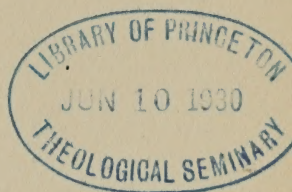


# JUSTICE AND JUDAISM

IN THE LIGHT OF TODAY



BY

✓  
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TO MY PARENTS—  
TO WHOM JUDAISM HAS BEEN  
A JOYOUS WAY OF LIFE

*In awarding the Kaufman Kohler Prize, in 1917, for this essay, which the author has since somewhat revised, the judges awarding the prize (the late Dr. Kaufman Kohler, then President of the Hebrew Union College, Cincinnati, O.; the late Professor David Neumark; and Professor Moses Bittenwieser, also of the Hebrew Union College), made the following comment: "It is an altogether new work and original in character. It contains many points of view that are new and helpful in the elucidation of the principle elaborated by the author. . . . It is the result of painstaking industry and thoroughgoing study of the Jewish and modern sources."*

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*For his valuable assistance in the revision of the proofs of this book, I wish to express my indebtedness and gratitude to my friend—Jacob Kabak.*



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"But let justice flow down as waters and righteousness as a perennial stream". Amos 5: 15.

"We cannot, therefore, say with St. Paul, that the greatest thing in the world is love, but rather, however great and necessary love is, the greatest thing in the world is not love but *justice*, for only justice functioning as the fundamental social principle can establish for humanity what love as the fundamental principle must ever, because of its inherent weaknesses and failings, fail to achieve—the socialized State, Law, Morality, character, aye, even the universal establishment of love itself."

p. 26.

## INTRODUCTION

Christian scholars have always claimed superiority for the ethics of Christianity as compared with the ethics of Judaism. They have always attributed this superiority to the fact that Christianity made love its all-conquering principle, whereas with Judaism, its mother-religion, "mere" justice is fundamental. It was, therefore, quite natural that Jewish scholars, unconversant with the ethical superiority of justice over love as a fundamental social principle, in order to refute this alleged superiority, vigorously exerted themselves to prove—by pointing to the numerous passages in the Jewish Bible and later Jewish literature which speak of God as love and enjoin love of man—that Judaism, too, teaches not only justice but love also, even as much as Christianity.

Now, to the present writer it seems that these Jewish scholars had the wrong cue on this subject and that therefore their line of reasoning, based on that cue, failed them in their sincere efforts successfully to refute their Christian polemicists. A different cue, the one which we have attempted to follow in this discussion, would have in fact enabled them to score heavily in favor of Judaism. To our mind, the Christian scholars

are right in their contention that Judaism did not, as Christianity did, place love above justice as the all-regulating principle of man's social life, that Judaism rather assigned that supreme place to justice. Right, indeed, is Professor Theodor Geral Soares in his emphasis on the fundamentalizing of love by Jesus and Christianity: "Jesus proposed the principle of love as the conquering power in human society. He believed that man would yield to love and that by love alone could society be regenerated. If we really want to understand Jesus, there is nothing gained by attempting to explain away his words. He believed that society could be founded on love. His countrymen wanted the kingdom of God, when freedom, justice, peace should reign. He told them they could have the life of the kingdom if they would make the great adventure. He said that it was better to forego rights than to fight them. He put it very definitely in the prohibition of the resistance of him that is evil (Matt. 5:39). Aggression upon one's rights; tyranny and oppression, are best met by giving to the aggressor more than he demands; imprudence is best met by compliance (vv. 40-42). It is not merely non-resistance, not merely passive acceptance of wrong, it is a positive endeavor to overcome evil with good." "He (Jesus) expected that the Kingdom of God would be economically sound not by an uprising of the poor to confiscate the possessions of the rich, but by the gene-



rous realization of the rich that the responsibility of removing all injustice was in their hands.”<sup>1</sup>

But, here is just where, to our mind, Judaism scores over Christianity and proves itself to be by far the more socially constructive religio-ethical system. Instead of proving itself inferior to Christianity by championing an ethics fundamentally based on the principle of justice instead of love as does Christianity, Judaism proves itself to be the sounder, the more realistic, the more scientific, the more socially constructive, the more modern ethical system. For—and this we will attempt to prove in the first two chapters of this essay—not an ethics that fundamentalizes love, as does Christianity, but rather one that fundamentalizes the principle of justice, as Judaism does, possesses the potency and the equipment to establish in society that social order wherein freedom, justice and peace shall reign. Nay, we further aim to show that the very universalization of love—the supreme passion of Christianity—can only come about through the prior establishment of justice.

This will be our thesis in this essay: Israel by making justice the supreme principle in man's social life, has done so because of its strong this-worldliness and its supreme passion for the rearing of a just and free and peaceful social order on earth, and because of its intel-

<sup>1</sup>*The Social Institutions and Ideals of the Bible*, pp. 351-2; p. 346.

ligent and strong conviction that only through the fundamentalizing of the principle of justice can such a desired social order be effected. On the other hand, Christianity did and could afford to elevate love as the supreme social principle because of its supreme other-worldliness and its consequent little concern for the social achievements and necessities of this world, thus proving itself entirely inadequate, even as Judaism proves itself entirely adequate, as an ethics and social program for a world such as ours is today, very much this-worldly, and therefore very anxiously interested in approximating here in this life, here on this earth of ours, a just and free and peaceful social order and to accomplish this by the only ways and methods which the stern facts of life and human nature will permit. And by its insistence on justice as the guiding principle, Israel has achieved everlasting glory for Judasim, having thereby put upon it the stamp of social soundness and eternal modernity.

Our thesis will divide itself into the following chapters: Chapter One, by psychologically analyzing the two principles, or sentiments, of love and justice, will attempt to show why love cannot, while justice *must*, serve as the fundamental principle in the life of humanity; Chapter Two, by dwelling on the ethical all-inclusiveness of justice, will attempt to show that not only does justice possess those qualities and potencies that make for mankind's

complete spiritual realization, but that it, at the same time, demands and commands nothing less than that; Chapter Three will attempt to establish that it is just on this socially indispensable and socially redeeming principle of justice that Judaism is founded, and will also point to the constructive and ennobling effects that the fundamentalizing of justice by Judaism had upon Israel's character and life. Our last chapter, where we turn our attention again to the fundamental principle of Christianity, will enable us to decide, from the findings made in the discussion of justice and Judaism in our first three chapters, as to the value of the contention of Christian scholars and of the opinion generally held, namely: that Christianity by making love instead of justice its supreme social principle has thereby achieved for itself a higher plane of ethics and has thus transcended and superseded the ethics of Judaism, our final conclusion being that it did not. Instead we find that by its fundamentalizing of love Christianity only sentimentalized and made other-worldly the ethical doctrines and social life of the Western World and thereby did much to retard its social reconstruction by the only efficacious and truly conquering principle of justice as championed by Judaism.

To our first task, therefore, the psychologic analysis of the two principles under discussion—love and justice.





## CHAPTER I

### Love and Justice Analyzed; the Indispensability of Justice as the Fundamental Social Principle.

Both love and justice are known in Social Psychology as Sentiments. In order to understand what this science means by a sentiment, we must first state its definition of instinct. An instinct is an innate psycho-physical tendency or, in other words, an innate emotion and the latter's concomitant impulse or tendency toward action upon its excitation, as, for instance, the instinct of pugnacity, which consists of the emotion of anger and its concomitant impulse toward resistance or fighting. And a sentiment is an "organized system of emotional tendencies (or instincts) centered about some object."<sup>1</sup> Such is the sentiment of love. "What is meant by saying that a man loves another is that he is liable to experience any one of a number of emotions and feelings on contemplating that other, the nature of the emotion depending upon the situation of the other."<sup>2</sup> One will thus experience tender emotion in the presence of the beloved person, fear when the latter is in danger, anger

<sup>1</sup>Wm. McDougall, *An Introduction to Social Psychology*, (4th Ed., revised, 1912), p. 122.

<sup>2</sup>*Ibid.*, p. 123.

when he is threatened, self-abasement when he is humiliated, elation when he is praised, joy when he prospers, sorrow when he meets misfortune, etc. Likewise, the sentiment of justice Social Psychology finds to be constituted principally of the following two complex emotions: of the complex emotion of moral indignation, and the vengeful emotion, or revenge, centred about its peculiar object—the idea of right or justice.

The aim of this chapter is to show that of the two sentiments or principles just defined, justice and not love must form the fundamental social principle.

To begin with, justice is indispensable as a fundamental principle for the successful functioning of love itself—both for already existing love as well as for the democratization or universalization of love. Let us first turn to the former. The emotion of moral indignation (one of the two complex emotions of the sentiment of justice) asserts itself in a person upon his beholding the ill-treatment of one he loves. The psychologist explains the origination of this emotion as follows: “Like all other instinctive impulses this one (the parental instinct, which is the basis and chief constituent of the sentiment of love and which consists of the tender-emotion and its impulse to protect the beloved object) when its operation (to protect the latter) meets with obstruction or opposition (as for instance on the occasion of the maltreatment of one’s child) gives rise to, or is complicated by,

the pugnacious or combative impulse directed against the source of the obstruction (the offender), and the impulse being essentially protective, its obstruction provokes anger perhaps more readily than the obstruction of any other. . . . The intimate alliance of tender emotion and anger is of great importance for the social life of man, for the anger evoked in this way is the germ of all moral indignation, and on moral indignation justice and the greater part of public law are in the main founded."<sup>3</sup> It is thus evident that the sentiment of justice supplies to love the indispensable means which it lacks—assertiveness, pugnacity, or what we shall henceforth call *coercion*—for its successful functioning, for the protection of the object or person to which it responds. Without the coercion of justice, love is absolutely powerless to realize its desire. Thus the truth of our first

<sup>3</sup>*Ibid.*, pp. 72-73. To make our analysis of the sentiment of justice complete, let us add that the other complex emotion—the vengeful emotion or revenge—which is such an integral part of the sentiment of justice, has its origination in the humiliation of the self. This is graphically evident in the blood-feud. When informed of the murder of his tribal brother, the savage instantly experiences the emotion of anger which is caused by the insult thus done to his self (his tribal self). And this emotion with its concomitant pugnacious impulse, which we call revenge or the vengeful emotion, impels him to assert himself, to make his self, as we say, good again, to return an equal or greater insult to the offender, or to the whole tribe of which the offender is a member. How large a part this emotion played in the evolution of Law, see, for instance, Jenks "*Law and Politics in the Middle Ages*," chap. V. and Hobhouse, "*Morals in Evolution*," Vol. I, chap. IV.

statement, the *indispensability of justice as the fundamental principle for the successful functioning of already existing love.*

Now as to the indispensability of justice for the democratization or universalization of love. *Love is naturally clannish.* In its earliest manifestations it extended only to the nearest kin. At a certain time in the history of Rome no patrician loved his plebeian countryman, for his clannish love extended only to the borders of his own caste. But later there were many patricians who did feel a brotherly love for their plebeian countrymen. How was this accomplished? Simply! It was very imperceptibly and gradually *forced* upon the former. The conquest and enjoyment of greater rights by the plebeians gradually tended to merge the social life of the two heretofore socially insulated classes, which merging, slowly, unconsciously, and imperceptibly developed their mutual sympathy, which, in turn, paved the way for the development of a feeling of brotherly love between them. Thus was love democratized in Rome by the prior democratization of justice; so was brotherly love developed between the *Tiers Etat* and the nobility in France, and so it is being democratized now between the Third and our so-called Fourth Estates. It was, then, coercive-justice, the conquest of greater right, that knocked together, so to speak, the mutually unsympathetic heads and hearts of the various classes and actually *compelled*

them to widen the clannishness of their love—to democratize their love. Without justice, love must needs have remained as narrow, as circumscribed and clannish as Nature made it. The democratization or universalization of love is, therefore, seen to be but the achievement of justice. Thus the truth of our second statement—the *indispensability of justice for the democratization or universalization of love*. Those, then, of our idealists who crave the establishment of universal love must therefore bear in mind that if history teaches us anything it is that only by *first making justice the fundamental principle can the greater universalization of love be accomplished*.

