Against the Heteronomy of Halakhah: Hermann Cohen's Implicit Rejection of Kant's Critique of Judaism

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> "Moses did not make religion a part of virtue, but he saw and ordained the virtues to be part of religion…"
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> Josephus, *Against Apion* 2.17

Hermann Cohen (1842–1918) was arguably the only Jewish philosopher of modernity whose standing within the general philosophical developments of the West equals his enormous impact on Jewish thought. Cohen founded the influential Marburg school of Neo-Kantianism, the leading trend in German *Kathederphilosophie* in the second half of the nineteenth and the first decade of the twentieth century. Marburg Neo-Kantianism cultivated an overtly ethical, that is, anti-Marxist, and anti-materialist socialism that for Cohen increasingly concurred with his philosophical reading of messianic Judaism. Cohen's Jewish philosophical theology, elaborated during the last decades of his life, culminated in his famous *Religion of Reason out of the Sources of Judaism*, published posthumously in 1919.[1] Here, Cohen translated his neo-Kantian philosophical position back into classical Jewish terms that he had extracted from Judaism with the help of the progressive line of thought running from

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1   Hermann Cohen, *Religion der Vernunft aus den Quellen des Judentums*, first edition, Leipzig: Fock, 1919. I refer to the second edition, Frankfurt: Kaufmann, 1929. English translation by Simon Kaplan, *Religion of Reason out of the Sources of Judaism* (New York: Ungar, 1972). Henceforth this book will be referred to as *RR*, with reference to the English translation by Kaplan given after the German in square brackets. It should be noted that I will not always follow Kaplan's translation word-for-word, see also n. 24 below.

Plato through Maimonides to Kant.[2] In a nutshell, God, for Cohen, is the idea (in a Kantian, regulative sense) of the normative, infinite realization of the good in the world. This realization is known in religion as the establishment by means of "the imitation of God" of the messianic kingdom on earth.[3] It is the intention of the present study to show that therefore *halakhah*, Judaism's religious law, in Cohen's thought, becomes the specific, (positive-historical) "Jewish" instantiation, as it were, of Kant's categorical imperative.[4]

Cohen fundamentally rejected the approach to *halakhah* developed by German-Jewish Reform theology throughout the nineteenth century and returned to an argument of Moses Mendelssohn's for keeping the law, if only in a more sophisticated and philosophically refined form. Mendelssohn had argued in a private letter to Herz Homberg from 1783 that the ritual law of Judaism serves the purpose of closing the ranks of the believing Jews, because mere articles of faith will simply not be enough to unite the true theists against the onslaught of all forms of idolatry.[5] The Reformers, although actually they, too, are in agreement with Mendelssohn's idea that it is the *purpose* of the law that must justify its validity, nevertheless saw this purpose first and foremost in a romantic edification of the observant Jews, that is, in a 'spiritual uplifting' as the definitive yardstick for answering the question which parts of the law should be abandoned in the light of modernity. Abraham Geiger (1810–74), the founder of the Reform Movement, wrote for example "Judaism looks upon religious ceremonies as the means for strengthening our religio-ethical sentiments. These ceremonies serve as reminiscences of past events whereby we think of God's paternal and wise Providence, or are humbled; they serve also to strengthen our good intentions or to preserve or regain our spiritual purity."[6] The establishment

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2   For the Maimonidean connection, see George Y. Kohler, *Reading Maimonides' Philosophy in 19th Century Germany* (Dordrecht: Springer, 2012)*.*

3   I drew for this passage on Steven S. Schwarzschild's entry, "Cohen, Hermann," in *Encyclopedia of Religion*, ed. M. Eliade (New York: Simon & Schuster, 1987), 559–60.

4   I will concentrate, however, on the autonomous nature of *halakhah*, according to Cohen, and not on the resulting responsibility of keeping it – which is a difficult problem of its own.

5   See for this letter: *Moses Mendelssohn: Writings on Judaism, Christianity, and the Bible*, ed. Michah Gottlieb (Waltham, MA: Brandeis University Press, 2011), 124.

6   Abraham Geiger, "Der Formglaube in seinem Unwerthe und in seinen Folgen," Wissenschaftliche Zeitschrift für Jüdische Theologie 1 (1839): 10; translation from

of historiography as an academic discipline of critical scholarship (within the *Wissenschaft des Judentums*) made it impossible for modern historians like Geiger or Heinrich Graetz (1818–91) to uphold the Halevian version of the authorization of Torah through a "real," a witnessed historical act. But then again, the edification-criterion for legal reforms essentially generated a new Spinozian dichotomy of religion and politics.[7]

For Cohen, this spiritual approach led the Reform Movement into the trap of interpreting large parts of traditional law only in terms of the national, political needs of the Jewish people, which are no longer required after emancipation. While for the Reformers, fitting in with the *zeitgeist* was the norm by which traditional Jewish law was to be judged, Cohen suspects this method of eudemonism: the inconvenient cultural isolation of the observant Jews is still necessary for Cohen, as long as no universal religion of reason has emerged. This isolation, however, is not inherent in the Law itself, as Mendelssohn assumed, for the Law's sole purpose is the preservation of the idea of the One God. For Cohen, the distinct nation known as Israel was only necessary as a precondition for the formation of the Jewish religion, and this is the only meaning of the concept of the *chosen people*. Therefore, the Reform Movement was wrong to see the commandments as exclusively motivated on the national level – a perception which led them to their project of "combating the Law as the source of national isolation."[8] In opposition to Reform, especially during the last decades of his life, Cohen was increasingly inclined to appreciate "the importance of the protective screen of fixed ritual" – a shield that was felt by him necessary for the survival of a community.[9] As long as pure Jewish monotheism is not "devaluated, replaced, or replace-

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David Philipson *Abraham Geiger as Reformer* (Charlevoix, MI: Central Conference of American Rabbis, 1910), 31ff.

7   Spinoza throughout the fifth chapter of his *Tractatus theologico-politicus* (1670) claimed that the purpose of Mosaic law was to give the Jewish state in antiquity a positive legislation, which lost its validity with the end of political independence. Moses was a talented lawgiver to Spinoza, but his claim to a divine authorization of the law was merely a tactical move.

8   *RR* 418 [359].

