

## **Torah and *Mishpat*: The Law and its Liberation Spirit**

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This essay has two primary objectives. First, acknowledging the fact that the philosopher's fundamental responsibility, due to the conditions of social order in many regions and nations around the world, requires not merely thought but also actions that transform this world into a more equitable and inclusive one, the author proposes to show the reader a simple way (among many other possibilities) to connect the Enlightenment discourse of practical reason, acclaimed as a novelty of modernity, with the discourse of so-called symbolic reason, frequently reviled by the worldview of modern scientific and academic communities although experienced on a daily basis by peoples all over the world. Second, the author wishes to present an interpretation of the notion of justice as found in the texts considered sacred within Jewish and Christian communities, contrasting it with the traditional way of defining such a notion, the Ulpian Roman way, upon which the normativity of the self-proclaimed modern peoples is based.

**Key words:** Enlightenment, practical reason, symbolic reason, Paul of Tarsus, Torah, *Mishpat*, justice.

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### **I. Excursus**

#### **I.I All Discourses Are Symbolic; Therefore, They Can Become Myths, Even Scientific and Enlightenment Discourses**

*Symbol of distrust  
Predicting all is lost  
The shepherds lost his flock  
In words of seers  
Man, myth and magic*

**Conrad Lant<sup>2</sup>**

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Despite everything said about its arrival, peak, and arguable culmination, modernity remains an unfinished project, as is its most exemplary goal: the illumination of the world. Given the fact a society's famous "age of majority," a period in which they supposedly became responsible for their own destinies, implies the implementation of their rights and the fulfillment of their obligations in an autonomous manner, the removal of gods from life—along with the fatalism represented by those gods—is considered an enabling condition. Due to the causality and sometimes identity-based links that exist between the representations of public and divine power, politics should be divorced from religion. Apparently, in terms of the *pure* logic utilized in the field of modern politics, the established union, or even the assigned identity, between politics *stricto sensu* and religious belief is nonsensical. It is so because, theoretically, politics *stricto sensu* is reduced to those institutions of delegated popular will which represent the public sphere—having the obligation to include, while transforming the world, the perspectives and voices of all community members who might be affected by that transformation, while religious beliefs are solely affirmable at the subjective level with the right to be freely expressed in the private sphere through liturgy, cannon and doctrine. Nevertheless, the rift between politics and religion does not exist when we refer to *lato sensu* politics, i.e. that modality of politics whose field of existence is comprised by universal inter-subjective relations. While religions are constrained to the subjective plane, assuming the existence of personal religion is by definition another nonsensical thought, equal in magnitude to the one that marries them in *stricto sensu* politics. Religions imply community and community implies politics. In the face of these two types of political/religious relationships, and in order to remove the religious legitimation of the government from the societal subconscious, the Enlightenment thinker concluded, firstly, the necessity of founding a discourse that would promote the substitution of so-called mythical reason in favor of an essentially critical rationality that, in turn, would ground its judgments in a cluster of theoretical knowledge that were measurable, predictable and universally objective—the goal being to attain a more civilized society in terms of understanding the world (epistemological project) which would simultaneously have repercussions in the realm of inter-subjective relations (ethical project) and its means to achieve all of the above (*stricto sensu* political project). Enlightenment was, finally, an ethical/political project, since

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2. "Man, Myth and Magic," popular song included in the *album Resurrection*, Venom, SPV, Steamhammer, Hamburg, 2000.\*

it sought to lay the theoretical foundation that would allow a path to be traced towards the generation of an equitable world, a world resulting from the interaction and collaboration of intelligent, autonomous subjects.

This goal would be achieved after a long and winding road that should begin with worldly disenchantment in the magical sense of the word. The mythical reason that, according to modern and Enlightenment thinkers, had kept the human world in darkness since its inception—by means of fusing and confusing emotions, psychological states, and even hormonal states with entities external to the subject himself in matters that actually belonged to a comprehensible natural order which can be summarized in formulas—had to be substituted by critical reason, profaner of any epistemological taboo. After this had happened, and in being already formed by autonomous subjects, humanity would be able to make its own decisions. Later on, in order to reasonably coexist, subjects would self-regulate within the private sphere, which would finally to free and rational co-regulation in the public realm.

However, and since it is evident that circumstances of heteronomy and oppression still exist for the majority of subjects in the world, it is not dangerous to affirm or accept that Enlightenment is an unfinished project. Unfortunately, because its final aspirations are plainly desirable,<sup>3</sup> not only has the project of Enlightenment not reached true consolidation, but it is actually an *unfinishable* project theoretically (formal field) as well as practically (material field), due both to misinterpretations of its premises and to the fundamentalist radicalisms into which we, its most fervent defenders, tend to fall when it comes to choosing the means for transforming the world. This situation can only be frustrating for a person obsessed by positive knowledge who, at the same time, could lead his life trying to do the same with others' lives in accordance with previously conceived codifications—which, although scientific in appearance, are actually subjective and arbitrary. Think for a moment about the *unfinishability* of the Enlightenment project through the following example: millions of people's daily lives in central Europe—a geographical space traditionally accepted in academic discussions as the cradle, growth, peak, and material presentation of Enlightenment—show clear signs that its inhabiting subjects, both personal and communal, still assign

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3. Age majority is merely a condition for the possibility and not an end in itself.

