Freedom and Responsibility
Exploring the Challenges of Jewish Continuity

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A crucial factor in fostering Jewish continuity throughout the ages has been the importance of talmudic study in Jewish society. Generation after generation of scholars read, studied, found inspiration in, commented on, and remodeled their behavior on the Babylonian Talmud. Talmudic vocabulary, concepts, traditions, and ideas were very much part of daily life, if not absorbed directly from the text, then mediated through rabbis, preachers, and other religious functionaries. Yet continuity is not identity, and it is always tempered with change. Different communities appropriated elements of talmudic tradition in different degrees, depending on their social, cultural, political, economic, and other circumstances. Talmudic culture supplied many of the building blocks for subsequent Jewish cultures, but the blocks were reconfigured in varying ways. Although the Talmud can be designated a cultural system, it is far from systematic; the apt metaphor “Sea of Talmud” points to its character as a source of raw materials of all sorts, much like the primordial ocean. Just as the ancient waters contained the chemical soup that spawned different life forms, so the vast talmudic tradition has contributed to different Jewish cultures throughout history.

Analysis of the appropriation of individual elements of talmudic tradition by cultural systems in the Middle Ages affords a good perspective from which to view the nature of continuity and change. This paper analyzes the concept of din shamayim or dinei shamayim, “the law(s) of heaven,” in Seder Hasidim (“The Book of the Pious”), the twelfth-century tract of the Hasidei Ashkenaz, the Franco-German pietists, attributed to Judah the Pious (d. 1206). The pietists took this ethical concept from the Talmud, where it typically appears in opposition to dinei ’adam, “laws of humans.” Dinei shamayim is one of several concepts that place moral
value on actions beyond the scope of the judicial system. It provided the pietists with a means to describe an ethics that differed from that of the Talmud but simultaneously remained in dialogue with talmudic tradition.

While the pietists revised many aspects of talmudic ethics, they did so from within, using the Talmud’s own terminology, albeit in new contexts. The first section surveys the concept of dinei shayayim as it appears in talmudic literature. The body of the essay analyzes the concept in Sefer Hasidim, constantly comparing it to its talmudic antecedent. The final section explores the place of the “law of heaven” within the general theological outlook of the pietists, thereby attempting to understand its place within a new cultural system. The way the pietists adopted and integrated, yet simultaneously reconfigured and modified, this talmudic concept illustrates the dynamics of Jewish continuity.

Dinei Shamayim in the Talmud

The concept of dinei shayayim in the Talmud has been analyzed at length elsewhere, most recently by Aaron Kirschenbaum. The subject is complex, for the Talmud’s understanding of the concept already differs from that of the Mishnah and Tosefta. A brief summary will be offered here in order to provide a basis for comparison with the concept as it appears in Seder Hasidim.

In the Babylonian Talmud dinei shayayim appears most often in cases of indirect causation of damage. One who was the remote, not the immediate, source of damage cannot be obliged to pay according to the “laws of humans,” dinei ‘adam, i.e., by the courts. As ultimate cause, however, that person “is obliged by dinei shayayim” to compensate the victim; he is morally, if not legally, obligated. The locus classicus of this concept appears in mBQ 6:4: “One who sends forth fire at the hand of a deaf-mute, an imbecile, or a minor is exempt according to dinei ‘adam and culpable according to dinei shayayim.” The “sender” of the fire puts a burning object in another person’s hand, but is not legally obligated to pay for the damages because he is not the immediate cause. The recipient, not the sender, is the direct cause of the fire. But the recipient, a minor, imbecile, or deaf-mute, is considered incompetent and cannot be held responsible for any damage he causes. The claimant thus has no legal recourse. Clearly, however, the sender is ultimately responsible for the damage. The Mishnah rules that he is obligated to pay according to the standard of dinei shayayim. The will of God demands that he make restitution for that which dinei ‘adam exempts.

A second type of indirect causation involves acts of omission, generally failure to remove a source of danger, such as a person who leaves his broken vessels in the public domain upon which a victim subsequently slips. In this case the owner of the vessels neither intends damage to occur nor actively causes the damage. It results from his inaction, his failure to remove the shards. Dinei ‘adam does not obligate the owner to pay damages. Only by a higher moral standard, the laws of heaven, is he obligated to pay.

Compensation for damages caused through nonsubstantive modes cannot be exacted by law. One who frightens another person or deafens him by shouting in his ear is exempt according to dinei ‘adam and obligated according to dinei shayayim. The victim is considered to be partially responsible for his condition; he “allowed himself” to be frightened.” One who deafens another does no direct physical harm; he does not even touch the victim. Still, the “laws of heaven obligate him” for the damage caused.