9   Hans Liebeschütz "Hermann Cohen and his Historical Background," *Leo Baeck Institute Year Book* 13 (1968): 3–33 (23). This development might also be a result of Cohen's re-reading of the book of Ezekiel, Liebeschütz continues, for the prophet combines his idea of individual ethical responsibility with "care for the ritual forms of worship and life" (ibid.).

able"[10] by other forms of monotheism, its continuity is necessarily bound to the isolation of the Jews, not as an independent nation, but as a nationality within a nation. The real purpose of the Law for Cohen is to guarantee the continuity of Judaism as the carrier of pure monotheism – and is therefore to be found only on an abstract, philosophical level.

But even if we see the purpose of *halakhah* as generating a sufficient amount of cultural isolation of the Jewish community for the preservation of the strict monotheistic idea until the messianic age – *halakhah as law* must necessarily satisfy also another, probably more difficult criterion for the Kantian philosopher: It must be observed by the free decision of the autonomous human will. It is not enough (for *halakhah* to become ethically grounded) simply to reject supernatural revelation at Mount Sinai. For Kant, and also for Hermann Cohen, only the free autonomous will is the source of truly ethical action, the apriori ethical law arises from the "self-legislation" of human reason (*Selbstgesetzgebung der Vernunft*), not from any source or influence outside it.[11] What makes matters even more complicated here is that Kant excluded Judaism explicitly from his understanding of religion as grounded in ethics, and this on the very accusation of heteronomy. There are three reasons for Kant that Judaism was not a religion in the ethical sense: a) its laws deal only with external action and lay no claim at all on a *moral disposition* [*Gesinnung*] in following them, b) Mosaism has no belief in a life after death, without which no religion can be conceived,[12] and c) as Judaism is not missionary, but rather exclusive, it has no claim to the universal truth of its beliefs.[13] Judaism, for Kant, was thus "a collection of merely statutory

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10   *RR* 422 [363].

11   Immanuel Kant, *Groundwork for the Metaphysics of Morals*, trans. Allen W. Woods (New Haven: Yale University Press, 2002), 58.

12   The same claim was made by Lessing in order to prove the spiritual inferiority of Judaism, compared to Christianity, see his *Education of the Human Race* (1783), § 17. Kant specifically critiqued the notion of the Jewish God's *visiting the iniquities of the fathers on the children* (Exod 34:7), without knowing, apparently, that the immoral aspect of this notion was recognized and abolished by the Prophet Ezekiel (18:19–20), as even the Talmud explicitly noted (*b. Mak.* 24a).

13   Immanuel Kant, *Religion Within the Boundaries of Mere Reason*, trans. Allen W. Woods and George Di Giovanni (Cambridge: Cambridge University Press, 1998), 131. It must be said to Kant's credit, however, that concerning the last point he immediately has second thoughts, because he knows well that Judaism's concept of God – the invisible ruler of the universe – can be seen to contradict his claim.

laws supporting a political state."[14] This often quoted phrase is usually misunderstood, however, to be "a political critique of Judaism focused on its purported legalism."[15] Since for Kant, as this argument has it, enlightened Christianity of his own time was closest to a *religion of reason*, and Christianity generally reads the Apostle Paul as criticizing the central Jewish belief in a correlational, legal covenant with God and instead favors allowing only for divine grace – Kant necessarily rejects Judaism as an expression of an immoral and obsolete antique system of dry legislation. Frequently, Kant's rejection is even interpreted as open anti-Semitism, or at least as self-serving – since Kant himself was not at all neutral in his argument against Judaism: He wanted to convert German Christians to his own religious philosophy, with an idealized Christianity at the focus – therefore he preferred a derogatory view of Judaism, fitting his goals.[16]

In truth, however, Kant is far from supporting classical Christian supersessionism. For Kant, Christianity "arose suddenly, but not unprepared" from Judaism, and while Christianity's Jewish founder indeed tried to replace the "servile faith" of the Jews of his time with moral faith, his efforts ended with his undeserved death.[17] After this historical event thus also all actual reason to imitate Christ was obsolete for Kant. In his influential book on the philosophy of religion we rather find several long passages of scolding the 1700 years of church history ever since, a history which "weighed down the people with the heavy chain of blind superstition."[18] The real problem with Kant's view of Judaism for the believing Jewish Kantian is therefore not accusations b) or c), but first and foremost a). That is, the very contradiction

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14   Kant, *Religion Within the Boundaries of Mere Reason*, 130.

15   Yonatan Y. Brafman, "New Developments in Modern Jewish Thought: From Theology to Law and Back Again," in *The Cambridge Companion to Judaism and Law*, ed. Christine Hayes (Cambridge: Cambridge University Press 2017), 289.

16   For the alleged antisemitism in Kant, see Jacob Katz, "Kant and Judaism," *Tarbiz* 41 (1971): 219–37 (Hebrew); Nathan Rotenstreich, *The Recurring Patterns* (New York: Horizon Press, 1964), 23–47; Paul Lawrence Rose, *Revolutionary Antisemitism in Germany from Kant to Wagner* (Princeton: Princeton University Press, 1990); Micha Brumlik, "Kants Theorie des Judentums," in *Deutscher Geist und Judenhass* (München: Luchterhand, 2000), 22–74; Michael Mack, *German Idealism and the Jew: The Inner Anti-Semitism of Philosophy and German Jewish Responses* (Chicago: University of Chicago Press, 2003) and many more.

17   Kant, *Religion Within the Boundaries of Mere Reason*, 132–33.

18   Ibid., 134.

between legal compulsion of the believer by divine law (duty) and the free virtue (God's grace) – the discrepancy between the purported heteronomy in following of divine revelation as the authorizing power of *halakhah*, and the autonomous, rational will of the individual as the one and only source of moral action. The will is rational, according to Kant, when it operates by responding to what it finds to be apriori moral reasons, not according to outside influences.