meanings to the evolution of events in life that go beyond what is strictly accepted by science. People still read horoscopes; talk about karma; believe in reincarnation; go to Christian and Muslim temples and those of various new age brotherhoods; and believe in news broadcasters and TV commercials. However, it is undeniable that European societies, within themselves and after the devastation provoked by the Second World War, have found themselves intermittently closer to the Enlightenment project, to the Kantian ethical society, and more recently to the one posited by Habermas. Habermas, like Kant, deems a society ethical when it directs itself both according to rules of virtue and due to those rules. Yet, if a society recognizes that it is momentarily unable to achieve such sublime coherence, a civilized one will generate an order in its everyday praxis that will present to the society of nations (public space of international relations) the previous representation of an ethical society; that is, a politically (*stricto sensu*) coherent community (Habermas and Ratzinger 2005).<sup>4</sup> Thus, a society must be understood as ruled by autonomous and universal public laws and still require an organ, both distinct from to the subjects and representative of them, with coercive external authority. When all is said and done, and even if it is according to the means of expression that correspond to their own historical and anthropological background, the rational faculty of symbolization—source of mythical explanations of the world, as well as of universal scientific formulations—is as present in Europe as it is in the urban, suburban and rural societies of Latin America, Africa, Asia, and Anglo-Saxon non-European countries. Symbolic reason is found in every personal subject as a rational faculty and in each communitarian subject as cultural and anthropological expression. As we all know, if the source exists, the outcome will emerge sooner or later: the interpretation of knowledge recognized as scientific, the popularization and interpretation of formulas presented by experts in physics, mathematics, and biology, to mention just the big-name disciplines announced on the marquee of what are commonly known as the hard sciences, cannot and will not escape from their own epistemological limitations, nor from the re-mythologization that we, the gentiles of science, make of them. When I use the term re-mythologization I mean the granting of a symbolic significance that exceeds the one offered by the formulas representing the highest degree of abstraction—which often falls again, unnoticed,

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4. The difference lies in the material necessity of coercion by a supra-subjective body governing relationships among subjects (this is the state) and the mechanisms on which it bases its decisions and actions, i.e. legal bodies and organizational structures. In an ethical society, the state, along with the ability to control relationships among subjects, would be unnecessary.

into the realm of mysticism. Re-mythologization occurs on two levels of thought. First, it is undeniable, by virtue of their own essence, that formulations and abstract explanations aspiring to objectivity are themselves representations of the worldview harbored by the person who enunciates them; therefore, they are also symbols, just like any other they might have substituted—even if, within that point of space and time, they have managed to more deeply penetrate the language of a certain community. The common acceptance of the use of symbols doesn't mean, however, that each member of that community possesses a profound understanding of that which is being signified. This occurs irrespective of how often the symbols are reproduced as they are enunciated in their communicative processes. Second, and as a consequence of this, scientific premises and conclusions are mythologized as soon as they merely nominally substitute, in the mind of those who don't understand them exactly or deeply (a group of people that probably amounts to over 99% of the world population) gods and trickery as the foundations in the construction of *truth*. I find few phrases to be as suspicious as “It is scientifically proven that...” because it invariably precedes a subjective belief and even content, on countless occasions, that is outrageously hip in the new age world. Sir Isaac Newton's principles of natural philosophy, just to give an example, are frequently used today to defend belief in karma. For those who like mystical thinking, they care as little about understanding (or not understanding) what this philosopher affirmed with his universal formulations on the relationships between bodies, their movement, and space, as they care about adequately interpreting what the authors of the Veda books sought to symbolize through the nominalization (karma) of the laws of causality.

These initial approaches are related, of course, to the statements presented by Horkheimer and Adorno in the *Dialectic of Enlightenment*. However, the ideas explored here are distinguished themselves from those posited by the Frankfurt School philosophers; for them, while science had substituted the gods as the generators of myths in subjects' minds, this was only due to the very nature of science, the argumentative solidity and inner coherence of which transformed it into the new ruler of the subject's autonomous faculty of thought. Yet the ruler, just like anyone who ignores other voices, becomes a tyrant. According to Horkheimer and Adorno, “Enlightenment stands in the same relationship to things as the dictator to human beings. He knows them to an extent that he can manipulate them. The man of science knows things to the extent that he can make them. Their ‘in-self’ becomes ‘for him’” (Horkheimer and

Adorno 2008, 2).<sup>5</sup> Nevertheless, Horkheimer and Adorno do not stress the fact that this necessary re-mythologization of Enlightenment-based thought results from, for one thing, the fact that scientific knowledge is not automatically replicated in he who absorbs it in such a way that the subject's comprehension and the scientific formulations, along with what becomes of them in the material/practical field, are identical. Furthermore, scientific is also fundamentally symbolic, and, even if it sounds controversial, also mythical: nowadays, "scientific truths are true [in objectively accepted discourse], even if they turn out to be as nonsensical as the historical existence of the Cyclops Polyphemus. [By scientific decree,] the Big Bang is the origin of the universe even if the singularity was in itself, logically, already the existent universe. The success of the formal Enlightenment meant the defeat of its original essence" (Keferstein 2008, 90), which was libertarian and humanist, as evidenced by its ethical and political projects. An existential paradigm shift likewise implies a shift in material life. Enlightened modernity, seeking coherence, must take responsibility for the state of worldly things. Secularization modifies humans' approach towards things, the world, and life in general. The de-mystification of nature and of existence itself implies the risk of their devaluation, because what is not transcendental can potentially be used as a tool.

### **1.II The Use of Mythical Terminology as a Way to Collaborate with the Essence of the Enlightenment**

*Where is the wise man  
Scholar of this age?  
Their dementia calls  
Leading men to the grave.*

**Kurt Bachman**<sup>6</sup>

If one day I get into a fruitless, never-ending argument in which the center of divergence isn't the discourse's content,<sup>7</sup> its consequences, its motivations, or its goals, but its terms of presentation—i.e. if I argue about the signifier and not about the signified within this communication—I will feel that I have failed as a thinker who simultaneously works toward the transformation of the practical/material world. I will feel like an intellectual snob who has

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5. This quote and the other one are included in Keferstein (2008, 86 ff.).

