formulating what seems to be too harsh a prayer against that Accuser. Comparison with B. *Kiddushin* 29b-30a, as well as Rashi on 30a, s.v. "*Have Aminah*" indicate that the phrase "an arrow in Satan's eye" was formulated not as a protective curse but a bragging one, implying that one's chastity is such that one can scoff at the Tempter. In any case, scoffing is an activity only of those who lack humility regarding their own state of *halakhic knowledge* and moral development.

regularly prays to God for protection from it.[286] The *sugya*, especially in its pessimistic conclusion, implicitly endorses the dictum of Hillel (in *Avot* 2:4), that one should never rely upon oneself until the day of one's death.[287]

However, Hillel also taught "If I am not for myself, who is for me?" *(Pirkei Avot* 1:14)[288] and the demands made by this assertion of responsibility for oneself points to a plausible explanation for the inclusion of R. Hiyya b. Ashi along with sages who believed themselves impervious to sin. Perhaps his failure in the face of temptation is that he expected too much of prayer in the same manner that the other sages expected too much of character. Prayer is not seen as a solution to all matters in rabbinic thought, as illustrated in the *Mekhilta* of R. Ishmael, one of the so-called *Halakhic*

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[286] The story of R. Hiyya may be critical of the prayer being said "every time" since it reminds one of the rules against making one's prayer "a set thing." However, in the context, this story most plausibly makes the case that one can never be "protected" against temptation. Whether we read this as a *sugya* on scoffing or temptation (or a combination of the two), one wonders if the inclusion of R. Hiyya b. Ashi here without any internal criticism of his actions points outside the *sugya*, using a story about one R. Hiyya to criticize the statement of another R. Hiyya.

[287] Recall that this statement had been rejected without explanation by Abaye in our opening debate on character's permanence. It seems unlikely if not implausible that the *sugyot* under discussion were redacted entirely without reference to one another.

[288] Lacking is a satisfying explanation for the separation of the statements of Hillel between two chapters of *Avot* in what is otherwise a chronological listing of rabbinic leaders attached to usually pithy and occasionally enigmatic ethical exhortations or ruminations. Whether this interruption was erroneous or intentional, it is clear from the lack of this division in *Avot of R. Nathan (ARN),* a Talmud-like commentary to an earlier (and sometimes clearer) version of the Mishnah *Pirkei Avot,* that these statements are meant to be read together. In the expanded version in *Avot of R. Nathan,* the connection with virtue ethics is made even more explicit by way of commentary to Ecclesiastes 9:4 ("A living dog is better than a dead lion") which is used to illustrate that one may only repent (and improve oneself) while living *(ARN A,* 12, s.v. "*hu haya*"; *ARN B,* 27, "*im ain*." See also the explanation of this verse on B. *Shabbat* 30a. This point is also made in *Pirkei Avot* 4:16, B. *Avodah Zarah* 4b and elsewhere.

Midrashim composed toward the end of 4th century CE, according to which

Moses is rebuked by God for praying for too long rather than acting to cross

the Sea of Reeds.[289]

In the early days of the academies that produced the work from which

the Mishnah was formed, Hillel combined two conflicting messages, noting

that one has nobody to rely on but oneself while the very self one must rely

upon is unreliable and demands constant work. Especially in light of the

tradition that with Hillel begins the hereditary position of *Nasi,* "prince" of the

court, one would expect later generations to respond to this teaching (cf. B.

Shabbat 15a). In the subtle expression of this *sugya,* one finds an approach

that balances both the pessimistic and exhortatory components of Hillel's

teachings in *Avot.* The *sugya* teaches a lesson made famous by Aristotle,

that virtue is found somewhere in between two extremes.

A similar approach which balances the demands of self-improvement

with a recognition of human finitude is expressed by R. Tarfon, who "used to

say: it is not upon you to finish the work, but neither are you free to abstain

from it" *(Pirkei Avot* 2:16, my translation). One gets the same sense of self-

development helped along by divine grace that exemplifies Thomas Aquinas'

(1225-1274) account of the virtues.[290] People are required to begin the

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[289] *Mekhilta B'shalah* to Exodus 14:16. Cf. Rashi's commentary to the same verse.
[290] The closest the rabbis get to Aquinas, whose work is central to Catholic theology and
ethics, is R. Joshua b. Hananiah's reply to questions sent to him by the Alexandrians, where,

process of self-development but are assisted in continuing the process for as

as long as they remain committed to it. Examples of this position comprise

the conclusion of the collection from which R. Hiyya b. Abba in the name of R.

Johanan's bold statements were excerpted above:

> Our Rabbis taught: 'Neither shall you make
> yourselves unclean that you should be defiled
> thereby' (Lev. 11:43). If a man defiles himself a
> little, he becomes much defiled.

> Our Rabbis [further] taught: 'Sanctify yourselves,
> therefore, and be ye holy' (Lev. 11:44). If a man
> sanctifies himself a little, he becomes much
> sanctified. (B. Yoma 38b-39a).[291]

The Mekhilta of R. Ishmael expresses a similar sentiment when

commenting on Exodus 19:5. That verse begins "And now if you will listen."

The Mekhilta, noting the oddity of using the time-limiting phrase "and now" to

preface entry into the eternal Sinai covenant, suggests that the term is meant

as encouragement, since "all beginnings are difficult."[292] Rashi explains the

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for example, he declares that to acquire wisdom (as well as wealth and the like), one must
engage in activities likely to develop these strengths, but also pray to God (B. Niddah 70b).

[291] There are obvious affinities between these statements and the position of Maimonides
and other exegetes (Jewish, Christian, and Muslim) who explain away any apparent conflict
between the doctrine of free will and God's hardening Pharaoh's heart by explaining the
"hardening" itself as punishment or result of prior actions. The Talmud (B. Kiddushin 30b)
notes in passing (and with humor) the philosophical problem of God's creating an evil
inclination. The main subject there is the importance of teaching one's progeny (and oneself)
Torah and the power of occupying oneself with Torah as an antidote to the power of
temptation.

[292] Mekhilta d'Rabbi Yishmael, D'ba-Hodesh Yitro, 2, s.v. "V'ata Im." In what is probably
unintentional humor, R. Akiva explains the continuation of the verse to refer to circumcision, a
commandment about which the Mekhilta's statement is undoubtedly true. However, without

Mekhilta to mean "If you will accept the Torah at this moment, it will be guaranteed to you from now on."[293]

In the Palestinian Talmud, the idea that God provides assistance to those who try to develop themselves morally forms the basis of a statement that reads almost exactly like a chastened version of that stated above in the Babylonian Talmud by R. Hiyya b. Abba in the name of R. Johanan[294]:

> R. Yirmiyah said in the name of R. Samuel b. R. Isaac, "[After] a man guards himself from sin the first, second, and third time, God guards him... R. Zeira said, "Provided that he does not regret it [the following verse applies]: 'And a threefold cord is not quickly broken' (Eccles. 4:12)". "Never" is not written, but "quickly" (P. *Shavuot* 1:6, 33c).

This cord metaphor is used to illustrate the power of habit to keep one on a path of sin as well as one of righteousness: "R. Assi stated, The Evil Inclination is at first like the thread of a spider, but ultimately becomes like cart ropes..." (B. *Sukkah* 52a, interpreting Isaiah 5:18). *Genesis Rabbah*

R. Akiva's statement, we would be forced to understand the *Mekhilta* to refer only to the status of the nation as a whole rather than that of the individual involved in the Torah. With the addition of R. Akiva's statement, which refers to an act relevant to each male child, either interpretation is possible. Unlike the question of the individual student of the Torah, the position that the Torah is guaranteed in perpetuity to Israel is a theological certainty within rabbinic thought. The same is true, of course, of Christian thought, although there the question of the referent of "Israel" is more complicated.

[293] Rashi, Commentary to Exodus 19:5, s.v. "*V'ata.*' The word translated "it will be guaranteed" (יערב) could also mean "it will be pleasant," which would recall, with a more cheerful bias, B. *Shabbat* 88a where God is reported to have held the Sinai mountain over Israel and threatened: "if you accept the Torah, [it will be] good (מוטב). If not, this will be your grave."

[294] See also Tosefta *Kiddushin* 1:17, ed. Lieberman.

records the same statement in the name of R. Akiva.[295] A similar concept is

expressed here by R. Isaac, who interprets II Samuel 12:4 as referring to sin,

which begins as a visitor, then becomes a house guest, and ends up the

master of the house. As one develops these inclinations, they shape and

even come to define one's character:

> It has been taught: R. Jose the Galilean says, The
> righteous are swayed by their good inclination...
> [citing Ps. 109:22]. The wicked are swayed by
> their evil inclination [citing Ps. 36:2] Average
> people are swayed by both inclinations [citing Ps.
> 109:31].
>
> (B. *Berakhot* 61b)

Virtue ethics, in evaluating a whole life, looks at patterns of action in

order to discern a person's usual behavior, considering this indicative (as well

as causative) of his or her character. The Talmud recognizes the same

sense of pattern: "R. Huna said in the name of Rab: 'Once a man has

committed a transgression once or twice, it becomes permitted to him" (B.

Yoma 87a, cf. 86b, B. *Kiddushin* 40a, B. *Sotah* 22a). This "startles" the

anonymous voice of the redactor, who explains that a sin doesn't become

less sinful for having been repeated, but that it becomes a habit and therefore

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[295] *Genesis Rabbah* 22:6, substituting "ship's rope" for cart rope, in spite of the Biblical
citation. Other images used here are sin as a crafty stray dog and as a decrepit robber who
uses bravado to coax the weak into giving up their possessions. Although in *Genesis
Rabbah* the antecedent subject of these statements is sin (חטאת, from the verse being
commented upon – "sin lies at the door," Gen. 4:7), the concept being explored is sin
personified and therefore equivalent to the evil inclination of the Talmud. In neither case
does it literally mean an external creature. Compare the statements of R. Ammi ("the
Tempter") and R. Hanina ("Your Tempter") later in this text.

seems to the person as permitted.[296] Centuries later this process would be termed a function of "cognitive dissonance."[297] As noted in the previous chapter, one of the important lessons of virtue ethics is that virtue and vice are expressed not only in what people do, but in what they perceive. This understanding of human character grounds the just-cited statement of R. Huna in the name of Rab. The school of R. Ishmael put it more succinctly: "sin dulls [מטמטמת] the heart" (B. *Yoma* 39b). Max Kadushin wrote

> ...to the Rabbis Torah was *the* character-forming agency. By means of the Torah, as we have seen, a man not only learns to do what is right but becomes so tempered as to find it natural to do good [page break] and to avoid evil. Torah, then, renders good conduct and fine deeds implicit, so to speak, in a man's very personality, in other words, it ennobles and spiritualizes his character.[298]

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[296] The formulation on B. *Yoma* 86b is worded more strongly: "How then do I [R. Eleazar b. Jacob, explain]: 'As a dog that returneth to his vomit, etc.'? (Prov. 26:11). In accord with R. Huna; for R. Huna said: Once a man has committed a sin once and twice, it is permitted to him. 'Permitted'? How could that occur to you? — Rather, it appears to him as if it were permitted." See Rashi here, s.v. "*Ulla Amar.*"

[297] Leon Festinger, *A Theory of Cognitive Dissonance* (Stanford: Stanford UP, 1957).

[298] Max Kadushin, *Organic Thinking,* 75-76. Cited by Schofer (2000), 102, n 9.

Moral Education and Character Development

Like Aristotle, the rabbis understood the early development of a child's character to involve imitating his or her parents (*NE* 1179^{b}32-1180^{a}1, 1180^{b}3-7). "Abaye said: as the proverb has it, 'The talk of the child in the market-place, is either that of his father or of his mother'" (B. *Sukkah* 56b). The roots of future behavior are established in one's youth. Asked by way of metaphor whether everyone who studies will benefit, R. Meir replied that it depends upon the person's early training: 'all that was clean on its mother comes up [properly dyed], all that was not clean on its mother does not come up [properly dyed]' (B. *Hagigah* 15b). Therefore, education (both moral and practical) is a parental obligation (e.g. B. *Kiddushin* 30b).

Ideally such education begins from birth: "They said in the school of R. Jannai: '...With whom do you find the cream of the Torah? With him who spits out upon it the milk which he has sucked from the breasts of his mother'" (B. *Berakhot* 63b, cf. B. *Horayot* 13a on "raised in holiness"). While they disagreed on the extent to which habit and education guaranteed positive or negative results, there was a belief among the rabbis that engaging in virtuous activity leads to further virtuous activity and that the same is true of vicious behavior.

In describing the relationship between character and moral evaluation, Beauchamp and Childress write "If a virtuous person makes a mistake in judgment, thereby performing a morally wrong act, he or she would be less

blameworthy than an habitual offender who performed the same act."[299] In

the words of Proverbs, "Seven times the righteous man falls and gets up,

while the wicked are tripped by one misdeed [בְרָעָה] (24:16).[300] This

distinction is dependent upon the mistake not becoming a habit. For this

reason, one sage felt it essential to warn against even slight misdeeds

because of the potential impact not of the deed itself but of the habits to which

it might lead:

> Ben 'Azzai said: run to a [seemingly] unimportant
> command [*mitzvah kallah*] as to a serious one,
> and flee from transgression; for [one] precept
> draws [in its train another] precept, and [one]
> transgression draws [in its train another]
> transgression; for the recompense for [performing]
> a precept is a precept, and the recompense for
> [committing] a transgression is a transgression
> *(Pirkei Avot* 4:2).[301]

The Talmud notes the difficulty of eradicating a previously developed

tendency to sin (B. *Baba Metzia* 59B).[302] This is also apparent from a

"debate" about advice given by an imprisoned R. Akiva to R. Shimon bar

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[299] Tom Beauchamp and James Childress, *Principles of Biomedical Ethics,* 5th ed., 29.
[300] JPS (1985) translates בְרָעָה "misfortune," but רע can mean either bad, as in misfortune, or wicked, as in verse 20. One question that has to be asked of the Childress and Beauchamp account is whether the virtuous person should in fact be considered more culpable for minor infractions than the vicious. The rabbinic account suggests that either of these responses is correct, depending upon whether the virtuous person functions as model for others' behavior.
[301] *Soncino* renders "easy command" and "difficult command," which I think is confusing in light of the expectation of "running" to do the latter. The present translation accords with other rabbinic uses of these terms.
[302] The Talmud here also prohibits mistreating a proselyte for fear of causing backsliding מפני שסורו רע - "because he has a strong inclination to evil" *Soncino*'s translation follows Rashi. Jastrow's rendering is even stronger: "because his [original] character is bad."

Yohai, which concludes that one should always ensure that one's teaching is correct, because even a "corrected" scroll still shows the errors of its past (B. *Pesahim* 112a). Likewise, a "teacher of young children" is included in the category of "one whose mistakes cannot be rectified" and who is subject to immediate dismissal (B. *Baba Batra* 21b).

Another area which demonstrates the concern the rabbis had for virtue and proper habit is indicated in the emphasis they placed on "service to the sages." R. Shimon b. Yohai is cited by R. Johanan as stating that such service is greater than other forms of Torah study (B. *Berakhot* 7b). This service was a form of apprenticeship and intended to provide the student with moral and ritual knowledge that could not be transmitted in other ways.