Hermann Cohen, committed as he was to Kantian ethical thought in much more than a general sense, was not ready to understand Kant as an anti-Semite, and that for good reasons, as we will see: Cohen held that Kantian ethics directly continued a certain central line of talmudic legal thought. Cohen therefore chose a different way to confront Kant's critique of the Jewish religion: He declared that to the extent that Kant critiqued it, he was simply ignorant of Judaism. Baruch Spinoza and Moses Mendelssohn, his two teachers in the theology of the Jewish religion, were both particularly unsuited for this task, according to Cohen.[19] Spinoza's *Tractatus theologico-politicus* attempts to establish the independence of philosophy from politics and positive religion, hence it understands Mosaic Law as the civil law of the Jewish state in antiquity. The alleged theonomy of this secular state law was intended, in Spinoza's view, as a mere pretext to educate the people to be obedient and to live in peace with each other. At the same time, however, to lie about theonomy creates a wrong concept of God and is therefore for Spinoza the root of all future evil that grew out of this first fraudulent interrelationship of 'state and church.'[20] Mendelssohn supported this theory from a different direction. He not only advocated strongly the separation of state and church (even at the price of a reform of Judaism, depriving the community of all political means of punishment), he went as far as to separate ritual Jewish law completely from the rational universal law, which, although it is also contained in the Pentateuch, is transparent and binding for all humanity and needs no revelation. Jewish ceremonial law, however, contrary to Spinoza's view, is indeed historically revealed for

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19   Hermann Cohen "Innere Beziehungen der Kantischen Philosophie zum Judentum," reprinted in Hermann Cohen, *Jüdische Schriften* (Berlin: Schwetschke, 1924), vol. I, 284–305.

20   Baruch Spinoza, *Theological-Political Tractate*, especially chapters five and seventeen, in *Spinoza: Complete Works*, ed. Michael Morgan (Cambridge: Cambridge University Press, 2002), 435ff. and 641ff.

Mendelssohn, but valid exclusively as the *legacy for the congregation of Jacob*.[21] Thus Mendelssohn is depriving Judaism of all positive doctrines of belief and turns *halakhah* into a mere historical truth, independent of pure reason, and therefore also disconnected from apriori, rational ethics.

Both views have left clearly detectable traces in Kant's understanding of Judaism, but those influences still do not explain Judaism's heteronomy-problem for Cohen. To solve this, Cohen needs to argue against Kant on Kant's own terms, that is, he needs to begin from the premises of Kant's philosophy of ethics. While others have shown convincingly how much Cohen's theory of autonomy in Jewish thought is indebted to Kantian philosophy, the purpose of the present article is to explore the essential points where Cohen advanced over Kant.[22] Cohen suggests, as Leora Batnitzky wrote, "that Kant should have recognized on his own terms that far from being antithetical to ethics, law is at the basis of it."[23] So, the question arises: What is the relationship between the moral law of reason to *halakhah*, the religious law of Judaism, in terms of the autonomy of the will? Is there a parallel in justifying the observance of both laws that could guarantee the ethical nature of Judaism? And finally, what caused Kant to ignore this parallel that Cohen attempts to construct out of the sources of Judaism?

In a first step, Cohen established that *halakhah* is law in the first place – he strictly differentiated between a commandment, a 'personal directive' of God, and the notion of Torah as law, that is, as a teaching [*Lehre*].[24] It is the most remarkable development from all polytheisms to Mosaic monotheism

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21   Deut 33:4. See Mendelssohn's famous epistle to J.C. Lavater, where he refers to this verse as a proof that revealed law must be kept only by Jews.

22   Especially and comprehensively Kenneth Seeskin, *Autonomy in Jewish Philosophy* (Cambridge: Cambridge University Press, 2001), 149–81.

23   Leora Batnitzky, *How Judaism became a Religion* (Princeton: Princeton University Press, 2011), 55 (my emphasis). Batnitzky, however, then continues to claim that behind this suggestion stands a Protestant concept of God, which Cohen unintentionally adopted. If Kant is the only proof for this, however, the argument can be refuted by a close reading of Kant's *Religion Within the Boundaries of Mere Reason*, which is likely to reveal much more unintended similarities to Judaism (especially concerning messianism and atonement) on the side of Kant than vice versa.

24   Cohen insisted that the translation of *Torah* as 'law'/'Gesetz'/*nomos* (as in Paul) is actually wrong and misleading; rather, it should be translated as 'teaching,' respecting not only the Hebrew root but also the flexibility of content, while the universal validity of God's word remains untouched (see Cohen, *Die Bedeutung*

that the One God would no longer give individual instructions to single humans, Cohen explained, but a coherent *set of commandments* that are *valid law for a collective*, eventually for all of humanity: "The commandment is an isolated order, Torah [*das Gesetz*] seeks to become the constitution of the moral world."[25] From the beginning, thus, the philosophical implications of the "Jewish" idea of legal monotheism becomes the key concept for Cohen in his argument against Kant's critique of "heteronomous" Judaism.[26]

In a second step, Torah must be analyzed within the autonomy/heteronomy paradigm of Kant's own ethical theory. As we know, Kant introduced the idea of an autonomous will in order to bring to light the first principle of all morality. No wonder all previous efforts in that way have and must have failed, he wrote, because although most philosophers agreed that man is bound to law by duty, "it did not occur to one that man was subject *only to his own* and yet *universal legislation*, and that he was obligated only to act in accord with his own will, which, however, in accordance with its natural end, is a universally legislative will."[27] As long as the law did not arise from the human being's own will, it must have brought with it some *interest* for us to observe it, either a stimulus or a coercion. But this way, Kant argued, it was never the sense of duty that motivated the keeping of the law but always simple necessity [*Notwendigkeit*], according to this interest – even if it was not my own but someone else's. The will motivated by interests is then called heteronomous; the autonomous will, however, determined its own, but yet universal, law. In other words, what distinguished heteronomy from the autonomy of the will for Kant was the influence of the senses, of human

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    des Judentums für den religiösen Fortschritt der Menschheit [Berlin: Protestantischer Schriftvertrieb, 1910], 7).

25 *RR* 393 [338]. Ironically, Cohen himself used the German word "Gesetz" both for Torah (*Pentateuch*, "written law") and for rabbinic ("oral") law. Therefore I've translated here: "Torah." For the same reason, the term *halakhah* is used as translation from Cohen for "Gesetz" in this essay at all places where Cohen refers to rabbinic law, that is, practical legislation based on the exegesis of Scripture.

26 Two previous attempts to discuss Cohen's solution of the heteronomy problem have, although being exceptionally brilliant scholarship, not taken monotheism into account as the main factor. See Randi Rashkover, *Revelation and Theopolitics: Barth, Rosenzweig, and the Politics of Praise* (London: T&T Clark, 2005), 10–27; Daniel H. Weiss, *Paradox and the Prophets – Hermann Cohen and the Indirect Communication of Reason* (Oxford: Oxford University Press, 2012), 158–67.