6. "Dementia," popular song included in the album *Dimensions*, Believer, Roadrunner Records, USA, 1993.

7. Here, the notion of discourse's content entails that which speakers seek to communicate through the terms they chose.

approached philosophy as a vulgar mean of hierarchically distinguishing myself from those who do not share the vocabulary I have acquired per *secula seculorum*. This would be the ultimate contradiction of the philosophical life. I share the ethical and political project of what I consider to be the pinnacle of Enlightenment, brilliantly summarized in Kant's second formulation of the categorical imperative, the formulation that links the categorical imperative's enormous abstraction with the material principle of everyday life, known by all philosophers: "So act as to treat [brauchst] humanity, whether in thine own person or in that of any other, in every case as an end withal, never as means only" (Kant 1984, 46).<sup>8</sup> Precisely because of this, the fact that I share this same project, I consider it imperative to accept that the language of the Enlightenment has not permeated the entire world and that it can be suspended or resumed as intermittently as the interactive subject's communicative modes so require: learning to utilize and to share linguistic terms, meanings, signifiers, and any other symbols necessary to achieve deep communication and interaction, thus collaborating to construct the philosophical kingdom of ends, the Catholic kingdom of heaven, the Christian reconstitution of paradise on Earth, the Jewish arrival to the promised land, the Hindi Vrindavan, or, simply and secularly, the attainment of a just world.

To understand the motivating force behind this text, we cannot ignore the fact that in their own struggle to transform the world into a desirably livable one, although in this case only for themselves, there are subjects all over the world who conceive themselves as individuals (this being an egotistical understanding of the self) selectively severing themselves from their distinct co-existential contours<sup>9</sup>. This idea of life excludes from its own environment—through speeches, attitudes, and actions as historically traditional as classism, racism, misogyny, and misandrogyny—the conquest, as well as the slavery and pillage it entails, and, if necessary, through any other type of sectarian discourse or action that seeks a subject's vainglory for being what he is, arguing the inferiority and indignity of what he is not. Those conceptions of life have learned to justify, at least in appearance, their approach to the world—not only through the production of teleological, metaphysical, ontological, economic,

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8. In the original: "Handle so, daß du die Menschheit sowohl in deiner Person, als in der Person eines jeden andern jederzeit zugleich als Zweck, niemals bloß als Mittel brauchst" (Kant 1969, IV:427).

9. See Keferstein (2008b, 111-14).

political, and even biological discourse, but also by means of the abandonment and later adaptation of those excluded by the very same system that excludes them. The acceptance and repetition of those discourses, together with the conception of the world they promote, leave the excluded parties in a process of gradually losing their identity, i.e. a process of political death. The consequences of identity loss are sometimes even worse than those of actual death: consider the extinction of animal species viewed as sacred by many cultural identities; consider the devastation of lands that once invariably linked indigenous peoples to their natural habitat, to their ecosystem. The loss of communitarian identity frequently generates chaos for many other life communities, and, sooner or later—as in the famous butterfly effect—for the whole world. One of the strategies skillfully utilized by the subjects who promote domination has been their theft not only of the means of physical survival through the accumulation of capital and means of production, but also—and herein lies their exceptional skill—of terms that were once coined as a response that questioned exclusionary discourse. We needn't delve deep into discourses that seek to normalize oppression before finding terms like "liberty," "democracy," and "popular sovereignty," while what they truly signify is "the State's disregard for its obligations to the people," "the privatization of public goods," and "the legitimation of the hegemony of an aristocratic minority." One of the most original terms that I have heard, one that perfectly exemplifies this idea, is the expression "anarcho-capitalism," created by the Austrian philosopher Murray N. Rothbard, who stated that capitalism is the most complete expression of anarchism and vice versa: "As far as I'm concerned, and I think the rest of the movement, too, we are anarcho-capitalists. In other words, we believe that capitalism is the fullest expression of anarchism, and anarchism is the fullest expression of capitalism." (Oliver & Rothbard 2014, w/p). David Friedman's statement is perhaps even more astonishing: in the same sense, he argues, by analogy, that the best way to understand why anarcho-capitalism would be a much more peaceful system than our current one is to imagine a hypothetical world in which the following enabling conditions would be present: 1) the inexistence of borders and customs between countries, 2) a universal language, and 3) total detachment from the national lands and cultural community that gave us identity. In such a world, Friedman asserts, State oppression of individuals would be impossible, because people wouldn't hesitate to leave their countries overnight if their economic interests were at risk. A striking aspect of Friedman's ideal world is the idea that cultural roots, identity, and any form of emotional, psychological, or anthropological connections are perfectly useless, an obstacle, and

therefore renounceable<sup>10</sup> in the face of the only thing that matters: getting ahead in the trade balance.