To establish love, then, justice must function as the fundamental principle. But there are many other reasons why justice and not love must be society's fundamental principle. And those reasons will be found in the great fact that *society desires a great many more things than the mere establishment of universal love*, things which can only be acquired through justice as its fundamental principle. And why cannot those desired things be gotten through love as the fundamental principle? We shall see this presently by enumerating the many inherent social failings of love which wholly incapacitate it for safely serving as the foundation of social life, and we shall at the same time reveal the many qualities possessed



by justice that make it absolutely indispensable as the fundamental social principle.

Firstly, the *clannishness of love*, which we mentioned above, militates against allowing it to serve as the all-regulating principle of society. The above mentioned Roman patrician would not feel any moral indignation on the occasion of the maltreatment of a plebeian, for he possessed no sentiment of love for him, which we saw above to be a prerequisite for the assertion of the sentiment of justice. If that molested plebeian, then, would have had to depend on love for protection he would never have obtained it, not only because love lacking coercion cannot alone protect him, but also because love *will not even let justice do it*, because the patrician's love is not as yet so democratized as to make room for his sentiment of justice, or his moral indignation, to assert itself for the plebeian and through it to protect him. But justice alone *will* protect that plebeian, we mean, that *other and higher manifestation of justice which develops altogether independently of love* and is known in Social Psychology as the *abstract sentiment for justice*. Abstract justice *does* compel one to defend the rights of every human being as such, no matter whether one possesses love for him or not. Abstract justice strides ahead of love in the protection and advancement of the welfare of the whole of mankind and compels us to defend the rights of men and nations whom we never knew and for

whom we possibly could not have developed a sentiment of love (for the sentiment of love develops only through close relationship as well as through mutual kindness). *Justice, in other words, is universal in its functioning, while love is narrow and clannish. If, therefore, the good of the whole of humanity is our object, justice and not love must function as our fundamental principle.*

The second failing of love which entirely disables it as an all-regulating social principle is its *partiality*. Love must be partial, because it is, as Social Psychology terms it, *concrete*, because unlike justice, which is abstract and thus responds to an idea, the idea of right or justice, it responds to a concrete individual, a person. Love, therefore, does not worry about the defense of right, or justice, or, in other words, of the whole of society, or of the social order, but is concerned only with the defense of the concrete individual whom it insists on defending even when such defense means harm to society. This is evident in the case of a judge being called upon to pronounce judgment on his kin or friend. If his abstract sentiment of justice is not strongly developed he will be compelled by his sentiment of love to pronounce a partial judgment upon the latter, resulting of course in the miscarriage of justice, in the endangering of the stability of the social order, in injury, in brief, to the interests of society. Will, however, justice hold fundamental sway in the judge's character, it will en-

able him to transcend his love for his kin or friend and to decree an impartial judgment in consonance with the demands of public justice, though such judgment will mean the utter ruination of the individual involved. *Do we desire then the thriving of law and justice and the State which rests* (or, speaking for the present, we should rather say should rest) *upon them, with everything that they make possible for society, justice and not love must be the foundation of the latter.*

The third defect of love which wholly discredits it as a fundamental social principle is its blindness or unreflectiveness. Love, in responding to the individual, is unreflective of the ultimate result that its action will have both upon the individual, and, what is even more important, upon society. Thus our love naturally impels us to respond unreflectively to the outstretched hand of the beggar on the street, to alleviate his temporary misery and need. Beautiful as such giving seems at first blush, modern scientific charity properly disparages it, for, firstly, though relieving the temporary need of the beggar it ultimately demoralizes his character, destroys his initiative and industry and dooms him to permanent dependency; and, secondly, it works havoc on society by perpetuating pauperism and social waste. Modern charity operating on the principle of justice, and naturally mindful of the *social* good, of the good of all, therefore, bids us check this

blind and unreflective impulsiveness of our sentiment of love, to do away with this indiscriminate giving. Rather does it demand of us to make our proportionate contribution to the scientifically organized charities of our community which constructively aid the needy individual by compelling his own co-operation and industry and thus help to make of him again a self-supporting member of the community, thereby, of course, helping both the individual and permanently so, and simultaneously advancing the social good.

And it is because unreflective conduct on the whole turns out to be socially detrimental that modern ethical writers insist on calling only reflective conduct moral, for, write Dewey and Tufts: "Only through reflection can habits, however good in their origin and past exercise, be readapted to the needs of the present, only through reflection can impulse not yet having found direction be guided in the haven of reason and happiness."<sup>4</sup> Again: "A truly moral act is one which is intelligent in an emphatic and peculiar sense, it is a reasonable act. It is not merely one which is thought of as good at the moment of action, but one which will continue to be thought as 'good' in the most alert and persistent reflection. For by reasonable action we mean such action as recognizes and observes all the necessary

<sup>4</sup>*Ethics*, p. 418.

conditions, action in which impulse, instinct, inclination, habit, opinion, prejudice (as the case may be), are moderated, guided and determined by considerations which lie outside and beyond them (i.e., by considerations of the social good)."<sup>5</sup> And the more we progress in our moral life, the more do "we find ourselves called to live upon a still deeper and more thoughtful plane."<sup>6</sup> In other words, as to the two sentiments about which we are concerned, *the more we wish to moralize the life of man the more must we substitute the blind unreflective impulsiveness of love with the reflectiveness of justice; in other words, the more are we compelled to make justice instead of love the fundamental social principle.*

The last and perhaps most serious failing of love which incapacitates it wholly as the ruling principle of social life is its lack of *coerciveness, or coercion*, which we saw above to be supplied to society by justice. To answer, then, why coercion is indispensable to society is at the same time, in fact, to explain why justice must be made society's fundamental principle. And to explain this, we ask: Why do law and morality—the two great institutions that are founded on coercion—law on political or state coercion, and morality on the non-political but none the less very powerful coercion of so-called public opinion—find coercion indispensable for the

<sup>5</sup>*Ibid.*, pp. 306-7.

<sup>6</sup>*Ibid.*, p. 421.



enforcement of their mandates in spite of the fact that, generally speaking, these two most important social institutions aim at nothing less than the highest common good, the good of all? The answer in the words of Ihering who asks the same question, is as follows: "For two reasons. The first reason is *deficient knowledge*. Not everyone has the insight to know that the common interest is at the same time his own. Law (and we certainly can say the same thing of morality) may be defined as the union of the intelligent and far-sighted against the near-sighted. The former must force the latter to that which their own interest prompts. Not for their own sake, to make them happy against their will, but in the interest of the whole. Law (and again, the same can certainly be said for morality) is the indispensable weapon of intelligence in its struggle with stupidity. But the imperfect knowledge of the individual is not the only reason that makes law (coercion) necessary; the second reason is the *bad or weak will* which sacrifices the more remote common interest for the sake of his own more proximate interest."<sup>7</sup>

A deeper study of the meaning of this "bad or weak will" will even more strongly convince us of the indispensability of coercion. Social Psychology finds human nature constituted of instincts, some of which, when

<sup>7</sup>*Law as a Means to an End*, tr. by Isaac Husick, pp. 419-20.

looked at from the social point of view, are primarily egoistic, that is, operate primarily for the preservation of the individual, as the instincts of acquisition, pugnacity, self-assertion and flight, which *in toto* may be termed man's self-seeking nature; while the others, as the parental and gregarious instincts, are altruistic, for they primarily function for the preservation of the species, which together may be called man's social-seeking nature.<sup>8</sup> Evolution, again, finds that Nature found it necessary, in the interest of the preservation of the individual, in the early periods of man's evolution, to make man's self-seeking tendencies strongly predominant over his social-seeking nature, and in order later to counteract this strong precedence of man's egoism so as to make room for the greater advancement of the social good, Nature, its *èlan vital*, or whatever we choose to call that force in nature that makes for social progress, was compelled to furnish man with some compelling means to force the altruistic tendencies of his nature to come to the fore of his social life; in other words, to coerce man away from seeking his own good at the expense of the social good, to compel him to live by the higher truth that only through the advancement of the

<sup>8</sup>Compare with this analysis of human nature the psychologically sound Talmudic doctrine of the יצר הטוב ויצר הרע, the good and evil inclinations of man's heart in contradistinction to the Christian unsound dogma of the innate total depravity of man.

social good can the individual further his own highest welfare. Hence, as Ihering comes to the conclusion: "The result with which this discussion (on coercion) closes is the social indispensability of coercion."<sup>9</sup> And social coercion indeed is so universally indispensable for man's moral life that however a person may not need one kind of coercion—the policeman, for instance, to make him obey the law—he nevertheless does always stand in need of the more imperceptible and often to him unaware moral coercion of public-opinion to goad him on to live an ever broader moral life, to compel more and more his altruistic tendencies to conquer and transcend his eternally-assertive egoism. For human nature, from this point of view—the continued existence therein of both the altruistic and egoistic tendencies, and consequently the ever-readiness of man's ever stronger egoism to get the best of his altruism—never changes, always remains the same, the great truth that our modern non-resistance theorists fail to keep in mind. Thus our first conclusion on the subject of coercion—the *indispensability of coercion for the socialization of human nature or as we say for the development of character*—which, of course, means at the same time, the *indispensability of justice as the fundamental principle for the development of character*. Which in turn compels the other conclusion that if we permit society to operate

<sup>9</sup>*Ibid.*, p. 423.

fundamentally on the principle of love we must expect as a result thereof the stunting and demoralization of character. For, when you permit love to hold fundamental sway you substitute the coercion of law, morality, the discipline of the pedagogue and the parent—all the creations and expressions of the sentiment of justice, and all indispensable for the discipline of character—with love's inevitable policy (inevitable, firstly, because of its lack of coercion and, secondly, because it blindly operates in the interest of only the temporary good of the individual) of forgiveness, of condonement, of the overlooking of fault and wrong, of the withholding of due punishment and correction, with the resultant, too unnecessary to recount, degenerative reaction upon character. The evil result upon character of allowing love to rule one's conduct is evident daily in the refusal of the sentimental mother to punish and thus to correct her child, thereby making for the stunting of his moral growth. Indeed, the reason why mothers as a rule are more prone than fathers to forgive, to overlook wrong, to refrain from punishing the child, is that, it is a known fact in psychology, the sentiment of justice is weaker in the woman than in the man. *Do we, therefore, wish to build character, coercive justice and not condoning and lenient love must be our fundamental principle.*

But as indispensable as justice is for the development of character, even so is it for the obtainment of rights—

which is our second conclusion on the subject of coercion. Our above statement of the facts of human nature—the strong predominance of man's egoism over his altruism and the consequent indispensability of social coercion to make this predominance recessive—in terms of rights, means, and this history indubitably proves, that man in order to acquire his rights is compelled to struggle for them, to wrest them by force from the greedy grasp of his patrician neighbor whom clannish love or egoism constrains to monopolize them. This is only too evident in the historic struggle of the Athenian commons against their Eupatreds, the Plebeians against the Patricians, the *Tiers Etat* against the *Ancien Regime*, and in our modern fierce war of the Fourth Estate against our present "vested interests."

