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Aging and the aged in Jewish law

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ETHICAL WILLS

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There is an old and familiar *midrash* about how the *Shema* came to be.¹ On his deathbed, Jacob called in his twelve sons and said to them, "Listen, the God of Israel that is in the heavens is your Father, for I fear that there is doubt [the word is *mahloket*] in your hearts about the Holy One, Blessed be He." They responded, "Hear, Israel, our father, just as there is no doubt in your heart about the Holy One Blessed be He, so there is no doubt in our hearts, but the Lord is our God, the Lord alone." At this point, according to the *midrash*, Jacob said under his breath what has become our traditional response to the *Shema*, "*Baruch Shem Kvod Malchuto...* [Blessed be the glory of His kingdom]." In this moving death scene, we have what we might call the first ethical will, the beginning of what was to become a long Jewish literary tradition.

In fact, of course, the situation is much more complex. The story of Jacob's last words to his sons is not found in the *Tanach* itself, but in the much later midrashic literature. In fact, the earliest mention of this story I could find is in *Bereshit Rabbah* and *Dvarim Rabbah*.² As best we can tell, both these *midrashim* are Palestinian and date from around the eighth or ninth century of the Common Era.³ It is interesting to speculate on why this particular story would appear just at this time and in just this form—that is, in the form of a last will and testament, an ethical will. I shall return to that question in a few moments, but before doing so I want to say a few words about the tradition of ethical wills as we have come to know it.

The literary phenomenon we today know as ethical wills is not a universal Jewish literary type. In fact, ethical wills occur in what we regard to be their classical form only in the thirteenth century or so, and then only among Ashkenazic Jews of southern and central Europe.⁴ Even more narrowly, they appear to have been composed

largely by authors who were connected either with the thirteenth century pietistic movement of the *Hasidei Ashkenaz* or with Kabbalistic mysticism, especially in the wake of the exile from Spain. Nor does it seem on closer inspection that this literature is really made up of true wills at all. Rather, what we call Hebrew ethical wills in the classical sense are really well-crafted moral treatises written as though they were wills—that is, as though they were the words of a dying father to his children.

These observations raise a number of questions. If these are not really ethical wills, what are they? Why are they written as wills? And what does this have to do, first of all, with the ethics of aging and, second, with Reform Judaism. It is to these questions that I propose to address myself in the next few minutes.

Let us look first at the genre itself. I should begin by pointing out that the notion of a distinct genre of ethical wills is itself of rather recent vintage. The term “ethical wills,” and the conceptualization that it constitutes a genre, is to be credited to Israel Abrahams, who published a collection of such literature in 1926 as part of the Schiff Library of Jewish Classics project of the Jewish Publication Society.⁵ The purpose of the Schiff Library in general, and of this collection in particular, was to show that the Jews had created a classical Hebrew literature that was just as worthy of study and respect as the literature produced in Greek and Latin. Abrahams collected a variety of moral writings that seemed to be in final testament form, put them together in one book, and titled the collection *Hebrew Ethical Wills*. It is perhaps significant that no entry for such a literature appears in the *Jewish Encyclopedia* that appeared in the early part of the century—that is, before the appearance of Abrahams’ *Hebrew Ethical Wills*—but does appear in the subsequent *Encyclopedia Judaica*. Abrahams brought together in one place moral

sayings and lessons in the form of last wills and testaments from Talmudic times all the way up to the nineteenth century. In so doing, he created the sense of a single genre. Although Abrahams probably went too far in including Talmudic and midrashic stories like the one I cited at the beginning, he was certainly right in bringing to our attention the fact that there was such a distinct genre, at least in the Middle Ages.⁶

With this background in mind, let us turn to the material itself. What we find in Abrahams' collection from the medieval period, as I said, are really nothing more than moral treatises. These are works meant to instruct the reader on how to lead the proper moral life. As such, they represent in Judaism a middle stream of literature that stands between *Halakhah* on the one hand and philosophy on the other. The *Halakhah* defines norms of behavior, but only rarely, and then only obliquely, deals with matters of intent and emotion. It is concerned in the end with proper behavior in the concrete world. The philosophical literature, on the other hand, is less concerned with behavior than with proper conceptualization. It addresses the rational part of our souls but, again, not the intentional or emotional side. It is here that the ethical literature, be it *Pirkei Avot*, *Musar*, or ethical wills, finds its unique place. It is not concerned with sheer conduct on the one hand, although it usually assumes this, nor is it concerned with the philosophical underpinnings of its content, although this is often assumed as well. Rather, it is a literature addressed to the reader's emotions, intentions, and feelings. It may be for precisely this reason that it takes the form of a will, a point I will return to in a moment. In all events, it thus covers the religious ground between philosophy on the one hand and *Halakhah* on the other.

But why should this literature be in the specific form of ethical wills? After all, other ancient literary paradigms are available

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to Judaism for passing on advice and wisdom. There is the model, for example, of *Pirkei Avot*, which is a collection of moral aphorisms. This is an ancient form that we can trace back at least to the biblical book of Proverbs and beyond that into ancient Near Eastern, especially Egyptian, literature. There is also the model of the *midrash*, which presents itself as exegesis of the biblical text. This is a more recent form, of course, relatively speaking, since it is impossible to have a *midrash* unless there is a canonical text, and that did not develop until late antiquity. Nonetheless, the midrashic style was certainly available to the authors of the ethical wills. So we have to ask again, why the form of a will?