The following is an example of the way a servant might learn ritual knowledge during his attendance on scholars:

> Amemar and Mar Zutra and R. Ashi were sitting at a meal and R. Aha the son of Raba waited on them. Amemar recited a separate blessing for each cup; Mar Zutra recited a blessing over the first cup and over the last cup; [but] R. Ashi recited a blessing over the first cup and no more. Said R. Aha b. Raba to them: in accordance with whom are we to act?
> (B. *Pesahim* 103b)

What follows is a discussion by the two scholars justifying their practices. While this may seem to be a minor point to learn, the overall impact of such service on the student was seen as paramount. Failure to

properly serve the sages meant that one's moral and ritual education was

dangerously incomplete:

> It has been reported, If one has learnt Scripture and Mishnah
> but did not attend upon Rabbinical scholars, R. Eleazar says he
> is an 'Am ha-arez' R. Samuel b. Nahmani says he is a boor; R.
> Jannai says he is a Samaritan; R. Aha b. Jacob says he is a
> magician. R. Nahman b. Isaac said: The definition of R. Aba b.
> Jacob appears the most probable; because there is a popular
> saying: The magician mumbles[303] and knows not what he says;
> the tanna recites and knows not what he says (B. *Sotah* 22a).[304]

Here the tanna is one who has memorized the laws perfectly, a human

book. Despite this knowledge, *understanding* can only arise through

attendance on the sages and the closer connection that develops from that

relationship. Similarly, the *Tosefta* reports that an increase in arguments

resulted from the multiplying of students "who had not served their

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[303] Jacob Neusner writes that "The functions of a rabbi in third-century Babylonian Judaism exhibit remarkable similarities to those the Iranian Magus." The similarity he notes is in contrast with the passage just cited as "[The Tanna in the Amoraic academy] was not a rabbi, and the parallel [in this text] is merely superficial" ("The Rabbi and the Magus," *History of Religions* VI.2 (1966): 169-78. Reprinted in Jacob Neusner, *Talmudic Judaism in Sasanian Babylonia* (Leiden: E.J. Brill, 1976), 78-86), 79.

[304] See Saul Lieberman, "The Publication of the Mishnah," In *Hellenism in Jewish Palestine* (New York: Jewish Theological Seminary Press, 1962), 83-99. Lieberman suggests that "...the *Mishnah* was not published in writing. But we have good evidence to establish that it was published in a different way...The *Tanna* ('repeater', reciter) committed to memory the text of certain portions of the *Mishnah* which he subsequently recited in the college in the presence of the great masters of the Law. Those *Tannaim* were pupils chosen for their extraordinary memory, although they were not always endowed with due intelligence." After citing the above text from B. *Sotah* 22a, Lieberman concludes, "Indeed the stupider [sic] the *Tanna*, the more reliable his text; he was not suspected of 'doctoring' it" (*Hellenism*, 88). This last remark is tempered by reference to "notable exceptions."

teachers."[305] This passage also appears in the Babylonian Talmud (B. *Sotah* 47b, B. *Sanhedrin* 88b) [306] There are only two plausible causal connections. The first is that these students did not learn the full understanding of the law that can only be learned through the daily interaction required of service. The second is that they did not learn the virtues through imitating a teacher they served. Either way, service is tied to education.

Walter Wurzberger suggested that Maimonides represents, in his development of virtue ethics, a "pioneering breakthrough in Jewish ethics." He continues,

> His originality can also be seen in his treatment of the biblical passage 'and thou shalt cleave to Him' [Deut 13:5]. Although he seemingly merely paraphrases the Rabbinic interpretation that mandates attachment to scholars of the Law, he actually re-interprets [sic] it by adding the phrase 'so that he may learn from their actions' [B. *Ketubot* 111b, M.T. *Hilkhot De'ot* 6:3]. *There is no basis whatsoever in the Rabbinic sources that attachment to scholars of the Law is mandated in order to provide us with role models... But for Maimonides the purpose of the attachment to scholars is educational.*[307]

Strictly speaking, this is true. The passage Maimonides paraphrases is in fact talking about those who do not study the Torah at all. It is cited to comfort a teacher who is concerned after hearing a teaching implying the

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[305] *Tosefta*, ed. S. Lieberman (Jerusalem: Jewish Theological Seminary of America Press, 1993), *Sotah* 14:9.

[306] Oddly, *Soncino* translates שלא שמשו כל צרכן on B. *Sanhedrin* 88b as "studied insufficiently" but correctly ("who had not served") on B. *Sotah* 47b. The concept of service is described as including the performance of every activity suitable for a slave, so long as the student would not actually be mistaken for a slave (B. *Ketubot* 96a).

[307] Wurzberger, *Ethics of Responsibility,* 75.

unschooled are destined only for punishment.[308] To this end, the student

explained that there is a secondary level of merit, relevant to one who

supports the real work being done by the scholars (B. *Ketubot* 111b, cf. B.

Berakhot 34b). However, the rabbis used the term "cleave" to indicate an

attachment which included a moral-educational component. In one of the

blessings in the morning liturgy established by the rabbis, for example, the

term "cleave" is used to indicate attachment not to the sages but to the "good

inclination and a friend who is good" (B. *Berakhot* 60b).

Wurzberger is correct that Maimonides represents a breakthrough in

the systematic development of a Jewish virtue ethics, just as Maimonides

represents a breakthrough in organizing and codifying Jewish law. However,

neither in virtue ethics nor law does Maimonides represent the radical break

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[308] The strongest statement that one might find associative merit or punishment is found perhaps in the laws concerning the apostate city, עיר הנדחת (Deut. 13:13-15, M. *Sanhedrin,* 1:5, 10:4-6, B. *Sanhedrin* 15b,16b, etc.) However, note that the Tosefta (*Sanhedrin* 14:1) writes that the apostate city "never was and never will be," its legislation serving only to provide an occasion for study and its reward. More directly relevant to the individual is the statement by R. Akiba, that one who cleaves/attaches to sinners, even without sinning, will be punished and one who cleaves/attaches to doers of *mitzvoth*, even without imitating their actions, will receive such reward as comes to those to whom they are attached (ARN A, 30). The narrative which immediately follows this text, however, suggests culpability on the part of the one punished, perhaps reflecting discomfort with an assertion concerning purely associative guilt.

רבי עקיבא אומר כל המדבק בעוברי עבירה אף על פי שלא עשה כמעשיהם הרי זה מקבל פורענות כיוצא בהן. וכל המדבק בעושי מצוה אף על פי שלא עשה כמעשיהם הרי זה מקבל שכר כיוצא בהן. כיצד שנים מעידים באחד ואומרים אדם זה הרג את הנפש ונמצאו זוממין ונגמר דינם ליהרג וכשהן מוציאין אותו לבית הסקילה אחד רץ ובא אחריהן ואומר יודע אני בעדות זו אומרים לו בא והעד עדותך אף הוא נמצא זומם ונגמר דינו ליהרג. כשהן מוציאין אותו לבית הסקילה אומר אוי לי שאלו לו באתי אני כבר לא נגמר דיני ליהרג עכשיו שבאתי עמהן נגמר דיני ליהרג. אומרים לו ריקה אפילו מאה בני אדם באין אחריך ונמצאו זוממין כולן נהרגין. וכי איזהו מדה מרובה מדת הטוב או מדת פורענות הוי אומר מדת הטוב אם מדת פורענות מעוטה המדבק בעוברי עבירה אעפ"י שלא עשה כמעשיהם הרי זה מקבל פורענות קל וחומר למדת הטוב מרובה

with the Talmud that Wurzberger's statement implies. Wurzberger goes too far in suggesting that the Talmud did not recognize the educative value of living in proximity to the sages.

Even if we discount the Talmudic passages just cited, the explicit connection between service and education precedes Maimonides (b. 1135) by more than two centuries. Saddia Gaon (b. 882), in his introduction to the *Book of Beliefs and Opinions* (completed 933) understood the phrase "who had not served their teachers" to mean that the students had not completed their studies, specifically "the subject matter of wisdom."[309] Similarly, Rabbi Joseph ben Meir ibn Migash (b. 1077), a teacher to Maimonides' father (!), echoes a statement by the sage Hillel and explicitly blames the erroneous rulings of some so-called judges brought to his attention on their laziness leading to their failure to "serving the leaders of the generation."[310]

Maimonides understands the *mitzvah* of "cleaving to the sages" to be based on human nature. In the section immediately preceding his discussion of cleaving to the sages, Maimonides explains that "it is human nature to be

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[309] Saadia Gaon, *The Book of Beliefs and* Opinions, trans. Samuel Rosenblatt (New Haven and London: Yale UP, 1948), 13.

[310] Responsa of HaRi Migash, 195, *"v'od shezeh,"* *Responsa Project* [CD-ROM], v. 9 (Ramat Gan: Bar Ilan University, 2001). Hillel scolds B'nai Batyra for their lack of knowledge, which he blames on their laziness as expressed in their failure to attend to Shemaya and Avtalyon. Like Moses in the Midrash, Hillel's ire causes him to embarrassingly forget some of his learning. It is, however, restored after he praises the populace, noting that if they "are not prophets, they are the children of prophets" (B. *Pesahim* 66a / P. *Pesahim* 33a/6:1). In the version cited in the Palestinian Talmud, all of Hillel's arguments are defeated and he is only elevated to leadership after declaring that he had learned the law from his teachers. In both versions, they seek Hillel out because they heard "there was a Babylonian who had served Shemaya and Avtalyon."

drawn in his actions and beliefs after his neighbors and friends" (M.T. *De'ot*

6:1). The next law is "to cleave to sages and to their students in order to

learn from their actions" (M.T. *De'ot* 6:2). The sages had already noted that it

was human nature to learn good and bad from one's neighbors. One

example is present in a rabbinic citation of exceptions that prove the rule:

> R. Eleazar said: A righteous man once lived between two
> wicked men and did not learn from their deeds, a wicked man
> lived between two righteous men and did not learn from their
> ways — The righteous who lived between two wicked men and
> did not learn from their wicked ways was Obadiah. The wicked
> man living between two righteous men and not learning from
> their ways was Esau (B. *Yoma* 38b).

This text is premised on the belief that usually people do imitate their

neighbors. Maimonides, then, represents a refinement of the rabbinic

understanding of the moral-educational value of attachment to the sages. It is

true that Maimonides developed his philosophical system under the influence

of Aristotle and went beyond the rabbinic understanding in order to synthesize

the rabbis and Aristotle into a coherent legal-philosophical system.

Nonetheless, he does not represent a discontinuity in Jewish ethics or the

rabbinic concern for character.

This concern for character is emphasized in a a teaching of R.

Johanan cited by Rabbah b. Bar Hana concerning the importance of a

teacher's moral status:

> What is the meaning of the verse, 'For the priest's
> lips should keep knowledge, and they should seek
> the Law at his mouth; for he is the messenger of
> the Lord of hosts' (Malachi 2:7)? [This means that]
> if the teacher is like an angel of the Lord of hosts,
> they should seek the Law at his mouth, but if not,
> they should not seek the Law at his mouth!
> (B. *Hagigah* 15b).[311]

This teaching is not surprising when we remember Aristotle's emphasis on vice and virtue as determinants of perception. Quoting Nancy Sherman again, "what vice has destroyed is the ability *to see* the proper goals of action; thus it is not merely ends that have been corrupted but, more significantly, one's access to them through perception and reason."[312] The rabbis recognized that one's character affected one's interpretation of the same data. This point is expressed by R. Johanan, in the name of R. Simeon b. Yohai, "Even the favours of the wicked are distasteful to the righteous" (B. *Nazir* 23b/ B. *Horayot* 10b). The Talmud similarly distinguished between "the exegesis of the righteous" and that of the wicked (B. *Shabbat* 104a). For this reason, the school of Shammai, expressing a conviction similar to that of Aristotle, wanted to limit the ranks of students to those who were wise, humble, of good birth, and wealthy."[313] The school of Hillel, perhaps

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[311] This text is cited as a challenge to R. Meir's continued discipleship of Elisha b. Abuyah after the latter's turn to sin. The complexities of this narrative are discussed by Jeffrey Rubenstein, "Elisha ben Abuya: Torah and the Sinful Sage (Hagigah 15a-15b)" in *Talmudic Stories: Narrative Art, Composition, and Culture*, 64-104.

[312] Nancy Sherman, *Fabric of Character*, 112.

[313] Cf. B. *Nedarim* 38a.

recognizing that the student differed from the teacher in that the former is, by definition, one who is prepared to improve, declared: "A man should teach to everyone, for there were many sinners among Israel and they were brought close to the study of Torah and from them descended [those who were] righteous, pious and proper (*Avot of R. Nathan A* 3).

Like the Socrates of Plato's *Meno* (89c), the rabbis were concerned with whether or not that which is most precious (virtue or Torah, respectively) readily passed from father to son. They assumed that a scholar would teach it to his son: "Now, would Hezekiah king of Judah have taught the Torah to the whole world, yet not to his own son Manasseh?"(B. *Sanhedrin* 101b). The question, as it was for Socrates, is whether such transmission is likely to be successful. Again, we have conflicting opinions represented in the Talmud. In one section of the Talmud, we have a report that:

> R. Parnak said in R. Johanan's name: 'He who is himself a scholar, and his son is a scholar, and his son's son too, the Torah will nevermore cease from his seed....R. Jeremiah said: From henceforth [i.e., after three generations] the Torah seeks its home.
> (B. *Baba Metzia* 85a)

This immediately follows two stories in which Rabbi Judah rescues the son and grandson of great scholars from the moral deprivation into which they

have fallen.[314] The Talmud asks the question "Why is it not common for scholars to bring forth scholars from among their sons?" (B. *Nedarim* 81a).[315] It then lists several opinions as to the reasons for this failure, including one suggested later in the *sugya* just cited, that the scholars failed to show the Torah the respect it deserved, treating it as ordinary knowledge rather than as something sacred (B. *Nedarim* 81a).[316] That same *sugya* also presents an opposing opinion, that the data do not support the conclusion that Torah does not regularly pass from father to son. The error, this position claims, is the result of a perception bias that results from the drama of change between the generations:

> R. Hama said: What is meant by [Proverbs 14:3]? 'Wisdom resteth in the heart of him that hath understanding' — this refers to a scholar, the son of a scholar; 'but that which is in the midst of fools is made known' — to a scholar, the son of an 'am ha-arez' [multiple meanings, here probably: ignoramus]. Said 'Ulla: Thus it is proverbial, One stone in a pitcher cries out 'rattle, rattle' (B. *Baba Metzia* 85b).[317]

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[314] See also top of B. *Berakhot* 17b, where a prayer is cited, "that we may produce no son or pupil who disgraces himself in public," and B. *Yoma* 86a: "But if someone studies Scripture and Mishnah, attends on the disciples of the wise, but is dishonest in business, and discourteous in his relations with people, what do people say about him? ' Woe unto him who studied the Torah, woe unto his father who taught him Torah; woe unto his teacher who taught him Torah!' This man studied the Torah: Look, how corrupt are his deeds, how ugly his ways; of him Scripture says: In that men said of them, These are the people of the Lord, and are gone forth out of His land (Ezekiel 36:20)".

[315] *Soncino*'s translation, "why is it not usual for scholars to give birth to sons who are scholars?" is an amusing, if inadvertent, example of crypto-feminism. The text itself reads, "ומפני מה אין מצויין ת"ח לצאת ת"ח מבניהן?".

[316] See also commentary of the Ran to B. *Nedarim* 81a, s.v. "*L'hakhamim.*"

[317] Adam Bellow, son of Saul Bellow, suggests that there are benefits to a meritocratic nepotism, along lines suggested by the rabbis, in his *In Praise of Nepotism: A Natural History*

The single stone rattling refuses to allow any overarching understanding of human moral and intellectual development. It is neither the case that scholars will always beget scholars, nor is it the case that they will not do so. The rabbis were not naïve in their treatment of character development and education. They developed educational programs that served to maximize the number of scholars even as they understood that doing so would lead to an overall reduction in the quality of scholarship. They allowed each of the opinions concerning character to stand unresolved because they are each true, albeit in different ways. By holding permanently open the possibility of a person's becoming a scholar or of developing virtue, the texts refuse the comfort of a status quo that would allow one to fall back from a continuous pursuit of self-improvement.[318]

(Doubleday). For fitting criticism enmeshed in a generally positive review, see Brendan Conway, "The New Nepotism," *The Public Interest* 154 (Winter, 2004): 130-135.

[318] Whether this point is capable of being generalized requires further examination. One parallel concept is the notion that "Israel is not subject to planetary influences" (e.g. B. *Nedarim* 32a).

Chapter 4: Rabbinic Virtues

This dissertation presents examples of rabbinic give and take about matters central to virtue ethics. The rabbis did have several virtues that they praised. Ronald Green, in his discussion of the rabbinic virtues, suggests that "humility" holds pride of place in rabbinic ethics and, most significantly, is a constitutive virtue. Constitutive virtues, Green writes, include those "excellences of character not conceptually related to the fulfillment of duty but which are nevertheless held important in conducing to and furnishing the dispositional ground for Morality."[319] I applaud Green for presenting material in support of this claim, which challenged conceptions of rabbinic ethics as being purely oriented to fulfillment of Divinely commanded actions.