A sanguine struggle, forsooth, man was compelled to wage before he acquired his liberty of person, his freedom of conscience, his political rights, and is yet waging for his still to be achieved economic rights. Indeed, the life of the ever expanding human rights, the life of law, as Ihering calls it in his famous little essay, *Der Kampf um's Recht* (The Struggle for Law [for Right]), has been in truth *ein Kampf*, a relentless battle, and well characterized, as Ihering remarks, by the emblem of justice—the scales in one hand and in the other the *battling sword*. And that force in human nature and history that fought for and won his rights for man, let us not forget, was



none other than our coercive, combative sentiment of justice. What, then, would have happened if plebeian man at some period in his past had sentimentally chosen to let love hold supreme sway in his life? The blind altruism of love, coupled with its uncoerciveness and perhaps helped along by some other-worldly obsession, would have woven for him, as it did for the Nazarene, a beautifully sounding and highly sentimental policy of non-resistance, which would have persuaded him, as it did the latter, that the best way to obtain his rights, if he was at all interested in such worldly things, was not by fighting for them but rather by submitting to wrong, by giving the oppressor more than he wants, by "turning to him his left cheek." Needless to say that we at the present time (if this policy would have made it at all possible for us still to be on the scene) would have had the opportunity of witnessing the majority of mankind sans rights—wanting even the meager rights we now possess and upon the enjoyment of which depends not only our material welfare but our ethical realization as well.

Sound ethics, therefore, which needs must be argus-eyed and aggressively vigilant for human rights, must be founded on a principle which dare not overlook this hard fact of human nature—its eternal strong disposition to live selfishly and the consequent indispensability of coercion for its social functioning. A truly moral ethics (and by moral we mean as modern ethics has it—

that which makes for the advancement of the social good) must, therefore, be founded on the coercive sentiment or principle of justice, and must establish as its watchwords the latter's motto: "Resist evil: Suffer no Wrong: Battle for Right, for Justice!" Such an ethics must consider man's moral indignation the highest moral manifestation of his character.

We can, therefore, now appreciate the reason that led one like Ihering, who indeed was open-eyed to the real facts of human nature as well as to the transcendental moral importance for man of the possession of rights, to speak with such marked praise and rapture of man's moral indignation: "No other feeling so far as I know," writes Ihering, "is able so suddenly, so radically to make a change in man; for it is a demonstrated fact that it has the power to rouse the gentlest and most conciliating natures to a pitch of passion which is otherwise entirely foreign to them; a fact that proves that they have been wounded in the noblest part of their being and touched in its most sensitive fibres. It is the phenomenon of the storm in the moral world, sublime, majestic in the rapidity, suddenness and power with which it breaks forth in the strength of that moral force which, like a tempest, or the elements in a fury, sweeps everything before it, then grows calm and beneficent and produces a purification of the moral atmosphere enjoyed both by the

individual and by all.”<sup>10</sup> And true to the philosophy of an ethics founded upon justice, Ihering holds the battle for rights, “the struggle for law,” as he terms it, to be nothing less than the moral duty of man, and that such battle for one’s rights is the loftiest and truest idealism of man’s nature, “the poetry of character.”<sup>11</sup> Also, as the very existence of law depends on man’s constant struggle against the ever assertive selfishness and arbitrariness of man’s nature, Ihering rightly holds it a moral wrong for one, on account of an indolent love of peace, or because of the small value of the object of the legal controversy, or for any other reason, to abstain from defending his rights before the law. “I hold this view (that one need not bother about a law-suit if for some reason he finds such action unimportant) to be reprehensible in the highest degree and in conflict with the very essence of law. If it were possible that this view should become general all would be over with the law itself; since whereas the law to exist demands that there should be always a manly resistance made, this view preaches that the law should flee like a coward before wrong. To this view I oppose the principle: Resistance to injustice, the resistance to wrong in the domain of law, is a duty of all who have legal rights to themselves—for it is a commandment of moral self-preserv-

<sup>10</sup>*The Struggle for Law*, (2d [Eng.] ed., tr. by John J. Lalor), pp. 75-76.

<sup>11</sup>*Ibid.*, p. 60.

ation—a duty to the commonwealth; for this resistance must, in order that the law may assert itself, be universal.”<sup>12</sup>

It is, therefore, very evident that such an ethics founded upon justice cannot but assume a disparaging attitude toward the Christian ethics of non-resistance to evil and submission to the aggressor upon one's rights, no matter how lofty the religious sentiment underlying it and however beautiful its dictates of “turning the left cheek” may appeal to our sentimentalism. Such a sound ethics cannot but look askance at such injunctions as that of St. Paul bidding true Christians as a mark of the highest virtue to abstain from defending their rights through the lawsuit (I Cor. 6:7), which defense we saw such an ethics demands as a moral duty. Does not such an ethics of non-resistance—the very logical expression of a mind obsessed by love and unregulated by justice—fly in the very face of our knowledge of the hard facts of human nature? Does it not try to persuade us to take the most hazardous chances with the obtaining of human rights, with the stability of law, of public justice, of the social order, with the disciplining of character, yes, even with the universal establishment of love itself—the most cherished and indispensable human ideals and achievements? But more of this in our last chapter.

<sup>12</sup>*Ibid.*, p. 30.

To sum up then: Because of its many failings—its clannishness, partiality, blindness or unreflectiveness,—above all because of its lack of coercion, love is very dangerous as a fundamental principle for society. In the pregnant words of Dr. Kohler: "Love is almost always partial. It overlooks faults, condones wrong and spoils character. No state, no human commonwealth can be built upon love. Crime must be held at bay, passion restrained, evil resisted, the criminal himself feels the need of offering atonement for guilt."<sup>13</sup> On the other hand, what love lacks, justice possesses—universality, impartiality, reflectiveness and coercion—qualities indispensable for a sound and progressive social life, the possession of which qualities makes it indispensable as a fundamental social principle. Indeed, as we have shown in the beginning of this chapter, justice is so indispensable as a fundamental principle that the very successful functioning of already existing love and the democratization or universalization of love are only made possible through it. Thus *while love is an important social force, justice is the social power par excellence*, and while love is necessary for social progress—in making possible the primitive assertion of the sentiment of justice, as well as in playing a great role in the development of law by softening the harshness of existing *legal* justice—justice, and

<sup>13</sup>"Three Discourses on Jewish Ethics." *Papers of the Fifth Annual Session of the Jewish Chautauqua Society*, 1901, p. 84.



not love, must function as society's *fundamental principle*.

We cannot, therefore, say with St. Paul that the greatest thing in the world is love, but rather, however great and necessary love is, *the greatest thing in the world is not love but justice, for only justice functioning as the fundamental social principle can establish for humanity what love as the fundamental principle must ever, because of its inherent weaknesses and failings, fail to achieve—the socialized State, Law, Morality, character, aye, even the universal establishment of love itself.*

Psychology, then, commands justice as the fundamental social principle. Does ethics dictate likewise? In other words, granted that justice is psychologically indispensable as the all-regulating social principle, is this principle ethically complete enough to satisfy the fullest and highest aspirations of mankind's highest life? Does it demand and command as much as, or perhaps more than, love? That its demands are so broad and all-inclusive as to include the fullest desiderata of love and much precious more that is indispensable for man's ever progressive life, is what we will attempt to show in our next chapter, "Justice According to Ethics: the Ethical All-Inclusiveness of Justice."

## CHAPTER II

### Justice According to Ethics: The Ethical All-Inclusiveness of Justice.

Justice has been generally identified with something unpleasantly "harsh" and "rigid," for which reason the cry has always been to "temper justice with mercy." So has justice also been put in antithesis to charity, which latter was appealed to as a higher virtue than justice. It behooves us, then, who set up justice as the fundamental social principle, to show the historic causes of these identifications and antitheses, as well as to expose their fallacies by pointing to the ethical all-inclusiveness of justice *par excellence*.

Justice abstracted from all particular cases, from all concrete grouping of facts, what we may term "abstract justice," what is its demand according to modern ethics? The latter, basing its principles on the demands of human nature—the natural desire of man for full expression of all of his instincts and sentiments—demands from society the opportunity and means for this very realization of every man's highest ethical personality, which demand is nothing else but the demand of justice.

As concerns the State, therefore, the latter must according to justice offer to every one of its individuals

the opportunity for the fullest realization of his ethical personality. And as concerns the individual himself, it is his duty in his individual life to help the State to further this, its task of justice. As W. W. Willoughby expressed it: "Justice consists in granting so far as possible to each individual the opportunity for a realization of his highest ethical self and . . . this involves, or rather is founded upon, the general duty of all in the pursuit of their ends to recognize others as individuals who are striving for and have a right to strive for the realization of their own ends. In other words there is the general ethical mandate to be a person and respect others as persons, to treat others as ends, never as mere means to one's own end."<sup>1</sup> Thus the state which allows by its unjust laws the exploitation of one class by another is not operating on the principle of justice, for it fails to treat all of its individuals as ends, but treats some as means to others' ends. Likewise, the individual who, for instance, employs his workmen on starvation wages which prevent them from realizing themselves economically, intellectually, etc. (all these phases of development being the *sine qua non* for the individual's *ethical* realization), also fails to treat human beings as ends, as justice requires, but merely treats them as means for his own end, his own aggrandizement. To put the same thing in other words, justice demands the identification of your own

<sup>1</sup>*Social Justice*, p. 24.

ends with those of society at large, and therefore condemns one's advancement of one's own interests to the detriment of those of others. It is the simultaneous furtherance of the social good together with one's own good, that justice demands. Nay, in its fullest expression, justice pleads for *noblesse oblige*, which means that the more rights and liberties and achievements one enjoys, the more is one therefore obligated, because of one's superior abilities and possessions, to advance the good of others.