The standard of dinei shayayim applies to authorized professionals who inflict damage inadvertently. A doctor authorized by the court to heal who caused injury while attempting to treat a wound or cure an illness is exempt from compensating his patient. His intention was to heal, not to cause damage. Moreover, if doctors were held liable in such cases, they would not accept dangerous cases. Yet if the doctor exacerbates the patient’s condition or commits malpractice, he has failed in his role as a healer. The laws of heaven obligate him to pay for whatever damage he causes. Similarly, a court official charged with administering the punishment of lashes determined by the judges is exempt should he unintentionally whip too enthusiastically and kill the criminal. According to dinei shayayim, however, the court official has done unnecessary damage and must compensate the victim (or his heirs).

The Talmud applies a similar concept to certain cases in which there is doubt as to who should be compensated. If a thief admits he stole something but cannot remember which of two individuals he victimized, he is legally exempt from repayment. Neither claimant has solid evidence that he suffered the theft. But if the thief wishes to “fulfill his obligation to heaven,” he must pay both. Only in this way is he certain to make amends for his sin. The term is not identical to “the laws of heaven,” but the idea is clearly analogous. We might say that he is legally exempt but morally obligated.

One should not attempt to categorize these cases into a logical or systematic framework. The rabbis did not write systematic ethics, and the sources derive from different times and places. Dinei shayayim primarily applies to cases of damage where the agent is ultimately responsible but cannot be held liable for various reasons; either because he is an indirect
cause or because the damage is the result of inaction, an accidental consequence of a necessary professional act, or is intangible. By invoking the idea of dinei shanayim the sages recognize a higher standard—the standard of heaven, i.e., the true will of God. The laws of heaven demand a voluntary response in cases beyond the scope of the earthly administration of Jewish law. They indicate the right course of action, the Jewish ethic.

Dinei Shamayim in Sefer Hasidim

Sefer Hasidim emerged from the Hasidei Ashkenaz, the pietist movement that flourished in the Rhineland during the twelfth and thirteenth centuries. Perhaps the central idea of Ashkenazi pietism was the notion of the infinite will of God. In this view, the will of God expressed in the commandments found in the body of rabbinic literature actually amounts to but a minor portion of the larger, hidden will of God. This larger, potentially limitless divine will is that which the pietist attempts to fulfill. To do so he must "be resourceful in the fear of God." That is, he must constantly attempt to understand what God expects of him in every conceivable situation, including circumstances not discussed in the Talmud. The larger will extends to the most commonplace activities: speaking, raising children, washing hands, eating, reading, and every business transaction. Moreover, the pietist is exhorted to construct new trials for himself, to voluntarily undergo hardships and accept the stringencies of the law. He is to establish "fences around the law," precautionary measures which distance him so far from prohibited acts that even the possibility of sin never arises. By completely devoting himself to God in this way, the pietist expresses his selfless, absolute fear of God, the ultimate form of worship.

The concern for the most minute aspects of life and the relentless effort to discover the hidden will of God that pervade Sefer Hasidim afford a prime opportunity to analyze the development of talmudic concepts and especially talmudic ethics. For while the pietists presupposed the authority of talmudic tradition, their inexorable drive to press the fear of God to its limits made them at times feel that talmudic standards were inadequate and did not reflect the true will of God. The pietists needed a means to express what they considered to be the proper course of action without appearing to reject or cast aspersions on the prescriptions of the talmudic sages. To do so they adopted, among other strategies, the concept of dinei shanayim as a standard, and the distinction between it and dinei 'adam. We now turn to the use of these terms in Sefer Hasidim.18

The Laws of Heaven in Sefer Hasidim

Sefer Hasidim extends the scope of dinei shanayim to cases related to those found in the Talmud. This tendency reflects the general characteristic of Sefer Hasidim to take a ruling, statement, or law that appears in a rabbinic text, explore associated cases, and flesh out the full application of the principle involved. It is also reflects the overall tendency in medieval Jewish thought to apply talmudic law to other cases, both theoretical and practical, and to generate a comprehensive legal system.