In so designating "humility," however, Green suggested that almost all other rabbinic virtues are properly understood to be "derivative." By this designation, Green indicates that these virtues are properly understood as dispositions to perform actions understood to be right and refrain from those understood to be wrong, on the basis of antecedent values (for example, Divine commandment). As discussed earlier, recourse to derivative virtues, so defined, is not properly the province of virtue ethics, at least not

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[319] Ronald Green, "Jewish Ethics and the Virtue of Humility" *Journal of Religious Ethics,* 1/1 (1973): 54.

exclusively.[320] Green is correct that some of the virtues esteemed by the rabbis are derivative of commandments, although I believe he casts his net too widely.

Rather than dispute each of the virtues Green so describes, let us look at a fairly clear example, that of "*gemilut hasadim*– גמילות חסדים" or loving-kindness. Before examining this virtue, let me clarify the point about which Green and I disagree. A virtue is only derivative if it functions exclusively to ground the performance of a commandment. For example, the virtue of "studiousness" might be taken to be derivative of the commandment to study the Torah. That a particular virtue might be commanded does not mean that it is derivative. One might be commanded, for example, to become a person of virtue.[321] The question of derivation stands on whether or not the virtue is independently valued or only because it results in performance of a command.

Gemilut hasadim or "Deeds of Loving-kindness" is listed by Shimon ha-Tzaddik, along with Torah and Worship, as one of the three pillars upon which the world's existence depends (*Pirkei Avot* 1:2).[322] It is clearly a separate

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[320] Cf. William Frankena, *Ethics,* 2nd ed. (Englewood Cliffs: Prentice-Hall, 1973), p. 65.

[321] I do not mean to claim here that there is a rabbinic understanding that we are commanded to be virtuous people. The statement here is merely a hypothetical extension intended to clarify Green's use of these terms.

[322] Cf. *Avot* 1:18. There R. Shimon b. Gamaliel suggests alternative supports for the world: Justice, Truth, and Peace. Interestingly, whereas Torah, Service, and *Gemilut Hasadim* maintain their individual significance in the latter sources, in the minor tractate, *Derekh Eretz* one finds the opinion that Justice, Truth, and Peace are expressions of the same virtue and

realm of action or virtue, rather than merely dependent upon revelation. This distinction is clear in a later Midrashic text, which cites this passage from *Avot* only to ask how the world existed with only two of its pillars during the twenty-six generations that separated Adam from Sinai.[323] It is true that the Talmud describes loving-kindness in terms of actions, for example in the following passage:

> R. Simlai expounded: Torah begins with an act of benevolence [גמילות חסדים] and ends with an act of benevolence. It begins with an act of benevolence, for it is written: And the Lord God made for Adam and for his wife coats of skin, and clothed them [Genesis 3:21]; and it ends with an act of benevolence, for it is written: 'And He buried him in the valley' [Deuteronomy 34:6] (B. *Sotah* 14a).

These actions do not completely capture the virtue of loving-kindness. Rather they are examples of its expression intended to show how central this virtue is to God's creation, for which the Torah metonymically substitutes.[324] Within the context of a human court, it may be sufficient for one to engage in certain actions without consideration of the motivation behind them.

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that further, having one means one has the other (*Derekh Eretz, Perek Shalom,* 1). A similar text, referring to *Gemilut Hasadim* suggests, rather than that having one means one has the other (implying that each is a facet of the other), that having two leads to the opportunity of the third being granted as a reward (P. *Ta'anit* 4:2/68a). This is of primary interest, I imagine, to those concerned with systematic studies of the virtues, especially questions such as arise in Thomistic ethics, as to whether the virtues are unitary, unified, or plural.

[323] *Pesikta Rabbati* (Ish Shalom), 5. This text appears to have been compiled in 845 C.E. of much earlier material.

[324] The Torah was understood, in one strand of rabbinic thought, to be the 'blueprint of creation' (cf. *Avot* 3:14, *Genesis Rabbah* 1:1).

However, the concept of "an act of benevolence" should be seen as connected with that of being *gomelai hasadim*, performers of deeds of loving-kindness. This term, which clearly refers to a characteristic of the persona not merely of the activity, is seen as an essential characteristic of the nation of Israel, along with mercifulness and shamefacedness.[325] These virtues were also understood to be prerequisites for conversion to Judaism (B. *Yevamot* 79a). The *Tosefta,* a Tannaitic text, distinguishes between acts of charity, which are exclusively monetary, and those of loving-kindness, which involve the person's entire being (גופו) while noting that both are so important as to be equivalent to all the commandments.[326] In the *Bavli,* R. Eleazar declares that one who gives charity is esteemed over one who gave all the sacrifices, and the former is in turn trumped by the performer of *gemilut hasadim.* This latter comparison is underscored by the declaration that the reward (even) of charity is only in proportion to the kindness it expresses (B. *Sukkah* 49b). *ARN* glosses Shimon ha-Tzaddik's statement, adding that the world was created through *hesed* (kindness) and that God desires *hesed* more than sacrifices.[327]

These passages would be irrelevant to an understanding of *gemilut hasadim* that was strictly concerned with the action and not the virtue. We

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[325] Often translated as "bashfulness," this virtue will be discussed in detail below.
[326] *Tosefta* (Lieberman) *Peah* 4:19.
[327] *Avot of Rabbi Nathan A,* 4, quoting Psalm 89:3, Hosea 6:6. Cf. *ARN B,* 8.

should recall once again Aristotle's point that action expresses virtue not only by its form but also because of the character of the person performing the action (*NE* 1105^{a}27-1105^{b}10).[328] It is clear, then, that we are not discussing a derivative virtue. Rather, following Aristotle's discussion, *gemilut hasadim* properly refers only to actions expressing the virtue of *hesed* or kindness. The term *gemilut hasadim* captures this idea as well, recognizing that the nature of the deed (*gemilah*)[329] is dependent upon the virtue and attendant character state of kindness (*hesed*) it expresses. Since these are understood as required positive characteristics or virtues, it is clear that we must understand the actions in B. *Sotah* 14a as representative and not exhaustive of the virtue of loving-kindness.

Virtues and Roots

It is important to recognize the way in which the root system of the Hebrew language gives the virtues an additional element of cultural embeddedness not entirely reproducible in English. This complexity of virtue terms within the rabbinic corpus may be illustrated by considering the virtue of

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[328] It should be noted that this is not, according to the rabbis or Aristotle, strictly speaking applicable to discussions of God's virtuous action.

[329] This follows Jastrow's translation of *gemilut hasadim* as ""deeds of love, charity". The term *gemilah* can mean deed or reward, the latter yielding "grants (gifts) of loving-kindness." As Jastrow notes under *g'mul*, see B. *Ketubot* 8b, where those who visited a house of mourning are termed *gomelai hasadim* and blessed that "the Lord of recompense [בעל הגמול] pay your reward [גמולכם]." In either case, the term refers to some sort of performance, rather than the external gifts properly associated with *tzedakah*, charity.

boshet or shamefacedness.[330] The term *boshet* is a multi-faceted word

whose root *bosh* can mean embarrassment, failure, chastity, bashfulness, or

insult. In this definition we see that the term can be both something desirable,

such as chastity, and something to be avoided, such as insult. In addition to

the positive and negative aspects of the term *boshet,* there is an additional

non-evaluative use of the term to refer to something that is private or meant to

be kept hidden from sight. For example, this is the meaning of the root when

it is used to refer to genitalia, as in Deuteronomy 25:11 and later, in *Leviticus

Rabbah.*[331]

The term *boshet* also has a legal meaning within the rabbinic laws of

damages, where it refers to the tortious humiliation. The relationship between

the virtue of *boshet* and the tort of *boshet* is identical to that between being

humble and being humbled. Public humiliation is understood as a very

serious crime, compared by the rabbis to murder.[332] However, as

Maimonides notes, the significance of the act of embarrassing another is

often overlooked. In fact, he includes it in his list of things for which one is

incapable of repenting because one fails to recognize that one has gravely

injured another.[333] Even when the insult is not actionable, such as when it is

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[330] The term shamefacedness denotes negative and positive qualities that are opposed to each other, as does the Hebrew term *boshet.*
[331]*Leviticus Rabbah* 14:3.
[332]B. *Baba Metzia* 58b
[333]M.T. *Hilkhot Teshuva* 4:4.

only through words, one who embarrasses another is believed to have forfeited his portion in the world-to-come.[334]

For the purpose of this study of rabbinic virtue, the legal materials are mostly of interest because they struggle with the tension between inalienable human dignity and an element of human honor that is a function both of the care one pays to one's own image as well as one's status within the community. We see in the laws concerning *boshet* an attempt to find a balance between the level of respect that is owed equally to all humans as humans and the experienced truth that different people hold themselves to different standards and are consequently owed different degrees of communal respect. For example, Maimonides rules that people who generally carry themselves lightly and are willing to make fools of themselves for a pittance are paid well below the established fines.[335] That one's actions and character determine (or ideally should determine) one's status within the community is of course relevant to virtue ethics.

In the *Aggadah* or non-legal material, *boshet* is usually something desirable.[336] As a desirable quality, *boshet* is seen as a virtue, which in all its forms is an openness to the positive effects of real or potential

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[334]Ibid., *Hilkhot Hovel U'Mazik* 3:7.
[335]Ibid. 3:11.
[336] There are other heteronymic uses of terms relevant to the virtues. To give one example, *Ba'al Nefesh* means a glutton (or "man of appetite") in Proverbs 23:2, and the opposite (a particularly scrupulous person) in the Talmud (e.g. B. *Pesahim* 40a). The Talmud explains the "literal" meaning of Proverbs to mean a student hungry for knowledge (B. *Hulin* 6a).

embarrassment. It must be understood that this embarrassment is not that which is caused by public exposure, but is rather the embarrassment of oneself before one's own conscience and God. This understanding of *boshet* is expressed in the passage "Said Rabbi Nehemia, 'even when we perform the right, we look upon our actions and are embarrassed (ויש לנו בושת פנים)."[337]

There are numerous Talmudic and Midrashic statements indicating that the positive effects of *boshet* include either the inability to do wrong for fear of embarrassment or the sincere repentance of wrong actions because of the embarrassment they cause. The statement is made in numerous locations in the minor tractates that "Those who are *boshet panim* [shamefaced] are not quick to sin"[338] This statement is elaborated to include reference to reward and punishment; "The *az panim* [brazen person] is not capable of repentance, while the *bosh panim* goes to heaven."[339] In the Talmud we have the statement that "one who sins and then is embarrassed [*mitbayesh*] is forgiven" (B. *Berakhot* 12b). The absence of *boshet panim* is

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[337] *Exodus Rabbah* 41:1.
[338] *Kallah* 1.8 and 2.1. *Derech Eretz* 7.8, *Derech Eretz, Pirkei ben Azai* 5.2, as well as elsewhere.
[339] *Kallah* 2.1.

also seen as a sign of the *am ha'aretz*[340] and is one of his characteristics that makes him an unsuitable suitor.[341]

As mentioned above, this concept of *boshet* is seen in certain rabbinic texts to be characteristic of Jews: "The Holy One, blessed be He, gave three gifts to Israel: mercifulness, *boshet,* and *gemilut hasadim.*"[342] The passage continues "and it is a clear matter about all who do not have *boshet panim* that their ancestors did not stand at Sinai."[343] This virtue, like the others, is understood not only to be culturally embedded, but even definitive of the national character.

Virtues as Contextual

Alasdair MacIntyre notes, in comparing the virtues as seen by Homer, Aristotle, Benjamin Franklin, and Jane Austen, that not only are the list of virtues different, but the concepts of virtue that informs the lists are so incompatible as to beg the question of whether there is enough shared meaning to the word virtue to make it useful as a term in ordinary

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[340]The term "am ha'aretz" literally means "[a member of the] people of the land." It has multiple (generally pejorative) meanings within the rabbinic corpus. The most general definition is to see it as an antonym for *Talmid Hakham* (disciple of the sages).

[341]*Mishnah Torah, Hilkhot Isurei Biah* 21:32.

[342]*Numbers Rabbah* 8:4.

[343]Ibid. This same term is used ambiguously as a distinction between God and humanity in a verse from Daniel that is incorporated into confessional prayers, "To you God is righteousness and to us is *boshet hapanim*" (Daniel 9:7). The ambiguity lies in the possibility that the term may mean an accusing conscience (a human parallel to God's righteousness) or may simply mean humiliation when having to face God from the standpoint of human moral failure.

conversation, let alone discussions of ethics.[344] MacIntyre's conclusion is

that one can generalize from all of the accounts that "the exercise of a virtue

exhibits qualities which are required for sustaining a social role and for

exhibiting excellence in some well-marked area of social practice..."[345]

It would seem natural to some that there should be a list of rabbinic

virtues, perhaps placed within a hierarchy. Humility, for example, is

consistently a central virtue. To give just two examples:

> 1) The disciples of Abraham, our father, [possess] a good eye, a humble spirit and a lowly soul. The disciples of Balaam, the wicked, [possess] an evil eye, a haughty spirit, and an over-ambitious soul. What is [the difference]? The disciples of Abraham, our father, enjoy [their share] in this world, and inherit the world to come... but the disciples of Balaam, the wicked, inherit Gehinnom [i.e. Hell].
>
> (Pirkei Avot 5:19)[346]

> 2) Who is destined for the world to come? He who is meek, humble, stooping on entering and on going out, and a constant student of the Torah without claiming merit therefor. [Thereupon] the Rabbis cast their eyes upon R. 'Ulla b. Abba [as endowed with all these qualities].
>
> (B. Sanhedrin 88b)

However, it is my contention that the strength of rabbinic thinking about

virtue is its emphasis on context and the recognition that different times call

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[344] Alasdair MacIntyre, After Virtue, 185ff.

[345] Ibid., 187.

[346] This chapter of Pirkei Avot contains in its 23 mishnayot the highest concentration of materials addressing virtue, including both moral (5:10, 11, 13, 16, 19, and 20) and intellectual (5:7, 12, 15, and arguably 17 and 21).

for different *tzaddikim* or saints. Indeed, the Talmud records numerous, conflicting sets of virtues. MacIntyre's point about the variability of the virtues is aptly illustrated by a hierarchy of virtues attributed to R. Pinhas [=Phineas] b. Yair, a saintly *tanna* of the second century C.E. This statement was destined to become a central text for European Jewry through Moshe Hayyim Luzzato's (1707-1746) exceedingly popular ethical work *Mesillat Yesharim*, for which it provides the underlying structure. Rather than providing a definitive statement of virtue within the rabbinic context, the statement itself (along with its attendant infra-textual commentary) demonstrates the variability of the virtues. The statement appears in two different (primary) forms: the first in the Palestinian Talmud *Shekalim* 3:3/47c, the second in the Babylonian Talmud *Avodah Zarah* 20b.[347] The former version reads:

> Zeal leads to cleanliness, cleanliness leads to purity, purity leads to holiness, holiness leads to humility, humility leads to fear of sin, fear of sin leads to piety, piety leads to [acquisition of the] holy spirit, [acquisition of the] holy spirit leads to revival of the dead, revival of the dead leads to Elijah (may he be remembered for good).[348]

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[347] Confusingly, the version in the Talmud of the Land of Israel is also printed in some editions of the Babylonian Talmud, which lacks a tractate to the Mishnah *Shekalim*. The referenced text appears as B. *Shekalim* 9b. The same text is included in the collection of Aggadic *b'raitot*, *Midrash Tannaim* 23:15. A discussion of the passage which pursues a different understanding of the statement appears in Adolph Büchler, *Types of Jewish-Palestinian Piety from 70 B.C.E. to 70 C.E.: the Ancient Pious Men* (London: Jews' College Publications, 1922), 42-67. He lists additional parallels in *Song of Songs Rabbah* 1:1 and *Midrash Proverbs* 15:32, 41a.