Evidently, justice includes love and kindness and all of the fine social virtues, nay, these are just what it *demand*s, and through its coerciveness compels the individual to realize and establish them. The precept "Love thy neighbor as thyself" (Lev. 19:34), is nothing else, then, than the demand of justice—the treatment of your neighbor as an end as you do, or should do, your own self. So is the so-called Golden Rule, which Hillel taught in its negative form, "What is hateful to thee, do not unto thy neighbor" (Shab. 31a), and Jesus later in its positive form, "All things therefore whatsoever you would that men should do unto you even so do ye unto them" (Matt. 7:2, Luke 6:31), but the embodiment of justice, viz., What is hateful to thee—to be treated as a mere means to another's ends—do not unto thy neighbor; treat not your neighbor as a means

to your end; as you would like others to treat you, as an end, so treat them as ends.

The demand of justice: "treat everyone as an end and no one as a means to your ends," applies equally to international as well as to individual relationships. To mention one instance: If a nation of a higher culture determines to spread her influence over the domain of another less civilized nation, which may be interpreted as her *noblesse oblige* duty, she must so act toward that nation as to treat her as an end and not as a mere means for her own aggrandizement, ruling her, if ruling is necessary, with the *noblesse oblige* motive of elevating that nation to her own higher civilization—that noble international conception first developed by the Great Prophets of Israel.

Such being the comprehensive demand of justice, it is evident that "charity" is but a mean term in the development of justice, a mere harbinger of a more perfect state, under which it becomes useless. As Willoughby writes: "In imagination at least we can picture to ourselves a time when such perfect justice will be rendered that true charity will find no material upon which to employ itself. When this stage of development is reached the idea of justice will not swallow up the feeling of sympathy for suffering nor lessen the tenderness felt by the strong for the weak, but where help is given it will be given because it is deserved and



not for the sake of satisfying a desire which may or may not be a proper one. Under conditions even where no direct relations have ever existed between the giver and the receiver the extending of aid will be deemed but a matter of simple justice. The individual as a moral being will be recognized to have the rights to demand that so far as it lies within human power, society shall be so organized as to give to all a due opportunity for happiness and growth. And reciprocally each individual will perceive that so far as it lies within his might it is his duty to bring it about that such opportunity is given."<sup>2</sup>

"Mercy," too, is of course included within the larger term and demand of justice. The reason that tradition has looked upon justice as "harsh" and pleaded the tempering of justice with mercy is found in the popular identification of ethical with legal justice, or the existing law, which because of inherent reasons and its inherent slowness to change is generally behind the community's more rapidly developing sentiment of justice. "The slowness and indirectness (of the law)," write Dewey and Tufts, "throw light upon the supposed distinction between justice and mercy. When the practical injustice of regarding accidental homicide or killing in self-defense as murder began to be felt, the theory was

<sup>2</sup>*Ibid.*, pp. 49-51.

still that he was to be recommended to the crown for mercy or pardon."<sup>3</sup> So, too, at present, when sociology has revealed to us the fact that much crime is due to heredity, environment, lack of education, that is, to society itself, mercy is again appealed to for the minimizing of the punishment of the criminal, but what is really demanded is simply justice—that the present law should so become moralized as to take these facts into consideration in meting out its judgments. Mercy, then, is also seen to be, like charity, “a mean term in the evolution of our present notion of justice.”<sup>4</sup>

Keeping in mind, therefore, the moral comprehensiveness of justice, we shall appreciate Aristotle's eulogy on justice: “Justice . . . is complete virtue . . . it is . . . the supreme virtue, ‘more glorious than the star of eve or dawn’; or as the proverb runs: ‘Justice is the summary of all virtue.’”<sup>5</sup>

Evidently justice should be made the fundamental principle of society, not only because it furnishes society with the indispensable means mentioned in Chapter One, for the realization of its highest ethical personality, but also because it is justice alone that aims, demands and works for such a realization. Are we not, then, right in insisting that, unlike St. Paul, we cannot say

<sup>3</sup>*Op. cit.* p. 462.

<sup>4</sup>*Ibid.*, Note.

<sup>5</sup>*Ethics.*

that the greatest thing in the world is love, but rather, justice, for justice not only makes possible the universalization of love but far more than that—all social institutions that make for the complete moral development of mankind.

It will, therefore, be very simple for us to see in Chapter Four, why consciously or unconsciously, modern mankind is very strenuously laboring to reconstruct its entire social life upon this great principle of justice.

Having now seen both the psychologic indispensability of justice as the fundamental social principle and its superiority to love as such, as well as its ethical all-inclusiveness and excellence, it remains now to show that it is upon this very indispensable and ethically all-inclusive principle that Judaism is founded. This will be our task in the following chapter.

### CHAPTER III

#### Justice: Judaism's Fundamental Principle for the Life of Men and Nations.

It was Adolph Schmiedel who, in his excellent little thesis *Die Lehre von Kampf um's Recht in Verhältniss zu dem Judenthum und dem ältesten Christenthum* (1875), inspired by and built upon Ihering's above quoted *Kampf um's Recht*, graphically pointed out for the first time that it was the vigorous, supremely powerful passion for justice, which Ihering finds, as we noted above, to be the highest moral achievement of the individual and the nation, that moulded the spirit of Jewish law; that in Jewish law justice, and only justice, and justice above all, was what mattered, and that therein the struggle for right (the essence of justice, as we saw above, and the highest duty enjoined by a socially sound ethics), was recognized as the grandest moral duty, because in Jewish law justice appeared no less than a thing of God, which, therefore, made the triumph of every just cause no less than the triumph of God. . . . And it was Dr. Kohler who in the present generation took up this lead of Schmiedel and in his many writings on this subject<sup>1</sup>

<sup>1</sup>"Grundriss Einer Systematische Theologie des Judenthums," pp. 87ff.; "Three Discourses on Jewish Ethics," *op. cit.*; *Hebrew Union College and Other Discourses*, pp. 158f., 168, 226f.; *Jewish Encyclopedia*, V, 249; VII, 364; VIII, 189.

continued to emphasize the main argument which this essay further attempts to elaborate and establish,—that Judaism has indeed laid greater emphasis than did Christianity on justice rather than on love, nay actually fundamentalized justice, to its greater credit, to its greater soundness and greater modernity, inasmuch as it is justice and not love upon which society can be securely founded.

Our elaboration of the thesis of this chapter, so ably stressed by these two scholars, showing how fundamental justice is in Judaism, will consist in, firstly, showing how strongly rooted was the sense of justice—the love of justice and the ever accompanying hatred of injustice—in the heart of the Jewish people from the very beginning of and throughout its history; secondly, how naturally and inevitably Israel embodied this deep-rooted love of justice in its religion and ethics; and, finally, how beneficially this religion founded on justice reacted upon Israel's character and life.

Unique and inspiring, indeed, it is to reflect upon, when perusing Israel's history, Israel's passion for justice, its determined and persistent refusal to suffer any injustice, as well as its circumspect scrupulousness in its defense of the idea of justice. Awesome it is, we say, this drama of justice in Israel, no matter how we try to account for it.<sup>2</sup>

<sup>2</sup>One may note here the theory of Israel's desert origin—desert-



Mark the weird tragedy of justice<sup>3</sup> enacted by some of the Israelitish tribes against the tribe of Benjamin on account of the scandalous affair perpetrated by some of its members in Gibeah, which electrified them all to respond "as one man" to the outraging of justice, "for," we are told, "they have committed lewdness and folly in Israel" (vs. 6). Observe also how any injustice committed by any member of Israel is considered as casting shame upon the whole people.<sup>4</sup>

Note Israel's singular protest against King Saul, in spite of his being their King, for his whimsical dooming of his son to death. "Shall Jonathan die," the people vociferated, "who hath wrought this salvation unto Israel? Far from it, as Yahweh liveth, there shall not one hair of his head fall to the ground, for he hath wrought with God this day." And we are assured that the people rescued Jonathan, that "he died not" (I Sam. 14:45).

Recall the famous relentless denunciation of King David by the court-prophet Nathan for trespassing the rights of his mere subject Uriah: "Thou art the man," cried Nathan, "wherefore hast thou despised the word

life being known to make for a strong sense of personal equality and stern, uncompromising justice. See Dr. Julian Morgenstern, *The Foundations of Israel's History*, pp. 54-57.

<sup>3</sup>Related in Judges 20, seemingly an historic fact.

<sup>4</sup>Cf. also Gen. 34: 7 and Josh. 7:15.

of Yahweh to do that which is evil in his sight? Now therefore the sword shall never depart from thy home because thou hast despised me and hast taken the wife of Uriah the Hittite to be thy wife" (II Sam. 12:7,10).

Note the righteous indignation of the people at the unfair murder of Abner by Joab; above all, how their moral excitation was abated only by David's diplomatic disavowal of this deed, which disavowal, by the way, did so much to win over to his rule even his former enemies, the northern tribes (*Ibid.*, 3:28f.).

A somewhat similar winning over of Israel by a king's championing of the cause of justice, is eloquently illustrated in King Solomon's famous Wise Judgment. "For they saw," we are told, "that the wisdom of God was with him to do justice" (I Kings 3:28). And the very reason that the popularity of Solomon waned, the reason that led to the final breaking away of the northern tribes from his dynasty, was none other than his policy of oppression and injustice which the Israelitish strong sense of justice refused to brook.

How the trespassing of individual rights by King Ahab in the famous incident of Naboth's vineyard, which to Jezebel, the Tyrian princess, seemed a mere act of kingship, did set on fire the seething indignation of the prophet Elijah! "Hast thou killed and also taken possession?", cried the prophet. "Thou hast sold thyself to that which is evil in the sight of Yahweh. Be-

hold I will bring evil upon thee. . . . for the provocation wherewith thou hast provoked me to anger and hast made Israel to sin" (I Kings 21:91, 21-22)! Indeed, even as King, Ahab dared not, for fear of the people's resentment, commit this crime openly, but was compelled to perpetrate it astutely behind the simulation of a trial in which case, according to the existing law, Naboth's property (he being accused of treason) automatically became the king's possession. And it was this single crime against an obscure subject, by the way, that ultimately cost Ahab the high price of his dynasty.<sup>5</sup>

Recall also the incidents recorded in Genesis of the righteous vengeance of the sons of Jacob against Shechem, "because a wrong has been done in Israel" (34:7). And mark how Moses, though represented throughout as the meekest and gentlest of men, made his first appearance on the arena of history as a relentless avenger of injustice (Exod. 2:11f.).