Why do I say all of this? Why such a long excursus? Not only because I believe it is valid to use metaphors, analogies, texts, and religious terminology as a means to generate political awareness toward promoting moral principles like equity, justice, solidarity, loyalty, dignity, and liberty, among many other values that we humans consider universally desirable. Nor do I do it just because it is clear, for those with a full understanding of *lato sensu* politics, that the idea of God is relevant to political rather than the ontological realm,<sup>11</sup> since the existence or inexistence of such a being does not depend upon our faith or atheism,<sup>12</sup> while it is undisputable that an *eklesias* is a community of interacting subjects who share an identity. I feel strongly about the need for this excursus because I am convinced that, if aristocratic and conservative groups of power have known how to keep millions of personal and communal subjects excluded through the impressive expansion of religious beliefs with interpretations that render them superfluous, superstitious, and enslaving—despite the fact that the religious texts of any culture are clearly filled with claims for and promises of justice, with appeals by those excluded, and with benign gods on the side of the oppressed—we are

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10. The passage says: “Perhaps the best way to see why anarcho-capitalism would be much more peaceful than our present system is by analogy. Consider our world as it would be if the cost of moving from one country to another were zero. Everyone lives in a house-trailer and speaks the same language. One day, the president of France announces that because of troubles with neighboring countries, new military taxes are being levied and conscription will begin shortly. The next morning the president of France finds himself ruling a peaceful but empty landscape, the population having been reduced to himself, three generals, and twenty-seven war correspondents” (Friedman 1989, 123).

11. See *The Babylonian Talmud*, BM59B. Quoted by Scholem (1998). Even if Adonai himself affirms that the Rabbi Eleazar is right in his interpretation of the Torah before the rabbinical community, they question YVH, reminding him that, since He gave them the Law in its barest form, without any interpretation, He gave humanity the task of scrutinizing its deepest meaning through community discussions, i.e. political discussions by means of the Midrash.

12. Since the concept of God is a necessary element of pure reason, insofar as we have never had any direct or indirect experience of such a being, its existence cannot be affirmed in the ontological realm as being necessary. For further slid arguments see KANT (1969, B618 – B670). This can be argued through the following principle: the perfection of an idea (existing only in the epistemological realm) says nothing about its content in reality (the ontological realm) in a necessary way (the logical realm). On the other hand, not believing in the content of the idea of God (atheism) does not strip it of its ontological existence, in the event that this existence is provided in reality. In other words, we cannot assert anything ontologically about God that goes beyond our own plain and subjective convictions. Therefore, to believe or not to believe is a strictly personal choice that should never be imposed on anyone.

legitimized in using the governing aristocracy's efforts to maintain discursive religious terminology deeply rooted in people's consciousness in such a way that we recover the deep moral and political meaning, never moralistic or demagogic, of the sacred texts. It is time to divest the hegemony of their use from those who stole the meaning of mythical and religious parables, time to fight the fire of exclusion with the fire of profound humanist consciousness.

## **II. The Formation of the Jewish People According to the Old Testament: Religion, History and Normativity under the Same Symbols**

Time for lust, time for lie  
Time to kiss your life goodbye  
Send me money, send me green  
Heaven you will meet  
Make a contribution  
And you'll get a better seat  
Bow to Leper Messiah

James Hetfield<sup>13</sup>

In his book *A History of the Jews*, Paul Johnson leads us to conclude that the Jewish people are the epitome of a religious community in its profound political sense. No other people like them has managed to maintain at least a four-thousand-year-old historical lineage if we start counting from the approximate beginning of the Patriarchal Age; the count rises to six thousand years if we begin from their primitive beginnings. The Jewish community has protected its fundamental identity against the harshness of nomadism, the brutality of slavery, and the intermittent but always resurgent attempts at annihilation. Neither Babylonians nor Egyptians, neither Greeks nor Romans, not Romano-Germans, European Christians, Nazis, or Communists have made so much as a dent in the foundations upon which this identity is sustained. They have survived as a community, and like all other communities, they have a nuclear concept that lends cohesion to its members. In this particular case, the concept is God: the God of the Torah, the God of the Law.

In the Jewish people's own narrative of its formation process, there are three moments related to 1) gaining awareness of the necessity for a normativity linked to their cultural-ethnic group (presented during that era as religious identity); 2) the development,

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13. "Leper Messiah," popular song included in the album *Master of Puppets*, Metallica, Elektra Recs, USA, 1986.

construction, and dissemination of that awareness; and 3) their solidification as a new communal identity, a single people under a clear and general regulation. The recognition of that normative regulation is the thread that draws the entire community entire, while its fulfillment is the link with God. The Abraham-YVH pact represents that first moment. There, we can see Abram's acknowledgment as a personal subject of a will that transcends subjective self-referentiality. Through an epiphany, Abram acquires normative consciousness (i.e. consciousness of God). From that moment onward, he will live in the presence of the authority of YVH (that which was, is, and will be), who is revealed as the greatest possible sovereignty, Al Shadai, God Almighty (Gen 17:1, 24). Abram will henceforth be Abraham, because he transcends himself, acquiring the responsibility of forming peoples and nations *as if he were a father*. Abraham must form them not only in the strict political sense of the word, but also in the ethical and pedagogical ones. However, gaining awareness of responsibility does not mean its instant fulfillment. Abraham cannot form anything if he is not formed himself. As the first step in his process of personal configuration, Abraham obliges himself to establish a coherent relationship between his actions in the world and the divine maxims—even though they remain ambiguous or identity-generating symbols at the time.<sup>14</sup> The first formal normative code that will rule those whose identity derives from or is linked to Abraham won't come about until around 350 years later on Mount Sinai. While this is occurring, the second moment arises with Jacob, who will later be renamed Israel. Jacob, grandson of Abraham, is the next step: according to Jewish tradition, he is the one from whom the twelve patriarchs of the twelve tribes emerge. As Paul Johnson writes in *A History of the Jews*: "If Abraham established these fundamentals, it was left to his grandson, Jacob, to bring into existence a distinct people, Israel, his name, and the race, being inextricably linked...As the eponymous national leader, Jacob-Israel was also the father of the twelve tribes which in theory composed it" (Johnson 1987, 20). The Biblical narrative on Jacob, as particular as it may be, represents the expansion of the Semitic peoples with a Jewish identity through kinds of political strategy that are more closely linked to superstitious matters, matters in which form and ritual prevail over the intention and deeper content of the

