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*Halacha Seen Viable Basis for
Israel Despite Some Lacks*

It was gratifying to learn that my recent piece on the importance of studying Jewish law was well received. It will be my privilege next semester to teach a course on Jewish law at the New York Law School and perhaps I ought to explain why - apart from very respectable academic reasons - I am excited about the opportunity.

I love Jewish law and I seek to share that love with as many others as I can. My deepest regret is that the State of Israel, as yet, is slow to respond.

Israel has revived much. The tongue of the Prophets has been resurrected there to become its official language. The study of the Bible was made universal. Even military experts profess their need of the Book of Books. Tourist guides refer to it in almost every comment. National contests involving demonstrations of its mastery attract thousands of spectators as baseball games do in the United States.

Rabbi Kook's prayer that the old shall be renewed is being fulfilled. But what of Jewish law? Will or can historic Jewish jurisprudence become the basis for the legal order of the autonomous Jewish republic of our day?

It may surprise many that this is not now the situation. However, except for family law and such cases as come before the rabbinical courts with the consent of all the parties, the legal system of Israel is a composite of Ottoman, British, and French doctrines and rules. The Israeli parliament, the Knesset, has not radically altered the pattern. Partisans of the Halacha (Jewish Law) have always urged the renaissance of the ancestral legal heritage. They feel that the revival of Jewish law would enhance the national revival even as the revival of Hebrew did. But as yet their success is minimal.

One of Israel's very prominent jurists, Supreme Court Justice Haim H. Cohn, cites at least three reasons why he is pessimistic about the future of Jewish law in the Jewish state.

First, he argues, most Israeli lawyers do not know Jewish law. However, one might hope that even as many of them mastered the tongue of the Prophets, so the education of the growing number of law students in Israel - and now even in the United States - will include what the older lawyers did not see fit to master.

Second, Justice Cohn says that "many of the provisions to be found in the Jewish codes are nowadays anachronistic and obsolete; and it does in no way derogate from the beauty and progressiveness and vision of those laws in the times, places and communities in and for which they were created, that they cannot serve the purposes and requirements of a modern welfare state."

However, all legal systems have provisions in their codes, which are "anachronistic and obsolete". The crucial question is whether the legal system contains within it the potential for growth and change. And it is precisely this that I look forward to demonstrating to my classes. Jewish law has this potential in great measure.

Justice Cohn's strongest argument against the reception of Jewish law by the Jewish state is that "the practical enforcement of the Jewish law of marriage and divorce by rabbinical courts has done very little, if anything, to encourage or justify such a goal."

About this point I could write a volume. It is simply not true that there has been no progress in the development of Jewish family law. The progress may not have been as rapid or as spectacular as Justice Cohn would have wanted it to be. But even in so sensitive an area as marriage and divorce, the Israeli rabbinate demonstrated the potential of Jewish law for growth and change.

What bothers me most, however, is that when people think of Jewish law what comes to mind is principally Jewish family law which is only a small fraction of the total corpus of the law. And because Justice Cohn is unhappy with what the rabbis are doing with Jewish family law, he would relegate to the antiquarian a vast and brilliant literature that can still enrich all mankind, and especially the Jewish people.

Jewish law pertains to every area of human existence. It is more comprehensive than any legal system with which moderns are fa-

miliar - American, British, Continental, Roman, or Russian. It involves private law and public law. It is charged with the ethical and the pragmatic. It can stimulate philosophical analysis and sociological speculation.

Name it and it is to be found in the legal literature of Judaism. Our sages said this many years ago and it is still true. Therefore, failure to make as much progress in one area as Justice Cohn would have wanted hardly justifies discarding the whole.

To students I shall try to communicate the love that obsesses me and perhaps, in due course, the demand for the renaissance of Jewish law will be irresistibly strong.