How eloquently and trenchantly over the stretch of the ages still ring the stern and scathing denunciations of the Great Prophets against the injustice of their kings and ruling classes: "Thus hath Yahweh said", cries Amos, "because of three wrong deeds of Israel, because of four, I will not turn it away: because they sell the small man for a pair of shoes, who tread to the dust the

<sup>5</sup>See, for instance, Harper's *Commentaries to Amos and Hosea*, Int. Crit. Com., p. 11.

head of the poor; the way of the humble they turn aside to the dishonor of my holy name. They lie down on garments seized as pledges and drink the wine presented by fined persons" (2:7-8). "Woe to Zion's careless ones, to Samaria's confident ones, O you, who would be the big folk of a most refined people and for whom Israel serves as a mere goblet to devour. They are celebrating the Day of the Devil and offering murder and deeds of violence. They lie on ivory couches and lounge clownish in their divans; aye, they devour the lambs from the fold and the calves from the stables. They jingle the harp, they invent song-snatches, they drink wine out of the big bowl, they smear themselves with the finest oils. Therefore are they going into banishment, as the first among banished ones; there the loungers shall unlearn their noisiness. The Lord Yahweh has sworn by his very self, Jacob's vanity disgusts me. I hate his palaces, I will dispose of the city and whatever therein" (6:1-3, 8-10). And Isaiah, too, does not lack vehemence in his denunciation of his people's injustice: "Yahweh will hold reckoning with the elders of his people and its rulers, for ye have eaten up the vineyard: the spoil of the poor ye have accumulated in your houses. What mean ye that ye crush my people and grind the face of the poor, saith the Lord Yahweh of Hosts" (3:14-15)! Thus the justice-intoxicated Micah: "Hear ye, heads of Jacob and rulers of the house of Israel, is it not for

you to know justice? Ye who hate the good and love the evil, who pluck off their skin from off them and their flesh from off their bones, who also eat the flesh of my people and flay their skin from off them and break their bones and chop them to pieces and as flesh within the cauldron. Hear ye, heads of the House of Jacob and rulers of the House of Israel that abhor justice and pervert all equity. They build up Zion with blood and Jerusalem with iniquity. The heads thereof judge for reward and the priests thereof teach for hire and the prophets thereof divine for money; yet they depend upon Yahweh and say, is not Yahweh in the midst of us? No evil shall come upon us" (3:1-3; 9-11).

How heroically the sentiment of justice breaks forth also from the soul of the Psalmist: "Whoso privily slandereth his neighbor, him will I destroy. He that worketh deceit shall not dwell within my house; he that speaketh falsehood shall not be established before mine eyes. Morning by morning will I destroy the wicked of the land so as to cut off all workers of iniquity from the city of Yahweh" (101:5, 7-8). Mark the Psalmist's utter inability to bridle his mouth from crying out against iniquity: "I said I will take heed to my ways that I sin not with my tongue, I will keep my mouth with a bridle while the wicked is before me. But my heart was hot within me; while I was musing the fire burned; then I spoke with my tongue" (39:1, 3). Indeed,



the Jewish seer was too inebriated with justice as well as too practical (his practicalness no doubt due to his powerful sense of justice) to be even able to dissociate love of justice from the simultaneous hatred of injustice. Thus his noble exclamation: "I hate the work of them that turn aside" (101:3), and "ye that love Yahweh (who in turn "loves justice and hates evil") hate evil" (97:10).<sup>6</sup>

<sup>6</sup>Our touching here on Judaism's exhortation to hate evil offers the opportunity to state Judaism's real attitude on man's proper attitude toward his enemy. Even as Judaism's entire ethics is founded on the principle of justice, so is its teaching concerning the enemy a logical corollary of this same principle. Judaism does *not* enjoin hating the enemy. Indeed, it does not, like Christianity teach loving the enemy and submitting to his arbitrariness, for this is both psychologically impossible and ethically unjustified, inasmuch as we thereby endanger our rights as well as the stability of the social order.

*Be just to your enemy*, is exactly Judaism's teaching on man's proper attitude toward his enemy, and from the viewpoint of good sense and constructive thinking, the finest and soundest teaching on this subject. Your enemy has done you wrong, it is true, says Judaism, and it is natural that you should continue for some time to bear hatred against him. But it is not befitting for you, created in the image of your all-forgiving God, to bear that hatred against him forever: "Thou shalt not hate thy brother in thy heart" (Lev. 19:17). This lofty precept, by the way, belies the statement made in Matt. 5:43: "Ye have heard that it was said of old (referring no doubt to the Old Testament), Thou shalt love thy neighbor and hate thine enemy." No, you are neither to hate nor to love your enemy, is what Judaism teaches, but rather that it is your duty to defend yourself and your rights against your enemy, against the perpetrator of evil, but after you have done so, "thou shalt not

Neither could the Israelitish moralist even imagine how the obtainment of justice could be realized without resisting and battling against injustice. Yes, even the Messianic King he soundly pictured as an implacable warrior against the enemies of justice. Indeed, "he shall smite the tyrant with the rod of his mouth and with the breath of his lips shall he slay the wicked" (Isa. 11:4). And Israel, too, the servant of God who

take vengeance, nor bear any grudge against him, but thou shalt love thy neighbor as thyself" (Lev. 19:18).

Nay, we are expressly enjoined that one is even to help one's enemy in distress (Ex. 23: 4-5). And it is important to bear in mind that this last exhortation, which breathes such a lofty moral spirit, is found in the same so-called Primitive Code which contains the "eye for an eye" dictum which has been pointed to by vilifiers of Judaism (Matt. 5:38) as representing the fundamental principle of Jewish ethics. That this spirit of retaliation was not that of even this Primitive Code (to say nothing of the ethically unsurpassed breadth of later Jewish ethical writings, as that of the Great Prophets, for instance), this exhortation to help even one's enemy, let alone the generous spirit of justice pervading this whole Code, is the most irrefutable proof. As we see it, these retaliatory dicta were, even by their primitive codifier, not meant as rules for individual conduct but simply as *legal* principles for the judge (and as such they would not be surprising in the midst of so many ethically superior mandates, as law is very often behind even the *average* moral sense of a people or community), and even as such they were not even then, at the time of their embodiment in this Code, meant to be taken literally but merely as expressing for the judge in their archaic, non-Israelitish, form the principle of all Law—that crime must not go unpunished and that justice must under all conditions be meted out according to customary judicial interpretation of the case—i. e. by money compensation, and the like.

is to establish justice upon earth (Isa. 42:1,4), Isaiah envisages as a militant battler against injustice: "He hath made my mouth," regenerate Israel is made to say, "like a sharp sword, he hath made me a polished shaft" (Isa. 49:2). And how true to Israel's outlook of justice, as Schmiedel remarks, is the Rabbis' visioning of the ushering in of the Messianic Age through *חבלי משיח*, messianic birth-throes (Sanh. 98*b*), as well, we may add, their sound remark that, only to one who is dead do we say, Depart in peace, for so long as we live we must *fight* for justice and truth. (Ber. 64*a*).

How gloriously again the Jewish passion for justice breaks forth in Shemiah's famous denunciation of the Sanhedrin for its hesitancy to convict Herod for unjustly putting to death the leader of the national party,<sup>7</sup> and in the unique sentencing to death by Simeon ben Shetah of his own son whom the legal evidence incriminated, even though he himself was convinced of his innocence.<sup>8</sup>

And how uniquely and dramatically did the Jewish indomitable sentiment of justice wage its glorious and indefatigable struggle for Israel's rights within the yawning and devouring jaws of persecution and bigotry throughout its whole long history of inimitable martyrdom and self-sacrifice in its ages-long, unyielding battle

<sup>7</sup>*Sanh.* 19, and Graetz (Eng. Ed.) II, p. 79.

<sup>8</sup>*Jer. Sanh.* 23*b*.

against the mighty hordes of Assyria, Babylonia, Syria, and Rome, and later against the sanctimonious monkish armies who with mouth preached the religion of love and with hand tortured millions to death for no other crime than that their conscience would not allow them to subscribe to the heathen dogmas of the Religion of Love!

And it is no historical accident that when we reach modern times we find that the founders of Socialism, whose chief cry is, "Suffer no injustice!", were the children of that very justice-intoxicated people—Karl Marx, Lassalle, etc., for who else shall be in the fore of the world's battle for economic justice if not the sons of that people that was born with the genius for justice?

It is, then, very natural that the Jew's elemental passion for justice should embody itself in his God-conception, that Israel's God should be conceived fundamentally as Justice, not only in his later great career as the universal God of all nations and history but even in his very humble beginnings as the Yahweh of one or two tribes.

Israel, to be sure, always conceived of his God as a God of love, of mercy and compassion and, as such, already in the very early so-called Books of the Covenant, the theory of most scholars that Yahweh was first considered as Love by Hosea to the contrary notwithstanding. "Yahweh," we are there told, "is a

God merciful and gracious, slow to anger and abundant in love (חסד) and truth, keeping loving kindness for thousands" (Ex. 34:6-7; 33:19). But already there, is justice his higher and fundamental principle; nay, because of his distinctly moral nature it must needs have been, for only this higher principle could enable him to discipline and correct and elevate his people, to do which love, as we saw, is absolutely powerless. Thus, not at all because He does not love His children but because as the Psalmist beautifully puts it, "God loves justice," and it above all things, that makes Him there declare that "I will not justify the wicked" (33:7), and impels the Covenant writer to say that "He will by no means clear the guilty" (Ex. 34:7). And in Hosea, too, who is erroneously known to be the first to teach that God is Love (though it is right to say that Hosea was first to dwell on the love of God more than any of his predecessors), God is fundamentally the God of justice. Indeed, Hosea graphically shows how really fundamental the principle of justice is in Israel's God, for, in spite of his great love for his people his higher principle of justice compels him to exercise upon it his punitive justice, though to do this hurts him so grievously (Hos. 11:8). Thus in spite of Yahweh's supreme love for Israel, his fundamental principle of justice compels him to punish his people and to punish them severely: "As ye plowed wickedness ye shall reap evil," he calls aloud, "ye shall



eat the fruit of falsehood" (Hos. 10:13). And this is just why, by the way, the God of Amos brings doom upon his people, not as is wrongly held, that the God of Amos knew no love, for, forsooth, the God of Amos loved his people as much as did the God of Hosea in spite of the fact that Amos fails (for temperamental reasons under all probabilities, or for the purpose of emphasizing thereby the stronger, God's punitive-justice so as to induce his people to improve their ways) to use the word חסד or אהבה as Hosea does when characterizing God. How, if the Yahweh of Amos had not loved his people, can we explain the love and kindness that He had shown them in destroying the Amorite before them (Amos 2:9), his love in raising up from them sons for prophets and Nazarites (Amos 2:11) and the mercy He has bestowed upon them so many times in refraining due punishment (7:1f.).<sup>9</sup> But the reason that the Yahweh of Amos sends his people into exile (which kind of punishment, by the way, is in itself a proof of Yahweh's love, for had He not loved them He could have destroyed them utterly on their own land), is in order to punish them, as the Deuteronomist later beautifully expresses it, "as a father punishes his child" (8:15), which punishment shall cause, that "days shall

<sup>9</sup>For other biblical passages emphasizing God's love, see, for instance, Isa. 1:25f.; 5:4; 46:3-4; 49:50; 54:10; Jer. 9:23; 31:2,19; Pss. 36:67; 88:12-13; 89:15; 103:6-8,17; 145:78.

come," as Amos himself has it, "when I send into the land a very hunger, not a hunger for bread nor a thirst for water but to hear Yahweh's word" (Amos 8:11), even as Isaiah later writes, "in order to purify with lye thy (Israel's) dross and purge all its alloy, so that after it (Zion) shall be called the city of righteousness, the faithful city" (Isa. 1:25-27), which is to serve as the righteous exemplar for all the nations (Isa. 2:2-4). The biblical seers, then, conceived God to be both love and justice, but *fundamentally justice*, as the Psalmist graphically expresses it: "Justice and righteousness are the foundations of thy throne, loving kindness and truth go before thee" (Pss. 89:15).