[348] The version appended to the printed version of the Mishnah *Sotah* 9:15 reads (per *Soncino's* translation):
> R. Phineas b. Jair used to say: zeal leads to cleanliness; cleanliness leads to purity; purity leads to abstinence;

A few clarifications are necessary. Within the rabbinic understanding, "the holy spirit" is the element of prophecy that remained after the age of prophecy had been closed. It therefore represents a direct communication from God, an indication of extreme favor secondary to piety. "Revival of the Dead" and "Elijah" refer to stages in the Messianic era. As with other rabbinic texts, self-improvement is understood to have an impact on society as well. Here, development of individual virtue leads to communal redemption.[349] This passage follows a discussion of practices designed to ensure that those entrusted with communal funds were well above suspicion. Extending these, it functions as a counsel of perfection.[350]

Now consider the passage in the Babylonian Talmud:

> Our Rabbis taught: The words, Thou shalt keep thee from every evil thing [Deut. 23:10] mean that one should not indulge in such thoughts by day as might lead to uncleanliness by night. Hence R. Phineas b. Jair said: Study leads to precision, precision leads to zeal, zeal leads to cleanliness, cleanliness leads to restraint, restraint leads to

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> abstinence leads to holiness; holiness leads to humility; humility leads to fear of sin; fear of sin leads to saintliness; saintliness leads to (the possession) of the holy spirit; the holy spirit leads to the resurrection of the dead; and the resurrection of the dead cometh through Elijah of blessed memory, Amen.

[349] It might be the case that this refers only to the individual's presence at these Messianic events. However, the description of one stage leading to another works better in the manner I described in the body of the text.

[350] Although Büchler's note is cryptic, it appears that he prefers to assimilate the various texts to the version in the Babylonian Talmud (*Types of Jewish-Palestinian Piety*, 42, n. 1).

purity, purity leads to ['saintliness/piety' in printed, *Mesoret Ha'shas* corrects to:] holiness, holiness leads to meekness, meekness leads to fear of sin, fear of sin leads to [holiness in printed, *Mesoret Ha'shas* corrects to:] saintliness, saintliness leads to the [possession of] the holy spirit, the holy spirit leads to life eternal [lit. 'revival of the dead'], and saintliness is greater than any of these, for Scripture says, 'Then Thou didst speak in vision to Thy saintly ones' (Ps. 89:20).[351]

This, then, differs from the view of R. Joshua b. Levy. For R. Joshua b. Levy said: Meekness is the greatest of them all, for Scripture says, 'The spirit of the Lord God is upon me, because the Lord hath anointed me to bring good tidings unto the meek' (Isaiah 61:1). It does not say, 'unto the saints', but 'unto the meek', from which you learn that meekness is the greatest of all these.

(B. *Avodah Zarah* 20b)

First, note that here the path of virtues is described as a response to the dangers inherent in anything less than a perfectly virtuous life. One is at risk for falling into impurity when one sleeps if one has not protected one's thoughts during the day. This functions as a metaphor for developing proper habits during one's life so that one will not be embarrassed in death. Placed in this context, R. Pinhas b. Yair's discussion is understood not as a counsel of perfection but as an essential guide to those virtues necessary to prevent

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[351] Rashi's commentary (to B. *Avodah Zarah* 20b) explains the virtues as follows: Precision – is very careful when facing possibility of sin to distinguish the appropriate way of avoiding it; Zeal – anticipates temptation and avoids it in advance; Cleanliness – clean of sin; Restraint – even from that which is permitted; Purity – a higher form of cleanliness.

falling into sin, implying a belief that one who does not advance in virtue necessarily falls into vice.[352]

Second, note that even in the record of this one text, there is disagreement not only about how to arrange the virtues within the hierarchy, but further as to which virtues are even to be included. Of course, this derives from the fragility of oral and manuscript transmission. However, the variations would not exist but for the fact that the conception of these virtues was fragmented as well. Put another way, one does not err (to this extent) in repeating an established passage or in copying a manuscript where the error is problematic within one's worldview. Rather, the interpolation is most likely a function of multiple understandings of the virtue being collated within the context of a known discussion of the virtues. A separate text states that the virtues of wisdom, fear [of God], and humility are equivalent to one another.[353] The Tosaphists, considering this text as well as R. Pinhas b. Yair's virtues, suggest that one cannot have any of the virtues without having the others as well.

Virtues are only meaningful in context and, as a result, the list of relevant virtues changes in keeping with social changes. Even when the names of virtues are retained, the specific meanings of those virtues

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[352] This point often is made concerning the need to continually review and advance one's studies. See, for example B. *Sanhedrin* 99a.

[353] The text appears in the minor tractate *Derekh Eretz* 5:5. It is cited (as "in the Midrash") by the Tosaphists in their commentary to the discussion of R. Pinhas b. Yair on B. *Avodah Zarah* 20b. See note 241, above.

changes. It is therefore apparent that lists of specific virtues are the least transferable aspect of any discussion of virtue ethics. The emphasis on contextuality within virtue ethics has this embeddedness as a necessary corollary.

Further indication of the fluidity of virtue within the rabbinic model are the various discussions of "special merit." A full discussion of merit (z'khut—זכות) and its place within rabbinic ethics generally and rabbinic virtue ethics in particular will have to wait for a future study. It is clear that merit and virtue are not synonymous, as indicated by frequent references to "merit of the ancestors." Nonetheless, merit does refer to some positive quality inhering in a person (or people) and is therefore a likely analogue of virtue. My discussion of the term here is specific to its use as an indication of rabbinic approbation of what is taken to be ethical behavior, even when it is clearly outside the legal and social system. This approbation is seen as indicative of positive character and is given the imprimatur of divine sanction.

Several stories from B. *Ta'anit* 21b-24a illustrate this concept. One of these is the story of Abba the Cupper or blood-letter. The Talmud denigrates the practice of blood-letters in general, writing "Ten things were said of a blood-letter. He…has a conceited spirit… has a grudging eye and an evil eye…and he is suspected of adultery, robbery, and bloodshed." It is among the professions that disqualify one from becoming either a king or a high priest (B. *Kiddushin* 82a). Nonetheless, Abba the Cupper merits divine favor

because his medical practice was exceptional, even by today's standards, for emphasizing both respect for privacy and indigent care.

I will cite two further examples. The first begins with the prophet Elijah, in the *Aggadah* a frequent visitor to saintly rabbis, pointing out a man described primarily in terms of the way his clothes did not match rabbinic standards. Elijah indicates that this man is the only one in the crowd who has merited a place in the world-to-come (i.e. Heaven). The shocked sage rushes to ask the man wherein lies his merit and is told by the man that he uses his position as jailer (a role outside the normal rabbinic range of ethical employment) to protect (especially Jewish) female captives. Furthermore, his apparent collusion with corrupt authorities permits him to warn the Jewish community of impending actions against them. Elijah then pointed out two more men within the crowd as having merit. The sage inquires and learns that they are entertainers whose merit comes from entertaining the downtrodden and using humor to promote harmony (B. *Ta'anit* 22a).

The point of these stories is to indicate that merit is developed within the social context in which one finds oneself. Furthermore, the expectation that virtue is to be defined exclusively in terms relevant to the community at large is intentionally undercut by narratives describing merit present in people outside roles typical or even acceptable for members of the community. A similar set of stories in the Palestinian Talmud is even more pointed. Here, a panderer who prevented a married woman fallen on hard times from sinning

is told "It is fitting that you should pray and be answered" (P. *Ta'anit* 1:4, 64c).

It is impossible, on this account, to fully elaborate those virtues which are

relevant to human life, because human life is too varied to allow for such easy

systemization. While it is clear in each of these stories that the narratives

described represent exceptional cases, the rabbinic model requires the

possibility of virtuous behavior be present even in these extreme cases.

I want to defend this understanding of the virtues from charges of

relativism. According to Aristotle, virtues are directed toward some *telos* or

goal and we cannot delineate the virtues absent an agreed upon *telos* and

understanding of human function. Relativists would suggest our pluralistic

society lacks any such shared conception to ground a shared set of virtues

because there is in fact no shared human *telos* or human function. The

rabbinic model rejects this understanding, but agrees that human nature is

not so fixed that society always remains the same. Right and wrong remain

largely fixed for all time and every person, but the ideal way to live does not.

For this reason, the Talmud teaches that one turns to the judges of his own

generation to deal with the questions that arise during that generation (B.

Rosh HaShanah 25b, citing Deut. 17:9).[354]

Even within the more-or-less coherent tradition of the rabbi functioning

as scholar-sage-judge, the requisite set of virtues is not fixed fully. This is

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[354] See also M.T. *Hilkhot Mamrim*, chapter 1.

noted by Isaac Bashevis Singer in his introduction to a collection of stories

recounting his childhood as the son of a *dayyan*, a rabbi who renders legal

decisions:

> The Beth Din [rabbinical court] not only differed in
> every generation, but every Rabbi who
> participated in it colored it with his character and
> personality. Only that which is individual can be
> just and true.[355]

Distinctive of rabbinic virtue ethics is the recognition that a "saint" is not

a universal model. Lee Yearley writes that a generic model of virtue (and

human flourishing) is found in Aristotle, Aristotelian Christianity (especially

Aquinas), and Confucianism. He suggests that these earlier traditions arrive

at a generic model of flourishing from a belief that human nature is essentially

unvarying.[356] Surprisingly, this opinion is also expressed by some proponents

of contemporary virtue ethics.[357] For example, Harold Alderman suggests that

virtue ethics (and ethics generally) needs such a general model of

paradigmatic virtue. Generic (though detailed) models of virtue are perhaps

the lingering inheritance of the Modern tendency to esteem the universal.

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[355] Isaac Bashevis Singer, *In My Father's Court*, (New York: Signet Books, 1967), vii.
[356] Lee Yearley, "Conflicts among Ideals of Human Flourishing" in *Prospects for a Common Morality,* eds. Gene Outka and John Reeder, Jr, (Princeton: Princeton UP, 1993), 234
[357] Harold Alderman, "By Virtue of a Virtue," in *Virtue Ethics: A Critical Reader,* ed. Daniel Statman (Washington, D.C.: Georgetown UP, 1997), 145-164. For a contemporary study that reaches the conclusion that even job-related virtues are person-specific, see Marcus Buckingham, "Don't Waste Time and Money," (GallupJournal.com, first accessed 12/5/01, http://gmj.gallup.com/management_articles/special_reports/article.asp?i=40).

Contrast these approaches with that of B. *Menahot* 29b, where each of

the righteous is "embarrassed" in the presence of the others because each

has a different set of good deeds.[358] Likewise, even of study, one finds the

teaching "A man can learn only that part of the Torah which is his heart's

desire, for it is said, 'But whose desire is in the law of the Lord'" (B. *Avodah*

Zarah 19a, citing Ps. 1:2).[359] A similar idea is found in the rabbinic

understanding of the nature of revelation and prophecy: "the same

communication is revealed to many prophets, but no two prophesy in the

identical phraseology" (B. *Sanhedrin* 89a).[360]

Just as the rabbis understood the Biblical description of Noah as

"righteous in his generation" to mean that different times have different

standards they also recognized that different people may be exceptional

models of only one or a few virtues.[361] Similarly, we read:

> Rabban Johanan b. Zakkai had five [pre-eminent] disciples. [R.
> Johanan] used to recount their [foremost] qualities [lit. "their
> praise"]: R. Eliezer b. Hyrcanus is a plastered cistern which
> loses not a drop; R. Joshua b. Hananiah — happy is she that
> bare him; R. Jose, the priest, is a pious man; R. Simeon b.

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[358] I think this is a better reading of the text: "because of their deeds that are not like one another -- מפני מעשיהן שאינן דומין זה לזה," than, for example, that of Rashi who doesn't read it as each being embarrassed in front of the other, but as a hierarchy, where some are embarrassed before others. Rashi's explanation fails to capture the reciprocity of the Talmud's language.

[359] Soncino, without justification, adds the word "well" (as in, "can only learn well"), which does not appear in the text and is undercut by the narrative cited immediately following.

[360] The term סיגנון (*signon*) is translated by *Soncino* as both communication and phraseology here, to give the sense of the statement and is supported by the example the Talmud provides. Perhaps a more accurate translation is: "The same signification is revealed to many prophets, but no two prophesy using the same signs."

[361] B. *Sanhedrin* 108a, interpreting Genesis 6:9, per R. Yochanan. Cf. B. *Rosh Hashana* 25b.

Nethaneel is one that fears sin, and R. Eleazar b. 'arach is like
unto a spring that [ever] gathers force *(Pirkei Avot* 2:8).

The point of this *Mishnah* is that each of R. Johanan's top students had
some area in which he was preeminent. All were exceptional and unique in
the particular expression of their piety and sagacity. Excellence in a particular
matter, over and beyond an even accumulation of a variety of virtues, was
esteemed. This is illustrated in a narrative of particular importance to those of
us involved in scholarship and education:

> R. Pereda had a pupil whom he taught his lesson
> four hundred times before the latter could master
> it. On a certain day having been requested to
> attend to a religious matter he taught him as usual
> but the pupil could not master the subject.
>
> 'What', the Master asked: 'is the matter to-day?' —
> 'From the moment', the other replied, 'the Master
> was told that there was a religious matter to be
> attended to I could not concentrate my thoughts,
> for at every moment I imagined, now the Master
> will get up or now the Master will get up'. 'Give me
> your attention', the Master said, 'and I will teach
> you again', and so he taught him another four
> hundred times.
>
> A bath kol issued forth asking [R. Pereda], 'Do you
> prefer that four hundred years shall be added to
> your life or that you and your generation shall be
> privileged to have a share in the world to come?'
> — 'That', he replied. 'I and my generation shall be
> privileged to have a share in the world to come'.
> 'Give him both', said the Holy One, blessed be He.
> (B. *Eruvin* 54b)

This story demonstrates a concern with teaching to each individual student's needs. It fits into a *sugya* concerning the proper method of teaching the Oral Torah. The *sugya* looks at the way that Moses taught the tradition to Israel, first teaching it to Aaron and then Aaron's sons, and then the elders. R. Eliezer concludes that one must teach each student four times. This position is challenged by R. Akiba, who declares that one "must go on teaching his pupil until he has mastered the subject" (ibid.). Pereda's story illustrates the esteem with which teacher's truly following Akiba's opinion were held. Additionally, by showing Pereda encouraging a student less able than others, this story demonstrates recognition that this student will have something unique to contribute to the tradition.

A similar understanding is expressed by the Talmudic discussion of R. Simlai's statement concerning the 613 commandments. As noted above, the Talmud lists the way David and the prophets winnowed the 613 commandments to fewer and fewer sets of virtues or principles.

David came and reduced them to eleven, as it is written:

A Psalm of David. Lord, who shall sojourn in Thy tabernacle? Who shall dwell in Thy holy mountain? — [i] He that walketh uprightly, and [ii] worketh righteousness, and [iii] speaketh truth in his heart; that [iv] hath no slander upon his tongue, [v] nor doeth evil to his fellow, [vi] nor taketh up a reproach against his neighbour, [vii] in whose eyes a vile person is despised, but [viii] he honoureth them that fear the Lord, [ix] He sweareth to his own hurt and changeth not, [x] He putteth not out his money on interest, [xi] nor taketh a bribe against the innocent. He that doeth these things shall never be moved.
(B. *Makkot* 24a, citing Psalm 15)

The Talmud then gives examples of individuals, drawn either from scripture or from among the rabbinic colleagues, who paradigmatically represented each of these. Two important points come out of the Talmud's use of narratives to explicate the meaning of the psalm. The first is that it is clear the rabbis felt the ambiguity of the text demanded such explication. The second is that each esteemed action or virtue was represented in the person of one paradigmatic individual, with no two being represented by the same person. This is drawn out in the *sugya*'s conclusion:

It is written [in conclusion], 'He that doeth these things shall never be moved' [Psalm 15:5]. Whenever R. Gamaliel came to this passage he used to weep, saying: [Only] one who practised all these shall not be moved; but anyone falling short in any of these [virtues] would be moved! (B. *Makkot* 24a).

