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# SOME REMARKS ON LOVE AND LAW IN HERMANN COHEN'S ETHICS OF THE NEIGHBOR

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By the time Martin Buber published a selection of Hermann Cohen's writings on "The Neighbor" (*Der Nächste*) in the Bucherei des Schocken Verlags in 1935, during the last years of Jewish publishing in Nazi-controlled Germany,<sup>1</sup> Cohen's reflections on love-of-neighbor had become a canonical reference point for a modern Jewish understanding of the significance of this command to love. But to trace the general direction of Cohen's several discussions of neighbor-love is to discover a powerful rereading of this biblical concept that deemphasizes *love* as the determinant core of its meaning and instead pinpoints *law* as the basis of moral freedom.

The impetus for such a shift is already given by Cohen's philosophical teacher, Kant, who in the *Critique of Practical Reason* narrowly circumscribes the sense in which love can be involved in the morality of

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<sup>1</sup> Hermann Cohen, *Der Nächste. Vier Abhandlungen über das Verhalten von Mensch zu Mensch nach der Lehre des Judentums* (Berlin: Schocken, 1935).

an action. Moral actions imply a relationship between the agent and the principles under which they may be judged moral, but whether that relationship is one of love or inclination (Kant cites “love of man” and “love of order” as examples) is not relevant to whether they are moral. Those who think of themselves as “volunteers” [*Volontare*] in acting morally, rather than as doing their duty, are engaged in the self-flattery of imagining themselves the “sovereign” of the “kingdom of morals,” rather than as its subjects, and this is itself a “defection in spirit” from the “holy law.” The double commandment to “love God above all and your neighbor as yourself” is consistent with this requirement only in the sense that as a commandment it demands “respect for a law.” It is with respect, as the only properly “moral feeling,” that we should aspire to comport ourselves toward the law, and not with love.<sup>2</sup> Neither love of God nor love of the neighbor, in the sense of “pathological love” or “inclination,” can be commanded, since God is not an object of the senses and thus cannot be an object of such love, and we are not capable of loving a human being on command. Thus, the love in question must be a “practical love,” which is to say that love is not a disposition or conviction (*Gesinnung*) one can “have”, namely that of obeying God’s commandments and doing one’s duties toward one’s neighbor “gladly” (*gerne*),<sup>3</sup> —but rather one toward which one must strive. In this sense, the moral precepts of the Gospels are merely a representation of “moral *Gesinnung*” in its perfection, as an ideal of “holiness” that is unattainable by finite creatures.<sup>4</sup>

In a piece he published 100 years ago to commemorate the 100th anniversary of Kant’s death, Cohen underscores the “great difficulty” of Kant’s notion of autonomy, which strikes a delicate balance between

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<sup>2</sup> Immanuel Kant, *Kritik der praktischen Vernunft*, Akademie-Ausgabe, vol. 5: 79. I am indebted to David L. Clark for having laid out some of these issues in Kant in his presentation to the Mellon Sawyer Seminar on “The Ethics of the Neighbor” at UCLA, January 14, 2004.

<sup>3</sup> *Ibid.*, 82.

<sup>4</sup> For a helpful explanation of Kant’s concept of *Gesinnung*, see Henry E. Allison, *Kant’s Theory of Freedom* (Cambridge: Cambridge UP, 1990), 136-145.

freedom and obedience to law indeed, "overcomes" their opposition.<sup>5</sup> Reading the above-cited passage of the Second Critique in his 1910 lecture on "Inner Affinities of Kant's Philosophy with Judaism," Cohen explains that autonomy may mean we are free, but with respect to our will this means only that we may "impose on it a universal law." In saying that we must not be "volunteers of morality," Cohen writes, "it is as if Kant had heard this expression from a Jewish philosopher and in the Talmud itself," which he illustrates with a citation from Tractate Kiddushin 31a: "One who is commanded and fulfils [the command] is greater than one who fulfils it though not commanded" (*gadol metsuve ve-oseh me-mi she-eino metsuve ve-oseh*).<sup>6</sup>

