THE LEO BAECK
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48

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Leo Baeck Institute was founded by representative organizations of Jews from Germany for the purpose collecting material on and sponsoring research into the history of the Jewish community in Germany and ther German-speaking countries from the Emancipation to its dispersion. The Institute is named in honor f the man who was the last representative figure of German Jewry in Germany during the Nazi period.

Wissenschaft des Judentums, Historical Consciousness, and Jewish Faith: The Diverse Paths of Frankel, Auerbach, and Halevy

By

David Ellenson

In his 1965 book, The Historian and the Believer, Protestant scholar of religion Van Harvey observed that the commitment of the modern historian to "a sustained and critical attempt to recover the past" was motivated by a "Promethean will-to-truth" that was genuinely "revolutionary" when this approach first fully manifested itself during the nineteenth century. He observed that modern historical method was "based on [naturalistic] assumptions quite irreconcilable with traditional belief [based on supernatural metaphysics]," and went on to assert, "If the theologian believes on faith that certain events [as recorded in holy writ] occurred, the historian regards all historical claims as having only a greater or lesser degree of probability and he regards the attachment of faith to these claims as a corruption of historical judgment." [1]

The modern study of history, with its critical canons of scholarship and its dogmatic notion of change, is thus by definition seemingly antithetical to faith. As Soren Kierkegaard, the famed nineteenth century Protestant theologian, stated, "One can 'know' nothing at all about "Christ." He is the paradox, the object of faith, existing only for faith. But all historical communication is communication of 'knowledge,' hence from history one can learn nothing at all about Christ. … He can only be believed." [2]

All this may seem an unusual place to begin this prestigious annual lecture held under the auspices of the Leo Baeck Institute. After all, our topic this evening is not Christianity. However, my citations of Professor Harvey and Soren Kierkegaard are meant to indicate that the topic tonight is not a parochial one confined to the Jewish community in the modern world. Rather, this question about the relationship between the modern study of history and the matter of religious faith -- of how to reconcile adherence to sacred tradition with critical methods of historical research -- has plagued many religious believers during the last two hundred years.

In this year, when we mark the 150th anniversary of the Jewish Theological Seminary of Breslau and consider the powerful heritage of academic scholarship that that seminary has bequeathed the modern Jewish world, no question could be more meaningful. Countless religious Jewish historians during the last two centuries have been

[1] Van A. Harvey, The Historian and the Believer: The Morality of Historical Knowledge and Christian Belief (Urbana and Chicago: University of Illinois Press, 1996), pp. 4-6.
[2] Robert Bretall, ed., A Kierkegaard Anthology (Princeton: Princeton University Press, 1946), pp. 388-389, as cited by David N. Myers, Resisting History: Historicism and Its Discontents in German-Jewish Thought (Princeton: Princeton University Press, 2003), p. 1

occupied with this issue. Indeed, it is one that has great meaning for me both as a personally committed religious Jew and as a head of a modern rabbinical seminary – Hebrew Union College-Jewish Institute of Religion -- that has been marked since its inception in 1875 by a devotion – as have all major modern liberal Jewish religious seminaries – to Wissenschaft des Judentums. Indeed, a wrestling with this question of faith and analysis has marked virtually all sectors of an acculturated and university-trained occidental Jewry since the rise of a modern critical historical consciousness during the last two hundred years.

No one has better addressed what this dilemma has meant from a Jewish standpoint and for the Jewish community and the modern professional Jewish historian nor what is distinct about this mode of thought than Professor Yosef Hayim Yerushalmi of Columbia University. In his deservedly famous Zachor: Jewish History and Jewish Memory, Yerushalmi writes, "[The] discovery of history [by the Jewish historian] is not a mere interest in the past, which always existed, but a new awareness, a perception of a fluid temporal dimension from which nothing is exempt. The major consequence for Jewish historiography is that it cannot view Judaism as something absolutely given and subject to a priori definition. Judaism is inseparable from its evolution through time ..." [3]

In contrast, classical rabbinic thought, as Jacob Neusner has pointed out, is atemporal. Labeling such thought as "paradigmatic thinking," Neusner observes that for the rabbis, paradigms of different sorts dictate the organization of events, and these events are interpreted by appeal to these archetypical models. The patterns themselves impose meaning on the events that occur and in so doing they obliterate distinctions between past, present, and future, between here and now and then and there. [4]

This does not mean that the ancient or medieval rabbis, as Amos Funkenstein has argued, possessed no sense of "historical consciousness." [5] However, the sense of "collective memory" that marked classical Jewish culture and consciousness was far removed from the autonomous and secular historicism that burst forth among Jewish university-trained scholars during the nineteenth century. Of course, the historical method developed by these modern historians was itself a byproduct of the process of secularization that ultimately came to dominate the modern West. This approach precluded sacralized historical explanation. For the modern historian, every fact and event must be placed within its own singular context and an explanatory or analytical narrative appropriate to that context must be created.

"There is," Yerushalmi therefore observes, "an inherent tension in modern Jewish historiography ... To the degree that this historiography is indeed 'modern' ..., it must stand in sharp opposition to its own subject matter, not on this or that detail, but concerning the vital core: the belief that divine providence is not only an ultimate but an active causal factor in Jewish history ..." [6]

It is therefore small wonder that many Jewish religious traditionalists have vehemently protested the critical works of modern scholarship for these works support, as Yerushalmi once more phrases it, "a Jewish historiography divorced from Jewish collective memory and, in crucial respects, thoroughly at odds with it." [7] The study of modern history would seem to be a subversive activity.