R. Gamaliel understood the psalm to list a comprehensive set of requirements for one who would be able to dwell in the tent of the Almighty. Such an interpretation could easily become a stumbling block before those who hoped to develop themselves morally and religiously. Recognizing the risk of this understanding, which was after all sufficient to move even the esteemed R. Gamaliel to tears, his colleagues interpreted the passage as a list of different routes to the goal.[362] The text continues:

> Said his colleagues to him: Is it written, 'He that doeth all these things [shall not fall]'? It reads, 'He that doeth these things', meaning even if only he practises one of these things [he shall not be moved]. For if you say otherwise, what of that other [similar] passage, 'Defile not ye yourselves in all these things' [Leviticus 18:24]? Are we to say that one who seeks contact with all these vices, he is become contaminated; but if only with one of those vices, he is not contaminated? [Surely,] it can only mean there, that if he seeks contact with any one of these vices he is become contaminated, and likewise here, if he practises even one of these virtues [he will not be moved].
>
> (B. *Makkot* 24a)

The use of specific individuals to illustrate each part of the Psalm also supports the latter interpretation.

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[362] The difficulty of this exegesis, which was probably insufficient to reduce the type of anxiety attributed to R. Gamaliel but sufficient to prevent the passage from dissuading those in pursuit of virtue, is clear from the need to adduce additional proof from a separate passage. Furthermore, the imbalance between the ease of becoming impure and the difficulty of being purified, mirrored by the imbalance between vice and virtue, undercuts the support offered by the second passage.

A profound and moving example of the multi-dimensional nature of virtue as understood by the rabbis is found in an account of the community's loss of its paragons:

> When R. Meir died, the composers of fables ceased. When Ben Azzai died, the assiduous students [of Torah] ceased. When Ben Zoma died, the expositors ceased. When R. Akiba died, the glory of the Torah ceased. When R. Hanina b. Dosa died, men of deed ceased. When R. Jose Ketanta died, the pious men ceased... When R. Johanan b. Zakkai died, the luster of wisdom ceased. When Rabban Gamaliel the Elder died, the glory of the Torah ceased, and purity and abnegation perished. When R. Ishmael b. Fabi died, the luster of the priesthood ceased. When Rabbi died, humility and fear of sin ceased (B. *Sotah* 49a-b).

Each of these sages exemplified some essential aspect of rabbinic virtue most fully. Others presumably shared the virtues described, but none so paradigmatically as those to whom the virtue or virtuous activity is ascribed. Nonetheless, each is considered a paragon, rather than someone who is lacking the other essential virtues.

In the wake of the loss of these paradigmatic individuals, the Mishnah *Sotah* asks "upon whom is it for us to rely [להשען]?" responding "Upon our Father who is in heaven." This statement seems to be a rejection of virtue ethics, since it turns from relying on human paragons to the greater certainty of relying on God. However, the Mishnah has no trouble listing past

exemplars of the type one might find in the *Aggadic* literature modeling behaviors and attitudes that might be imitated.[363]

The printed editions of the Mishnah conclude with the statement by R. Pinhas b. Yair, discussed above,[364] describing a path to virtue. The addition of R. Pinhas' statement gives the Mishnah's chapter a more affirmative conclusion in keeping with the practice of not concluding study on a pessimistic note.[365]

In sounding a cautionary note, the Mishnah draws our attention to the relationship between virtue, community, and God. The virtuous are not self-absorbed and aloof, but are part of a community which is pained by their loss. Human mortality means that the community cannot rely on an individual paragon of virtue but must constantly encourage the development of all its members. Although a reminder of human limitation, God is not seen here as

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[363] The passage recalls the verse in Isaiah 11:20 in which it is promised that Israel will no longer rely on those who abuse her, but rather on God. The use of "our Father in Heaven" perhaps recalls *Avot* 5:20, which would imply learning virtues wherever one may (active), or M. *Yoma* 8:9 implying that God will purify those who cannot do so for themselves (passive). My own inclination is that it points to M. *Rosh Hashanah* 3:8, where our Father in Heaven returns our attention by granting courage (virtue /active) and healing (passive).

[364] See below.

[365] The Babylonian Talmud here doesn't need this addition since it ends with the upbeat statements of contemporary rabbis claiming to (or committing to) possess some of the virtues supposedly lost. P. *Sotah* 9:17/23b has neither addition. Perhaps it sees Israel's ability to rely on God in horrific times as itself a blessing or perhaps this is just an example of the further development and greater verbosity of the Babylonian Talmud.

Judge, rendering human virtue meaningless, but as Father, whose gentle

rebukes are constructive.[366]

The pessimism of the Mishnah *Sotah* is focused on its contemporaries,

in keeping with the rabbinic belief in generational decline (e.g. B. *Baba Batra*

58a). However, this pessimism also functions as a call to action. In the

version of this text in the Babylonian Talmud, two young scholars respond to

the pessimism by declaring their commitment to represent virtues that had

supposedly been lost. The community engages in continuous critical self-

reflection because its encounter with God forces it to recognize that even its

highest moral achievements are capable of further improvement. In the face

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[366] Eliezer Berkovits suggests that even justice in Hebrew Scripture is salvific, noting that root of the term *mishpat* (justice) occasionally means "to save."("The Biblical Meaning of Justice," *Judaism* 18/2 (1969): 188-209). His argument as far as the term goes is persuasive, I think, but extends too far when generalizing to all matters of Divine justice:

> As terrifying as He may appear to those whom He judges, so comforting is He to those for whose sake He executes judgment. God's insistence on justice is dictated by His concern for those to whom justice is denied. It is for this reason that the Biblical command to do justice is so often connected with the injunction to protect the right [sic] of the weak and helpless (p. 191).

Berkovits wishes to establish, on the basis of *imitatio Dei,* an obligation to act against oppressors. He writes, "All law is God's way, appropriately reflected onto the realm of human existence. All Biblical law is, in a sense, *imitatio Dei*" (201). I support this project, but think it is important to note the limits of such imitation. God the Judge (*Elohim,* the name used in Genesis 7 is understood by the rabbis to indicate God as Judge) could decide that Justice demanded destruction of all life on the face of the earth. This hardly helps the oppressed. It was Justice itself that was saved, not the victims of injustice. This decision is clearly outside the realm of human action and serves as a reminder to those whose imitation of God, even God's righteousness, would go too far. Relevant to the present point, there are times when God appears as Father and times God appears as Judge. At core, this is of course the same God, but the phenomenology of the encounter is clearly different.

of tragedy and human finitude, individuals are called to develop virtue not only for themselves, but as members of the community in covenant with God.

The Problem of Repentance

One difficulty for virtue ethics in a rabbinic context is that a central point of rabbinic theology is that the "gates of repentance" are always open. This point, repeated throughout rabbinic literature, finds expression in the following passage:

R. Simeon b. Yohai said: Even if he is perfectly righteous all his life but rebels at the end, he destroys his former [good deeds], for it is said: The righteousness of the righteous shall not deliver him in the day of his transgression. And even if one is completely wicked all his life but repents at the end, he is not reproached with his wickedness, for it is said, and as for the wickedness of the wicked, he shall not fall thereby in the day that he turneth from his wickedness. Yet let it be regarded as half transgressions and half meritorious deeds! — Said Resh Lakish: It means that he regretted his former deeds" (B. *Kiddushin* 40b).[367]

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[367] Among the most "surprising" of such complete acts of repentance is that of Eleazar ben Durdia. After a life of sexual immorality, he recognizes his degradation after being insulted by a prostitute he has engaged. Failing to secure mercy by calling on various natural forces to intercede for him, he realizes, "The matter then depends upon me alone! Having placed his head between his knees, he wept aloud until his soul departed. Then a bath-kol was heard proclaiming: 'Rabbi Eleazar b. Dordai is destined for the life of the world to come!' ...Rabbi [on hearing of it] wept and said: One may acquire eternal life after many years, another in one hour! Rabbi also said: Repentants are not alone accepted, they are even called 'Rabbi'!" (B. *Avodah Zarah* 17a). This text is too complex to discuss here, but note that here too (a page before the narrative discussed in the text) we see the declaration that Rabbi wept in the face of God's accepting last-minute repentance. I hope to treat at a future date the entire *sugya,*

What then is the advantage of virtue ethics with its long, arduous processes of habituation and character formation?[368] This conflict is apparent in the text of one of the martyrdom narratives, where an executioner's change of heart earns him a place in heaven alongside the executed sage: "When Rabbi heard it he wept and said: One may acquire eternal life in a single hour, another after many years" (B. *Avodah Zarah* 18a).

A close reading of that text would indicate a difference relevant to virtue ethics between the sage who is admitted to the afterlife by name and the penitent who is admitted as "Executioner." The rabbinic model of heaven (beyond the declaration that "no eye has seen it") is not one of equality but where each is "embarrassed" in the presence of the others because of their different good deeds. Eternal life is presumably better than annihilation, but the virtuous may very well benefit more than those who enter through an instant act. We are not told why Rabbi wept. Is it because someone "cheated" his way into heaven while others had to work so hard? This seems unlikely, given the prohibition against begrudging someone a benefit that comes at no loss to you. Perhaps he weeps because the potential apparent

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beginning on 16b with the arrest of R. Eliezer and continuing through 19b with the story of R. Alexandri calling, " Who desires life" and explaining that one must both refrain from misdeeds and engage in Torah study in order to be worthy of life. While this *sugya* raises issues of heresy and interaction with the government, it also considers ordering one's life through study and whether doing so is sufficient or irrelevant to attaining a good life in the present and future worlds.

[368] It is tempting to read B. *Shabbat* 56b's discussion of King Josiah's repentance as "revising his opinions of ages eight to eighteen" as indicating that return does not require sin. However, such a reading is tenuous.

from the executioner's actions would have found greater expression had it been realized earlier in life. Of course, the most human response is that Rabbi wept at the tragic loss of life before him.[369]

Rabbinic virtue ethics confronts the challenges raised by the theological concept of an open door of repentance by responding with tears. As indicated in numerous passages, many of which are cited above, the rabbis recognized that we do not live in a world in which the good or wicked consistently receive their just desserts. For that reason, they rely upon a vision of a future world, but that vision does not eliminate the need to develop virtue in this world. Faced with the challenges of becoming righteous within a world that fails to reward such righteousness and indeed often does not even allow for the actualization of virtues extant in potential, the proper response is that of Rabbi, to shed tears. Rabbinic texts struggle with the possibility of developing character while knowing that those of whom would least expect it still fall into sin. These texts debate the viability of virtue ethics or a close analogue. That is, they are concerned with whether virtue and character are significant factors in the moral life and how to relate them to various theological propositions current within the academies. Freedom to choose between right and wrong is of course a fundamental tenet of rabbinic thought

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[369] But see note 367. See also B. *Avodah Zarah* 10b. The one additional situation in which Rabbi "cries" occurs outside of B. *Avodah Zarah,* on B. *Hullin* 7b. It his response to a miracle which prevents Rabbi from pressing the sainted R. Phinehas to join him for a meal. Rabbi weeps and declares "if this is the power of the righteous during their lives, how much greater is their power when they die!"

(cf. Avot 3:15). The following Aggadic text exemplifies the rabbinic repudiation of original sin or original virtue:

> R. Hanina b. Papa made the following exposition: The name of the angel who is in charge of conception is 'Night', and he takes up a drop and places it in the presence of the Holy One, blessed be He, saying, 'Sovereign of the universe, what shall be the fate of this drop? Shall it produce a strong man or a weak man, a wise man or a fool, a rich man or a poor man?' Whereas 'wicked man' or 'righteous one' he does not mention, in agreement with the view of R. Hanina. For R. Hanina stated: Everything is in the hands of heaven except the fear of God, as it is said, And now, Israel, what doth the Lord thy God require of thee, but to fear etc."
> *(B. Niddah* 16b, citing Deut. 10:12)

It does not follow from this freedom, however, that human nature is completely open at every moment. As discussed above, the rabbis understood habit to impact one's likelihood of sinning or doing good deeds. Rabbinic "moral psychology" is very Aristotelian in this regard. Rabbinic ethics balances the ever-present opportunity for repentance with its expectation that the usual course is for a sinner to sin, the righteous to repent, and for habits to require education from childhood. One finds in rabbinic literature many examples of a basic skepticism concerning human nature balanced by an equally powerful insistence on both human freedom and the possibility of human self-transcendence. This balance between pessimism and recognition of the possibility of transcendence expresses itself in statements that recall Reinhold Niebuhr's description of "the nature and

destiny of man."[370] Although the rabbis rejected any concept of original sin by which humanity might bear inherited guilt, they saw humanity as weak in the face of sin:

> R. Simeon b. Lakish [=Resh Lakish] stated, 'The evil inclination of a man grows in strength from day to day... and were it not that the Holy One, blessed be He, is his help, he would not be able to withstand it...'
> (B. Sukkah 52b)

On the other hand, B. *Shabbat 55b* records four who did not sin (who died only because death entered the world through "the serpent's machinations").[371]

Even when they asserted that the world was created through the letter "hey – ה" because its open side (on the left) invites the sinner to return to God, the rabbis recognized the practical difficulties barring repentance. Rhetorically asking "why not return the way he left (the bottom)?" they answered: "Such an opportunity would never arise" (B. *Menahot* 29b). Such was the importance (and difficulty) of repentance that "R. Johanan said: Great

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[370] R. Niebuhr writes, "The essence of man is his freedom. Sin is committed in that freedom... It can only be understood as a self-contradiction, made possible by the fact of his freedom, but not following necessarily from it" (*Nature and Destiny of Man*, vol. 1 (New York: Scribner, 1964), 17). He further writes, "It is obviously necessary to eliminate the literalistic illusions in the doctrine of original sin if the paradox of inevitability and responsibility is to be fully understood... The Christian Doctrine of original sin... is a dialectical truth which does justice to the fact that man's self-love and self-centredness is inevitable, but not in such a way as to fit into the category of natural necessity. The final paradox is that the discovery of the inevitability of sin is man's highest assertion of freedom... It is at this point that the final battle between humility and human self-esteem is fought" (262-3).

[371] For a discussion of the context in which this passage appears, see above, page 154.

is repentance for `it overrides a prohibition of the Torah" (B. *Yoma 86b).*[372]

While this statement is not actually a legal principle, the rabbis were willing even to override Biblical law (at least concerning property) to remove collateral barriers blocking the gates of repentance:

> R. Hiyya b. Abba said that R. Johanan stated that according to the law of the Torah a misappropriated article should even after being changed be returned to the owner in its present condition, as it is said: He shall restore that which he took by robbery (Lev. 5:23) — in all cases. And should you cite against me the Mishnaic ruling, my answer is that this was merely an enactment for the purpose of making matters easier for repentant robbers.
> (B. *Baba Qama 94b*)

The rabbis could claim that in doing so they were simply following God's practice. According to several rabbis, God violated the general rule of free will, causing Israel and David's grievous sins as a prod to repentance by future sinners:

> R. Joshua b. Levi further said: The Israelites made the [golden] calf only in order to place a good argument in the mouth of the penitents, as it is said, O that they had such a heart as this alway, to fear Me and keep all My commandments etc.(Deut 5:26). This last statement accords with what R. Johanan said in the name of R. Simeon b. Yohai:... [God predestined it so] in order to teach thee that if an individual sinned [and hesitates about the effect of repentance] he could be referred to the individual [David], and if a community commits a sin they should be told: Go [see what happened] to the community [Israel].

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[372] The statement is an example of hyperbole, as the "proof" is God's accepting Israel back after her idolatrous infidelity despite the law against a man remarrying an ex-wife who did not remain faithful to him.

(B. *Avodah Zarah* 4b-5a)

The Talmud notes that "each of these instances is necessary" because otherwise the individual sinner would fear because he lacks a community's greater claim on God's mercy, while a community might fear that it was the lack of publicity for the individual's sins that allowed them to be forgiven.

Related to the problem of repentance versus habit, one finds in the rabbinic texts a tension concerning the status of the penitent as compared with one who has always been righteous.[373]

> For R. Abbahu said: In the place where penitents stand even the wholly righteous cannot stand, as it says: Peace, peace to him that was far and to him that is near [Isaiah 57:19] — to him that was far first, and then to him that is near. R. Johanan, however, said: What is meant by 'far'? One who from the beginning was far from transgression. And what is meant by 'near'? That he was once near to transgression and now has gone far from it. (B. *Berakhot* 34b)

> Our Rabbis have taught, Some of them, used to say, 'Happy our youth that has not disgraced our old age'. These were the men of piety and good deeds. Others used to say, 'Happy our old age which has atoned for our youth'. These were the penitents. The former and the latter, however, said, 'Happy he who hath not sinned, but let him who hath sinned return and He will pardon him.'
> (B. *Sukkah* 53a)

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[373] Cp. Aristotle's discussion of the distinction between continence and virtue in *NE* Book 7.