In an earlier reading of this passage, in his study of *Kant's Foundation of Ethics* (1877/1910), Cohen had praised the "sober solidity" (*Gediegenheit*) with which Kant locates morality in the "feeling" of respect, or duty. "At this point," he comments, "rational ethics touches by a hair's breadth" ethics that is *schwarmend* (raving, fanatical<sup>7</sup>), in that it explicitly avoids love as a basis for morality.<sup>8</sup>

Cohen's endorsement of both Kant's deemphasis of love and his use of the concept of law is continued in his own systematic work on ethics, *Ethics of the Pure Will* (1904/1907). At the point in that work at which Cohen introduces one of his core (and best-known) ideas, that ethical action is made possible by a "correlation" between the I and its counterpart, a non-empirical "other", that indeed the I as moral agent itself originates in the

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<sup>5</sup> Hermann Cohen, "Immanuel Kant. Zu seinem hundertjährigen Todestage (12. Februar 1904)" in *Allgemeine Zeitung des Judentums*, February 12, 1904, 76.

<sup>6</sup> Hermann Cohen, "Innere Beziehungen der Kantischen Philosophie zum Judentum" in *Judische Schriften* vol. 1 (Berlin: Schwetschke, 1924), 292.

<sup>7</sup> On the difficulties of translating the Kantian term *Schwarmerei*, apparently also taken over by Cohen, into English, see Peter Fennes, "A Note on the Translation of Kant," *Raising the Tone of Philosophy. Late Essays by Immanuel Kant, Transformative Critique by Jacques Derrida*, ed. Peter Fennes (Baltimore/London: Johns Hopkins University Press, 1993), x-xii.

<sup>8</sup> *Kants Begründung der Ethik*, 3rd ed., *Werke*, vol. 2 (Hildesheim: Olms, 2001): 332-33.

correlation with that other person, or alter ego,<sup>9</sup> Cohen announces: “We are standing at a crossroads of systematic ethics,” namely the very point “at which it diverges from religion.” To be sure, Cohen writes, the one God of monotheism corresponds from the start to a unity of humankind across the multiplicity of individuals and peoples. But this has meant that the problem of the other has been understood in a way that is misleading from the point of view of the ethics that Cohen is seeking to develop. For the other in the religious context is the stranger or foreigner, initially encountered as a challenge to the unity of humanity, in that the stranger “initially appears foreign as such; he appears different from one’s own people and from one’s own faith.” This is why the Bible seeks to dispel this appearance, this prejudice by decreeing that “the stranger shall be to you as the native among you” (Lev. 19:34; cited in ERW 214). Cohen concedes that such pronouncements evoke sympathy—the same sympathy, he adds, that the biblical prophets call for when they evoke, together with the foreigner, the figures of the widow and of the orphan—and, based on such sympathy, they are supposed to engender a hospitality that allows the native to extend the scope of the law to encompass the foreign. These are “sublime ideas,” capable of captivating us and reverberating in our hearts, but, Cohen writes, a sober look at the contemporary political hostility to foreigners makes evident that they have had no impact at all. Similarly, the idea of love that is employed by religion is admirable as far as it goes, but insofar as it is an affect, it cannot serve as the basis for ethics. If the other or the stranger are to be ethically significant, this is because they are concepts of law (or legal science), and thus belong to the political realm from the outset, and not because they are objects of love (ERW 216). The self-other correlation is better viewed along the lines of a legal action (*Rechtshandlung*) than as driven by affect (ERW 213).

Furthermore, Cohen adds that the danger of appealing to love is nowhere as evident as in the command to love thy neighbor—or at least in the discourse surrounding this command, since “neighbor” in German,

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<sup>9</sup> *Ethik des reinen Willens*, 2nd ed. (1907), 210-13. Hereafter “ERW.”