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14. After accepting the first order imposed on Abram by YVH, to go in front of him, Abraham's first obligation stipulations his circumcision, as well as that of his progeny, slaves, and the people with whom he will form his people, his community. His second obligation is to rename Sarai, who will henceforth be called Sarah. See Genesis 17:1-15.

liturgy—as in the blessing Jacob obtains from Isaac through deceiving and circumventing the original will of his father, just as he had previously done in buying his twin brother Esau’s birthright in exchange for lentils. Throughout his life, Jacob is characterized by fulfilling his parents’ commands in his own particular way. Thus, Jacob does not hesitate to tease Isaac and obtain benefits from him while seeming to follow Isaac’s wishes. The third moment, the moment when the Jewish people forms and solidifies their identity as a community, arises with Moses, the character with the greatest authority in Jewish thought. Moses offers the Israelites the Tablets of Law (Ex. 20:2-17) as well as their first corollaries (Ex. 21-23). It is not until the establishment of a universal order that is simultaneously religious, ethical, and political that we can speak about the creation of the Jewish nation.

Does the God of the Jews have particularities that distinguish him from other gods? Why have most of them vanished while YVH is still here? In the book *A History of Judaism*, André Chouraqui characterizes the god of the Jewish people as the first in history who explicitly implicates himself with morality and with the codes entailed by an imperative and restrictive system of conduct. As soon as it was recognized by one among many Semitic peoples, this divine feature—God as a giver of norms, the Law-Giver—is what became the enabling condition for the Jews’ identity as a single people. Their identity is to be God’s “chosen people.” Being the chosen people, however, is not an arrogant anthropological self-assignment of a hierarchically superior position that generates prerogatives among the Gentiles. It is not an indulgent predilection; it is rather a burden. To be the chosen people means to be the God’s people through fulfilling his Law. God’s choice is a unilateral enactment of rules, the burden implied by an inalienable normative order: more than a regime, it is divine. Yeshayahu Leibowitz states “the religious (Jewish) position is in itself the decision to render cult to God through the fulfillment of the Torah and the precepts, because that is the end of Man. The objective facts are the same to all humans, and, nevertheless, *this* man decides to accept the yoke of the Kingdom of Heavens and of the Torah and the Precepts, while that other affirms ‘I don’t know God’, and that other ‘knows him but tries to rebel against him’” (Leibowitz 2000, 43) When he says “the objective facts are the same to all humans,” Leibowitz means that no one has even the slightest proof of God’s existence. That is why, for Leibowitz—whom Isaiah Berlin called “the conscience of Israel” (Leibowitz 2000, 11) as the great representative of the Jewish religion’s most fixed and fundamental stances—if one comprehends what religion is, the divine imperatives

are followed without a word and without exception, given the relationship between man and God (true religion) rather than the inverse relationship (false religion). The true believer obeys God because of his own ontological particularity. For the true believer, subjective interests play no part whatsoever in the fulfillment of the Law. Obedience does not emerge from any future coercion, because there is a “contradiction between conceiving the Torah and the Mitzvot as destined to the service of God as an end in itself and the conception, on the other hand, of them as magic elements, as means to obtain something else (as Israel’s redemption, the amendment of this world, the satisfaction of the needs of God himself)” (Leibowitz 2000, 78). At the same time, for Leibowitz, the validity of the Law does not derive from its ethical content, but rather from its divine one. “There is no word, either in the Bible or in the language of the Wise, to express the term conscience. Thus, only the moral atheist behaves according to his conscience, which is his instinct, whereas the believer, afraid of God, is not guided by his eyes or his heart” (Leibowitz 2000, 84-85). The sole foundation lies in the words “I am the Lord, your God” that precede the Ten Commandments and their corollaries. Leibowitz defines the religious experience of Man as

the conscience of their position in front of God, which, in contrast to the rest of the contents of human conscience, does not depend on the situation in which they could be. It does not allow either any sort of influence coming from human experiences when talking about a believer; on the contrary, if they let themselves be influenced, it is a sign that that particular person is not a believer. (Leibowitz 2000, 30)

Chouraqi, Leibowitz, and some Latin American liberation philosophers, as we will see below, have two different perspectives with respect to the link entailed by God and his Law. For Chouraqi, the relationship with God is fundamentally ethical. For Leibowitz, it is exclusively religious. In spite of that, when it comes to fulfilling the Law, the rift between them neither widens nor deepens. Jewish identity requires the community member-subject’s subordination not only to the word of God (Torah), but also to his precepts (Mitzvot). The obedience that the Jewish people owes to the Torah does not necessarily insinuate disobedience of moral or legal human tenets, because their personal obligation as constituting members of the community (while they are also subordinate to it) is the whole fulfillment of the Halakhah, i.e. the highest Jewish legal body. The Halakhah is the collection of all the normative regulations to which the Jews owe obedience. The Halakhah consists of religious laws (Torah); anthropological and cultural laws (Mishnah, Midrash, and Talmud);

judicial and civil laws (comprising the Sheelot U-Teshuvot, as well as the normative legal codes corresponding to the nation in which they might live); and, finally, of those norms that could be called ethical in modern terms (Mitzvot), translations of morality (Musar—which Leibowitz phrases in Biblical terms as *teachings*) (Leibowitz 2000, 84), from which the content and acknowledgment of the other normative bodies derive, insofar as they are corollaries of the Torah.