This debate clearly is relevant to virtue ethics. While Aristotle would support the privileging of the righteous, it is not clear that this conclusion is mandated of virtue ethics. Maimonides, generally a good Aristotelian, writes in his legal text:

> Let one who repents not worry that he is kept afar from the level of the righteous because of the sins he did. This is not so. Rather, he is beloved and delightful in the eyes of the Creator and it is as though he never sinned. And not only that, but his reward is great because he has tasted sin, [and yet] separated from it and overcome his evil passions. Therefore the sages in the Talmud declare 'In the place where penitents stand, even the holy righteous cannot stand.' That is to say, [the penitent's] level is higher than that of one who never sinned, because he has conquered his inclination all the more so.
>
> (M.T. *Laws of Repentance*, 7:4)[374]

One explanation for the position that the penitent stands closer to God is that, having overcome his weaknesses, he is not as likely to sin again as the righteous who has never been so challenged. This certainly fits into an account of habituation and virtue. Both positions, as noted, find support within the rabbinic corpus.

Another way of understanding the relationship between virtue ethics and repentance appears when we examine the symmetry between idolatry

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[374] Compare this to Maimonides' discussion of the same topic, absent the concern for repentance, in *Eight Chapters*, chapter 6. He concludes that continence is preferable (in terms of reward) for those prohibitions and requirements unique to Israel (e.g. not to eat milk and meat together), whereas virtue (in the sense of unity between action and desire) is clearly preferable (to an extreme) for those prohibitions and requirements shared by all humanity (e.g. not to murder).

and repentance. Within rabbinic discussions about merit and sin, these two are the only "activities" that may be accomplished absent physical action. In the case of repentance, Resh Lakish explains that the regret is sufficient to change the nature of the past (B. *Kiddushin* 40b).[375] Concerning idolatry, even the intent is punished, because "idolatry is so heinous that he who rejects it is as though he admits [the truth of] the whole Torah" (B. *Kiddushin* 40a).

Rather than being opposed to virtue ethics, perhaps the radical re-orientation accomplished both in repentance and through committing oneself to idolatry (understood as the antithesis of virtue) is in fact transformative in the manner described by one stream of rabbinic thought. This question is at least worthy of further consideration by contemporary virtue ethics. The Talmud already begins this discussion, noting that the way repentance affects the past is different when the person's motivation is a desire to be closer to God rather than a desire to avoid punishment:

> Resh Lakish said: Great is repentance, for because of it premeditated sins are accounted as errors...
> But that is not so! For Resh Lakish said that repentance is so great that premeditated sins are accounted as though they were merits...
> That is no contradiction: [The latter] refers to a case [of repentance] derived from love, the other to one due to fear.
> (B. *Yoma* 86b, Cf. B. *Kiddushin* 40b)

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[375] Regret, as discussed in this sugya, is applicable both to one's sins and one's positive accomplishments. Cf. Raba b. Hinena's statement on B. *Berakhot* 12b.

In the case of fear, one's sins become "errors" because a proper awareness of God's might, such as the penitent now has, would have dissuaded one from the transgression. Resh Lakish acts as the Jewish Plato, understanding all sin to result from error, and declares, "A person does not commit a transgression unless a spirit of folly enters into him" (B. Sotah 3b). However, when love is the motivator, one attempts to transform oneself into that which is lovable. The claim Resh Lakish makes on B. Yoma 86b is that this reorientation is so powerful that one is able to draw upon the vicious habits one developed in the past and transform them into virtues.

There is something deeper at work in the balance between discussions supportive of habituation and those that undercut it by supporting the promise of instant repentance or its opposite. To explain the underlying issue, we have to consider the relationship between the values internal to an approach to ethics and the ones inculcated by accepting that approach to ethics. For example, it might be asked whether utilitarianism is self-contradictory, on the grounds that utility would be maximized by people acting on some other ethical theory rather than being guided by utilitarianism.

Considered from this perspective, rabbinic virtue ethics would face a problem if it were the case that accepting its understanding of character led people to despair over the possibility of improving that character. Teaching that character must be developed from one's infancy deters one raised in a corrupt environment from trying to improve her character. Similarly, teaching

a doctrine of easy repentance can have ruinous consequences for personal morality. The same is true of an Aristotelian claim that the man of virtue never falls into error. Rabbinic virtue ethics, to accomplish its inherent goal, has to recognize and respond to these problems.[376]

One finds a general trend throughout the rabbinic materials: whatever teaching might lead to moral or religious complacency is rejected and whatever would lead to further self-development is established and developed. In practice, this meant that seemingly contradictory teachings were emphasized simultaneously. This approach was established more or less explicitly:

> Our Rabbis have taught: Always let the left hand thrust away and the right hand draw near. Not like Elisha who thrust Gehazi away with both his hands... R. Simeon b. Eleazar says: human nature [יצר],[377] a child, and a

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[376] In a unpublished paper, I have argued that the sugya following the *Mishna* on B. Kiddushin 39b is redacted so as to move from a theology of this-worldly reward and punishment to one that makes no such promises, with the goal of affirming an ever-present demand for proper action.

[377] This term, *yetzer,* is usually translated as "[evil] inclination," but is also taken to be an essential drive, e.g. to procreate. This is the point of a fascinating narrative on B. *Yoma* 69b in which Temptation is captured:

> They prayed for mercy, and [the Tempter] was handed over to them. [Ezra] said to them: Realize that if you kill him, the world goes down [so reads *Soncino;* better: "is finished"]. They imprisoned [the Tempter] for three days, then looked in the whole land of Israel for a fresh egg and could not find it. Thereupon they said: What shall we do now? Shall we kill him? The world would then go down.

Recent studies concerning the Evil inclination include Daniel Boyarin, *Carnal Israel: Reading Sex in Talmudic Culture*, 61-76. Jonathan Schofer's dissertation, *The Making of a Sage: The Rabbinic Ethics of* Abot De Rabbi Natan (U of Chicago, 2000) provides a study of *yetzer* in that text (pp. 101ff, see also pp.81-82). He notes that "*yetzer* is a rabbinic trope for the locus of spontaneous impulses" (102). This dissertation has been published as *The*

woman: These should be thrust aside with the left hand
and drawn near with the right.
(B. *Sotah* 47a and *Sanhedrin* 107b)[378]

Looking past the sexism of this statement, we find a core rabbinic teaching about moral education and the development of virtue. One is expected to maintain a balanced approach in establishing moral behavior in every sphere over which one has control. It seems to me that R. Simeon b. Eleazar listed all three of these categories for reasons that made sense within that social structure and can within ours if seen as theoretical models rather than actual claims to social authority. One's own human nature, one's child, and one's wife, represented successive levels of externalizing moral authority. The self over whom one theoretically has complete control, the child over whom one has had formative control as well as current authority, and the woman over whom one (legally) has current authority but whose moral formation preceded that authority. The last category subtly challenges the first, reminding one that even when one has not had complete control over character formation (which is true even of oneself), a balanced approach is more likely to lead to actual change than attempts at more radical transformation.

Making of a Sage: A Study in Rabbinic Ethics (Madison, Wis.: University of Wisconsin Press, 2004). As discussed above, Elizabeth Shanks Alexander considers, "Art, Argument, and Ambiguity in the Talmud: Conflicting Conceptions of the Evil Impulse in B. Sukkah 51b-52a," *Hebrew Union College Annual* 73 (2003).
[378] The last sentence is my translation.

What this passage teaches, in any case, is that the rabbinic model of moral education recommended a dialectical approach to correction and recognized the dangers inherent in both overly positive and overly negative strategies. The narratives cited by the Talmud to support these statements include examples of sinning disciples who are led to the worst of sins because they were pushed away too much and because of teachings which led them to believe themselves incapable of repentance.

In fact, one finds numerous rabbinic teachings that aim to mitigate both the error of relying on repentance and the error of believing one's sins have made repentance impossible.[379] The last Mishnah in the tractate devoted to the Day of Repentance warns: "If one says, 'I shall sin and repent, sin and repent,' no opportunity will given to him to repent" (M. *Yoma* 8:9, B. *Yoma* 85b).[380] The gates of repentance remain closed to those who contemplate sin lest they become themselves a source of temptation. From the other side, the fact that one has sinned should not lead to despair and further sin: "R. 'Ulla expounded: Why Is it written, 'Be not much wicked'? Must one not be *much* wicked, yet he may be a *little* wicked! But if one has eaten garlic and his

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[379] The response to the problem of too much faith in one's own virtue is discussed above.

[380] The Talmud to this passage (quoted above as well) ties this warning to the problem of habituation: "IF ONE SAYS: I SHALL SIN, AND REPENT, SIN AND REPENT. Why is it necessary to state I SHALL SIN AND I SHALL REPENT twice? — That is in accord with what R. Huna said in the name of Rab; for R. Huna said in the name of Rab: Once a man has committed a transgression once or twice, it becomes permitted to him. 'Permitted '? How could that come into your mind — Rather, it appears to him like something permitted" (B. *Yoma* 87a. The capitalized section indicates the Talmud is quoting the Mishnah).

breath smells, shall he eat some more garlic that his breath may [continue to]

smell?"(B. *Shabbat* 31b, quoting Eccl. 7:17. Emphasis added).

The Talmud emphasizes the importance of separating oneself from

one's sin both after the fact, through repentance, and, significantly, before the

fact if one finds oneself being overcome by temptation. The following text is

set within a section of Talmud that deals generally with matters of character:

> R. Il'ai the Elder said: If a man sees that his [evil] desire is
> conquering him, let him go to a place where he is unknown,
> don black and cover himself with black and do as his heart
> desires but let him not publicly profane God's name.
> (B. *Kiddushin* 40a)

In its context, R. Il'ai should be read as not simply dealing with a

hierarchy of sin but as teaching how to avoid turning a transient wicked desire

into a character-deforming habit, since the Talmud notes that it is only

applicable when one cannot resist the temptation.[381] R. Il'ai's teaching would

be out of place in a legalistic ethics that sees the same action as wrong or

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[381] It is possible to fit Il'ai's doctrine into act-centered forms of ethics, for example by considering it simply an indication of the appropriate way to fit different types of errant behavior in an appropriate hierarchy. I think it points to something beyond a simple hierarchy because of the self-transformation he suggests. The Talmud here and in B. *Hagigah* 16a understands this as more than simply a matter of not profaning God's name publicly, because if that were all that were meant by Il'ai his statement would be superfluous.   Put another way, there is something at work to make his position different from the one that immediately precedes it in B. *Kiddushin* 40a: "R. Abbahu said on R. Hanina's authority: Better had a man secretly transgress than publicly profane God's name." In explaining how his position doesn't disagree with R. Joseph's equating sinning in private as the ultimate disrespecting of God, the Talmud distinguishes between the casual sinner (whose private sinning indicate he has more respect for human sanction than God's sanction) and one who cannot control his desires and must follow Il'ai. Rashi (as well as R. Hananel) understands it to be an additional step which might dissuade the potential sinner from the act. See his commentary here, s.v. "ילבש שחורים" and to B. *Moed Katan* 17a s.v.
"מה שלבו חפץ"

right wherever and by whomever it is performed.[382] Rather, his is the advice

of virtue ethics to those who have only begun to develop virtue.

After the statement quoted previously that "Average people are

swayed by both inclinations," Raba adds, "and such as we are of the average"

(B. *Berakhot* 61b). This seems like an odd statement to come from a saintly

leader, until one recalls the teaching that everyone should think of himself as

balanced between good and evil (B. Kiddushin 40a-b). This passage teaches

that one should be neither complacent because of one's prior good deeds nor

immobilized by one's previous sins. Rab makes the same point in his

declaration to Rabbi Judah that they should not consider themselves

"respectable" in the sense of immune from temptation (B. *Kiddushin* 81b). A

similar lesson is found in the declaration that "the greater [= more of a sage]

the person, the greater the evil inclination" (B. *Sukkah* 52a).[383] In all of these

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[382] Il'ai's doctrine is not esteemed throughout the Talmud. So, for example, B. *Moed Katan* 17a, where a collegiate who allegedly observed Il'ai's dictum meets a gruesome end. However, it is noteworthy that he is at least admitted in the afterlife into the "grotto of the judges" if not the "grotto of the pious."

[383] This is cited to comfort Abaye's distress over his self-critical belief that he would have succumbed to temptation where ordinary people did not. Blaise Pascal (1623–1662) noted, "There are only two kinds of men: the righteous who think they are sinners and the sinners who think they are righteous" (*Pascal's Pensées,* translated by W. F. Trotter, (New York: E. P. Dutton, 1958) no. 534). An interesting variation is found in the following narrative:

> R. Judah expounded: In the time to come the Holy One, blessed be He, will bring the Evil Inclination and slay it in the presence of the righteous and the wicked. To the righteous it will have the appearance of a towering hill, and to the wicked it will have the appearance of a hair thread. Both the former and the latter will weep; the righteous will weep saying, 'How were we able to overcome such a towering hill!' The wicked also will weep saying, 'How is it that we were unable to conquer this hair thread!' (B. *Sukkah* 52b).

we have the lesson taught by combining Hillel's teaching that one cannot rely on oneself and the teaching that one ought not be wicked in one's own eyes (*Pirkei Avot* 2:13).

A similar balance comes out of the sages' recognition that one's historical and personal situation plays a role in moral development. As noted above, their comments to the biblical statement that Noah's was "righteous in his generation" recognized that one's social environment impacts upon the possibilities of moral development (Genesis 6:9, *B. Sanhedrin* 108a). The

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Elizabeth Shanks Alexander provides a different reading of this text as part of her analysis of B. *Sukkah* 51b-52a which discusses the reactions the righteous and the wicked will have to the destruction of the Evil Inclination at the end of days (Elizabeth Shanks Alexander, "Art, Argument, and Ambiguity in the Talmud: Conflicting Conceptions of the Evil Impulse in B. Sukkah 51b-52a." *Hebrew Union College Annual* 73 (2003)). Alexander's application of the tools of literary analysis to the text artfully uncovers the use of ambiguity by the redactors of the *sugya*. This element of ambiguity carries over to the texts following the one's she discusses. While the righteous are seen to confront a huge evil inclination and the wicked one that is nothing, the Talmud also explains how the Evil Inclination grows stronger when given reign. Some examples: The Evil Inclination is at first like the thread of a spider, but ultimately becomes like cart ropes (B. *Sukkah* 52a);"First he is called a passer-by, then he is called a guest, and finally he is called a man, for it is said, 'And there came a passer-by to the rich man, and he spared to take of his own flock and of his own herd, to dress for the guest' and then it is written, 'but took the poor man's lamb and dressed it for the man that was come to him' (2 Sam. 12:4);" and "R. Johanan remarked, There is a small organ in man which satisfies him when in hunger and makes him hunger when satisfied" (B. *Sukkah* 52b).

Where I disagree with Alexander is on the "meaning" of this text. Discussing the surprise of the righteous over the mountain representing the Evil Inclination they have conquered Alexander writes, "One guesses that perhaps the righteous discounted their good deeds, assuming that for the ease with which they dismissed the Evil Impulse, it must not have been very large." The discourse on the Evil Inclination, including that which immediately follows, does not support this understanding. The story, later on this page of Talmud, of one sage's concern for the strength of his own inclination is expressed when he suffers after concluding that he would have failed if tempted in the same way that the ordinary people he had witnessed, "If it were I', said Abaye, 'I could not have restrained myself', and so went and leaned in deep anguish against a doorpost, when a certain old man came up to him and taught him: 'The greater the man, the greater his Evil Inclination.'" The point of this text is that the righteous do not dismiss their evil inclinations (at least concerning sexual matters) "with ease." This conclusion is pointed to immediately preceding this story, when the Evil Inclination is described as that "which is constantly hidden in the heart of man."