“der Nächste”, has traditionally been misconstrued as the one who is “nearest” to me, that is, in terms of proximity or nearness. But surely, Cohen protests, ethical obligation cannot be a matter of degrees of nearness, or of “more or less.” This, he adds, is evident in the history of mistranslations of the command to “love your neighbor [in Hebrew: your *rea*] as yourself.” While *rea* according to Cohen means simply “other” or “another,” the Septuagint renders it as *plesios* (neighbor), the Latin Vulgate with *amicus* (friend), and Luther’s translation goes so far as to use the superlative *Nächster*, i.e., “the nearest.” In all of these translations, what is suggested is that the other whom I shall love is someone who is close to me, related to me in some way, and for Cohen, this misinterpretation simply mirrors the failure of ethics throughout the history of politics (ERW 218-19). Wherever differences of degree are invoked, wherever nearness is a criterion, ethical rigor is endangered (ERW 217).

The several essays that Cohen devoted to the theme of “neighbor-love,” beginning in 1888, move beyond this objection to neighbor-love as an ethical category based on love, to propose a reinterpretation of the “neighbor” as a juridical category that makes it once again available for an ethics. For while in *Ethics of the Pure Will* Cohen had contented himself with briefly linking Kant’s lack of attention to law as a possible ground of ethics to his prejudice (traceable to a Pauline prejudice) against Judaism as a “statutory,” law-based religion (ERW 267-69), it is in the “neighbor” writings that we can see Cohen cashing out his insights about legal categories yielding ethical principles specifically with respect to Jewish law. Thus, while in the passage I just discussed from *Ethics of the Pure Will* the very fact that the term ‘*rea*’ has been mired in a history of misunderstandings according to which neighbor-love is a matter of degrees of nearness makes the notion in itself corruptible and serves to disqualify it as an ethical category, the texts on neighbor-love provide detailed accounts of why “neighbor” is a mistranslation, and of the negative consequences and implications of that mistranslation. More importantly, in that Cohen in those texts seeks to retrieve an authentic understanding of the neighbor from Jewish sources and against Christian-theological misreadings, he is in effect extending the insights developed

in his ethical theory on how law is to be made productive for ethics, that is, on how law yields the “facts” (*Fakta*) for ethics.

Cohen’s “neighbor” texts, like the relevant passage in *Ethics of the Pure Will*, are oriented around his observation that the historical translation of ‘rea’ as ‘neighbor’ is problematic and has led in particular to a widespread misreading of the command as applying only to the fellow Israelite/Jew, and not to the non-Jew.

In his polemical discussions of neighbor-love, directed against contemporary biblical interpretations according to which this concept was absent from the Talmud and from the Bible, Cohen aims to show that this command is “the fundamental form of monotheistic morality.”<sup>10</sup> He does so by linking the essential equivalence between love-of-neighbor and love-of-the-stranger<sup>11</sup> with two important juridical categories:

The first of these is the biblical term ‘ger’, which is the term usually translated as ‘alien’ or ‘stranger’ in Lev. 19:33-34<sup>12</sup> and which Cohen translates into German as “Beisatz-Fremdling,” meaning “resident-alien.”<sup>13</sup> Menachem Lorberbaum has recently pointed to what he argues is a rabbinic impoverishment or narrowing of the notion of the *ger* to mean ‘convert’. This development was ironically, Lorberbaum suggests, the result of an attempt to make Judaism more hospitable, by specifying the conditions of conversion. Lorberbaum views this narrowing as a dangerous erosion of what might have been, and could yet be, an important Jewish ethical resource for respect of the non-Jewish other.<sup>14</sup> He

<sup>10</sup> “Die Nächstenliebe im Talmud. Ein Gutachten, dem Königlichen Landgerichte zu Marburg erstattet” (Marburg: Elwert, 1888), reprinted in *Jüdische Schriften*, vol. 1: 148.

<sup>11</sup> *Ibid.*, 148-50.

<sup>12</sup> In the Revised JPS translation: 33 When a stranger resides with you in your land, you shall not wrong him. 34 The stranger who resides with you shall be to you as one of your citizens; you shall love him as yourself, for you were strangers in the land of Egypt.

<sup>13</sup> “Die Nächstenliebe im Talmud,” 158. Cf. “Die Entdeckung des Menschen als des Mitmenschen,” chap. 8 of *Religion der Vernunft aus den Quellen des Judentums*, 140. “The Discovery of Man as Fellowman,” chap. 8 of *Religion of Reason Out of the Sources of Judaism*, trans. Simon Kaplan (New York: Ungar, 1972), 121.