Yet modern historical scholarship has not always "been at odds" with the construction of Jewish memory and faith. While this mode of investigation clearly can be employed to "undermine" tradition, the method of Wissenschaft des Judentums has just as surely been utilized to construct new ways of approaching Jewish commitment and faith. In fact, during the nineteenth century in Germany, historical scholarship frequently played the role of handmaiden to religion and its influence was pervasive in virtually every precinct of German-Jewish life.

As Ismar Schorsch has observed, "In nineteenth-century Germany the study of Jewish history functioned as both authority and medium. Construed as authority, a proper reading of Jewish history could yield the indispensable guidelines and validating principles to determine the future shape of Judaism. Invoked as medium, Jewish history could readily provide an interpretation of Judaism in terms of the idealistic idiom of the century. In the Middle Ages, these two functions were fulfilled by different disciplines: a rich and flexible legal tradition generally served as sole authority for changes within the Jewish community, while philosophy offered the common idiom in which Judaism could be expounded for Jew and non-Jew alike. In the wake of emancipation, ... history assumed the role of both. It became the functional equivalent of halakhah and philosophy in the medieval world." Wissenschaft des Judentums was "the most potent intellectual force on the German Jewish scene" and Jewish scholars across the religious spectrum attempted to resolve "the dilemmas posed by the emancipation struggle through a proper reading of Jewish history. ... Wissenschaft history was programmatic history." [8]

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[3] Yosef Hayim Yerushalmi, Zakhor: Jewish History and Jewish Memory (Seattle and London: University of Washington Press, 1982), pp. 90-91.

[4] See Jacob Neusner, "Paradigmatic Versus Historical Thinking: The Case of Rabbinic Judaism," History and Theory 36:3 (1997).

[5] Amos Funkenstein, "Collective Memory and Historical Consciousness," History & Memory 1 (1989), pp. 5-26.

[6] Yerushalmi, Zakhor, p. 89.

[7] Ibid., p. 93.

[8] Ismar Schorsch, Heinrich Graetz – The Structure of Jewish History and Other Essays (New York: JTS, 1975), pp. 8-9 and 11. Gerson Cohen, in his "German Jewry as a Mirror of Modernity," LBIYB Volume XX (1975), p. XXV, makes this point about the "programmatic nature" of nineteenth century German Jewish history when he writes, "One of the singular features of German-Jewish scholarship was its ingenuousness; if anyone pretended about his real motives, it was not Zunz, Geiger, Frankel, Graetz, or David Hoffmann." Michael Meyer also reinforces the position Schorsch here puts forth when he demonstrates, in "Jewish Religious Reform and Wissenschaft des Judentums: The Positions of Zunz, Geiger, and Frankel," LBIYB Volume XVI (1971), pp. 19-41, that different nineteenth century scholars – employing the exact same *wissenschaftlich* methodology – routinely drew diverse conclusions for practical Jewish religious faith and practice from their investigation. Finally, Jakob Petuchowski in his Prayerbook Reform in Europe (New York: World Union for Progressive Judaism, 1968), pp. 84-104, demonstrates that the use of Wissenschaft was so ubiquitous during the 1800s in Germany that both Orthodox and Reform

While a number of traditionally religious German Jews shunned Wissenschaft des Judentums and regarded critical historical study as an anathema, far more traditional Jewish believers did not. These traditional Jews embraced Wissenschaft and felt that modern study could actually enhance and deepen Jewish faith. As Schorsch notes, "By the 1840s a cluster of historians began to wield Wissenschaft in defense of traditional Judaism. Wissenschaft ... could be wielded ... conservatively to defend traditional Judaism and to resist Reform." [9]

By looking at selected parts from *Darkhei Hamishnah* of Zacharias Frankel and by considering the attacks and methods employed in two different and representative Orthodox critiques of his work, *Hatzofeh 'al Darkhei Hamishna* by Zvi Benjamin Auerbach and *Dorot Harishonim* by Isaac Halevy, the different ways in which significant figures in traditional nineteenth century German Judaism addressed and understood the nature of historical scholarship and its relationship to faith will be illuminated. In so doing, the diverse intellectual approaches that informed these men as well as the distinctive attitudes that different camps of Jewish religious traditionalists have taken toward critical scholarship will be elucidated. In this way, a concluding reflection can be offered on the implications that historical consciousness has for the maintenance of Jewish faith and life.

Frankel and *Darkhei Hamishnah*

A giant of *juedische Wissenschaft* and a completely observant traditional Jew, Zacharias Frankel (1801-1875) is famed for the leading role he played in the construction of modern Jewish scholarship and for his position as first head of the Breslau Seminary. His *Darkhei HaMishnah*, written in 1859, is a pioneering work in the field of critical rabbinic scholarship. In it, Frankel attempted to address the development of the Oral Law from the time of the Men of the Great Assembly (the *soferim*) through the editing and arrangement of the Mishnah (earliest major collections of Jewish law collated and codified by Judah the Prince around 220 C.E.).