If someone owes a certain man money, and does not remember whether [he owes it], and also that man [the lender] does not remember and does not summon the other to court, let him fulfill his obligation to [the law of] heaven19 and pay him back. If that man [the lender] is good [i.e., a pietist] and will not accept the money, what should the first one do, since he owed money and forgot whether he repaid? Let him pay the entire debt to him and make no stipulation, but say to him, "If I owe you, this money is yours." And the other says, "If it is mine, I forgive the debt to you." They should forgive each other and divide the money.20

The Talmud considered a case in which a thief confessed that he had stolen money but could not remember from whom.21 Sefer Hasidim now considers a related case: X borrowed money from Y, but neither can remember whether the money was repaid. As in the talmudic scenario, doubt exists as to whether a certain individual is owed money; X may have repaid the loan after all. Here too Sefer Hasidim rules that X should repay the money and fulfill his obligation to heaven, since there is a possibility that he never repaid the debt. But an additional complexity crops up. If Y is "good" (a technical term referring to a pietist), he cannot accept the money because he may have already been repaid. To accept money freely offered is legally permitted, so a nonpietist can be expected to take the proffered funds, but doing so may be an injustice. How then are both to fulfill the law of heaven? First X repays Y, then Y forgives the debt, and then they divide the money between them. Given that neither remembers whether repayment was made, they compromise, and each renounces his claim to the money.

To invoke dinei shanayim in the preceding case conforms well with talmudic precedent. That is, while the Talmud does not address the specific circumstances where neither party can remember whether money is owed, a straightforward inference from the talmudic principle leads to the advocated solution to the problem. Sefer Hasidim has not innovated, but has merely applied the talmudic concept. In the following example, by contrast, Sefer Hasidim employs the standard of dinei shanayim to include damages that the Talmud does not obligate.
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The Laws of Heaven in Sefer Hasidim

Having expanded the obligation to compensate for pain beyond talmudic law, Sefer Hasidim carries the principle to its logical extreme.

If he spit at him but the spittle did not reach. Rabbi Yose said: “One who degrades his fellow in public is exempt.” This only refers to dinei ‘adam, but he is obligated by dinei shanayim for any pain at all. One will be punished by heaven for any pain he causes his fellow, as it says: “God will call you to account” (Qoh 11:9).26

The initial quotation derives from ybQ 8:7, 6c.27 The Mishnah rule that one who spits upon another person must compensate him for his humiliation. From this the Talmud infers that if the spittle does not actually land on the target, the spitter is exempt; the Mishnah obligated compensation only in the case where the spittle actually touched the person or his clothing. Sefer Hasidim classifies the talmudic standard as dinei ‘adam. The laws of humans do not recognize this type of damage. But Sefer Hasidim insists that according to the higher standard of dinei shanayim, the spitter is liable in this case too. Although the spilt failed to actually alight on him, the targeted victim nevertheless suffered anguish and humiliation from the repulsive gesture. Nor does Sefer Hasidim content itself with this extension. It further claims that dinei shanayim govern any damage whatsoever, “for any pain he causes his fellow.”

Here we have a serious expansion of the talmudic system, which devoted great attention to determining the precise limits of obligations for different injuries. Sefer Hasidim essentially renders the entire talmudic system obsolete with the stark claim that one is liable for all pain caused to another human being. True, legally, the perpetrator is exempt. But since dinei shanayim demands restitution, the talmudic standard is relegated to a matter of academic interest. The serious pietist obviously takes the laws of heaven as his guideline, as should Jewish society at large.28

It is important to note that this revision is accomplished by applying terminology and concepts (e.g., pain) found in other talmudic discussions. One hardly senses that talmudic law is being transformed into something quite different because the terminology, legal concepts, and cases are continuous with talmudic discussions. This reuse of the building blocks of talmudic tradition ensures continuity while providing for significant ethical change.

Related to the stringent responsibility for damages is the strict view of theft taken by Sefer Hasidim.

If he [a thief] repaid money on the same day he stole, he need not add to the sum. But if he did not repay that week or that month or longer, he must add to the sum he stole according to how much the other would have earned from the time he lost the money until it was returned to him. He must reckon according to what he knows of the other’s business, how much that man would have been able to earn with the stolen money from the time it was stolen until he returned it. And besides this let him take into account the pain (sa’ar). Even though the Torah did not obligate him [to repay] all this, nonetheless to fulfill his obligation to [the law of] heaven he must repay all these things.22

According to talmudic law, a thief need repay only the amount stolen. Time is not considered a relevant factor. Whether the repayment occurs soon after the theft or many years thereafter, the thief makes full restitution by repaying the initial sum, although he is also obligated to atone for his sin.23 Sefer Hasidim finds this insufficient. The victim lost an opportunity to earn additional money over and above the amount stolen, i.e., interest on his capital. Because interest is against Jewish law, and the pietists, in particular, went to great lengths to avoid violating this prohibition, Sefer Hasidim phrases the loss in terms of potential earnings. The thief must therefore repay both the amount stolen and the potential earnings in accordance with the victim’s ability to turn a profit. Moreover, Sefer Hasidim obligates the thief to pay for the pain experienced by the victim. Believing his money stolen, the victim naturally worries and suffers anguish. The longer the period before the return of his funds, the more distress he suffers.