27 Kant, *Groundwork for the Metaphysics of Morals*, p. 50. (emphasis in the original)

desires, instincts, urges and (even intellectual) pleasures, but also the influences of detestation and aversion. Only by excluding those influences ("interests") the human will is free, rational and ethically lawful. The autonomous *ought* of this will makes the moral imperative a categorical one.

Translated into religious language, this moral demand excludes the millennia-old theological (if not anthropological) idea of "reward and punishment" as a motive for keeping religious law: Fear of God, in a simple biblical sense, or the hope for divine recompense, would turn the observant Jew into a morally inferior human, according to Kant. But much to his satisfaction, Cohen could point here to a striking number of ancient and medieval Jewish sources that straightforwardly reject the heteronomous notion of "reward and punishment" and proclaim that the divine law must be kept for its own sake – *Torah li-shmah* (תורה לשמה), as the Hebrew expression of the talmudic sages has it.[28] For Cohen, ideally, there is no reason to say Judaism would prefer the keeping of the law for fear of or hope for earthly or even heavenly reward. The *locus classicus* for this apparent Kantian ethical thought in rabbinic sources is *Mishnah Avot* 1:3, where Antigonus from Socho is quoted saying: "Do not be like servants who serve the master in the expectation of receiving a reward, but be like servants who serve the master without the expectation of receiving a reward, and let the fear of Heaven be upon you" – a text on which Lenn E. Goodman recently commented: "Even Kant excludes heteronomy no more vividly."[29] For Cohen, furthermore, this text is "not an isolated saying" in rabbinic sources,[30] but its best ethical expression. Cohen immediately referred to yet another striking example of a talmudic notion

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28   See for this notion *m. Avot* 6:1 and Maimonides, Mishneh Torah, *Laws of Talmud Torah* 3:10. The notion is often misunderstood as denying the practical relevance of Torah study, while the classical source (just mentioned) seems to mean rather disinterestedness in a Kantian sense.

29   Lenn E. Goodman, *God of Abraham* (Oxford: Oxford University Press, 1996), 97. This comment comes as a response to Emil Fackenheim, *Hermann Cohen, After Fifty Years* (New York: Leo Baeck Institute, 1969) who accused Cohen and other liberal Jewish thinkers to have read Kant back into rabbinic sources and to act upon this as though the morality of Judaism was autonomous and not revealed. Antigonus is not a 20th century liberal, Goodman replied, and still he takes God's will as his own. For a detailed discussion of Antigonus' saying, see Alan Mittleman, *A Short History of Jewish Ethics* (Chichester, UK; Malden, MA: Wiley-Blackwell, 2012), 66–68.

30   *RR* 376 [323].

that in his view anticipated Kant's moral thought. In a footnote to the *Critique of Practical Reason* Kant writes thus:

> It is a very beautiful thing to do good to men from love to them and from sympathetic good will, or to be just from love of order; but this is not yet the true moral maxim of our conduct which is suitable to our position amongst rational beings as men, when we pretend with fanciful pride to set ourselves above the thought of duty, like volunteers, and, as if we were independent of the commandment, to want to do of our own good pleasure what we think we need no commandment to do.[31]

This rejection of ethical voluntarism is identified by Cohen with the talmudic rule that those are greater who keep the law because they are obligated to do so than those who volunteer to keep it (גדול מצווה ועושה ממי שאינו מצווה ועושה).[32] "It is as if Kant had learned this notion from a Jewish philosopher or from the Talmud itself," Cohen once exclaimed in connection with this passage.[33] Later, Cohen further comments on this talmudic saying concerning the autonomy of the law of Judaism:

> Apparently, because it is an instruction, the act loses its autonomy, and its origin is put in God's commandment. But this also eliminates from the act any egoistical motive. Every thought of success, not to mention reward, is far removed from this origin. The commandment comes from God. He is the unique good. His commandment is therefore the commandment of goodness

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31 Immanuel Kant, *Critique of Practical Reason,* trans. Thomas Kingsmill Abbott (Amherst, N.Y.: Prometheus Books 1996), 152 (translation edited). See Cohen's earlier discussion of this passage in his *Kants Begründung der Ethik,* (1877), *Werke*, vol. 2 (Hildesheim: Olms 2001), 332–33.

32 *B. Qidd.* 31a, the legal importance of the rule finds expression in the fact that Maimonides codified it in the twelfth century to become binding *halakhah*; see Mishneh Torah, *Laws of Torah Study* 1:13: וכל העושה דבר שאינו מצווה עליו, אין שכרו כשכר המצווה שעשה אלא פחות ממנו. It is interesting to note that this appears in Maimonides' legal discussion about the obligation of women to learn Torah.

33 Cohen, "Innere Beziehungen," 292. See here Dana Hollander, "Some Remarks on Love and Law in Hermann Cohen's Ethics of the Neighbor," *Journal for Textual Reasoning* 4 (2005).

> [*Gebot der Güte*]. With regard to this good what meaning could a reward have?[34]

What is left unsaid, however, is how much Kant (at least here), Cohen, and Judaism (for that matter) stand at this point in contradiction to traditional Christian ethics that build rather on voluntarism as the superior moral attitude, compared to the compulsion of law.[35] In general, though, Kant tends to uphold a voluntarist, anti-compulsion view when it comes to the yardstick of the morality of all legal obedience, especially of religious law. As Steven Schwarzschild remarked, it is "interesting to watch the Jew Cohen put his finger on Kant's Protestant, Pauline abhorrence of the law: he [Cohen] points out that all law, positive as well as ethical, has for its purpose the compelling of the will, and that "compulsion" is, therefore, not sufficient reason for regarding a law as heteronomous."[36] Therefore, for Cohen, the most convincing example of all of Kantian thought in rabbinic sources, is a short line in *Mishnah Avot*, attributed there to Ben Azzai: שכר מצוה מצוה.[37] Cohen translates it into German in a Kantian fashion: *Der Lohn der Pflicht ist Pflicht* (The reward of duty is duty).[38] The word *mitsvah*, Cohen explains, has a double meaning: it means 'law' from the side of God, but it means 'duty'

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34   *RR* 377 [324].