<sup>14</sup> Menachem Lorberbaum, “Jewish Collectivity and Gentile Otherness,” presentation at the Limonick Conference on “The Ethics of the Neighbor,” UCLA, May 16, 2004. Cf.

has also called attention to Talmudic passages that express an ongoing ambivalence between recognizing a divine mandate to welcome the *ger* and nevertheless operating with a notion of *ger* as denoting a status apart from that of the native-born Israelite.<sup>15</sup> Cohen, in any case, does not follow the rabbinical usage that Lorberbaum identifies as dominant, but sticks to the usage of *ger* in the sense of *ger toshav*, the “stranger among us” whom we must treat as an equal.

Second, Cohen identifies neighbor- and stranger-love with the Talmudic transformation (Cohen calls it a *Prazisierung*, a specification or more precise formulation) of *ger* into the category of the Noahide, which he calls an “institution of state law” (*staatsrechtliche Institution*). The Noahide, or “son of Noah,” is of course traditionally defined as a non-Jew whose status is equivalent to that of a Jew and who is bound by seven laws, which are regarded as binding on all humankind (and have frequently been equated with the modern-day notion of natural law). Cohen underscores the fact that this is a legal category: the Noahide is defined as a citizen of the state (*Staatsburger*), and thus his status is irrespective of his faith or belief (*Glaube*),<sup>16</sup> and he cites a number of quite diverse legal sources to support this interpretation.<sup>17</sup>

Looking at the development of Cohen's “ethics of the neighbor” from Kantian principles, we can say that the disqualification of love as a possible basis for ethical action is mitigated by a reinterpretation of love—in particular love-of-neighbor—in terms of law. In endorsing Kant's criticism of the “volunteer of morality,” Cohen links it to a Jewish tradition of respect for the law. But he also finds in Kant, who he sees as still informed by a Pauline tradition of opposing law to true religion (religion insofar as it can provide the ground for morality), a failure to recognize

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“Introduction” to chap. 14: “Converts” in *The Jewish Political Tradition*, vol. 2: *Membership*, ed. Walzer/Lorberbaum/Zohar (New Haven/London: Yale UP, 2003), 233-38.

<sup>15</sup> See *ibid.*, pp. 246-47.

<sup>16</sup> “Die Nächstenliebe im Talmud,” 158.

<sup>17</sup> *Ibid.*, 159 ff. Cf. *Religion der Vernunft* 141 ff. *Religion of Reason* 122 ff.

this Jewish resource as a positive one.<sup>18</sup> Cohen was engaged in an ongoing effort to call this opposition into question, and among his procedures for doing so was the effort to show that love, desire, “heart,” and conviction/belief (*Gesinnungen*) are indeed shown in the Jewish sources to be involved in obedience to the law.<sup>19</sup> In Cohen’s discussions of the “neighbor,” we thus see a sustained effort to reinterpret love by way of legality, such that, for example, Cohen proposes a retranslation of *ve-ahavta lo kamokha* as “Liebe ihn, er ist dir gleich”: “Love him, he is like you,” or rather, “equal [*gleich*] to you.” This highlights an equality before the law (by means of “the ancient idea of equality of human beings before God”)<sup>20</sup> and thus accords with the task of philosophy: “to establish criteria for the certainty of human beliefs [*Überzeugungen*] and to defend them against the affects of hatred as of love, as a matter for reason.”<sup>21</sup>

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<sup>18</sup> “Innere Beziehungen,” 284-87.

<sup>19</sup> “Gesinnung” (1910), *Judische Schriften*, vol. 1: 196-210. An excerpted version of this text also was included in the Schocken compilation of Cohen’s writings on “the neighbor,” partly because it had previously been published together with one of the “neighbor” essays, “Der Nächste. Biblexegese und Literaturgeschichte” (1914/1916) (see note 1).

<sup>20</sup> “Innere Beziehungen,” 292.

<sup>21</sup> “Die Nächstenliebe im Talmud,” 146.