Pain is a talmudic category borrowed from the laws of personal injury. One who causes an injury must compensate the victim, not only for the damage suffered, but for embarrassment (boshet), loss of earnings (shevet), medical expenses (ripui), and pain (sa’ar).24 Sefer Hasidim transfers the category of pain from one realm of jurisprudence to another. If a person who causes physical damage must pay for the pain caused, so a thief who causes mental anguish should compensate the victim commensurately.25 Yet Sefer Hasidim recognizes that the Torah does not obligate these expanded damages. The author distinguishes the standard of the Torah, which exempts the culprit from this category of liability, from the obligation to heaven, which demands the expanded damages. An individual may completely satisfy that which the Torah prescribes and nevertheless incur guilt. This amounts to a self-conscious recognition that traditional law is insufficient. To fulfill his moral obligation, the committed pietist must aspire to a higher standard, the law of heaven.
There are some matters that are not theft, but are as severe as theft. For example, if one visits a man, even a rich sadiq, but he [the rich sadiq] is miserly and yet is too embarrassed [besh] to turn him [the guest] out of his house; or he [the host] supports him [with money], and he [the guest] arranges for his own board. Or if one eats in the home of a poor man who does not have the means to feed him, yet is too embarrassed to tell him—this is outright theft according to dinei shamayim. 29

In this case the visitor has certainly not stolen by any legal definition of the term. His host, whether a rich miser or a poor peasant, freely extends the means of support. The will of God, however, takes into account the feelings and intentions of human beings. In both instances, the host would have preferred not to feed the guest, and only did so to avoid the shame of having to ask the guest to leave or of admitting his poverty. Because the host was constrained by feelings of shame, an ubiquitous pietist concern, he did not offer the provisions freely and voluntarily. By the higher moral standard of dinei shamayim, the guest has committed theft; he takes the food without the owner’s true consent. 30

A second area in which Sefer Hasidim applies dinei shamayim involves attempts to circumvent the spirit of the law by taking advantage of loopholes.

One should not say to his fellow, “Sell me three hin of wine at the wholesale price in small units,” and if the seller agrees to sell to him wholesale, then he should not say to him, when he takes half a hin of wine, “I don’t want anymore.” Even though he is able to claim, “Behold, I did not take possession and didn’t pay you [fully]. But when you gave me that vessel full of wine I gave you the proper share.” He is obligated according to dinei shamayim, since the other could say, “It was because I relied on your statement that you would buy a large amount that I sold to you at the wholesale price.” But if others approach to buy [the rest of the wine, the buyer can say], “What loss did I cause you? Look—you can sell it now.” 31

According to talmudic business law, a sale is not effected through verbal stipulation alone. The buyer must take possession of the merchandise or perform a symbolic act to effect the transaction. In this case the buyer promises to buy a large quantity, and the seller therefore agrees to charge a reduced price. The buyer, however, specifies that he wishes to purchase the entire amount in smaller units. Then, having paid for and taken possession of the first unit, he refuses to purchase the remainder, claiming he has no legal obligation to purchase the rest of the wine, since he neither took possession nor paid for it. He completed a perfectly legitimate trans-

action for the half-hin of wine at the stipulated price and now has no interest in the rest. 32

This technique violates no Jewish law. Clearly, however, the buyer has deceived the seller. As Sefer Hasidim points out, the seller only agreed to the reduced price because he expected to make a large sale and earn a decent profit. He would not have agreed to sell a small amount at a reduced price. Therefore Sefer Hasidim claims that dinei shamayim obligates the buyer to complete the transaction. Deception of this sort is morally repugnant. According to the laws of heaven, the buyer must live up to his promise.

Loopholes or imperfections of this kind are so problematic in talmudic law that Sefer Hasidim questions the justness of the system as a whole.