35   Note, for the best example, the difference between voluntary Christian alms-giving and Jewish *tsedakah*, which is seen as restoring justice and is thus rather a form of compulsory community tax. How for Cohen legal autonomy is achieved exclusively in the Jewish (and thus not Christian) tradition is discussed comprehensively by Robert Erlewine, "Hermann Cohen and the Jewish Jesus," *Modern Judaism* 34 (2014): 210–32.

36   Steven S. Schwarzschild, "The Tenability of Hermann Cohen's Construction of the Self," *Journal of the History of Philosophy* 13 (1975): 361–84 (372–73). Cf. Hermann Cohen, *Ethik des freien Willens*, Berlin: Cassirer 1904, 253f. This article, as well as all other essays by Schwarzschild on Cohen, is republished in one volume: Steven S. Schwarzschild, *The Tragedy of Optimism – Writings on Hermann Cohen,* ed. George Y. Kohler (New York: SUNY Press, 2018), 69-92.

37   *M. Avot* 4:2.

38   *RR* 374–76 [321–24]. Interestingly, Cohen can refer here even to his philosophical arch-enemy Spinoza for support. In the nineteenth century, one of the most often cited insights of Spinoza was the final proposition of his *Ethics*: "Beatitudo non est virtutis praemium, sed ipsa virtus" (Spinoza, *Ethics* 5:42), which Cohen here shortened to *praemium virtutis virtus* (*RR* 374 [321]). Whether Spinoza here indeed "translated this passage of the Mishnah literally", as Cohen wrote, is a matter of dispute, though.

for man who accepts it by his own free will as the "yoke of the law."[39] There is no contradiction between the two sides. For Cohen, there can be no other reward than "the infinite, unceasing task of morality itself." Any other reward would turn morality into heteronomy and therefore "injure its purity."[40]

Whether or not those and similar examples are actually close to Kantian ethics, there are probably even more numerous rabbinic and medieval Jewish sources, which propound very clearly a system of "reward and punishment" as the motivation for the observance of *halakhah*. But Cohen, as a neo-Kantian philosopher, is not committed to an historical, that is, an empirical totality of the literal tradition of Judaism. Here, exactly like in his oft-criticized reading of Maimonides' philosophy, Cohen applies the neo-Kantian method of a 'regulative idealization' to Judaism's textual history.[41] Cohen was interested in precisely those aspects of actual, historical Jewish thought that supported or even confirmed his own view of Judaism as rational, ethical monotheism, and therefore those same Jewish concepts are not so much historically true as rather universally valid, in the apriori, philosophical sense. Contradictory, irrational aspects, as much as they belong to empiric Jewish history of thought, can and should be philosophically neglected.[42]

Having thus established *halakhah* as law that must be kept not for reward but for its own sake, even according to Jewish tradition itself, exactly in the same methodical sense as moral law must be kept for its own sake according to Kant, Cohen can now proceed to discuss the problem of the divine lawgiver Himself. Would not the transcendent deity of the Jewish belief constitute a source of the law that is clearly outside the autonomous human will? Therefore, in order to salvage 'divine authorship' of Jewish law, as a last step Cohen needs to solve the heteronomy problem by discussing the concept of God Himself that stands behind his refutation of Kant's rejection of Judaism

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39   *RR* 401 [345].

40   *RR* 374 [321]. Daniel Weiss discusses another example, the famous *na'aseh ve-nishma* from Exod 24:7; see Weiss, *Paradox*, 163–64.

41   For Cohen's reading of Maimonides, see Hermann Cohen, "Charakteristik der Ethik Maimunis," reprinted in Hermann Cohen, *Werke,* vol. 15, ed. Hartwig Wiedebach (Hildesheim: Olms, 2009), 161–269; and for discussion, Kohler, *Reading Maimonides' Philosophy*, 171–72.

42   For a discussion of this method in Cohen, see Steven Schwarzschild, "Germanism and Judaism – Hermann Cohen's Normative Paradigm of the German-Jewish Symbiosis," in Schwarzschild, *Tragedy of Optimism*, p. 104–11.

as an ethical religion. Which God, for Cohen, is "the God of Judaism"? The biblical, personal God (endowed with anger, will, life, and spontaneity), or Kant's postulated God of practical reason? In his rejection of Judaism, even Kant seems to be committing the 'cardinal error of Protestant theology' that Cohen attacks at many places in his writings, but without ever mentioning Kant personally: to turn the God of the "Old Testament" into the national God of the Jews, the *Judengott*. This short-sighted triumph over Judaism in fact "stupidly applied the axe to monotheism itself," Cohen wrote, for if the God of the prophets is no longer also the God of the Christian world, monotheistic faith is losing its source and origin.[43] Kant's alternative, a God postulated out of a rational necessity of his ethics, however, Cohen had rejected from early on as a return to eudemonism, because Kant's God became thus the "distributor of happiness" [*Austeiler der Glückseligkeit*].[44] In fact, Cohen eventually rejected all three of the Kantian postulates: Freedom, because "it is not a postulate but rather the basic law of ethics" *[Grundgesetz der Ethik]*[45]; and the idea of immortality – that Kant (and Lessing) positioned against Judaism as a pre-condition for an ethical religion, as we saw above – because for Cohen immortality was the very opposite: a pre-religious myth that must be (and was) strictly separated from the pure monotheism of Judaism.[46]

The Jewish concept that comes closest to Cohen's own concept of God is the Maimonidean God without attributes, who is *almost an idea* in the view of Cohen.[47] In Cohen's reading, "God's ways" from Exodus 33:13 – for Maimonides, identical with the attributes of action, that is, the only attributes of God we

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43   Hermann Cohen, "Gesinnung," (1910) in Cohen, *Jüdische Schriften*, vol. I, 196–209 (206–7).

44   This appears first already in Cohen's second work of Kant interpretation, *Kants Begründung der Ethik*, from 1877, see Hermann Cohen, *Werke,* vol. 2, ed. Hartwig Wiedebach (Hildesheim: Olms, 2001), 358. Again in 1910, in Cohen, "Innere Beziehungen," 293. See Helmut Holzhey, "Kritische Rezeption der Kantischen Religionsphilosophie," in *Kant im Neukantianismus: Fortschritt oder Rückschritt?*, ed. Marion Heinz (Würzburg: Königshausen & Neumann, 2007), 68–74.