At the very outset of his work, Frankel proclaimed, "God illuminated the spirit of Cyrus, King of Persia, and he proclaimed freedom to all the people of the Children of Israel in his kingdom to go up to Jerusalem to build there the house of God." The introduction is hardly controversial from a traditional religious standpoint nor does it appear very "scientific." God is here depicted as an "active agent in history," and the explanation offered as to the motives that informed Cyrus when he is reported to have ordered the return of the people Israel from Exile in Babylon to the Land of Israel hardly comports to the naturalistic criteria that a modern historian might elicit in offering a description and analysis of this purported event. Clearly, his sense of the reliability and accuracy of the tradition hardly reflects the posture that a modern historian would adopt regarding classical religious texts.

However, Frankel was not particularly concerned with offering either a religious or social history of the Jewish people. Rather, his aim in *Darkhei Hamishnah* is to trace

[9] Ibid.

the development of the Oral Law from the era of Ezra and the *Soferim* to the end of the Mishnaic period. He therefore continues by asserting that the tasks of the *Soferim* were twofold – 1) to explain and clarify the laws of Torah in general and the application of other mitzvoth in particular to the people and 2) to establish new decrees and ordinances according to the needs of the hour and the time. Indeed, they established these decrees in accord with the political and social situation that obtained in their day (p.2). They knew that with the passage of time, matters would arise that the earlier sages had not anticipated, whether in regard to the personal and familial needs of human beings or the conduct of the state. As a result, new customs and judgments were always required (p. 3) and the Men of the Great Assembly arose to fulfill these dual functions.

In speaking of the former explanatory function, Frankel illustrated his point by turning (p. 3) to *lex talionis*, the famed biblical passages found in Exodus 21:23-25 that deal with the law of retribution and speaks of "an eye for an eye." Frankel contended that the Sages did not understand this passage literally and that they therefore fulfilled their interpretive task by explaining that this passage denoted monetary compensation for injury, not removal of a body part. Later in his argument (p. 12), in exemplifying the second legislative function, Frankel claimed that that in the Mishnah there are "*halachot* that are of great antiquity whose authors we do not know, and they emerged from the mouths of the *zugot* (pairs of rabbis) and those who preceded them."

In concluding his introductory section to his book, Frankel also stated that there were other ways in which Jewish law developed (p. 20). He writes, "And besides those *halachot* which emerged from midrash on Scriptures and from the hermeneutical principles enunciated above, other *halachot* are found whose rationale is impossible to determine. They are received and classified by the term '*halachah l'moshe mi-sinai*.' In the Mishnah, Frankel stated that this term is used twice – Peah 2:6 and Yadayim 4:3. In the Gemara, this term is sometimes applied to an anonymous halachah found in the Mishnah – e.g., Yebamot 8:3 and Nazir 7:4." Furthermore, the Talmud itself often employs this phrase without reference to the Mishnah whatsoever.

Frankel then went on to an account of the phrase, "*halachah l'moshe mi-sinai*," itself. In what was destined to become the most famous and controversial part of the book, Frankel stated that the phrase could best be understood by looking to an explanation offered by Asher ben Yechiel (1250-1327), the famed medieval Talmudist widely known as the Rosh, in his *Hilchot Mikvaot* 1. There the medieval sage commented upon Yadayim 4:3 where the Mishna states that the granting "the poor man's tithe in the seventh year – *ma'aser 'ani ba-sh'vi'it*" by the nations of Amon and Moav is a "law from Moses at Sinai." However, the law is actually not found in the Torah. Therefore, the Rosh says that this law is so "self-evident and well-known" (*davar barur*) that it is *"k'i'lu halachah l'moshe mi-sinai* – as if it were a law revealed to Moses at Sinai." On the basis of this account, Frankel concluded that the phrase "*halachah l'moshe mi-sinai*" referred to an "ancient law – *halachah y'shanah*" that should not be understood literally as coming from Moses at Sinai. Rather, the origins of such a law was lost in the mists of history and was of such great antiquity that it was "***k'i'lu* – as if**" it were a law revealed to Moses at Sinai. Frankel here acknowledged the developmental nature of Jewish law.

At the same time, he employed a source taken from an authority with impeccable rabbinic lineage to justify this position.

Orthodox Reaction and the Response of Frankel

Though Frankel had produced a traditional warrant to support his position, the forceful reaction of Orthodox rabbis to his work was swift and savage. [10] Foremost among these critics was Rabbi Tzvi Benjamin Auerbach (1808-1872) of Darmstadt and Halberstadt. In his 1861 *Hatzofeh 'al Darkhei Hamishnah*, Auerbach constructed the following argument. He asserted that "the foundation of our faith is the belief that the Oral Law was revealed by God" (pp. 1-2). In contrast to this, the claims Frankel put forth ascribe the *halachot* to human, not divine, authorship. This stands in direct opposition to the teachings of the Sages in *Berachot* 5b, which asserts that all the commandments and teachings in Judaism – both Written and Oral Torah – "*nitnu l'moshe mi'sinai* – were given to Moses at Sinai." Furthermore, in the Sifra commentary on Leviticus, *Parashat Ba-har*, it states, "All the commandments – both their general principles and their detailed expositions – were stated to Moses at Sinai" (p. 3).