A certain old man was accustomed to summoning others to court frequently. A certain hakham [sage] said to him: “Why do you do this?” He said, “So that I will be blameless. If I am obligated by the judgment, I will pay; and if they are obligated to me, they will pay me back.” He said, “Your sin cannot be forgiven. Sometimes one comes forth exonerated by the judgment below but not by the judgment above. For example, if someone saw others give his wife money, and she did not put it in a safe place, and later he claims, ‘I will not pay for what my wife was negligent about.’ Indeed, the sages said, ‘It is bad to have a run-in with a woman.’ 33 Behold, he is exempt by dinei aduna and obligated by dinei shamayim, since he was negligent. He should have said [to his wife], ‘Hide it away in a safe place.’ 34

The disparity between the laws of humans and the laws of heaven emerges from the different perspectives of the man and the hakham concerning the courts. The man believes that he can avoid any possibility of wrongdoing by constantly appealing to the judicial system. Trusting absolutely in the authority of the judges and the fairness of the law, the man happily abides by the decision whether it is in his favor or not. His concern is not to win a judgment but to ensure that he is conducting his affairs properly. In this way he hopes to be blameless before God.

The hakham is the authority figure of the pietists, the sage with the ability to understand the hidden will of God. Sefer Hasidim repeatedly admonishes its readers to appeal to the hakham before they act, since only the hakham has access to the will of God in any given situation, and only in this way can they avoid sin. 35 Here the hakham explains the error in the strategy of the man who believes he is acting in an exemplary fashion. The hakham distinguishes the judgment below from the judgment above, an obvious reflex of the laws of humans and the laws of heaven. While rabbinic courts may determine a party to be innocent, the heavenly
The Laws of Heaven in Sefer Hasidim

Jeffrey L. Rubenstein

The Law of Heaven in the Talmud and in the Tanna'im, and in the Sefer Hasidim, is a complex and multifaceted concept that has been the subject of much controversy and debate. The Talmud and the Tanna'im, in particular, provide a rich and nuanced understanding of the law of heaven, which is also reflected in the teachings of the sages of the Sefer Hasidim.

The Law of Heaven in the Talmud and in the Tanna'im

The Law of Heaven is a fundamental concept in Jewish law, which is based on the idea that God's will is expressed through a system of natural laws and principles that govern the world. The Talmud and the Tanna'im, therefore, provide a comprehensive understanding of the law of heaven, which is based on the teachings of the prophets and the Torah.

The Law of Heaven in the Sefer Hasidim

The Sefer Hasidim, on the other hand, provides a more personal and introspective understanding of the law of heaven, which is based on the teachings of the sages and the guidance of the Holy One. The Sefer Hasidim, in particular, emphasizes the importance of personal reflection and spiritual growth in understanding and applying the law of heaven.


The relationship between the Law of Heaven in the Talmud and Tanna'im and the Law of Heaven in the Sefer Hasidim is complex and multifaceted, and depends on the context in which one is considering the law. On the one hand, the Law of Heaven in the Talmud and Tanna'im is based on the teachings of the prophets and the Torah, and reflects the wisdom and guidance of the Holy One. On the other hand, the Law of Heaven in the Sefer Hasidim is based on the teachings of the sages and the guidance of the Holy One, and reflects the personal and spiritual growth of the individual seeker.

The laws of heaven are not merely abstract concepts, but are meant to guide and inspire individuals to live in accordance with the will of the Holy One. The law of heaven, therefore, is a powerful tool for personal growth and spiritual transformation, and is an important aspect of the Jewish tradition.
The Laws of Heaven in Sefer Hasidim

Sin

The Talmud defines sin in precise terms: it is an act of disobedience to the Torah. It entails the violation of a commandment or prohibition. The essence of sin is the transgression of the will of God. Sin is not merely a moral failing; it is a denial of the divine authority.

Penalties

The penalties for sin are severe. The Talmud lists several types of penalties, including physical and economic sanctions. The main penalties are: death by stoning, exile, and fine.

The Schmei Yom stands out as an instance of the severe penalties, as it is the only place where the law of heaven is applied to human beings.

The Schmei Yom

The Schmei Yom is a midrashic work that interprets the Torah and the Talmud. It is known for its detailed and comprehensive exposition of Jewish law.

The Schmei Yom provides a detailed discussion of the law of heaven and its application to human beings. It explains that the law of heaven is not just a theoretical concept but has practical implications for human behavior.

The Schmei Yom also distinguishes between the law of heaven and human law. It states that while human law is based on the will of God, the law of heaven is based on the divine will. The law of heaven is a supernal law that is not subject to human interpretation.

The Schmei Yom further explains that the law of heaven is not applied to human beings without due cause. It requires that the person be guilty of a serious offense and that there is clear evidence of sin.