Talmud records a disagreement between Resh Lakish and R. Johanan about

the type of qualification implied by the statement "in his generation." The

former believes the specification functions to add praise while the latter sees

it as indicating that Noah was only righteous in comparison to the depravity of

his contemporaries. Both however agree that the passage indicates that one

must take environment into consideration when judging character. The same

point is made in the declaration that Hillel's development was stunted (at an

extremely high level) because of the failings of his generation on (B. *Sotah*

48b). Similarly, R. Johanan, noting the temptations involved in these

particular circumstances, declared that God held special regard for "the

bachelor who lives in a large town without sinning, a poor person who returns

lost property to its owner, and a wealthy man who tithes his produce in secret"

(B. *Pesahim* 113a). Here too, the text challenges itself in order to preempt

moral narcissism. When a bachelor disciple was cheered by the above

teaching, his self-congratulatory air was dispelled quickly (ibid.).[384]

While recognizing the importance of context as a factor in one's moral

development, the rabbis remained unwilling to allow for the use of

circumstance as an excuse for moral failings:[385] To indicate that everyone is

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[384] This would also serve to eliminate the temptation to remain a bachelor, in contravention of the vast majority of rabbinic teachings on the subject, in order to receive this Divine approbation.
[385] One finds a general trend throughout the rabbinic materials: whatever teaching might lead to moral or religious complacency is rejected and whatever would lead to further self-

expected to overcome his or her circumstances and live righteously,[386] the rabbis write "[the example of] Hillel inculpates the poor,[387] [of] R. Eleazar b. Harsom inculpates the rich, and [of] Joseph inculpates the sensual" (B. *Yoma* 35b).[388] Again, the conversation parallels that of Aristotle on character and virtue, but is never open to the complacency or elitism that Aristotle's work potentially contains.

What we have within several streams of rabbinic thought, then, is an approach to ethics that is concerned not only with its subject matter of character, but also recursively with the impact that maintaining such an approach has upon the character of its adherents.

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development is established and developed. (This may explain the acceptance of the otherwise illogical declaration that the repentant stand higher than the completely righteous).

[386] Literally "to toil in the Torah" (לעסק בתורה). That it means more than simply studying Torah, as the stories of Hillel and R. Eleazar might indicate, is shown by the inclusion of Joseph and the narrative of his refusing Potiphar's wife.

[387] Compare to ARN A6/B12, discussed by Schofer in the context of sages as models for behavior and character (*The Making of a Sage* (200), 72ff.

[388] This translation is slightly different from that of Soncino, which uses the "condemns" where I use "inculpates" for מחייב. This seems to me closer to the nuance here. The term translated here as "sensual" is "רשע" which literally is "wicked." This is Soncino's translation, which follows both Rashi (who substitutes וטרודי היצר) and the implications of the Talmudic text. The argument is against those who claim that by nature they are either more desirable or desirous and therefore less able to act appropriately than those for whom asceticism seems a natural temperament. On the other hand, the unattractive R. Joshua b. Hanania teaches that physically attractive scholars would have been even more accomplished had they been ugly (B. *Ta'anit* 7b). That narrative should be taken as a whole, however. The narrative cited to explain the reference to Hillel is one of the most famous rabbinic exempla, of the impoverished Hillel nearly freezing to death after being covered in snow in his attempt to hear the words of Torah emanating through the skylight of study hall when unable to afford the entry fee. R. Eleazar b. Harsom was the heir to a man of enormous wealth and fled to study Torah rather than care for his financial empire. When discovered by his father's servants he bribed them to leave him to his Torah study.

What might have been mistaken for a rejection of virtue ethics in fact demonstrates that the question of character and temptation were an area of continued rabbinic concern. I readily acknowledge and indeed have attempted to demonstrate, that the rabbinic position is in fact fragmented. However, this fragmentation suggests that the questions that underlie virtue ethics were being debated within the framework of the Talmud and its antecedent sources. Furthermore, an element of this apparent fragmentation is in fact an intentional posturing such that the student of these texts will never feel comfortable with complacency. If one is a sinner, the texts shy away from an emphasis on character and remind one that repentance is always available. When one repents, one is reminded that the process is ongoing and requires the development of proper character through repetition of appropriate actions. If one is righteous, one is reminded that character cannot prevent one from falling into sin. At the same time, one is comforted that a single sin has not destroyed the righteous character one has devoted a life to building.

In arguing for the recognition of virtue ethics within the rabbinic corpus, I have not attempted to suggest that other approaches to ethics are either inferior or entirely absent from the rabbinic catalogue. Rather, I present this argument as a corrective to prior descriptions of rabbinic ethics that dismiss or discount rabbinic concern with virtue and character. The rabbinic understanding of the practice and study of law as a primary form of worship

lent itself readily to the inviolable norms of deontological ethics. The experience of life under an oppressive and inescapable government and a strong sense of the fragility of life lent themselves, if not to utilitarianism, then to utilitarianism's near relative, lifeboat ethics. That the rabbis served as judges as well as legislators and academicians meant that casuistry, or the ethics of cases, was natural to them as well. Nonetheless, the rabbis were deeply concerned with character and habituation.

The rabbinic genius, expressed in a pluralism with the strength to reject ethical relativism, has been to recognize that a truth announced by one God can be truthfully heard in seventy different ways (B. *Shabbat* 88b, cf. M. *Sotah* 7:5).[389] Similarly, the Talmud taught, "whoever learns Torah from one master only will never achieve great success" (B. *Avodah Zarah* 19a). Knowing that each interpretation is only one dimension of the truth, adding virtue ethics to our interpretive approaches allows a fuller understanding of the infinite depth of rabbinic thought and the Torah.

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[389] B. *Shabbat* 88b: "R. Johanan said: What is meant by the verse, The Lord giveth the word: They that publish the tidings are a great host? (Ps. 68:12) — Every single word that went forth from the Omnipotent was split up into seventy languages. The School of R. Ishmael taught: And like a hammer that breaketh the rock in pieces (Jer. 23:29) just as a hammer is divided into many sparks, so every single word that went forth from the Holy One, blessed be He, split up into seventy languages." Cf. B. *Sanhedrin* 34a: "In R. Ishmael's School it was taught: And like a hammer that breaks the rock in pieces: i.e., just as [the rock] is split into many splinters, so also may one Biblical verse convey many teachings." Seventy is the rabbis' number for all the languages of the world (B. *Sanhedrin* 17a and numerous others).

Chapter 5: A Model of Virtue

I have been arguing for the presence of virtue ethics within the rabbinic corpus. However, within the realm of ethics, and this is especially true for Jewish ethics, one always feels a push to move beyond the historical and theoretical to get to the practical. So what is the practical impact of this study? What do we gain by knowing that the rabbis, at least as presented at the point of redaction within the Talmud, were concerned with the possibility and significance of character formation?

First, we recognize that it is possible to have a fully implemented deontological system of ethics functioning alongside a similarly developed system of virtue ethics. Furthermore, both of these co-exist and overlap with an expansive legal system. Given the ink spilled over which of deontological and virtue approaches to ethics is superior, the idea that the two might live in harmony with each other may seem heretical. And yet we find such a system at work within the pages of the supposedly legalistic rabbinic corpus! That fact alone should engender further debate among proponents of virtue ethics (and with their deontological and utilitarian interlocutors) about the relationship between the different approaches to ethics. The many advantages of virtue ethics do not eliminate the need for other approaches to ethics. Rather, the various approaches to ethics support one another and each is most appropriate within specific contexts. Jeffrey Stout notes that

> Our task, like Thomas Aquinas's, Thomas Jefferson's, or Martin Luther King's, is to take the many parts of a complicated social and conceptual inheritance and stitch them together into a pattern that meets the needs of the moment. It has never been otherwise. The creative intellectual task of every generation, in other words, involves moral *bricolage*.[390]

I would add the rabbis to Stout's list of those who have patched together antecedent traditions and their own understanding of the world in order to answer the needs of their generation. Recognizing this ethical holism within the rabbinic corpus, I would like to suggest a framework for contemporary ethics developed out of the rabbinic texts and their concern for character and virtue. To develop such a framework, one must recognize the Talmud as a source of structures of logical discourse and modes of communication. In earlier chapters, this approach allowed for a fuller understanding of rabbinic virtue ethics. Here it allows for an abstraction from the Talmudic corpus. Let me be clear that what follows is intended as a contemporary reworking of the rabbinic method rather than explication of the rabbis' own approach to ethics.

There is an inherent difficulty in developing such a framework. On the one hand, one is tempted to turn inward, to one's community and texts, precluding dialogue with the outside world. On the other, the move outward risks the errors of translation and accommodation, in other words,

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[390] Jeffrey Stout, *Ethics After Babel*, 292.

apologetics. Among contemporary voices, cautioning against the first of these errors is Laurie Zoloth's reminder that Jewish ethics must retain the prophetic-critical voice.[391] That is, Jewish ethics must be a force for transforming the world we encounter.

Cautioning against the latter is David Novak in his *Covenantal Rights,* where he warns that it is impossible to characterize a Jewish ethics in terms of community without reference to the particular relationship of the Jewish people in covenant with God.[392] This covenant is founded upon both a commitment to truth and the recognition that truth is always experienced as a function of one's particular relationships. Both emphasize that, in Zoloth's words, "Jewish ethical reasoning cannot be fully separated from the religious legal system of *halakhah.*"[393] A model for public ethical reasoning and decision-making drawn from Talmudic ethics balances commitment to community, to God, and to law. Inspired by the Talmudic use of mnemonics, I have organized this Talmud-derived model under three headings: (1) "Na'aseh v'nishma," (2) "Education, Dialogue, Debate," and (3) "Law."

The first component is "Na'aseh v'nishma," after the famous response of the Israelites at Sinai – "We will do and then we will hear" (Exodus 24:7,

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[391] Laurie Zoloth, *Health Care and the Ethics of Encounter* and "Faith and Reasoning(s): Bioethics, Religion, and Prophetic Necessity" in *Notes From a Narrow Ridge,* eds. Dena S. Davis and Laurie Zoloth (Hagerstown, MD: University Publishing Group, 1999), 247-276.
[392] David Novak, *Covenantal Rights: A Study in Jewish Political Theory* (Princeton, N.J.: Princeton University Press, 2000).
[393] Laurie Zoloth, *Health Care and the Ethics of Encounter,* 160.

per the Rabbis' literal translation). As the Emanuel Levinas explained this declaration in his essay "The Temptation of Temptation," ethics is too important a project to wait for unimpeachable philosophical grounding.[394] Instead, ethics finds a legitimating ground in the interplay between public dialogue and received legal and ethical tradition. While an imperfect implementation, the National Bioethics Advisory Commission (NBAC) convened by President William J. Clinton recognized that the ethical issues raised by cloning and stem-cell research demanded this sort of interplay.

However, this prioritizing of action over philosophy is not an excuse for ignorance or small-mindedness. The challenges of ethics require continuous reflection on and correction of the courses of action we have chosen. Liberal and post-modern Jewish ethicists have the unfortunate tendency to overemphasize the role of dialogue and openness to dissenting opinions within the rabbinic academy. We tend to emphasize the openness of the rabbinic academy, only pausing to note the unfortunate exclusion of women. For example, Menachem Fisch draws upon the famous story of Resh Lakish, who went from being a brigand to one of the rabbinic elite, to pronounce that "the doors of the academy are open to all who sincerely wish to join it

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[394] Emmanuel Levinas, "The Temptation of Temptation" in *Nine Talmudic Readings,* trans. Annette Aronowicz (Bloomington: Indiana University Press, 1990). Arguably, the same point is made, albeit from a drastically different starting point, by both the pragmatists (who deny the possibility of such a ground) and the better forms of principlism, whose arguments for a critically corrected consensus approach are based upon finding a middle ground between listless relativism and Pyrrhic foundationalism.

regardless of their background or former employment. *Halakhic* discourse is truly open: it does not merely tolerate different positions, but is truly pluralistic."[395]

The model of an open *yeshiva* door appears in the rabbinic literature by way of the distinction drawn between "three crowns." The first two, of the priestly caste and the monarchy, were hereditary. R. Johanan stated of the third crown, that of the table (which is to say the Torah), "whosoever wants to take it, may come and take it" (B. *Berakhot* 83b).[396] Of course, Fisch is not making such a claim about contemporary *Halakhic* discourse. Rather, he is suggesting this is an accurate description of the idealized rabbinic model functioning within the *Bavli,* although such a description necessarily yields a normative challenge to some forms of Orthodox Judaism.

To a certain extent, Fisch is correct – the doors of the yeshiva are open (to men). However, there is a fee for entry. As Fisch's own Resh Lakish (himself an elitist to the point that his speaking to a person in public was considered proof of the person's outstanding character (B. *Yoma* 9b))

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[395] Menachem Fisch, *Rational Rabbis: Science and Talmudic Culture* (Bloomington and Indianapolis: Indiana UP, 1997), 190.

[396] This is actually the subject of debate between the schools of Shammai and Hillel, with the former stating "A man should not teach other than one who is wise, humble, of good birth, and wealthy" and the latter stating "A man should teach to everyone, for there were many sinners among Israel and they were brought close to the study of Torah and from them descended [those who were] righteous, pious and proper (*Avot of R. Nathan A,* 3). The school of Hillel seems to have won this conflict (like almost all others). *ARN* ties the disagreement to the prior declaration of Great Assembly that one should bring up many students (cf. *Avot* 1:1).

expounds, the Torah is a trial for the righteous as well as for the wicked (Ps. 18:31, B. *Yoma* 72b).[397] Resh Lakish also declared that the "Torah remains only with one who kills himself for it" (B. *Shabbat* 83b/ B. *Berakhot* 63b).

The Talmud in B. *Berakhot* ties Resh Lakish's opinion to an explanation of the sacrifices required in the service of the Torah, here understood to be wisdom:

"הַסְכֵּת וּשְׁמַע יִשְׂרָאֵל הַיּוֹם הַזֶּה נִהְיֵיתָ לְעָם לה" – Take heed, and listen, O Israel; this day you have become the people of the Lord your God" (Deut. 27:9). Reading "Take heed" (*hasket* /הַסְכֵּת) as "cut yourself" (*kattetu* / כתתו), Resh Lakish's reading emphasizes the personal responsibility required to become worthy of this responsibility (B. *Berakhot* 63b). Returning to our model, if we are to lay claim to democracy and public ethical discourse, we must recognize that they also lay claim to us.

Rabbinic elitism is justified by the recognition that admission to the academy is power, a fact equally true within our own culture as in that of the Talmud, both of which were knowledge-based. As Raba teaches us, Torah (knowledge) is a source of life, but if misused it becomes a deadly poison (B. *Yoma* 72b, explaining Deut. 4:44). Within ethics, especially bioethics, ignorance and improper understanding guarantee inadequate reasoning.

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[397] I should also note that the model of the academy presented by Fisch in *Rational Rabbis* joins an open door with an intentionally opaque text designed so as to mislead all but the most gifted and close-reading scholar from its true meaning.

Considering cloning again, one of the fears expressed by the scientific

community was that a public backlash against Clonaid's claim to have cloned

humans would lead to legislation barring related research with the potential to

relieve human suffering on a large scale.[398]

I want to be clear that rabbinic elitism is "open," which is to say that

there are no external barriers, such as lineage or financial resources, to

becoming one of the elite. By external barriers I have in mind requirements

instituted in support of the type of easy transition from one sphere of influence

(money) to another (political or religious authority) that Michael Walzer

decried in *Spheres of Justice*.[399] Of course, there are always advantages to

wealth, for example, in that one is nominally in control of one's leisure. As

discussed above, the Talmud recognized the advantage of wealth for allowing

for study.[400] Therefore, special praise is reserved for:

> the generation of R. Judah son of R. Ila'i, of whose
> time it was said that [though the poverty was so
> great that] six of his disciples had to cover
> themselves with one garment between them, yet
> they studied the Torah (B. *Sanhedrin* 20a).

Nonetheless, the Talmud rejects the suggestion that material

possessions ultimately shape moral character. Rather, the rabbis asserted

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[398] I do not mean to imply a position as to whether that research, involving creation and destruction of human embryos, is itself ethical.
[399] Michael Walzer, *Spheres of Justice* (New York: Basic Books, 1983).
[400] Cf. *Pirkei Avot* 3:17, 4:9. R. Kahana blames poverty for forcing him work in situations that risk temptation (B. *Kiddushin* 40a).

that the wealthy and the poor alike find excuses for avoiding the toil of study and that both poverty and wealth make claims on those who would commit themselves to Torah.