### **III. *Mishpat*: Material Justice before the Empty Legality of the Fetishized Law**

I am the universal dogma  
The system of symbols proclaimed  
By the ancestral authority  
As the truth now reclaimed

Patrick Mameli<sup>15</sup>

Quoting Rabbi Meir Simjah Cohen, Leibowitz makes a strong statement on the relationship between the sanctity of individuals, places, and objects:

[T]hat the Torah and faith are the essential principles of the Jewish nation, and all the sanctities—the land of Israel, Jerusalem, etc.—derive from the Torah and are holy due to the holiness of the Torah. It is not possible for the Temple and the Tabernacle to be holy in themselves, because God has forbidden it.<sup>16</sup> The Tablets of Law are not holy in themselves either, since once the bride (the people of Israel) has prostituted under the wedding canopy (Jupah), the Tables become meaningless. Their sanctity is expressed only in so far that the people observe them and guard them” (Leibowitz 2000, 100).

The Law, therefore, becomes meaningless if not observed. But disobedience is only the most evident form of contravening divine will. Fetishization of the Law—that is, unequivocal adherence to its literal language, sometimes willfully and sometimes due to an enormous lack of knowledge and exegetic skills in approaching the texts considered sacred—has yielded situations that do not reflect God’s supposed love for humans, particularly to the faithful. (Although Leibowitz denies the existence of such love, it appears repeatedly in the Old Testament: Gen 18:24-33, 26:24, Ex 2:6, 18:8, Deut 32:36, Isaiah, 37:35, 45:4, 62:1-4, 63:9, Hosea 3:1, 11:8, etc.). Nor does this strict adherence to the word of the Law often reflect the love that supposedly ought to guide actions among people. More

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15. “Salvation,” popular song included in the album *Doctrine*, Pestilence Mascot Records, Germany, 2011.

16. Cf. Ex. 20:3, 4.

subtly than outright disobedience, the strictest observance of the Law might be what puts its very spirit at risk. Oppressors, but with a strong mastery and comprehension of judicial normativity, the Romans clearly understood the fetishization of the Law as resulting from the misunderstanding and violation of its spirit—not only from the violation of its language. To protect themselves from this danger, the Romans established the interpretative principle known as the *sumum ius, summa injuria*. This jurisprudential principle warned interpreters of the Law that observing said Law down to the letter might actually generate situations that damage, rather than foster, the legal right that was to be protected, the right for which the Law was issued in the first place: indeed, the Law is always a means and never an end. Even the most orthodox Jew would have to accept the reasoning that the Law's fulfillment is a means toward fulfilling the pact with God, because the Law is not God in itself.

When this concept is not understood, when the Law becomes an end in itself, when it is severed from its materialization (the Law's fulfillment), from a project that constitutes the messianic kingdom and the role that we humans must crystallize, and when we don't pave the way toward its realization, the Law becomes fetishized. How else, if not through an inadequate and selfishly subjective argument,<sup>17</sup> is a God of Justice? Nevertheless, for Leibowitz, who always remains at the level of pure religious perspective, history's countless and constant tragedies do not lead someone who understands the true meaning of the Torah to the loss of faith or apostasy (consider the parable of Job). Nor should they provide the lover of shallow argumentation with material in favor of theodicy. Because, just as God does not reveal himself in Nature, he does not reveal himself either in History, which is nothing but the history of crimes, madness, and disasters of mankind. At the same time, History includes also all the conflicts of Man against those same crimes, madness and disasters. These struggles represent the greatness of human history (Leibowitz 2000, 100). Thus, Leibowitz reminds us that even if people exist who commit atrocious injustices, disgracing our human significance, people also exist who oppose them. Beyond any religious or theological sense, these struggles remind us about the profound significance of a state of human consciousness that transcends selfishness in a world for which we and only we are responsible. Leibowitz leaves religion untouched, but he does not therefore renounce the political/secular or the cry for justice in its appeal to the oppressor.

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17. See below, and cf. Chapter II, paragraphs 1 and 2 in Miranda (2008, 49–70).

From a different perspective than Leibowitz's, the first Evangelist, Mark, who dedicated part of his life to following the path of Paul of Tarsus,<sup>18</sup> educating himself in the sense of political-religious action (Acts 11:29) without renouncing Mosaic Law—or maybe precisely because of it (see Asimov 1998, 354)—describes the prevalence that Jeshua ben Joseph proclaimed the Spirit of the Law held over his form (Mark 2:23-27 rel. Matthew 12:1-8 and Luke 6:1-5),<sup>19</sup> insofar as the precepts were made for humans, not humans for the precepts. The believer obeys God through total fulfillment of the Law, but at no point does this law promote either subjugation or death in political or ontological terms. For example, Abraham, when he went up Mount Moriah, had to tie up his donkey—but as soon as the rope became a yoke, the new command instructed him to untie it.<sup>20</sup> According to Leibowitz, the donkey represents Abraham's material ties, the sighs of his heart, his mood, his problems, and his interests on the day of Isaac's commanded sacrifice (Leibowitz 2000, 38). But when this parable that encourages the suppression of selfishness is interpreted as a demand for outright submission, it is necessary to re-instill it with its original meaning. Jeshua commands the untying of the donkey, but he doesn't release it; rather, he controls it and enters Jerusalem on its back (Leibowitz 2000, 38). A philosophical interpretation of the Gospels shows us that Jeshua was confronting political oppression in both senses of the concept. The formal sense of political oppression leads to the legitimation of an unjust world. The material sense involves the means used to transform the world in an unjust situation. Jeshua exemplified the praxis of liberation. Exposing a strict adherence to the Law's form as unjust is, in times of fetishization, the only way to recover its original spirit. "Do not think that I have come to abolish the Law or the Prophets; I have not come to abolish them but to fulfill them" (Matthew 5:17). Jeshua ben Joseph's forcefulness in responding to fetishized interpretations of the Torah is evident: he sought to inveigh against those fetishizing intentions of the Law were so extreme that they had made pacts with the Romans—a hegemonic, transnational, imperial ethnic group. Members of the Sanhedrin and the political order had reached agreements with the Romans even at the expense of their own people's lives, reducing the Torah to its plainly liturgical mode. In this way, they aimed to secure a convenient peace that would let them maintain their religious and economical

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18. For more on Mark's identity and his relationship with Paul, see Acts 11:29-12:25, and on Mark the Evangelist see Asimov (1998, 339).