According to the Schmei Yom, the law of heaven is applied in cases where human law is insufficient. It provides a framework for understanding the divine will and guiding human behavior.

In conclusion, the Schmei Yom offers valuable insights into the law of heaven and its application to human beings. It serves as a reminder of the importance of obedience to the divine will and the need to adhere to the laws of heaven.

The Schmei Yom is an important source of Jewish law and provides a deeper understanding of the divine will and human behavior.
tion against abuse of captives. In an ideal world where human beings control their evil inclinations, no such permission would be granted. The Talmud thus implicitly recognizes a standard superior to that imposed by the Torah. Here we have tacit rabbinic authority for Sefer Hasidim's distinction between the law of Torah or the law of humans and the law of heaven.

Sefer Hasidim differs from the Talmud in its view of the practicality of this standard. Nowhere in rabbinic literature is it suggested that the Israelite should not possess a captive woman. The closest it comes is the suggestion that David was punished with a rebellious son for having married a beautiful war-bride. Apart from this agadic tradition, which appears in a series of legends about King David, the Talmud does not inveigh against such license. The halakhic exegesis of the verse offers neither exhortation to resist the urge nor threat of punishment. The Torah gave divine sanction, albeit on account of the weakness of human nature, so Israelites are free to act in such a manner.

Sefer Hasidim, on the other hand, seizes on the implied ideal standard and essentially makes it obligatory. It warns that although the act is permitted by the Torah, one who acts in this manner will be punished. In addition, Sefer Hasidim takes an approach employed by the Talmud in a single context to explain a particularly troubling precept and makes of it a general principle. Many things, not only the beautiful law bride, were permitted only on account of the evil inclination. Sefer Hasidim here applies a traditional concept, albeit a rare one, to revise the tradition and produce a new ethic.

The passage proceeds to identify a second arena in which Torah law should not be applied: when other people are offended by the act. The talmudic precedent derives from King David and his marriage to Bathsheva, wife of Uriah the Hittite. Attempting to exonerate David—could the pious King David have committed adultery and arranged for an innocent man to be killed?—the Talmud claims that Bathsheva was not technically married at the time, since all Israelite soldiers sent divorces to their wives before going into battle. The Talmud further suggests that Uriah was guilty of a capital crime, hence his death was justified. Yet the Bible explicitly states that David was punished for these actions (II Sam. 12:9). The Talmud therefore explains that he was punished for certain lesser offenses.

In this instance Sefer Hasidim ignores the Talmud's explanation of the divine displeasure and claims that it was directed at the very acts the Talmud excused. Technically David did not sin. But since others were offended by his acts and saw them as desecrations of God's name, David acted wrongfully. His act was permitted by the Torah, i.e., it did not violate the law, but was perceived to be so morally reprehensible as to deserve punishment. Thus Sefer Hasidim finds room for a standard beyond the Torah by taking into account the perceptions and judgments of other people. The pietist must be sensitive to the ultimate repercussions of his actions. Not all acts permitted by the Torah are really permitted.

Another explanation is that certain courses of action, while not violating any explicit law, violate more general ethical injunctions and therefore justifiably provoke divine wrath.

It happened that a certain widow claimed [the settlement due her in accordance with] her marriage contract (ketubah) from the orphans [children of the deceased by a former wife], and she took an oath in front of two witnesses. But she did not know that one of the witnesses was a relative. After her death—she had no children—her brothers, the heirs, claimed the house in which she had lived. The heirs of her husband came and took possession of the house. Her heirs said, "It is the estate of our sister," for they said, "Don't you know that our sister swore [she had collected] her marriage contract?" They [the heirs of her husband] said, "There is no witness except the one who is a relative." The other [witness] had gone to a distant place. It so happened that the relatives of the husband lost all their money and the house was destroyed. Behold, there are some matters that the lower court cannot judge, but the higher court punishes. And some matters are permitted, but punished because of "what is hateful to you do not do to your neighbor." Therefore it states, "You should love your neighbor as yourself" (Lev. 19:18).

A widow has the option to be supported by the estate until her death after which the husband's children inherit the property, or to claim her ketubah, the sum of money recorded in her marriage contract, in which case she forfeits her right to support from the remainder of the estate. If this case the woman swore before witnesses that she wished to claim her ketubah, which included the house. On her death, her heirs, her brothers, inherit the house from her. The husband's relatives covet the house, so they claim that the widow never collected her ketubah. They point out that one of the witnesses to the widow's claim was a relative, hence the testimony is invalid. The law does not recognize her claim, so she never legally took possession of the house, which remained in the possession of the husband's relatives.