45   Hermann Cohen, *Der Begriff der Religion im System der Philosophie* (Giessen: Toppelmann, 1915), 50.

46   *RR* 390 [335].

47   Hermann Cohen, "Charakteristik der Ethik Maimunis," 203. For the same reading of Maimonides in Emanuel Levinas, see his "A Religion for Adults," in *Difficult Freedom. Essays on Judaism*, trans. Sean Hand (Baltimore: Johns Hopkins University Press, 1997), 17. For discussion see Kenneth Seeskin, *Autonomy in Jewish Philosophy*, p. 156.

can understand – are essentially of ethical character. These attributes define God solely as a moral being, as the essence of morality – God is merciful and gracious, long suffering and abundant in goodness and truth (רחום וחנון ארך אפים ורב-חסד ואמת).[48] "The *ways of God* describe His dealings with man," Cohen writes in 1900, and "they are therefore the norms of morality."[49] In his epistemological advance over Maimonides, Cohen held that God is indeed a transcendental idea – but while traditional religionists and realists usually say that according to Cohen's view God was "only an idea," Cohen, as an idealist, insisted that his God "was *even* an idea," because an idea, for Cohen (and Kant), is more "real" than experienceable reality.[50] From 1877 on, Cohen reintegrated his concept of God into his systematic neo-Kantian philosophy as the idea of truth – the logico-legal truth of "the necessary connection of the knowledge [*Erkenntnis*] of nature and the knowledge of morality." More specifically, 'God' means for Cohen the accordance [*Übereinstimmung*], that is, the systematic unity, "of theoretical causality and ethical teleology."[51] If we say God, in Cohen's language, we assume that the heuristic teleology of the natural sciences accords with the teleology of ethical action (when following the moral law). On this very share (that the idea of God has in the fundamental problems of philosophy) the share that religion has in human reason is based. In terms of religion, Cohen wrote: "If there is to be truth in the belief in God, God must be integrated into the science [*Wissenschaft*] of

48   Exod 34:6. In *Guide* I: 54, Maimonides explains that of Moses' two requests, to know *God's ways* (verse 13) and to see *God's glory* (verse 18), only the first is granted – for the scriptural 'glory of God' represents God's essence, which is unknowable. As opposed to that, the 'ways of God' are revealed, which indicates that God's actions are to be seen as models for the actions of men.

49   Hermann Cohen, "Liebe und Gerechtigkeit in den Begriffen Gott und Mensch," *Jüdische Schriften* III, 45. Twentieth-century Maimonidean scholars generally reject this ethical interpretation and identify the attributes of action in Maimonides with God's action in nature. See, for example, Shlomo Pines, "The Limitation of Human Knowledge According to Al-Farabi, Ibn Bajja, and Maimonides," in *Maimonides: A Collection of Critical Essays,* ed. Joseph A. Buijs (Notre Dame, IN: University of Notre Dame Press, 1988), 111.

50   Hermann Cohen, *Kants Begründung der Ästhetik* (Berlin: Dümmler, 1889), 125. Cf. also Cohen, *Kants Begründung der Ethik,* 74f., where he writes that we should say 'only a phenomenon,' as opposed to the errant 'only an idea.' Also cf. Cohen, *Ethik des reinen Willens* (Berlin: Cassirer, 1904), 417 (reprint in Cohen, *Werke*, vol. 7).

51   Both quotes are in *RR* 476 [410]. In fact, it can be shown here that Cohen's functional, philosophical concept of God did not change for the last forty years of his life.

ethics." Only thus, built on the rationality of science, belief can be freed from clinging to tradition and all external authority, and be truly autonomous.[52]

It is only based on this concept of God that Cohen is able to develop his understanding of an autonomous compliance with *halakhah*: "Pure ethics, in its application to man, cannot do without the concept of duty, ethics must transform the moral law into duty. The analogous change is completed in religion by transforming moral law into law that is commanded by God."[53] The commanding concept of the 'Divine command,' then, is nothing but the religious expression of the principle of the autonomy of the will, the difference is one of method, not one of essence. For Steven Kepnes, this equation is not even Cohen's innovation but

> follows a Jewish model in which morality is determined by divine commands and *halakhah* mediates all moral relationships. Jewish law, in this model, is not Kant's heteronymous law that renders the self passive and obedient and destroys moral autonomy. Rather, Jewish law is both part of and a support and guide for the autonomous self.[54]

We have arrived here at what appears in Plato as the dilemma of Euthyphro: "Is what is morally good commanded by God because it is morally good, or is it morally good because it is commanded by God?"[55] Kant has clearly resolved the dilemma in Euthyphro's favour. "So far as practical reason has the right to lead us, we will not hold actions to be obligatory because they are God's commandments, but will rather regard them as divine commandments because we are internally obligated to them."[56] For Kant God stands

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52   Hermann Cohen, *Einleitung mit kritischem Nachtrag zur neunten Auflage der Geschichte des Materialismus von Friedrich Albert Lange* (1914), in Cohen, *Werke* 5/ II (Hildesheim: Olms, 1984), 108.

53   *RR* 377 [324].

54   Steven Kepnes, "Hermann Cohen's Liturgical Reasoning on the Moral Subject and the Moral Community," in *German-Jewish Thought Between Religion and Politics*, ed. Christian Wiese and Martina Urban (New York: de Gruyter, 2012), 115–32 (128).

55   Plato, *Euthyphro* 10a. See here Jochen Bojanowski, "Kant's Solution to the Euthyphro Dilemma," *Philosophia* 44 (2016): 1209–28.