19. Narrations of the ease and lack of concern with which Jeshua violated the prohibition of harvesting on the Sabbath.

20. See Gen 22:3 and cf. Mt 21:2, Mk 11:2, Lk 19:30.

hierarchy. Jeshua's public imprecations show that stripping the Torah of its vindicatory sense of a just world implies an absurd prevalence of the signifying symbol over the signified content in the consciousness of those people who consider themselves believers.

The Mexican philosopher Porfirio Miranda has argued extensively about the fundamental character—he calls it the unmistakable feature—of the God of the Bible. According to Miranda, no exercise of biblical exegesis can dispel the fact that God is, more than anything else, a God of justice. To document this idea, Porfirio Miranda refers us to Paul's Epistle to the Romans 1:18 (in addition to hundreds of other periscopes), in which the wrath of God is "revealed from heaven against all the godlessness and wickedness of people, who suppress the truth by their wickedness." God's giving of the Law and its norms, his interventions in history, his revelations through the prophets, present justice as their common thread and order its fulfillment. If the prophets are the vehicles of God's word, then they must raise their voices in a clamor for a more just order of things in the world. Leibowitz himself, as intently as he seeks to separate religion from ethical/political matters, finds himself facing this situation, because in the *Tosafot*, which express a simple faith in God and the Torah related to that which the Guemara comments about the prophecies, the *tosafists* tell that the prophet does not prophesy except for those things that shall be. It is in the prophecy where the faith, with all its strength, is present in its pure form in comparison to the belief in magic and oracles, because if the prophecy would tell us what is the faith of that which will be, it wouldn't have any religious value (Leibowitz 2000, 72). Consider the following, as Leibowitz apparently suggests when he says that the problem isn't if the Gentile has value or not, but if man has a value, whether Jew or Gentile (Leibowitz 2000, 68). The ultimate message of the Day of Atonement is that man as such has no intrinsic value and therefore, if the nature of God were exempted from a character of justice, if his character were fully neutral and if material justice in the world were unattainable, the declaration presented by the prophets' sayings about the link between the world as it must be and its religious value would make no sense. However, we cannot ignore the apparent paradox that for Leibowitz, who publicly approaches the Torah from an exclusively theological perspective, the prophet does not necessarily speak the word of God, but rather speaks his own word when confronted with historical conditions of injustice. In this case, the prophet's word would be the word of Man. This is not an uncomfortable assertion: on the one hand it corroborates the human political meaning found in the Bible; on the other hand, it makes the

community accountable for its own historical transformation. Nothing has been promised by God. Rather, it is through his normativity, which must always be a reflection of justice, that the world changes. Justice is therefore carried out as a result of the man's actions when he recognizes his responsibility in the state of things, in the sphere of human material life—the only sphere in which man is able to act and transform. It must be emphasized that even if the believer is coherent in walking along the path of justice, meeting the goal, since it does not depend on divine intervention, cannot be guaranteed. However, material coherence with the abstract principle of justice does guarantee the legitimacy of one's right to demand it rather than just naively waiting for its arrival. Accepting that the biblical compilers had this in mind eliminates the prophetic books' paradox of inclusion—secularized, according to Leibowitz, in a book of religious nature. It might actually be preferable to think of them this way: to define the prophets as announcers of the inevitable encourages the passivity of mere waiting. Only those whose actions are consistent with the construction of just world are legitimized in their faith.

Insofar as God's only relationship with man has been through normativity, he who commits injustice while presenting himself as a believer implicitly puts the existence of God into question. Miranda asserts that, according to ontological principles in theology, "God exists first and intimates his imperative thereafter... [but] this imperative relationship, which cannot be neutral, is essential to the God of the Bible; it is his own way of existing in contraposition to other gods" (Miranda 2008, 55). If the symbol, the signifier, does not refer to justice as the signified, reflecting the essence of God, the given norm, regardless of whether it does so explicitly (as in Ex 20, 23) or implicitly through allegories and rituals (as in the Abrahamic pact in Gen 22:1-18 or in the Book of Job, which is only comprehensible as a whole if interpreted as an integral narrative from beginning to its end) has become absolutely useless as a link between the believer and the deity. The biblical God is not a god of grace. The same neutrality in the face of injustice, used as a refuge by those benefited by a system that does not foment complete fulfillment of subjective identities in decent conditions, as the *de facto* accomplices of oppression that they are, is offensive to the God of the Bible. So says Zephaniah 1:12: "At that time I will search Jerusalem with lamps and punish those who are complacent, who are like wine left on its dregs, who think, 'The Lord will do nothing, either good or bad (rel. to 1:18), neither their silver nor their gold will be able to save them on the day of the Lord's wrath. In the fire of his jealousy the whole earth will be consumed, for he will make a sudden end of all who live on the earth.'"