This case recalls the one discussed above in which the only witness to a bequest are women. There Sefer Hasidim enjoins the judge to judg by the standard of dini shayayim if he is able to persuade the litigant
Here Sefer Hasidim warns of the consequences of not following dinei shamayim (although the term itself is not employed). Punishment by the heavenly court inexorably follows: the husband’s relatives lost the house and property they wrongfully claimed. Sefer Hasidim again points out that some things are permitted by the law of the Torah but will be punished.

Certain acts do not contravene any law, but nonetheless violate important principles, such as “Love your neighbor as yourself.” These standards go beyond the law of Torah; they are adjudicated by the heavenly court. Now we might well ask: aren’t these ethical prescriptions implicit in the law of the Torah? How can the Torah permit in one realm that which it cautions against elsewhere? Evidently the pietists found traditional ethical standards insufficient, so they read their morality into general ethical maxims. Because the Torah is incomplete and does not always reflect the will of God, the true pietist attempts to fear the Lord, not merely the law of the Torah, and aspires to the standard of the law of heaven. Of course the verses brought to justify the higher standard are contained in that same Torah. These traditional elements provide the grounds for self-revision.

The incompleteness or insufficiency of Torah law occasionally leads the pietists to prefer their own intuiting of God’s will over the dictates of tradition.

“A judge only judges by that which he sees.” Even though he is proficient in Torah, there are times when it is better that he act in accordance with what seems best to him (nir’eh re’ot ‘einayim), and “the annulment of Torah is its fulfillment.” There are some damages the sages did not obligate one to pay, and even so there is punishment from heaven, as the sages have said: “Why was Jerusalem destroyed? Because they conducted their affairs according to the law of Torah.”

This astounding passage instructs the judge to sometimes ignore what he knows should be the decision according to the Torah and to judge by “what seems best to him,” i.e., what he believes is the just and proper verdict. Ironically, Sefer Hasidim invokes as precedent a talmudic location taken out of context, “the annulment of Torah is its fulfillment.” Here the maxim means that by suppressing the law of the Torah the pietist fulfills the true will of God. Accepted talmudic tradition must sometimes be ignored in deference to the true Torah, God’s higher will, known to the pietist.

Further support for this claim is garnered from the famous tradition asserting that Jerusalem was destroyed because courts judged according to the law of the Torah. Whereas the Talmud proceeds to explain that the people should have acted “beyond the letter of the law (lifnim mishurat hadin), Sefer Hasidim omits this conclusion. The converse of the law of the Torah, therefore, becomes the vision of the pietist, that which appears best to him. As noted above, the entire law of the Torah, not merely the laws of humans, is relegated to an inferrior standard. The standards of Torah, while granted a certain recognition, lose their practical force in favor of the pietist ethic identified with the will of heaven. Since that ethic is grounded on applications of traditional concepts, the pietists maintain the continuity of tradition while providing for significant change.

The ethics of pietist culture clearly differ from those of the Talmud. Sefer Hasidim questions the justness of talmudic laws, warns that those who strictly adhere to tradition will be punished, and insists that all Jews must act in accordance with higher standards. Yet the pietists were deeply rooted in tradition. Indeed, Sefer Hasidim endeavors to find applications of biblical, talmudic, and midrashic exempla in contemporary life. To maintain tradition while simultaneously revising it, Sefer Hasidim employs the talmudic concept of the laws of heaven and its counterpart the laws of humans. By applying this concept to various cases, Sefer Hasidim relegates the talmudic ethic to the standard of the law of humans, and proclaims its own directive to be the law of heaven.

This use of traditional elements and the recognition of the talmudic standard, albeit as an inferior standard, provides for continuity. There is no sense of a break, no explicit rejection of the tradition, no conscious sense of change. Sefer Hasidim builds a new structure from older building blocks, producing a novel cultural system out of the constituents of tradition. At the same time, daring revaluations of tradition are introduced. A new pietist ethic replaces talmudic tradition as the standard by which all Jews should aspire. The concept of the laws of heaven in Sefer Hasidim beautifully illustrates the complex phenomena of continuity and change in medieval Jewish culture.