Auerbach then continued by marshalling yet more sources to demonstrate that the notion that God revealed both the Written Law and the Oral Torah in their entirety to Moses was the cardinal foundation for the establishment of Jewish faith, and he cited Maimonides as the ultimate authority for this view. As Auerbach wrote, Maimonides, in his introduction to *Seder Zeraim* in his *Peirush Hamishnah*, states, "Moses our rabbi received the Torah – its explanations and its laws, according to its general rules as well as its details – and also the explanations of the written scripture, e.g., 'an eye for an eye,' ... from Moses who heard them [from God] and who passed them on to Joshua. (pp. 4-5). Indeed, "All of the [rabbis] received the Oral Torah from the God of Israel" (pp. 8-9). Therefore, as Maimonides rules in his *Mishneh Torah, Hilchot Teshuvah* 3, one who "denies that the Torah comes from Heaven is a heretic" (p. 9). In Auerbach's opinion, Frankel fell under this category, for his writings in *Darkhei Hamishnah* ran counter to this belief.

Auerbach went on to say that if Frankel were in fact genuinely pious, he would have written that the "explanations of the commandments – *peirushei hamitzvot*" came from "the mouth of the Almighty at Sinai – *mipi ha-gevurah ba-sinai*" and were passed down in an unbroken chain of tradition to the Men of the Great Assembly who taught them to the people (p. 10). Frankel would then have said, "*Rabeinu Hakadosh* (Judah HaNasi) gathered together all the laws, explanations, and commentaries that had come directly from the mouth of Moses and he wrote them exactly in the book of the Mishnah," just as it says explicitly in *Mishnah Avot* 1:1.

[10] Rabbis Samson Raphael Hirsch and Gottlieb Fischer accused Frankel of heresy in a prominent series of articles published by Fischer in 1860-1861 in *Jeschurun*, the Orthodox journal edited by Hirsch. These articles are reprinted in S.R. Hirsch, "*Schriften betreffend Dr. Z. Frankels 'Darke hamischna'*" *Gesammelte Schriften* (Frankfurt: 1863) VI: 322-434. See especially pp. 339ff.

However, Frankel did not do this. Instead, Frankel denied the "*shalshelet ha-kabalah* - the chain of tradition," that stands as the foundation of Jewish faith, in opposition to Sukkah 20b and Yoma 69a, where it states, "The men of the Great Assembly returned the crown to its original glory – *haheziru haatarah l'yoshna*" (p. 10). In making his case, Auerbach obviously offered an argument derived from the tradition alone. For Auerbach, such an approach was self-sufficient. The authority of the tradition had no need of Wissenschaft to bolster traditional religious claims or understandings.

His traditionalism found climactic expression in the blistering attack Auerbach launched against the treatment Frankel had accorded the notion of "*Halachah l'moshe mi-sinai*." Auerbach first cited the position Frankel had adopted in *Darkhei Hamishnah* regarding the term, and repeated the argument that Frankel had put forth there through his citation of the Rosh – that it is "self-evident and well-known" that the phrase "*halachah l'moshe mi-sinai*" refers to an "ancient law – *halachah y'shanah*" that should not be understood literally as coming from Moses at Sinai. Rather, such a law is so ancient that it is "***k'i'lu* – as if**" it were a law revealed to Moses at Sinai.

As a result, Auerbach contended that the author of *Darkhei Hamishnah* attempted "to have it both ways." While Frankel feigned commitment to Talmud, his work placed Jewish law in a developmental context and therefore denied that the Oral Law comes "*mi-pi hagevurah* – from the mouth of the Almighty" (p. 11). Indeed, Frankel undermined the very authority of the tradition he professed to champion. Rather than asserting that God revealed the *halachot* categorized under the rubric, "*halachah l'moshe mi-sinai*," to Moses at Sinai, Frankel maintained that they stemmed from "the *zugot*," or "the Men of the Great Assembly," or "those who preceded them" (p. 14). By claiming that these laws are simply "so called – *nikraot* laws from Moses at Sinai," Frankel destroyed the very foundation of the Jewish religion to which he professed devotion.

Auerbach also pointed out that Frankel was disingenuous in his citation of the Rosh on *Hilchot Mikvaot* 1. He argued that the citation there is unique and completely unrepresentative of the characterization the Rosh elsewhere accorded the phrase, "*halachah l'moshe mi-sinai*." Auerbach cited numerous examples from rabbinic literature on topics ranging from ritual slaughter to *tefillin* to defend his position, and cited those many more instances where the Rosh asserted, "*Halachah l'moshe mi-sinai* stems from the Torah – *meidoraita hi*" (pp. 15-16). Furthermore, Auerbach approvingly quoted Maimonides, who wrote, "*Halachah l'moshe misinai* refers to a matter that emerges from the mouth of Moses as the Holy One, Blessed be He commanded him" (p. 16). Auerbach asked why Frankel did not cite all these more numerous and more representative passages, and chided Frankel for citing the one single and exceptional instance. He contended that the Sages of the Talmud transmitted an unchanging and timeless Torah "as an eternal inheritance – *moreshet olam*" to the Jewish people (p. 21). Auerbach concluded his indictment of Frankel by charging that the approach and content of *Darkhei Hamishnah* sabotaged a belief in "*Torah min hashamayim* – Torah revealed from the heavens" (p. 54).