What remain as barriers are only those qualifications required for proper functioning as a member of the rabbinic elite. Any exercise of power, especially one predicated upon interpretation and debate, requires recourse to character development to ensure its proper functioning. The rabbis correctly recognized that character and knowledge are related (though logically separable) requirements for the legitimate exercise of authority.

The "open elitism" of the rabbis was simply a reworking of the qualifications necessary for the ethical exercise of power and was therefore justified. We should contrast the rabbinic understanding of such requirements with those of both Aristotle and the Stoics. Aristotle sees only those in a position of political and financial dominance as candidates for virtue.[401] In the *Politics* he states that in an ideal society all would not be equals, for citizens should not be involved in the socially necessary professions of artisanship and farming (*Politics* 1328^b24-1329^a25).[402] As Martha Nussbaum writes, "It is

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[401] See note 309.

[402] "[A citizen is:] he who has the power to take part in the deliberative or judicial administration of any state is said by us to be a citizen of that state; and, speaking generally, a state is a body of citizens sufficing for the purposes of life" (*The Politics,* 1275^b19-1275^b22, trans. B. Jowett, in *The Complete Works of Aristotle,* vol. 2, ed. Jonathan Barnes, Princeton UP, (Princeton: 1984), 1986ff.

a part of what we must see about Aristotle's program. It includes only those whom society already includes and favors."[403]

Stoic thought, on the other hand, taught one to be disinterested in anything one cannot control, to respond to one who threatens to behead you, "When did I ever tell you that I was the only man in the world who could not be beheaded?"[404] While the Stoics understood the impact that social conditions had on one's ability to develop virtue, they remained committed to a separation between external reality and, that which was important, the integrity of one's own will.[405]

The rabbis combined the better part of each of these philosophies: They argued that one could (and was required to) flourish – which is to say live a virtuous life in which every action is for the sake of Heaven, *l'shem sh'mayim* – regardless of the conditions one must endure. Even so, they emphasized the significance of this world and the importance of improving it for all who live in it. There was a ready response to the challenge,

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[403] Martha Nussbaum, *Therapy of Desire*, 56.

[404] *Arrian's Discourses of Epictetus*, I, 1, trans. P.E. Matheson, in *The Stoic and Epicurean Philosophers*, ed. Whitney J. Oates, New York: Random House, 1940), p. 226. Or, from the previous page: "What say you, fellow? Chain me? My leg you will chain—yes, but my will— no, not even Zeus can chain that."

[405] Martha Nussbaum argues in *Therapy of Desire* that the Hellenistic philosophers are justly criticized for being more concerned with inner change and detachment in the face of tyranny than politically correcting the social causes of that oppression. The argument goes too far, she suggests, if it does not recognize that the Hellenists recognized the need for such change on the societal level since they were clearly aware that society shapes both desires and character and that their second-order concern was to change opinions and desires through their philosophy to the point where society would follow and then continue to generate appropriate opinions and desires.

understood as a "criticism" of Judaism's commitment to charity, of why Jews do not observe God's will that the poor remain impoverished: The poor are (like the rest of us) children of the King – will He not honor those who, even in violation of his apparent orders, provide them with solace and nourishment? (R. Akiva, B. *Baba Batra* 10a). Especially within a community, all are responsible for one another (ערבים זה בזה) (B. *Shavuot* 39a). This responsibility for those who are in need is not limited to the community of co-religionists, but to the community at large:

> We support the poor of the heathen along with the poor of Israel, and visit the sick of the heathen along with the sick of Israel, and bury the poor of the heathen along with the dead of Israel, in the interests of peace (B. *Gittin* 61a, amplifying the Mishnah).

The aristocracy of the Torah scholar, the exemplar of virtue, is open to all, and the variation in the biographies of those who became preeminent attests to this ideal.[406] The challenge to this view comes, of course, from the rabbinic exclusion of women. It may be objected legitimately that Aristotle and the rabbis are on equal standing here, since Aristotle writes, describing his preferred view of the natural distribution of happiness, "[Flourishing] will also on this view be very generally shared; for all who are not maimed as

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[406] Aristotle's account has the seeds of a corrective version of itself. A particularly telling passage occurs in *The Politics*, when Aristotle notes that errors in judging who is equal and who unequal arise primarily because people are poor judges of their situation (*Politics* 1280a8-1280b14). Although Aristotle explicitly denies the legitimacy of equality on the basis of freedom in the passage, I think the passage points to a corrected version of Aristotle's system.

regards their potentiality for virtue may win it by a certain kind of study and care" (*NE* 1099b19). Likewise, the rabbis excluded women along with minors and those incapable of decision-making, for similar reasons. Indeed, Alasdair MacIntyre's criticism of Aristotle's account is equally applicable to the Rabbis:

> Part of Aristotle's error may well have arisen from a kind of fallacious reasoning typical of ideologies of irrational domination. Its premises are often enough in part true and are indeed made true by the effects of irrational domination. Those reduced to the condition of slavery do to some large extent become irresponsible, lacking in initiative, anxious to avoid work, and incapable of exercising authority... Aristotle's mistake, and the mistake of others who have reasoned similarly, was not to understand how domination of a certain kind is in fact the cause of those characteristics of the dominated which are then invoked to justify unjustified domination.[407]

I do not want to give the impression that this challenge is easily answered. However, I would like to raise two points by way of differentiating between Aristotle and the rabbis on this matter. The first is that Aristotle's definition of happiness is fundamentally tied to this elitism. Can one imagine someone born poor and uncared-for growing up and 'flourishing' in Aristotle's sense? Richard Taylor argues convincingly that one cannot, although his article is marred by sharing Aristotle's questionable elitism.[408]

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[407] Alasdair MacIntyre, *Whose Justice? Which Rationality?* (Notre Dame, IN:University of Notre Dame Press, 1988), 105
[408] Richard Taylor, "Ancient Wisdom and Modern Folly" in *Midwest Studies XIII*, 54-63.

There is nothing lost in the rabbis' understanding of virtue (as opposed to their legal system) in admitting the possibility of a woman whose mind and education were on par with or even beyond her contemporary rabbis, as the stories of Beruriah indicate (B. *Eruvin* 53b-54a, and especially B. *Pesahim* 62b). Similarly, women may be seen as more virtuous than men, even in the virtue of charity.[409] So, for example, the paradigm of virtuous charity, Mar Ukba, was seen as less accomplished in this arena than his wife (B. *Ketubot* 67b).

While in need of remediation, the rabbis at least understand there to be such a thing as a virtuous woman, whereas on Aristotle's account, there is no alternative model of virtue left to which women can aspire.[410] As has been noted by numerous feminist critiques of patriarchal religious structures, the involvement of women in decision-making is the proper route for correcting such prejudices. Moreover, as discussed above, the rabbinic recognition of truth's pluralistic nature and multivalence demands we continuously expand the circle of moral and intellectual education.

Although rabbinic sexism stands in need of correction, the premise that those incapable of properly executing judgment be excluded from rule is justified as discussed above. It remains, however, inadequate to the task of

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[409] Which might be expected to be limited to men, unlike *gemilut hasadim,* as it concerns finances and the world outside the house, as well as, in an Aristotelian sense, being superior to those one benefits.

[410] Martha Nussbaum suggests that this was not true for Aristotle's Greek predecessors nor for the latter Hellenistic philosophers (*Therapy,* 54ff).

providing for ethical reflection within a democracy. Within a society structured around the authority of the yeshiva and its precursors, it was perhaps enough that there was open access to the gates of knowledge and power. Within a democracy, where public rule is a given rather than a goal, those with knowledge have a greater responsibility to expand the ranks of the "knowledge class."[411]

To this end, the second component of my model for public ethical reasoning based on rabbinic virtue ethics is "Education, Dialogue and Debate." Public education, a central Jewish value since the days of Deuteronomy (e.g. Deut. 31:12ff) is the critical point at which an open elitism meets democratic values.[412] Any community that recognizes the intrinsic and practical value of knowledge and hopes to establish or maintain a democracy must commit sufficient resources to educate its entire population. As the rabbis recognized, knowledge is a crown – it yields both prestige and power. Further, as the Talmud declares, the "crown of learning" must be available to all (cf. B. *Yoma* 72b).

This education should encourage the development of the virtues necessary for participation in a properly constituted communal dialogue. As

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[411] We see this need expressed wherever we see the values of liberalism conflicting with the values of "democracy." It seems to me that the former are worth purchasing through the loss of the latter, but for the fact that the loss of one seems to lead inexorably to the loss of the other. The ideal, in any case, is a virtuous populace ruling itself democratically.
[412] Respect for persons means that only democracy can provide an ethical method for regulating socially important activity; but it must be an educated majority for it to reach an ethical decision.

Ronald Green has argued, a fundamental rabbinic virtue is humility.[413] This

virtue is clearly expressed both in the dictum that the law follows the majority

and in the Talmudic concern for protecting the voice of minorities. The rabbis

understood that human uniqueness provided its own justification for debate

and that truth was not accessible except through dialogue. A different

reading of "hasket" [take heed] in the *sugya* cited above takes it to mean

"Make yourselves into groups [kittoth] to study the Torah, since the

knowledge of the Torah can be acquired only in association with others" (B.

Berakhot 63b, cf. B. *Ta'anit* 7a). Similarly, R. Ishmael b. R. Yosi declares:

"Do not be [one who] judges in isolation, for there is none [qualified to] judge

in isolation but the One [i.e. God]" (*Pirkei Avot* 1:8).[414]

It is a rabbinic rule that laws follow the vote of the majority only when

reached within a public forum where the voice of the minority is considered

(B. *Baba Metzia* 59b). This is not merely a matter of procedure. The rabbis

were committed to finding value in every properly developed opinion, even

when that opinion failed to garner sufficient support for enactment.[415] This

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[413] Ronald Green, "Jewish Ethics and the Virtue of Humility" *Journal of Religious Ethics* 1 (1973).
[414] My translation
[415] No community is open to every opinion at every time. Which opinions are "properly developed" depends on a variety of humanly inescapable limitations, not the least of which is the state of language at a given historical point. Even the most dogmatic proponents of an unchanging *Halakhah* recognize that the law confronts new situations and develops in that manner. Maimonides, for example, in his introduction to the *Mishneh Torah,* describes the period between Moses and the first rabbinic age: "and everyone wrote [notes on the Oral Torah] for himself according to his ability, from the explanation of the Torah and her laws as he had heard, and of the rules [literally: words or things] which were newly made [שֶׁנִּתְחַדְּשׁוּ] in

respect for others and the humility it expresses remain virtues within contemporary society and failure to develop these leads inevitably to violence.[416]

The logic of dialogue within the Talmudic sources substitutes community for the philosophical or metaphysical grounding that God provides. Putting together the two components of the model described above provides us with a model for ethical discourse and development within a liberal society derived from and true to rabbinic sources that does not require God's *authority* as sanction. Where God stood as guarantor of the ethical project for Kant, here God stands as a reminder of both human finitude and human dignity. These two facets of human existence were best expressed by King David: "What is man that You have been mindful of him, mortal man that You have take note of him, that You have made him little less than divine, and adorned him with glory and majesty" (Psalm 8:5-6).

This model is committed to more than a Lockean toleration borne out of truth's inscrutability, although this too is emphasized by the recognition of

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each generation, and of the laws that had not been learned through revelation, but rather derived through the thirteen [hermeneutical] principles and which the Great Court approved. And so it had always been, until our Holy Rabbi [Judah the *Nasi*, who compiled the *Mishnah*]."

[416] See David Little, "Tolerance, Equal Freedom, and Peace: A Human Rights Approach" reprinted on the United States Institute for Peace website, <http://www.usip.org/research/rehr/equalfree.html>.

human limitations.[417] Rather, truth is understood to be fundamentally plural.

Dialogue respects both this fact and the dignity of one's interlocutor(s). R.

Isaac suggests that God, who indubitably would have access to such a

univocal truth, nonetheless engaged Moses as his study partner, each

offering different explanations (*panim*) for the *Halakhah* (B. *Berakhot* 63b).[418]

Truth's plurality is subject to constraints, social and otherwise. This is

recognized in R. Isaac's narrative by the fact that truth's pluralism is

expressed through interpretations of *Halakhah* or established law.

The final category of this model drawn from the Talmud is "Law."

Within the Talmud, ethical conclusions on practical matters reached after

debate are considered legally binding, reflecting a social need for codifying

settled answers to many of our toughest ethical questions. According to

Maimonides, the absence of legal finality following the dissolution of the

Sanhedrin or rabbinical supreme court directly resulted in discord (M.T.

Hilkhot Mamrim 1:4).[419] Martha Nussbaum suggests that the plan of study at

Aristotle's Lyceum was also predicated on a search for reasoned agreement

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[417] John Locke, "A Letter Concerning Toleration (1689)," in *Treatise of civil government; and, A Letter Concerning Toleration*, ed. Charles Lawton Sherman (New York: Irvington, 1979).
[418] See also, for example, Elijah's report regarding God's study of Judges 19:2 (B. *Gittin* 6b).
[419] Although I do not see any way to test this theory, I suspect that the violence and anger engendered by the abortion debates and suggested protections for those discriminated against on the basis of sexual orientation arise not from the level of commitment of each side (which was after all mirrored by earlier confrontations on civil rights) but from the belief, encouraged in the case of abortion by certain members of the Supreme Court (and the other branches of government), these matters are in fact not settled in law.

about the way to live a life most fully expressive of virtue. Each person came

with their own tradition and together they attempted to find:

> a clearer view of the common goal. Teacher and
> pupil are not seeking what will satisfy each of them
> singly, but for what they can live with together in
> community. This is so, above all, because their
> ultimate goal will be to legislate for such a
> community; a central reason for reflecting about
> the good life is to give direction to that task
> (*Politics* VII.1) A desire for agreement is thus
> presupposed, and regulates their procedure inside
> the inquiry itself.[420]

The same understanding of the purpose of study and debate is the

basis of the system of courts described in detail in the Mishnah *Sanhedrin*

and its attendant Talmud. Enacting law based on this communal decision-

making does not settle the issue beyond appeal; there is still room for further

dialogue and debate. *Opinions* (as opposed to *actions*) at variance with the

community's decision are unimpeachable on those grounds.

A society is equally at risk both when its laws are subject to constant

change and when they become completely rigid. As problems arise or

suffering is discovered, each community – and I want to emphasize that

despite the arguments of some proponents of virtue ethics, a liberal

democracy *is* a community – turns to its law and lore as sources of prior

reflection and guides to future action.

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[420] Martha Nussbaum, *Therapy,* 57.

These texts and traditions are not self-interpreting and only rarely is there only one ethical conclusion. Engaging their texts and each other allows members of the community to define a range of ethically acceptable behavior, despite the ethical uncertainty and pluralism that are basic to the human condition. As discussed earlier, virtue and character shape and are shaped by law.

Throughout this work, I have aimed to illustrate the way in which the rabbis reflected a balanced concern for both law and virtue. My goal has been to bring the rabbinic texts into dialogue with those of classical and contemporary virtue ethics. In doing so, I have argued that rabbinic virtue ethics can correct certain errors prevalent in contemporary virtue ethics. In considering what law to enact, whether to specify requirements or delimit areas of prohibited activity, a society must consider the impact of such decisions upon the character of the community as a whole and on the character of each of its members.

When confronting an area of law that has not been settled or needs to be revisited, the community and each of its members are best served when they draw upon the interpretive and dialogic virtues that are the hallmarks of Talmudic ethics. It is clear that students of rabbinic ethics and of virtue ethics have much to gain by bringing the two fields into dialogue with one another. In the words of *Qohelet*, "טוֹבִים הַשְּׁנַיִם מִן הָאֶחָד אֲשֶׁר יֵשׁ לָהֶם שָׂכָר טוֹב בַּעֲמָלָם –

Two are better than one; because they have a greater reward for their labor"

(Eccles. 4:9).[421]

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[421] I have combined the 1917 and 1985 translations of the Jewish Publication Society. This passage is used by *Avot of Rabbi Nathan A* 8:2 / *ARN B* 18:3 to explain the advantages of "acquiring a friend" (*Pirkei Avot* 1:6) – because each shows the other how to improve and corrects mistakes made.

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