56   "Wir werden, so weit die praktische Vernunft uns zu führen das Recht hat, Handlungen nicht darum für verbindlich halten, weil sie Gebote Gottes sind, sondern sie darum als göttliche Gebote ansehen, weil wir dazu innerlich

somewhat outside of ethics; in fact, the notion of a moral ruler of the world eventually grows out of a rational necessity to reconcile the irreconcilable (for Kant): the apriori universality of the moral law with the need to find this law within the individual's autonomous reason. A truly ethical society [*Tugendreich*] cannot be a democracy for Kant, it needs an autonomous will as lawgiver of *absolute* authority. Otherwise the law was merely (politically) *legitimate*, but not truly *moral* law. And here is the crucial point: Neither can this moral law be thought of as proceeding originally from the will of this lawgiver, Kant argued, because then "the duty to commensurate to them would not be free virtue, but externally enforceable legal duty." Logically, for Kant, there is only one way out of this dilemma: The supreme lawgiver of the ideal ethical community must be one, "with respect to whom all *true duties*, hence also all ethical duties, must, *at the same time*, be thought of as his commandments." This is the concept of "God as the moral ruler of the world."[57] Therefore, for Kant, "morality leads inevitably to religion," and not *vice versa*, we are logically forced to conjecture the ruling of God if we want to be moral human beings.[58]

For Cohen, Euthyphro's dilemma is less simple. He denied the contradiction between what Kant called "internally obligated" and what he constructed as the philosophical idea of God, now no longer a postulate but integral part of Cohen's neo-Kantian ethics. In addition, defending Judaism, Cohen wants to refer to the God of religion not exclusively as the necessary outcome of human ethical thought, as in Kant. The God of religion is the God Cohen reads *out of Jewish sources* – for him, critical, idealized reading of rabbinic texts is able to produce something very close to his own concept of God, he assumed. Thus, in a historical but also in a theoretical way, God stands for Cohen at the beginning of philosophical ethics, not at its end. In the words of Rashkover: "While Kant maintains that the moral self must postulate knowledge of God for the sake of the rationality of our action, Cohen understands God as the very pre-condition of our morality."[59] For

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verbindlich sind." *Kritik der reinen Vernunft*, A 819/ B 847; in English: *Critique of Pure Reason*, trans. Guyer/Wood (Cambridge: Cambridge University Press, 1998), 684.

57   Kant, *Religion within the Boundaries*, 109–10 (translation edited, emphasis in the original).

58   Ibid., 53.

59   Rashkover, *Revelation and Theopolitics*, 22.

Kant, God is a *synthetical proposition apriori*, because God "*exceeds* the concept of duty that morality contains"[60] – in other words, if there was a God at all, this God will then command the moral law, that is, be synthetically added to the concept of morality as the notion of duty. Cohen's God-idea, however can in a certain way be thought of as *analytic*: God is the *guarantor* [Bürge] of the 'success' of the moral law, and thus not an addition to it, but the condition of its realization. That is, because the One God represents the unique, that is, non-relativist *truth* of rational, apriori ethics.

Probably here Kant and Cohen are furthest away from each other, and it is again the abstract, philosophical consequences of pure monotheism that divide them so decisively. Kant recommends to the Jews that they should rather have faith in many mighty invisible Gods, if they could only "think of them as united, despite their departmental differences, in deeming worthy of their appreciation only those human beings who adhere to virtues *with all their heart*," contrary to having faith in one God, "who, however, makes of mechanical cult the main work."[61] Cohen, ironically, finds even in the traditional exegesis of the foundational verse of Jewish monotheism, the *Shema Yisrael* (Deut 6:4), textual proof that the love of God "with all your heart" essentially refutes Kant's accusation of a mechanical service of God – again without mentioning Kant.[62] But more importantly, Cohen believed for logical (one might say mathematical) reasons that only monotheism (oneness) can lead to virtuous action, and what is still more in his view, only monotheism can lead historically to the one (united) *messianic humanity* of the future.[63] Simply put, Kant says moral laws are human duty *as if* they were divine commandments, Cohen says moral laws *are* divine commandments. As we saw above, Cohen would not adopt the Kantian distinction between morality and (political) legality, based on the heteronomous nature of compulsion, in Kant's view. For Cohen autonomous acts are compelled, too – not by external forces, however, but by the power of human reason. Concerning the divine source of *halakhah*, Cohen's view would consequently mean that there is no heteronomy involved. If divine Jewish law is followed not for reward, and if

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60   Kant, *Religion within the Boundaries*, 35 (my emphasis).

61   Ibid., 132 (my emphasis).

62   Cohen, "Gesinnung," 207.

63   *RR* 297 [254-55] With no room for interpretation: "The unique God means the unity of morality." / "Messianism is the straightforward consequence of monotheism."

divine here means the transcendent idea of the infinite realization of the good in the world, ideally *halakhah* is but a religious instantiation of autonomous moral law, as Cohen repeatedly claims:

> If ethics demands that the will fulfill the moral law as the law of moral reason, then it can only be a methodological distinction when the religion of reason teaches one to think of the will of reason as a commandment of God.[64]

Daniel Weiss has shown what exactly constitutes that mere "methodological distinction" Cohen mentioned here and at several other places,[65] but, for the purpose of the present study, it suffices to note that this distinction is no longer essential for Cohen, that it does not prevent Jewish law from ideally being moral law. True, Cohen can identify divine command with the autonomous moral will essentially because for him God is an idea of practical human reason. But it must always be emphasized: For the neo-Kantian idealist the ontological status, that is, the 'reality' of ideas is on a much higher level, more "real," than the "actuality" of material objects, of empirical reality.[66] Cohen's idealization of the monotheistic God of the Jewish sources rather turns God into the only, the unique Being [Sein], while everything else is appearance [Schein][67] – thus crucially going beyond, if not even dismantling Kantian theology.[68] In addition, it is true that Cohen's *halakhah* is an idealized version of Jewish law and not identical with all traditionally observed regulations, let alone in their orthodox interpretation. But not only is Cohen well aware of this, his purpose is rather to demonstrate in general that observing *halakhah* (when compelled by the rationally accepted divine command) would not necessarily violate the autonomy of the human will and would thus not distinguish Jewish law from moral law. Once this is achieved, Cohen also

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64 *RR* 236 [202]. Exactly the same claim is then repeated at least twice in *RR*, see *RR* 395 [339] and *RR* 377 [324] as quoted above.

65 Weiss, *Paradox*, 162–63.

66 Like many others, Rashkover, *Revelation and Theopolitics*, 10, believes Cohen "cannot express the reality of God." In contrast, Steven Schwarzschild even saw in Cohen's insistence on the higher reality of ideas a distinctive theological rejection of Christianity: "In this spirit Cohen pitted the Jewish God-idea against the Christian doctrine of the incarnation." See Schwarzschild, "The Day of Atonement," *Judaism* 17 (1968): 352–57 (353).