Frankel was not insensitive to such critiques, and he reacted by posting an addendum to an edition of *Darkhei Hamishnah* published in 1867. [11] Entitled, "The Apology of the Author – *hitnatzlut ha'mhaber*," Frankel wrote that critics attacked him mercilessly and he stated that his own sense of honor would not allow him to compose a detailed response that would answer each of the charges hurled against him. However, he did claim, "The person who reads my book without preconceived notions and prejudices will not find anything in it" that would support the suspicions and charges that his opponents had put forth. "The searcher of men's hearts," he stated, "knows and is witness to the fact that any thought of undermining and diminishing either the Torah or the tradition was far removed from my thoughts when I wrote this book. The purpose of the book and my desired intention is apparent to every fair-minded reader."

Frankel wrote that the "scientific light - *hamaor hamada-i*" that *Darkhei Hamishnah* shed upon the Mishnah did nothing more than reveal the wisdom of the Mishnah and the "glory of its antiquity." He claimed that every page of his book testified to "my feelings of respect and honor" for the Oral Law and he believed that his attempt to raise its esteem was palpable to every fair-minded reader. While his opponents spoke as if he attempted "to destroy the basis of this Torah and to cast doubts on its foundations," Frankel asserted that his investigation of "the components and composition of the Mishnah" only reinforced respect for the "received tradition - *hakabbalah v'hamesorah*." As Frankel observed, "In a scientific study, it is enough to prove the antiquity of the Halachah from the earliest days of the nation." Indeed, "I attempted to demonstrate the existence of the law from the time that Israel became a nation." Furthermore, the term "*halachah l'moshe mi'sinai*" was itself indeterminate and subject to many viewpoints. His research did nothing more than protect this notion from the "scorn and derision" a number of historical critics had displayed in their efforts to debunk a literal understanding of this phrase. It was "to oppose those who" make such statements that "I spoke my words. God knows this is the truth and it was in this context that I cited the Rosh. As for those who continue to critique me, I can only say in the words of Scripture, 'They curse and You bless.'"

In assessing this quarrel between Frankel and Auerbach, it is obvious that each man was informed by a radically different sensibility concerning the relationship between critical scholarship and religious faith. While Frankel was a religious traditionalist, [12] he had also come to embrace modern modes of critical study as a legitimate mode of approaching faith for the religious Jew. His assertion that academic study of the past could only "prove the antiquity of the Halachah from the earliest days of the nation" indicates that he sensed the limits of "history." Academic study could not provide complete empirical confirmation of religious belief. Such total confirmation was beyond the realm of "science." However, this did not mean history had no utility. Frankel would never have agreed with the Kierkegaardian assertion that "from history one can learn nothing at all about" faith. At the very least, history could provide a respectable cultural warrant to protect religious belief from its cultural despisers. More significantly, history could be employed to inform and deepen the nature of religious belief for the modern Jew and to fortify the modern Jew's quest for "truth."

Auerbach clearly disagreed. The case he advanced against Frankel in his *Hatzofeh 'al hamishnah* displays no sense of modern critical historical consciousness. Auerbach simply marshaled significant numbers of prooftexts drawn from the tradition to condemn Frankel and his *Darkhei Hamishnah* as being profoundly opposed to what Auerbach regarded as a traditional notion of an unchanging Jewish law. While Auerbach did acknowledge that Frankel had found one traditional warrant for his position, the other citations he drew from the Rosh as well as the quotation from Maimonides where these authoritative rabbis defined "*Halachah l'moshe mi'sinai*" as "a matter that emerges from the mouth of Moses as the Holy One, Blessed be He, commanded him" allowed Auerbach to charge that Frankel distorted the tradition through his selective mode of citation. Indeed, the Frankel reference to the Rosh on *Hilchot Mikvaot* only masked the heretical nature of the stance Frankel had put forth. Frankel had unjustifiably selected a lone precedent in keeping with his own modern historical sensibility to justify reformulating an established doctrine of revelation that Auerbach regarded as sacrosanct. What is noteworthy here is that as late as 1861, a major German Orthodox spokesman could still remain indifferent to the approach of Wissenschaft.

Isaac Halevy and *Dorot Harishonim*: A Different Orthodox Approach

Given the fully acculturated nature of all sectors of German Judaism, Orthodox Jews could not long remain unconcerned with the claims of academic research and method. By the 1870s, the Orthodox Hildesheimer Rabbinerseminar in Berlin could boast of scholars such as Jakob Barth, Abraham Berliner, and David Zevi Hoffmann who were all prominent champions of Wissenschaft. [13] However, at this point in our narrative, I would turn beyond the "modern Orthodox" community to Isaac Halevy (1847-1914), the Lithuanian trained Talmudic sage and scholar who journeyed to central and western Europe in the mid-1890s and ultimately settled in Hamburg in 1902, to illustrate and comprehend the type of historical consciousness that had come to inform even elements of the most highly traditional circles of Orthodox Judaism in the modern world. A leader and architect of *Agudath Yisrael*, Halevy is the author of the famed six-volume "magnum opus on Jewish history *Dorot Harishonim*," which "spans the Biblical, Talmudic, and Gaonic eras." As his biographer O. Asher Reichel states, "In that work – the first volume

[11] This addendum is reprinted in *Darkhei Hamishnah* (Warsaw, 1923), p. 386.