So in the Talmud we find God to be conceived fundamentally as the God of justice, though of course God's love and mercy are so much dwelt upon. When God was about to create the world, so the Rabbis tell us, He said to Himself, *Shall I establish it on the principle of love? But this would cause sin to increase in the world* (exactly what we found to be one of the weaknesses of love—its readiness always to forgive and its inability to punish and thus eradicate sin). Shall I establish it on rigid justice (דִּין), that is, on such artificial justice which fails to take cognizance of human frailty, of man's inevitableness to sin?<sup>10</sup> But, then, how would the world be

<sup>10</sup>Here is another fine talmudic remark illustrating that God's justice according to the Rabbis is comprehensive enough to include

able to exist? Therefore God said, I shall create the world on both rigid justice and mercy **במדת הדין ובמדת הרחמים**, that is, on ethical justice which is broad enough to include mercy.<sup>11</sup>

And in Israel's very God-conception we graphically see how the Israelitish seer, true to his genius for justice and his instinctive perception of the full meaning and implications of justice, could not even conceive how divine justice, let alone social justice, could be established without God's mighty resistance to and ceaseless battle against injustice and evil. Indeed, God Himself is to the Israelitish seer the most militant battler against injustice and evil: "For I am like a lion against Ephraim," speaks the God of Israel through Hosea, "a young lion against the House of Judah, I even I, will tear and then desert, I carry off and no one rescues" (Hos. 5:14). "Therefore saith the Lord of Hosts," says Isaiah, "the

mercy, just as we saw in Chapter Two that justice needs must be, we mean R. Meir's observation that God's justice often intentionally refuses to take account of man's sins:

דרש ר' מאיר, והוא ישקיט מעולמו (איוב ל"ד), יסתיר פנים מעולמו כדיין הוה שהוא מותח

את הוילון מבפנים ואינו רואה מה נעשה בחוץ, Lev. R. 5:1; Gen. R. 36:1

And on this subject the Rabbis were but following the teachings of the biblical seers, who very frequently dwelt upon the fact that God's justice includes and leaves room for the frailty of man. See, for instance, Jer. 16:24; Job. 10; Pss. 6:2; 35:24; 78:38-39; 103:8, 10-12; 14-17; 119:2; 143:2.

<sup>11</sup>Gen. R XII 15. See also Raschi to Gen. 1:1.

כך אמר הקב"ה, אם בורא אני את העולם במדת הרחמים הוי חטייה סגואין, במדת הדין  
הואך העולם יכול לעמוד, אלא הרי אני בורא אותו במדת הדין ובמדת הרחמים.

mighty one of Israel, alas, I shall avenge myself of mine enemies and I shall take vengeance of mine adversaries" (Isa. 1:24). And through Jeremiah He thunders aloud: "Execute ye justice in the morning and deliver him that is robbed out of the hand of the oppressor, lest my wrath go forth like fire, and burn so that no one can quench it because of the evil of your doings" (Jer. 21:12). And certainly in full harmony with this vigorous and inspiring God-conception is the Rabbis' statement, that God reveals his very holiness in his punitive-justice.<sup>12</sup>

And it was because of their indomitable love and passion for justice that, when the faith of the Israelitish sages in divine justice began to waver, owing to the rise of the Problem of the Suffering of the Righteous, with the development of religious individualism with Jeremiah and Ezekiel, that they struggled very hard with themselves and succeeded, at least to satisfy themselves, to reconcile their stout faith in the justice of God with the evident unjust suffering of the righteous, as is evident from Psalms 37, 49, 73 and 94 and above all in the wonderful Book of Job which finds the solution to this eternally vexing problem in man's inability, due to his finiteness, to comprehend the events of life from God's viewpoint (Job 33:24; 37:23; 38:26); for, were man but for a moment able to do so, what to him now seems un-

<sup>12</sup>*Tanh. Kedoshim.* (Ed. Buber), XI.

אימתי נעשה הקב"ה נבואה בעולמו כשיעשה דין ומשפט באומות העולם.

just would in that eventuality be perceived by him to operate indeed on a higher principle of justice, but on justice, forsooth, after all. Indeed the very hope in the blessed other world largely owes its appearance in Israel to this very craving of Israel to establish the idea of the justice of God.

Forsooth, justice, to the Israelitish mind, was such an indispensable thing in the universe that it sometimes seems to stand out as some irresistible power independent even of God, a something which God Himself must needs obey. And the priestly writer's daring query indeed mirrors the Jewish justice-burning soul: "Will the Ruler of the whole earth fail to do justice" (Gen. 18:25)?

And it was because Israel conceived his God as supremely the God of justice that social justice became such an integral, inseparable part of his religion, and justice the foundation of his ethics. In their famous utterance against the social evils of their State, the great Prophets for the first time propounded the eternal truth (though not in terms of operation of social processes, as we do today, but in terms of direct divine punishment for evil and reward for good) that a State founded on injustice must needs perish, for the moral order of the world, so they contended, is founded on justice, for "justice is the measuring line and righteousness the standard" (Isa. 28:17), which truth makes it inevitable that the nation that fails to live in conformity with this universal law



must perish, and without exception, even Israel, the Chosen People of God. A State, therefore, to become great and impregnable must as a *sine qua non* establish justice in its midst, "for Zion (or the State)," they declared, "shall be redeemed only through justice" (Isa. 1:20). The duty, then, of the true and far-sighted patriots is to "let justice flow down as waters and righteousness as an ever flowing stream" (Amos 5:24), to work, in other words, for the reconstruction of their State, its laws and institutions, on the principle of true social justice.

The same truth is eloquently voiced in the Ideal State of the Prophets, which "shall be eternally established in justice" (Isa. 9:7), the Ruler of which shall "judge the poor in justice and deal with equity for the needy of the land" (Isa. 14), which state of justice will make Israel the envied morally great and exemplar nation (Isa. 2:2-3).<sup>13</sup>

But justice must not only be the fundamental principle of the State but simultaneously, also, the fundamental principle regulating the conduct of men, of the individuals of the State. The so-called Great Requirement of Micah is the motto of all the prophets for all men: "O man, what doth thy God require of thee but to do justice, love kindness and walk humbly with thy God"

<sup>13</sup>Cf. also Hos. 2:21; Isa. 1:26-27; 23:5; 32:16f.; 33:15; 54:14; Jer. 22:15, *et passim*.

(Mic. 6:8). So Isaiah enjoins: "Seek justice, relieve the oppressed, judge the fatherless, plead for the widow" (Isa. 1:17, Jer. 7:5f. *et passim*). The justice that the prophets demand is evidently not mere legal justice but the ethical justice *par excellence*, which does not exclude but rather includes, yea, demands love, kindness and mercy. Indeed does the famous precept of the Holiness Code, "Love thy neighbor as thyself" (Lev. 19:18) exactly embody the prophets' and lawgivers' demand of justice. Judaism, forsooth, evidently *considers it as a demand of simple justice, and not at all as a condescending, meritorious act of mere charity, for the rich and privileged to look out for and advance the full welfare of the poor and needy.*

Moreover, justice is not only to function as the fundamental principle for the State and its individuals but also as the fundamental international principle, and this as the *sine qua non* for universal peace and mutual progress. It was because Damascus with iron drags threshed Gilead (Amos 1:3), because Ammon ripped open Gilead's pregnant women to make his own land greater (v. 13), because Moab burnt in lime the bones of Edom's king (Amos 2:1), because Assyria whom God had appointed as a reformatory organ in His universal scheme of salvation (Isa. 10:5-6) had taken an entirely different attitude in the performance of her duty but "on destruction only was she bent" (v. 7), because in

brief, all these nations failed to treat other nations as ends, as justice requires, but treated them merely as means for their own aggrandizement, that they must needs be doomed to destruction by the universal God of Justice.

And in the Messianic visions of the Prophets we are expressly told, in the attitude which Israel is to take toward the Gentiles, just what the true international relation governed by the principle of justice should be. Israel is to live an exemplar life of justice and righteousness (9:56; 11:1-5) not only for her own good but that this may ultimately redound to the good of the nations, that they may be induced by beholding the great material and spiritual effects of such a life (22:7) to imitate this righteous life in their own midst and in their relations with each other, which will in turn lead to the glorious result of the establishment of universal peace and the spiritual regeneration of mankind (Isa. 2:4; 11:6-8; Mic. 4:2-4), "for the work of justice is peace and the effects of righteousness quietness and confidence forever" (32:17).

Nay, more than that, the really great nation which desires to live a life of the very fullness of justice, so teaches the Great Unknown of the exile, is even to lead a life of self-sacrifice and martyrdom for the spiritual elevation of all the nations even as Israel the Servant of God, (50:4; 53) whom God had enjoined: "It is too light a thing to me that thou shouldst be my servant,

inasmuch as I raised up the tribes of Jacob and restored the preserved of Israel, rather will I give thee for a light to the Gentiles that my salvation may extend to the ends of the earth" (49:6).

So the Rabbis, true to their great prophetic predecessors, find that justice must be the fundamental principle of society, for, "the world rests," we are told by R. Simeon ben Gamliel, "on three things, justice, truth and peace."<sup>14</sup> Indeed, the execution of justice is considered by them as one of the Noachian laws of humanity."<sup>15</sup> "Let justice pierce the mountains," was the characteristic maxim attributed by the Rabbis to Moses.<sup>16</sup> The first question, we are told, that man is asked at the Last Judgment is whether he has dealt justly with his neighbor.<sup>17</sup> And what is meant by dealing justly with one's neighbor according to the Rabbis is classically stated in Hillel's famous reply to the gentile who insisted on being taught the whole Law while standing on one foot: "What is hateful to thee do not do unto thy neighbor, this is the whole Law, the rest is merely commentary."<sup>18</sup>

<sup>14</sup> רשב"ג אומר על שלושה דברים העולם קים, על האמת ועל הדין ועל השלום, שנאמר

אמת ומשפט שפטו בשעריכם, *Ab. I, 18.*

<sup>15</sup> שבע מצות נצטוו בני נח, דינין וג'... כשם שנצטוו ישראל להושיב בתי דינין בכל פלך ופלך ובכל עיר ועיר כך נצטוו בני נח להשיב בתי דינין בכל פלך ופלך ובכל עיר ועיר.