67 *RR* 48 [41].

68 Compare Rashkover, *Revelation and Theopolitics*, 15.

enters into a long discussion of traditional Jewish rituals, their meaning, and especially their contribution to the moral law of God.

Concerning ritual regulations Cohen falls back on a common explanation in Jewish theology from Sa'adia through Maimonides to Mendelssohn: All laws that cannot directly be identified with a moral end follow pedagogical purposes: to educate the keeper of this legal regulation to eventually observe the pure moral law itself. This distinction, however, would not harm the unity of *halakhah* for Cohen. For what is not moral law in itself is "a means to the promotion of, and education in, the moral law."[69] This education, however, Cohen knows well, in reality "might take wide detours in its course that often may appear roundabout."[70] It is not even clear that all existing halakhic regulations can be squeezed into this model. Notwithstanding his univocal call not to abandon *halakhah* in order to facilitate social and cultural contact of the modern Jew with his surroundings, Cohen is still pronouncedly critical of practical *halakhah*'s attempt to penetrate "with the minuteness of miniature paintings the whole life with all its obligations, dominating actions that seem most insignificant as well as most intimate."[71] Humans have also other cultural concerns than exclusively moral or religious ones, and while moral law must be the *supreme* guide over all human activities, both *halakhah* and moral law must still not necessarily be the *immediate* guide of all our activities, Cohen writes, "let alone the unique and sufficient one." In the traditional Jewish approach of granting absolute power over Jewish life to *halakhah* there lies a "real danger" for Cohen, because the one-sidedness of its ethical orientation ignores human interest in natural sciences and excludes aesthetical needs, and sometimes even theoretical thinking. [72]

But eventually, excluding nonsensical or mystical customs and enduring Jewish law's usurpatory aspirations, it is the indivisibility of all *halakhah* that is decisive for Cohen's identification of the autonomous moral will with the rational acceptance of Divine law. While Cohen's referring to the educational purpose of many ritual regulations of *halakhah* is nothing new in Jewish thought, his insistence on the inextricable interwovenness of ritual and moral *mitsvot* is an original defense of *halakhah* both against Jewish reform and

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69   *RR* 401 [345].

70   *RR* 395 [340].

71   *RR* 402 [345].

72   All quotes: *RR* 402 [346].

against Christian, or even against the Kantian critique of Jewish legalism. At the beginning of his chapter on "The Law" in the *Religion of Reason* Cohen introduced an extensive discussion of the practical, indeed inseparable entanglement of several hygienic, dietary, clerical, political or cult-dominated *mitsvot* with moral laws such as the laws of charity or workers' rights.[73] Given this dialectical interpenetration, in Cohen's view it would ultimately damage also the moral law if one were to fight religious rituals of Judaism.[74] The distinguishing criterion for Cohen is only the rational autonomy of the observant Jew in keeping whatever *mitsvah*, ritual or moral. Cohen's Judaism has room for the affirmation of true religious rituals, because ethically Cohen can "demand the adoration of the idea of God *in addition* to moral action" – as he once wrote to his student, the radical Reform rabbi Benzion Kellermann, in a critical reply to Kellermann's rejection of all ritual law.[75]

In summary, as much as Christianity is in no way identical with the *religion of reason* for Kant, neither is traditional, historical Judaism per se a *religion of reason* for Cohen. But contrary to Kant, who reduced the morality of Christianity to some moral teachings of its founder, Cohen claimed a consistent thread of ethical doctrine running through the millennia of Jewish literary history. This thread begins logically at the idea of strict monotheism. While Kant seems to have no concept of the rational consequences of strict monotheism, in Cohen his re-introduction of the God-idea into modern philosophical thought justified the eventual identification of divine command with the autonomous will – thus turning the observance of *halakhah* ideally into a moral act. For Cohen, Judaism, as a religion, simply denies that there is a contradiction between its God and rational ethics, for the monotheistic Jewish God is the guarantor of the realization of moral law. Thus, to be obedient to this God is not forcing heteronomous principles upon human reason; obedience to *halakhah* does not pose an ethical problem for Cohen, even on Kant's own terms. In the words of Steven Schwarzschild, "theonomy is not only not incompatible with, but is positively conducive to Kantian

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73   *RR* 395–98 [339–42].

74   *RR* 399 [343].

75   Cohen to Kellermann, February 16, 1908 („Benzion Kellermann Collection" of the Center for Jewish History Archive, digitalized correspondence, p. 37). See here the discussion of this important letter in Torsten Lattki, *Benzion Kellermann – Prophetisches Judentum und Vernunftreligion* (Göttingen: Vandenhoeck & Ruprecht, 2016), 232.

autonomy properly understood if, that is, the God who is regarded as issuing imperatives is understood as the *God of truth,* i.e., the God of philosophical reason. The Jew Cohen has thus salvaged his fundamental commitment to *halakhah*, the law, for his ethics of rational autonomy."[76]

Interestingly, however, this ethical commitment to *halakhah* comes at the price of a severe philosophical-theological criticism of Cohen's teacher Immanuel Kant. While being careful to nowhere attack Kant directly, Cohen implicitly refutes all of Kant's criticism of the Jewish religion: Not only had Kant described Judaism as a *mere set of statutory laws* that must be followed mechanically, because as a good Protestant he struggled to see legal compulsion (even if motivated by human reason) as ethically more valid than virtuous voluntarism. Consequent upon this, Kant's own religious philosophy, especially his postulated God, falls short of the possibility of solving the problem of heteronomy the way Cohen solved it. The decisive contradiction, Cohen emphasized, is not the one found between statutory law and free religious belief, as Kant claimed in his critique of Judaism, because for Cohen even "belief can be as statuary as the law with its works."[77] Kant's two pre-requisites for ethical action, that "man was subject *only to his own* and yet *universal legislation*"[78] will best be met, for Cohen, by a religious person taking upon himself the *yoke of God's law.*

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76   Steven S. Schwarzschild, Introduction to the 1981 reprint of Hermann Cohen's *Ethik des reinen Willens*, in Hermann Cohen, *Werke*, vol. 7 (Hildesheim: Georg Olms, 1981), VII–XXXV. VII–XXXV, here XVI–XVII, and in Schwarzschild, *Tragedy of Optimism*, 127.

77   *RR* 400 [344].

78   See above, n. 27.