[12] Hermann Cohen, who studied with Frankel as a student at the Breslau Seminary, offered striking testimony to the piety of his teacher in a letter Cohen wrote to *Jeschurun* 7 (1861), pp. 297-298, after he read the savage criticisms that Hirsch and Fischer lodged against Frankel (see footnote 10). Cohen, in what was probably his first published writing, described Frankel as an observant Jew who conducted himself in all respects in accord with a strict interpretation of rabbinic law, "standing in the synagogue with a prayer shawl over his head, singing *zemirot* on holiday evenings, and also, on occasion in his Talmudic lectures,

[13] For an analysis of the approach the Hildesheimer camp of German Orthodox Judaism took to Wissenschaft, see David Ellenson, Rabbi Esriel Hildesheimer and the Creation of a Modern Jewish Orthodoxy (Tuscaloosa, Alabama: University of Alabama Press, 1990), pp. 148-165.

was published in 1897 and the sixth in 1964 – the fundamentals of Jewish tradition were reaffirmed." [14]

Halevy possessed a distinct historical sensibility and his work displays the all-pervasive influence Wissenschaft enjoyed in Germany. At the same time, his allegiance to Orthodox Jewish faith and practice was fierce. The critiques he issued against Frankel and other members of the Positive-Historical school such as Heinrich Graetz and I.H. Weiss for the treatment they accorded the history of the Mishnah and its authors, as well as an exposition of his own analysis of the same topics, demonstrate a distinctive Orthodox approach to Wissenschaft and allow for another understanding of how a devoted religious believer can simultaneously be informed by and dissent from the phenomenon of modern historical consciousness.

Unlike Auerbach, the Orthodox Halevy did not abjure an academic approach to the Jewish past. In fact, he enthusiastically professed his devotion to such study. In his writings, Halevy praised the academic study of Judaism as heralding a "renaissance of Jewish literature" and spoke of the need for Orthodox Jews to "work together for the benefit of *Hochmat Yisrael*." [15] While he charged that the research conducted by non-Orthodox students of Wissenschaft did little more than "reduce the foundations of Judaism into chaos (*tohu va'vohu*)," [16] Halevy nevertheless asserted, "The foundation of Orthodoxy rests on a foundation of true *Hochmat Yisrael*." [17] Halevy therefore insisted that the Orthodox scholar adhere to the most stringent standards of scholarly research, and he maintained that internal Jewish sources alone were not enough to construct a serious Jewish history. Indeed, he explicitly called upon Orthodox authors to consult contemporaneous non-Jewish sources such as Josephus in writing a history of the Jewish community. Furthermore, these sources "had to be presented in the original language" and articles presenting the fruits of that research had to be written "in a scientific manner." [18]

Halevy felt that he himself achieved such a "scientific standard" in his own work and, in a 1900 letter to Salomon Breuer of Frankfurt after publication of the first volume of *Dorot Harishonim* and prior to the publication of the second, he stated that he was confident that Breuer would appreciate and rejoice in the forthcoming volume. He further boasted that his historical research had succeeded in strengthening the stature of traditional Judaism in the modern setting and that he had succeeded in responding to those modern academics who had distorted Jewish history. As he wrote, "Through my hand, God has fulfilled the desire of all pious Jews to establish *Hochmat Yisrael* and Jewish history properly and restore them to their rightful place." As a result, "All evil

[14] O. Asher Reichel, Isaac Halevy (1847-1914): Spokesman and Historian of Jewish Tradition (New York: Yeshiva University Press, 1969), p. 9.
[15] Asher Reichel, ed., *Iggerot Rabbi Yitzchak Isaac Halevy* (Jerusalem: Mossad Harav Kuk, 1972), Letter 27a.
[16] Ibid., Letter 42b.
[17] Ibid.,Letter 134.
[18] Ibid.,Letter 27a.

earlier days." [19]

In describing his approach to Jewish history, Halvey wrote that history must not be based on "dreams – *halomot*." In a positivistic mode characteristic of his time, Halevy claimed, "History represents matters as they genuinely are from the depths of full research." The reader of an historical tome must be confident that the descriptions and representations of events and trends are fully reliable and accurate. [20]

Consequently, Halevy stated that the scholar must not depend upon "aggadah" – fanciful tales and interpretations -- for the writing of history. Instead, he averred that the key to Jewish history for the modern student of the past lay in grasping an understanding of the halakhic sources of Jewish tradition. Halevy complained that many traditional historians of the talmudic era employed *aggadot* that had no connection to the historical time and place of the *Amoraim* and this allowed for ahistorical flights of imagination that were no more than the expression of the subjective whims of each individual author. Halevy was genuinely committed to Wissenschaft – as he understood it. [21]

In making this distinction between halakhic and aggadic sources for the writing of Jewish history, Halevy reflected traditional patterns of understanding that marked the eastern European yeshiva world from which he emerged, a world that granted primacy to the purported "objectivity" of halakhic sources over the presumed "subjectivity" inherent in aggadic ones. [22] However, in offering this assessment of Halachah and Aggadah for the construction of history, Halevy just as clearly did not take into account the types of considerations that modern historians would adopt regarding the use of these sources. After all, even if aggadot are "fanciful flights of imagination," the historian can nevertheless mine them, no less than the historian can analyze halakhic texts, to reveal a great deal about the intentions and attitudes of their authors. Furthermore, Halevy clearly presumed the historical accuracy of all legal sources. He completely ignored the types of issues that a critical historian today might raise -- whether particular sources are projections of a later era onto an earlier one, the subjective concerns of the author, the personal commitments of the writer, and the like. Indeed, questions of this type seemingly never entered his mind. In this way, his critical historical consciousness – like that of Frankel for that matter -- appears rather "primitive."