<sup>16</sup> *Sanh. 56 and 5b.*

<sup>17</sup> וכך משה היה אומר יקוב הדין את ההר. *Ibid., 6a.*

<sup>18</sup> אמר רבא בשעה שמכניסין אדם לדין אומרים לו נשאת ונתת באמונה. *Shab. 31a.*

<sup>18</sup> דעלך סני לחברך לא תעביר, זה החורה כולה ואידך פירושה, *Ibid., and Ab. R. N. (Ed. Schechter), p. 53.*

R. Akiba is even more explicit: "Whatever thou hatest to have done unto thee do not unto thy neighbor: wherefore, do not hurt him, do not speak ill of him; do not reveal his secret to others; let his honor, his property be as dear to thee as thine own."<sup>19</sup>

This germane passion for justice in the soul of Israel we have thus seen embodying itself in Israel's God-conception of fundamental Justice and in his ethics which established justice as the fundamental principle for men and nations. Thus far we already had occasion to observe in Israel's history the salutary character-building effect that this religion of justice had upon Israel, but we must now also inquire into one more important source—the Jewish law—to make this fact more pronounced.

Let us recall the unique anxiety that the Jewish law always entertained for the poor and the many means which the several biblical codes devised actually to coerce the Israelitish State as well as the well-to-do individual to improve the conditions of the poor. The Rabbis looked upon charity even as did their biblical predecessors, as a demand of simple justice, which is evident in the very term they used for charity—righteousness—in full harmony with which attitude they even regulated by Law the proportion of one's income that

<sup>19</sup>*Ab. R. N. text B, XXVI, et passim.*



one must contribute for charity.<sup>20</sup> Recall also the establishment of the Prosbol by Hillel in order to facilitate the lending to the poor before the Sabbatical year, as well as the law to facilitate the collection of debts so as to put a check to the discouraging of the loaning of money to the poor.<sup>21</sup> Note also the prohibition by the Rabbis of putting articles of food by dealers into storage—the modern “Corner”—for the purpose of raising the price,<sup>22</sup> as well as the anxiety for the welfare of the laborer in the ruling of the Halakah to free the hired laborer from paying the damages for articles spoiled by him accidentally in the process of handling.<sup>23</sup> Indeed, is not the Jew's interracial charity largely accounted for by the powerful humanizing effect that his religion of justice, which enjoined charity as a simple demand of justice, wrought vigorously upon his character and life?

Note also the unique ethical attitude which Israel's law took toward the slave whom the Roman law as well as all ancient law considered as mere chattel. In truth the Jew always felt an aversion to the whole institution of slavery, a fact which is undoubtedly seen in the many attempts of the Jewish law, viz., the Sabbatical Year and the Jubilee, to mitigate its harshness as well as to

<sup>20</sup>*Mishna and Tosefta Peah*; also *Maim. Yad, Mattenat Aniyyim* and *Shulhan Aruk, Yore Deah*, pp. 245-259.

<sup>21</sup>*Sanh. 2b.-3a.* כְּדִי שֶׁלֹא תִנְעוּל דָּלָה בְּפִנֵּי לוֹוִין. and *Ket. 88a*

<sup>22</sup>*B. Batra 89b.*

<sup>23</sup>*B. Mez. 83a,*

hasten its abolition. We may recall here the law recorded in M. Eduyot (I,13) which decrees that a slave who has acquired a title to half his freedom must be granted a bill of freedom and the master receive from the slave a note for the amount which is still due him.<sup>24</sup> The Talmud insists that a slave possesses inalienable rights because he is a human being,<sup>25</sup> which noble attitude accounts for the many exhortations of the Rabbis to respect the dignity of the slave, to refrain from insulting him,<sup>26</sup> yes, not even a Canaanite slave, for, we are told, that God has given the latter to his master only for employment but not for humiliation.<sup>27</sup> We even find an injunction that the servant must be given the same kind of food which his master partakes.<sup>28</sup> And of R. Johanan we are told that he shared his meat and wine with his slave, declaring that the slave was human like himself, applying to him the words of Job 31:5: "Did not he that made me in the womb make him?"<sup>29</sup>

Finally, let us bear in mind the broad attitude that Israel's law takes to the alien. The Bible demands love to the alien (Lev. 19:34). The Talmud insists that a

24 אלא מפני חיקון של עולם כופין את רבו ועושה אותו בן חורין וכותב שטר על חצי

דמיו.

<sup>24</sup> *Sifra Kedoshin*, IV. (ed Weis).

<sup>25</sup> *Mekilta Mishpatim*.

<sup>27</sup> *Nidah* 47a. לעבודה נתתם ולא לבושה.

<sup>28</sup> *Kid.* 20a.

<sup>29</sup> *Jer.* B.K. VIIIc.

true Jew must act as justly to the gentiles as to the member of his own people, and that he must not take usury even from a gentile;<sup>30</sup> that charity must be done also to the poor of the gentiles, their dead be buried, their funerals attended, that he must deliver for them even funeral sermons as well as to condole with their mourners.<sup>31</sup>

The wonderful effect which Israel's religion of justice had upon the Jew is strongly evident in the latter's scrupulous defense of what Ihering calls the "idea of Law," which fact Schmiedel brought out so graphically in his above quoted essay. Schmiedel calls attention to the fact that for our modern slogans, which attempt to express the invaluable greatness of, and the consequent necessity to defend, the Law under all cost, such as the Majesty of the Law, the Idealism of the Struggle for Law, the Idea of Right,—Judaism, true to its apotheosis of justice, has created a more trenchant expression, viz. "כי המשפט לאלהים הוא", "the Law is God's" (Deut. 1:17), which necessarily makes our struggle for the defense of the law a religious duty, as every victory of the law is God's victory.

Mark the Chronicler's words put into the mouth of Jehoshaphat: "Consider (ye Judges) what ye do, for ye judge not for man but for God, and He is with you in

<sup>30</sup>*Mak.* 24a; B. K. 113a. כספו לא נתן בנשך אפילו בריבית עבדים

<sup>31</sup>*M. Gittin* V, 8 and *Tosefta* V, 4-5.

the judgment" (II Chron. 19:6). And it is because the defense of the Law is so holy that alongside of the proverbial mildness of Jewish law, as Schmiedel correctly remarks, we find constantly reiterated the relentless admonition of justice: "Thy eye shall not pity him!" (Deut. 13:9; 19:13; 21, etc.) And why? "So that thou shalt put away the evil from the midst of thee and those that remain shall hear and fear, and shall henceforth commit no more any such evil in the midst of thee" (19:19-20). For the same reason, too, we find alongside of the admonition, "Thou shalt not pervert the justice due to the poor in his cause" (Exod. 23:6) the remarkable exhortation, "And the poor man thou shalt not favor in his cause" (v. 3). Thus the Jewish law makes it a religious duty for one who has witnessed a wrong done, to come even uncalled for and inform the Court of it (Lev. 5:1), for it holds that it is the duty of every righteous person to see that justice is defended. Compare with this biblical law, Nachmani's remark on Deut. 16:20<sup>32</sup> that the reason "justice" is here repeated twice ("Justice, justice shalt thou pursue"), is that not only the judge but every individual is called upon to defend justice. It is for this reason, also, Schmiedel observes, that Maimonides, basing his authority on the biblical statement, "By His name thou shalt swear" and true to the spirit of the Jewish law, makes it one

<sup>32</sup>Com. to Pent.

of the Mosaic mandatory religious duties מצות עשה, for one to take an oath in order to testify as witness in a suit at law, for by withholding one's evidence one might help to defeat justice, which is God's.<sup>33</sup> Moreover, the Rabbis expressly tell us that justice (דין) being God's, it must be vindicated at all cost, whether the object of legal controversy be worth a hundred dollars or even a penny; indeed, both must be considered of equal importance in one's eyes,<sup>34</sup> which is strikingly identical with Ihering's similar contention, quoted in Chapter One. Yes, is not the Rabbis' singular passion for the defense of the idea of law eloquently illustrated in their loving to think that King David himself paid the fine which he as judge imposed for those poor people who were unable to pay the fines themselves?<sup>35</sup>

The Rabbis' strong insistence on the defense of the idea of the law is beautifully seen, as Schmiedel remarks, in the many interesting stories related of their singular scrupulousness against judicial bribery. This scrupulousness is the more remarkable when we bear in mind that they were not paid for their judicial functions—they merely received the שכר בטלה remuneration for the time they spent at the trials, in other words, for the

<sup>33</sup> *Mishna Torah, Hil. Sheb. II:1.*

<sup>34</sup> כקטון כגדול חשמעון, אמר ר' לקיש שיהא חביב עליך דין של פרוטה כדין של מאה מנה. *Sanh. 8a.*

<sup>35</sup> *Ibid.*, 4b. וראה שנהחייב עני ממון ושלם לו מחוך ביתו.



time that they thereby lost from their daily occupation.

One of these stories is told of Samuel.<sup>36</sup> Samuel, who was just preparing to cross a small bridge, was met by some one who offered to help him across. After the latter had done so he remarked to Samuel that he just met him very opportunely as he had a case for him to try, to which Samuel replied that because of the kindness which he had just shown him he dare no longer act as his judge. This action of Samuel's, by the way, was in accordance with the talmudic principle that one is likely to be bribed by a kind word even as by means of money.<sup>37</sup> Another story is told of Rab. Some one came to him to ask him to try a case. In their salutatory remarks the former reminded Rab that he was once his host, whereupon Rab declined to try his case, saying, "I am unfit to be your judge because you just reminded me that you once obliged me with a favor."<sup>38</sup> May we recall here again Simeon ben Shetah's most singular defense of the idea of law in convicting his own son to death in spite of the fact that he himself was convinced of his son's innocence, just because the strict interpretation of the law demanded it.<sup>38</sup>

Indeed it was for no less a reason than that society

<sup>36</sup>*Ket.* 105b.

<sup>37</sup> ת"ד ושוחד לא תקח (שמות כ"ג) אינו צריך לומר שוחד מסון אלא אפילו שוחד דברים נמי אסור כי הא דשמואל. *Sanh.*, 7b. 8a.