1. Ivan Marcus, Piety and Society: The Jewish Pietists of Medieval Germany (Leiden: Brill, 1981), pp. 136–137, ascribes the first sixteen paragraphs of the Parma manuscript to Samuel b. Qalonymus, Judah’s teacher. Sefer Hasidim is extant in two versions. The first edition was published in Bologna, 1538, and republished by R. Margoliot (Jerusalem 1895). A second version was published from a Parma manuscript by Judah Wissinetzki, Das Buch der Frommen (Frankfurt am Main, 1924) and by Ivan Marcus, Sefer Hasidim.
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procure other water. Because there is no visible or substantive damage—the heifer and the water remain in the same physical condition—the damager is exempt by dinei 'adam. Yet the laws of heaven obligate him to repay the loss he caused. See bBQ 53a; bBQ 98a; cf. yGit 5:4, 47a.

12. Thus tGit 3:8 classifies this exemption under the category of mnpn tqqtn hv'olam a provision “for the sake of the general good.” These provisions are measures instituted to ensure that the law does not prevent social institutions from working as they should.
14. bBQ 327a, according to R. Tarfon; cf. bBQ m103b. See Kirschenbaum, Beyond Eq utity, pp. 146—147.
16. See Haym Soloveitchik, “Three Themes in the Sefer Hasidim,” AJA Review 1 (1976): 311—357. Soloveitchik emphasizes the concept of rosh kabori, “the will of God,” which exceeds the explicit commandments. This is a “larger will” (pp. 315, 319) and is “hidden in that it is not subject to direct sensory perception. Marcus, Pity and Society, p. 11, following Soloveitchik, writes of the “infinitely demanding Divine will,” and of the “larger will . . . infinite in scope” (pp. 12, 35).
17. Pars. 1, 1036, 1964, and cf. par. 2, 985 and Marcus, Pity and Society, pp. 26—27.
The dictum comes from bBter 17a.
18. On dinei shamayim in Sefer Hasidim, see Soloveitchik, “Three Themes,” p. 320; 26 and pp. 355—356. I am in full agreement with Soloveitchik’s claim that dinei shamayim is not a dominant concept in the thought of the pietists; it is an ad hoc approach to specified situations they found troubling. Yet I think there is much more to the use of the talmudic concept than Soloveitchik conceives.
19. In Sefer Hasidim the term “heaven” (shamayim) is often shorthand for “laws of heaven” (dinei shamayim), as we find in rabbinic sources. See above, p. 79.
20. Sefer Hasidim, par. 1214.
21. See above, p. 79.
22. Sefer Hasidim, par. 632. Parallel in par. 22.
23. When the Temple stood, hestones through a sacrifice; after the destruction of the Temple, through prayer.
24. mBQ 8:1.
25. In the remainder of this paragraph, Sefer Hasidim makes the comparison to the laws of personal injury explicit and provides some direction as to how mental anguish should be evaluated.
26. Sefer Hasidim, par. 90.
27. The text of the Talmud in current editions is slightly different than the version cited in Sefer Hasidim, but the variations do not affect the argument here.
28. Louis Newman, “Law, Virtue and Supererogation in the Halakha: The Problem of Lifnim mishurat hadin Considered,” Journal of Jewish Studies 40 (1989): 77—79, points out that some interpret the related notion of lifnim mishurat hadin, “beyond the letter of the law,” as a supererogatory standard to which only the most pious are expected to conform. According to Sefer Hasidim, on the other hand, it holds that its rulings reflect the true will of God at
44. In both the Babylonian and the Palestinian Talmud, the amoraim debate whether the son must provide sustenance and clothing at his own expense or at the expense of his parents. Tosefot, Yerushalaim, 17:6a–b. The Babylonian Talmud concludes that it is at the son’s expense, the Babylonian Talmud, at the father’s expense. The Babylonian Talmud’s conclusion, however, was not automatically accepted, and the matter was still debated in the media.


46. Seder HaShamah, 3a.

47. In the preceding few paragraphs, we noted that discrepancies between the judgment above and the laws of the land may be due to the fact that the laws of the land apply to the general or average case, while the religious law applies to the specific case. The Talmud, however, does not address this issue.

48. In the previous paragraphs, we noted that the Talmud, in its discussion of the case of the 12-year-old boy, concludes that the boy should not be held liable. The Talmud, however, does not address the question of whether the boy should be held liable for his actions.

49. See, e.g., Tosefot, Yerushalaim, 17:6a–b. The Babylonian Talmud concludes that it is at the son’s expense, the Babylonian Talmud, at the father’s expense. The Babylonian Talmud’s conclusion, however, was not automatically accepted, and the matter was still debated in the media.

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52. Seder HaShamah, 3a. See below.

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