In the first volume of *Dorot Harishonim*, Halevy treated the mishnaic period of Jewish history. [23] Consequently, this volume provides the contemporary observer with a clear picture of his own historical sensibility as well as a useful point of comparison to see where his own approach and understanding were both akin to and distinct from that of a figure such as Frankel. Indeed, in this volume, Halevy stridently attacks not only

[19] Ibid., Letter 5.
[20] Ibid., Letter 17.
[21] Ibid., Letter 42a.
[22] Note how different this viewpoint is from that of many contemporary Orthodox precincts where the Art Scroll series of Orthodox publications often ascribes historical accuracy to events and tales contained in classical aggadic writings.
[23] Page numbers in the body of the text refer to this volume of *Dorot Harishonim*.

Fankel, but also Heinrich Graetz and I.H. Weiss – both leading members of the Positive-Historical camp of nineteenth century German Jewish historians.

Halevy pointed out that all these leading Positive-Historical scholars regarded *Tannaim* such as Hillel and Akiba as the supreme architects of rabbinic Judaism and they maintained that Jewish law was created and evolved during the first centuries of the modern era. For example, Halevy noted that Gratez asserted that "Hillel ushered in a new era in the" development of Torah. In so doing, "Hillel laid the cornerstone for the construction of the Talmud" and he established a foundation for Judaism that remains to this day (p. 157). Similarly, Frankel, in *Darkhei Hamishnah*, had written that while certain commandments from the time of the Ezra were ancient ones -- e.g., certain sacrificial offerings – others -- e.g., relating to forbidden foods such as gentile oil -- were new. In addition, Frankel declared, "Rabbi Akiba was the first to establish a certain *mishnah*." Therefore, averred Frankel, "Rabbi Akiba arose and he was the great man who began to construct the mishnah and lay its cornerstone" (p. 203). Finally, Weiss, in Volume I of his *Dor Dor v'Dorshav*, stated that Hillel felt empowered, "to employ logic (*sevara*) regarding every new matter that came before him to depart from" the established law (203).

To all of this, Halevy queried, "Is there any end to these words of foolishness?" Indeed, all these academics were persons who are "shrouded in fog" and who "walked in chaos" (p. 203). In contrast to Frankel and the others, Halevy maintained that Hillel did not introduce a new era in the chain of tradition nor did any of the Tannaim establish a new foundation for the construction of the Mishnah. He asserted that Graetz was in error on this point, just as Weiss was when he contended that Hillel deviated from the Halakhah. Similarly, Frankel was mistaken when he asserted that the first generations of the *Tannaim* laid the cornerstone of the Mishnah (p. 205). Rather, the Mishnah was already established before these rabbinic sages lived. Halevy referred to this original Mishnah as *Y'sod Hamishnah* and stated that all the arguments of the *Tannaim* were no more than expositions of and commentaries upon the earlier words and rulings they had received. As Halevy explicitly wrote, "All the Mishnah was arranged and its template sealed in its entirety, as it exists before us, and was transmitted during the days of the Men of the Great Assembly" (p. 204).

Halevy defended his stance in several ways. First, he argued that the language of the apocryphal work Ben Sira was akin in language and form to that of the Mishnah, thus demonstrating that the "Mishna was already familiar to all." Furthermore, he stated that the Mishnah was not connected homiletically to Scripture. Rather, the laws the Mishnah contained were arranged systematically as they were received. Indeed, they were preserved despite the persecutions that obtained between the time of the Men of the Great Assembly and the Tannaim. Furthermore, all the general "enactments - *takkanot*" of the rabbis and all the foundations for these rabbinic *takkanot* emerged prior to the days of Simon the Just. Halevy conceded that "here and there" there were individual *takkanot* that were identified with the head of the generation in which they were enacted, e.g., those of Jose ben Yoezer, the Beit Din of the Hasmoneans, and Shimon ben Shetach. However, they were all circumscribed enactments. In contrast, all wide-ranging *takkanot* such as *safek d'oraita l'humra*, the concept of *shevut* in relation to Shabbat, the prohibition of carrying in a place defined as *karmalit*, and the foundations of the laws of mourning were from no later than the time of the Men of the Great Assembly. [24] Indeed, many of these laws preceded the men of the Great Assembly. However, Halevy emphatically declared that none were later than this period. As Baruch Bokser, in a concise summary of his position, has observed, for Halevy the *Y'sod Hamishnah* "consists of biblical-based laws, other laws contemporary with the Sinaitic revelation of Torah, and later authoritative and collective enactments from the time of the prophets through the days of the scribes (*Soferim*). The Men of the Great Assembly received these laws, fixed their language and form, and thereby produced *Y'sod Hamishnah*." The Tannaim do no more than explain and clarify the rulings of *Y'sod hamishnah*. [25]