<sup>38</sup>For similar stories related of other Rabbis, see *Ket.*, *Ibid.*

may be securely established (מפני חיקון של עולם) that these Rabbis were so passionately and scrupulously interested in the defense of justice. Says R. Simeon ben Gamliel: "Do not deal lightly with justice, for it is one of the three foundations of the world. Our Judges taught that on three things the world stands, on justice, on truth and on peace. You are therefore to bear in mind that *when you pervert justice you make the world totter*, for justice is one of its foundations." "Indeed is the strength of justice supremely great," the Rabbis continue here, "for it is one of the foundations of God's throne, as it is written in Scripture 'Justice and righteousness are the foundation of thy throne, love and truth go before thee.'"<sup>39</sup>

Thus did the Religion of Justice mould Israel's character and life! Thus did it create for him his ever-youthful and this-worldly passion for social reconstruction, for the establishment of the Kingdom of God on earth through the unflinching defense of the law and the establishment of social justice. Thus did it create his idealism-fraught, indomitable pertinacity in the defense of his own rights in the face of the persecution of a whole world, as well as his simultaneous unique concern for the establishment of the rights of all nations, for which task—to bring forth to the Gentiles "justice in truth" and to make the "isles wait for his Law" of Ethical

<sup>39</sup>Deut. R. 51.

Monotheism—he consecrated his life as God's Servant People for mankind. Thus did his Religion of Justice toughen his moral fibre to successfully battle for his own rights and at the same time chiseled his soul so supremely tender and sensitive to the needs and cries of all human beings in distress and oppression, having made of his children the proverbial רחמים בני רחמים—merciful people, children of the people of mercy.

## CHAPTER IV

### Christianity in the Light of the Foregoing; Modern Society Reconstructing its Life upon Judaism's Fundamental Principle of Justice.

It can, therefore, be easily seen why Israel, having become so disciplined by its scrupulous devotion to justice and to that this-worldly world that justice commands, could not consciously or unconsciously permit itself to be taken in by that other-worldly movement of the early Christian centuries, nor look upon Jesus' new departure from Judaism,—for a new departure it indeed was, with its apotheosizing and fundamentalizing of love, with its psychologically impossible and ethically unjustified doctrine of loving the enemy, with its nominating of its principle of non-resistance-to-evil, instead of justice, as the highest ethical principle—Israel could not look upon this departure as a step forward in ethical doctrine and as superseding the fundamental ethical doctrine of its own Judaism.

To return to the above quoted Professor Soares' excellent brief of Jesus' new philosophy of social regeneration, Judaism's emphatic attitude on the ethical theories and pronouncements therein made has always been as

follows: To Jesus' proposal of "the principle of love as the conquering power in human society" and to his belief that "man would yield to love and that by love alone could society be regenerated," Judaism's answer is that such a proposal, beautiful as it is in theory, is not based on well-established facts of human nature and history, and that these facts rather incontrovertibly witness to the truth that mankind does *not* naturally yield to love, that love is not the conquering power in human society, and that by love alone society *cannot* be regenerated. A much tougher, much less sentimental, much more worldly, much more combative, much more open-eyed and complex principle—the principle of justice—proposed and sponsored by Judaism—can alone accomplish this regeneration. Nay, concerning even the very passion of Jesus, that of universal love, insists Judaism, it fails to see, psychologically and historically considered, how even that could be brought about without the prior universalization of justice.

He believed that society could be founded on love. How? Answers Christianity: "Aggression upon one's rights, tyranny and oppression, are best met by giving to the aggressor more than he demands, importunity is best met by compliance." But, protests Judaism, why forget that justice, not yet functioning as man's fundamental social principle, has not as yet prepared the average man to respond thus beautifully to the non-



resistance and compliance of the few rare individuals who may decide to make the "great adventure." Granted the problematic few, rare, highly developed individuals, or the imaginary Jean val Jean, with whom such a display of nobility may work, how about the millions not so nobly fashioned, who upon encountering such a display of non-resistance and compliance will take merciless advantage over you and trample roughshod over all your rights? And among those not so highly developed or nobly fashioned, may we not include our rapacious, imperialistic Christian nations of Christian Europe? What chance for healthy survival would a problematic non-resisting and complying community have among these intensely aggressive and unscrupulous states!

It is not "merely passive acceptance of wrong, it is a positive endeavor to overcome evil with good." The only positive endeavor to overcome evil with good in this world, retorts Judaism, that mankind's long experience, that a sound knowledge of human nature dictates, is the full, vigorous, courageous functioning of the combative, socially vigilant and ethically comprehensive principle of justice, which dictates all the rational good that love enjoins, nay, transcends it, and what is more, is equipped with the power to achieve it.

"His countrymen wanted the kingdom of God, when freedom, justice, peace should reign. He told them they could have the life of the kingdom if they would

make the great adventure,"—the adventure of "foregoing rights rather than fight them, etc." The only great adventure, insists Judaism, that history and a broad knowledge of human nature dictate as being safe and promising and as justified in making in the interest of furthering the cause of the kingdom of God in society, where freedom, justice, peace should reign, is no less than the great, difficult, slowly but surely efficacious Adventure of Justice—that glorious and never-ending sacrificial battle of the constructive idealists of all the generations of mankind for the increasing achievement of human right.

*Other worldly* is the only answer that Judaism can give, and has forever given, after due and unprejudiced thought, to the time-honored claims of Christianity that the latter has come to supersede its socially sound and constructive and therefore ever-modern ethics. Love, and an ethics founded on love, might suffice for little, other-worldly communistic groups whose chief concern was the preparation of their souls, by an ascetic discipline of self-denial, for an immediate coming of another world upon the conflagration of this wicked world—for whom it seems to us Christian ethics was primarily intended. Indeed only by some "sport" of history did this religion of love and non-resistance become the possession of the Western, intensely worldly and aggressive world, that *did* never and *could* never accept

it seriously, sincerely as an actual, possible and necessary mode of life, and thus of necessity invited within it the inevitable individual and national hypocrisy with which we have become so painfully familiar, and which perforce had to be the sorry resultant of an inevitable lip-service to a superhuman ethics. Love, and an ethics founded on love, says Judaism, may do in a hypothetical Messianic Era, after justice will have already brought about the universalization of love and the full moral regeneration of mankind. But for this world of ours, which unfortunately has yet a long way to travel to the problematic Messianic Era; for this world such as ours, of men and nations, who are untroubled by visions of another world; for our world of raw human nature, where of necessity we must forever struggle and battle for our precious rights and liberties and the furtherance of greater righteousness—for such a world nothing less than the vigorous and uncompromising and combative principle of justice will suffice. And can we forget that Jesus himself on that famous occasion, when he dramatically drove out money changers from the Temple, unconsciously disproved the universal practicability of his non-resistance-to-evil doctrine!

And what seems to be unmistakably the conviction of the modern Western World on the choice of justice or love as the all-regulating social principle? On what principle has it been reconstructing its varied life, after

it had begun to emerge from over a thousand years of debilitating Christian other-worldliness and lip-service to an unpracticable ethics? What was the principle that motivated and underlay the political revolutions of the last few hundred years, and at present what is the principle underlying our irresistible struggles for industrial democracy? Does modern Europe or America deem it practical and wise to make the "great adventure" of foregoing its rights and waiting for the eventuation of the era of economic democracy, for the "generous realization of the rich that the responsibility of removing all injustice was in their hands"? Or do we not rather deem it a surer and speedier way of making our privileged classes attain to that delicate realization by the more worldly methods and equipment of that demanding, commanding, combative, conquering principle of justice, so unforgettably sponsored by the prophets of Israel?

And in full harmony with this philosophy of justice, the modern world has ceased to look upon charity as a fine means for the rich to acquire Heaven or glory but, following Judaism, has learned to look upon it as but part and parcel of simple justice, as that which the rich man *owes* to his poor brother. Nay, more than that, what is demanded is, that society shall be so reconstructed on the principle of social justice that huge predatory wealth in the hands of the few, on the one hand, and rampant poverty, necessitating charity for the majority,

on the other, shall be made impossible, and that society shall see to it that every individual possess such equal opportunity for the realization of his highest ethical personality as will make charity superfluous. Recall also what we said in Chapter Two of the change of principle of modern scientific charity from that of love to justice.

Justice, in brief, is now demanded as the foundation of every State, just as the Great Prophets long ago demanded, and this not only for the benefit of the individual, but, again, as the latter taught, for the greater material and spiritual strength of the nation, for it is now seen, as these great social prophets of Israel long ago realized, that by assuring greater justice to the individual, by providing the latter with full opportunity to become intelligent, efficient, self-supporting, and thereby patriotic, the nation as a whole is made more powerful and great.

Equally so in our international relations, justice rather than love is now being demanded as the fundamental principle, as Israel demanded in its hoary past. We care not whether our Great Powers have already developed an affection for the smaller and weaker nations. What we demand of the more powerful nations is that, in the name of simple justice, they cease treating the smaller, weaker and backward nations as mere pawns in their far-flung imperialistic games, as mere exploitable markets



for their enrichment, but as nations indeed, whose national rights are to be scrupulously respected by them, even as they insist on the respecting of their own national rights by the rest of the world. Latterly this imperious demand is slowly but surely taking concrete form in our first glimmering of a world-society organized for world-peace—the League of Nations,—which is also being reared on the principle of justice. Indeed, if our League of Nations will ever come to mean anything in the way of preserving the world's peace, it will be compelled to supply itself with “teeth”—the teeth of aggressive and compelling justice, with sufficient military and economic power to be prepared to answer the aggressor-nations in their own terms, only ten-fold more powerful, so that by its world-power it may awe them into keeping their peace and the peace of the world. The nations of the world have indeed finally realized that international peace can only come about through the functioning of the principle and method of international justice, “for the work of justice is peace, and the effect of righteousness is quietness and confidence forever.”

Thus is modern mankind consciously or unconsciously reconstructing its social and international life upon the principle of justice, this truth having been forced upon it by the stern facts of life, of history, of human nature, these facts having evolved for it the inescapable conviction,—and this notwithstanding the dictates, on this

subject, of the Religion of Love and Non-Resistance to which a majority still pays lip-service,—that justice is the only way to social salvation. Either justice, or failure and annihilation!

No, not an ethics of a beautiful unworkability is Judaism's. It makes no superhuman demand upon human nature. No unattainable ideals has it given to man, yet it has given him a Way of Life that in a natural and inevitable way must needs result in peace, freedom, justice, aye, and brotherly love too.

Says the deuteronomic prophet in summarizing to his people the chief characteristic of their religion: "For this commandment which I command thee this day, it is not too hard for thee, neither is it far off. It is not in heaven, that thou shouldest say: 'Who will go up for us to heaven, and bring it unto us, and make us to hear it, that we may do it?' Neither is it beyond the sea, that thou shouldest say: 'Who shall go over the sea for us, and bring it unto us, and make us to hear it, that we may do it?' But the word is very nigh unto thee, in thy mouth, and in thy heart, that thou mayest do it" (Deut. 30:11-14).





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