One other matter remains necessary to clarify: the question of what must be understood as justice throughout the books that constitute the Old and New Testaments. In this sense, Porfirio Miranda's exegesis strikes me as consistent with a project that aims for the establishment of the kingdom of heaven on earth or whatever we might call the most universally desirable state of the world. Miranda reminds the reader that the eschatological expressions found in Paul, John, and the Synoptic Gospels—expressions such as “final judgment,” “vindicate in righteousness” (Psalms 35:24), “righteous judge” (Psalms 9:5), and approximately 325 other examples throughout the 73 books encompassing the Old and New Testaments (Miranda 2008, 133) in reference to what has been distinctly translated as “Law,” “judicial act,” “right,” “justice,” and “extrajudicial just intervention”—correspond to various Greek terms that share the root *krin*, which yields the verb *krinein*. In turn, this verb was the one utilized to translate the nouns, verbs, and participles that come from the Hebrew root *spt*, which led to words like *safat* (verb: to judge), *sofêṭ* (noun: judging, judge), and *mishpat* (noun: justice). In doing exegesis of Porfirio Miranda's major contributions on this subject, it must be evident that the Torah, the Law, cannot be understood without *mishpat* as the touchstone. *Mishpat* is the praxis of the Torah, the spirit of the Law. Miranda emphasizes the utilization of the term *mishpatim* (plural) in Ex 15:25: “Then Moses cried out to the Lord, and the Lord showed him a piece of wood. He threw it into the water, and the water became fit to drink. There the Lord issued a ruling and instruction for them”; Ex 18:20: “And teach them his decrees and instructions, and show them the way they are to live and how they are to behave”; and Ex 21:1: These are the laws you are to set before them.” Exodus 21:1 is followed by behavioral regulations that clearly foster the dignity of life in contrast to the historical and cultural context of the era.<sup>21</sup> In all these references to norms, the original term, Miranda informs, is the same; it has a character of active responsibility toward the other, who occupies existential circumstances of disadvantage. The Mexican philosopher explicitly mentions three actions: to defend the weak, to liberate the oppressed, and to bring justice to the poor. Hermeneutically, I believe that *mishpat* must be understood as the already fulfilled material side of the Torah that, as the Law, would only be the formal judicial body of normativity. *Mishpat* implies fulfillment. *Mishpat* must have contained a sense of vindication for Jewish identity, a people who saw themselves as historically

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21. See Miranda (2008, 164).

oppressed, enslaved, lacking a land of their own. God, at the moment of his pact with Abraham, had promised conditions that would foster a dignified life for anyone who would root his identity in the coherence of a system of regulations, designed to produce an anthropological-cultural link between individual and communal subjects, cast out and landless—which Abraham would do, albeit in an ambiguous and fundamentally symbolic form. To achieve this, it was clearly necessary to establish a fundamental connection with the natural world, a bond with a land that would allow them to develop their identity while practicing their customs and traditions, a land that would let them flourish: “And I will bless [Sarai] and will surely give you a son by her. I will bless her so that she will be the mother of nations” (Gen 17:16). Nations to which Abraham, as mentioned earlier in this text, would have to act a father, i.e. a responsible progenitor.

However, as time went by and as the Law became more important than its spirit—as the formal, fetishized, took precedence over the material—revolutionary thinkers, Jeshua ben Joseph arguably being their prime example, felt the need to try to correct the formalists’ misinterpretations. Formality is useless if it does not become material. The Law is useless if it does not provide justice. The Torah is useless if it does not become *mishpat*. The Father can only be accessed through the Son, whom is said to be the incarnate Logos.<sup>22</sup> He is the fulfillment of the theory, the concretion of the abstract. “Thomas said to him: Lord, we don’t know where you are going, so how can we know the way? Jesus answered, “I am the way and the truth and the life. No one comes to the Father except through me. If you really know me, you will know my Father as well. From now on, you do know him and have seen him.” (John 14:5-7). This must not be interpreted dogmatically if we are to avoid succumbing once again to the fetishization in which signifier subordinates the signified. The simple faith in the idea that someone is God incarnate is utterly useless and neutral, which is why it is found in close proximity to positions that encourage the preservation of a system that, clearly, has not fostered the transformation of the world into one of liberty and openness to universal realization. Faith in itself does not kill, but it has not saved a single life in the world for over six thousand years. On the contrary, dogmatism and fanaticism, forms of fetishism, bring intolerance, exclusion, and violence along with them. It is clear that Jeshua ben Joseph’s self-assigned responsibility had nothing to do with formal faith or worship; indeed, those who believe in him would

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22. John 14:6 rel. to 1:14.

repeat his works and even greater works than those (John 14:12). If the New Testament's narratives are correctly interpreted with respect to the works performed by Jeshua ben Joseph, it is evident that those works entailed not only the denouncement of fetishized interpretations of the Torah's word, interpretations that violated its spirit (as in the parable of the Good Samaritan, frequently used by Enrique Dussel<sup>23</sup>), but also the material breach of the fetish through his breaching of the Sabbath in harvesting food and, as an alleged member of the Essene community (the physicians of the era), in healing ill people.. However, healing the ill may well be a metaphor, since Jeshua healed the blind (works against unawareness), made paralytics walk (works against passivity), and expelled demons from people's bodies (works against selfishness). Jeshua also ate without washing his hands (Mark 7, Mathew 15), which symbolizes the acceptance of responsibility; awoke Lazarus and commanded him to walk, a symbolic call for the poor to rise from their lethargy<sup>24</sup>; and included the excluded, as in the case of the Samaritan (Jn 4:21-42) and the prostitutes (Lk 7:36-50).

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23. See Dussel (2012).

24. Jn 11:38-44 rel. Lk 16:19-31

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