While Halevy did concede that the Tannaim at times argued over the precise wording of the Mishnah, he was insistent that the literary formulation and redaction of the Mishnah stemmed from the time of the Men of the Great Assembly. He buttressed this position by offering numerous cases where the "original mishnah" was followed by later rabbinic argumentation. One example will suffice to illustrate the mode of explanation he advanced. In Mishna Hagigah 1:1, it states, "Everyone is obligated to see the Temple during the three pilgrimage festivals, except for the deaf-mute, the imbecile, and a minor, ... and he who is unable to go up by foot." After the list of persons who are exempt from seeing "the Temple during the three pilgrimage festivals" is completed, the Mishnah then asks, "Who is a minor?" An argument is then recorded between Bet Shammai and Bet Hillel. Bet Shammai contends that the phrase, "Who is a minor?," refers to a child who cannot be carried on his father's shoulders. In contrast, Bet Hillel states that it refers to a child who cannot grasp his father's hand in going up to Jerusalem. A child who cannot walk on his own power is not obligated to be at the Temple Mount on these holidays. As Halevy would have it, the first sentence of the Mishnah is 'the Foundation of the Mishna (*Y'sod Hamishnah*).' The arguments that follow are later additions and are restricted to a definition of what constitutes a 'minor' for purposes of this law (p. 207).

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[24] *Safek d'oraita l'humra* is a principle that asserts that in a case where there is a doubt regarding a commandment that stems from the Torah, one leans toward stringency. *Shevut* is a category that refers to restrictions instituted by the Sages of the Talmud in order to prevent violations of Torah prohibitions on or to enhance the holiness of the Sabbath and festivals. On the Sabbath, Jewish law prohbits carrying from a "private domain" into a "public domain." The rabbis of the Talmud extended this prohibition to carry freom the "private domain" into the "public domain" to include areas that resemble a "public domain" such as field or an alley. They called such an area *Karmalit*

[25] Baruch Bokser, "Y.I. Halevy," in Jacob Neusner, ed., The Modern Study of the Mishnah (Leiden: Brill, 1973), p. 137. Of course, as Jacob Lauterbach, in his Rabbinic Essays (Cincinnati: Hebrew Union College Press, 1951), p. 181, writes, "At the most, his arguments could only prove that there had been many *halakhot* and decisions in the days of the Soferim, and that the earliest Tannaim in our Mishnah in their discussion seek to define and explain these older *halakhot* and decisions. But it does not follow that these *Halakhot* and decisions were already in the days of the Soferim composed in Mishnah-form."

Concluding Considerations and Thoughts

Halevy clearly strained to undermine the notions put forth by Frankel, Graetz, Weiss and their Positive-Historical school. Yet, there is a striking methodological similarity between Halevy and Frankel that easily distinguishes them from a man such as Auerbach. Though Halevy pushed the date of the composition of the Mishnah even further back into the mists of antiquity than did Frankel, Halevy did not abjure history. Indeed, Halevy parallels Frankel in that he too wields "history" as a weapon to posit the antiquity of the law. History becomes a category to grant religion cultural respectability and to instill a sense of self-confidence and self-respect in a contemporary generation of Jews.

However, history is more than a simple warrant to complement religious faith for men such as Halevy and Frankel. Their interpretations of Jewish legal texts are literary-historical, not halakhic. In the case of Halevy, his presentation of the Mishnah permitted him to argue that the rabbis were not complete innovators while simultaneously indicating – as Frankel and others had -- that there were layers or strata in the Mishnah. It would therefore be a mistake not to distinguish Halevy from Auerbach and to dismiss Halevy as an Orthodox apologete who employed history only to defend traditional Jewish piety. His *Dorot Harishonim* no less than *Darkhei Hamishnah* displays a *Weltanschauung* that situates and understands its data within historical context. In so doing, history provides a sense of meaning for a current religious community.

There is therefore an unavoidable historicist mode of thought that brings us back to the position that Kierkegaard enunciated and that was cited at the outset of this presentation. The insistence of the historian that texts be placed in context seemingly dissolves, as David Meyers has phrased it, "the veneer of transcendence in which sacred texts [are] wrapped." [26] Such a methodological approach not only aroused the ire of religious traditionalists such as Auerbach and Hirsch against Frankel. It also led Rav Kook to warn Halevy "that we need to be guarded against new ways." Kook protested the history that Halevy had penned and censured his description of strata in the Mishnah, his refusal to affirm the historicity of Aggadah, and his use of Josephus and other non-Jewish sources in the writing of *Dorot Harishonim*. For a believer such as Rav Kook, this approach that Halevy adopted subverted the belief in Judaism as a timeless and sacred tradition. [27]

However, this lecture has sought to demonstrated that the relationship between historical consciousness and the scholarship such consciousness produces on the one hand and religious faith on the other can be more complex than men such as Kierkegaard and Kook suggest. The tensions between "history and faith" may never be completely resolved. However, the writings of men such as Halevy and Frankel indicate that historians who are religious are not confined to the response of Auerbach. The writings of Frankel and Halevy demonstrate that committed religious Jewish scholars can employ history in the service of religion and that Clio, the muse of history, often directs and informs the religious impulse by displaying the spiritual capacity and abiding inspiration that resides in the religious story. History seeks to serve and persuade the present as it recovers and presents the past. From this perspective, history can deepen faith and construct new modes of religious and communal memory and identity. The uses of history are many.

[26] Meyers, Resisting History: Historicism and Its Discontents in German-Jewish Thought, p. 5.
[27] *Iggerot Rabbi Yitzchak Isaac Halevy*, Letter 80.