The answer, I think, lies in the literature's claim to authority. *Pirkei Avot*, for example, makes its statements in the name of famous ancient sages. The claim here is one of discipleship. We are told in the beginning of the book that Moses received all Torah from Sinai and passed it on to Joshua, Joshua to the elders, and so on. The later aphorisms, stated in the names of Shamaiah, Abtalion, Hillel, Akiba, Eliezer, and so on are understood to draw their authority through a chain of discipleship stretching back to Moses himself. This is the oral law written down. We know from the New Testament and from the Islamic Hadaith that in the Near East this is a common strategy for claiming authority.

The *midrash* bases its claim on a somewhat different foundation, namely the written text of the revelation. It has a call on our attention and allegiance because it claims to express what is implicit in the very words of the Holy Writ given at Sinai. The authority invoked here is not this or that sage, but the words of what we all possess in common, the Tanach. This, of course, is again a common mode for claiming authority in Judaism, dating back at least to the peshers of the Dead Sea Scrolls. This community claims to find its

own contemporary situation prefigured in the writings of such prophets as Habakkuk and Nahum. Basing a claim of authority on the written word of a commonly accepted canon is of course a continuing activity even in our own day, as anyone knows who has listened to the Religious Right.

The use of the form of an ethical will thus seems at first an odd choice. It does not seem to have become a mainstream and accepted Jewish genre by the Middle Ages, when this literature appears. Yet, on closer examination, it does seem that the idea of last wills and testaments does have deep roots in the Jewish tradition. After all, the Book of Deuteronomy can in a sense be said to be a long ethical will, Moses' last testament to the Children of Israel. We even find this form in the *Dead Sea Scrolls*, in the *Testament of the Twelve Patriarchs*, for example. In both these cases, the document is clearly pseudepigraphic. It draws authority not because it is revelation (whether written or oral) nor because it is the result of an authoritative chain of tradition, but because of the wisdom acquired by the person who presumably utters it. It is this accumulation of a lifetime of experience and insight that makes an ethical, didactic will demand our respect. It is a wisdom based neither on revelation nor on logic, but on the practical experience of living in this world.

It is on the basis of this particular claim to authority that I think we can understand the choice of genre for medieval Hebrew ethical wills. The authors are not claiming to present an exegesis of Scripture, although they do cite a proof text now and then; nor are they claiming to be passing on knowledge from a line of teachers, although in many cases the authors are in fact the students of famous rabbis and teachers. For that matter, they are not claiming to be giving the reader the results of philosophical inquiry, although in many cases what ethical wills say are rehearsals of standard philosophical works.

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Rather, they come to us as the distilled wisdom of one who has witnessed life and learned something of its secrets. Maybe its closest relative is the book of Kohelet in the Bible. To be sure, the authors often point out along the way that what they have to say is congruent with Torah or with philosophical deductions, but this is only an aside. The authoritative voice is not some other text, but the (presumably) dying author. As I suggested earlier, this is, of course, also what gives the literature its emotional power.

This genre has some other rather interesting aspects that may help explain its particular form. As it turns out, there are clusters of writers. The Asheri family in thirteenth-century Germany, for example, provides us with a number of ethical wills: from Asher ben Yehiel (d. 1327) and from his sons Judah ben Asher (d. 1349) and Jacob ben Yehiel (d. 1340).⁷ Another cluster is associated with the Horowitz (or Hurwitz) family of Bohemia from whom we have three generations of ethical wills from the sixteenth and seventeenth centuries. In both cases, these families were associated with ideologies or movements that were out of the mainstream. Asher ben Yehiel and his family, for example, were associated with the *Hasidei Ashkenaz*. This group was influenced both by Jewish mysticism and probably also by German pietism of the thirteenth century. The Horowitz family was associated with Kabbalistic circles, Isaiah ben Abraham having actually settled in Jerusalem in the early seventeen hundreds.

I would suggest at this point that the clustering of ethical wills in such families is not accidental. In a way, we can look at the form of the ethical will as suggesting a stream of tradition and authority outside the normal channels. The ethical will was a way of passing along teachings and possibly some esoteric doctrines in a way that was on the surface thoroughly Jewish, if not quite rabbinic.⁸

I do not wish to pursue the implications of this aspect of the literature at this point. I want instead to look at what it says about the nature of the elderly, in whose name the literature comes. Let me hasten to say that I do not mean to imply that the elderly are always regarded as sectarian. Nonetheless, I think there is some significance in the fact that the wisdom acquired by the aged is deemed normative and instructive alongside the written Torah and the deductions of philosophers. The form of this literature assumes that the aged are a special resource, one that deserves its own voice in our community.

What gives the elderly this special call of authority? I would like to offer a couple of suggestions. One has to do with the concept of oral tradition. As a religion we have never regarded Tanach as a closed literary canon in the way the Church, for example, has regarded the Bible. For us, the lessons of Judaism are also always passed down from parent, and grandparent, to child. This is the point of the *midrash* about Jacob and his children with which I opened this paper. This is what makes conversion to Judaism so difficult: conversion is not just a matter of learning Jewish history, customs, and ceremonies. It means the absorption of an entire culture, much of which is not articulated or written down (although this is changing). In all events, the elderly are the repository of that part of Judaism that they inherited from their parents and grandparents and are the only source for the succeeding generations.

Second, I think the notion of ethical will builds on the notion of the strong Jewish family. It is inconceivable in Judaism to have a call as we find in the New Testament to leave one's family in order to be saved. Through the existence of ethical wills we are saying, in effect, that the passing generations are integral to our own lives as Jews. They have an insight into what it means to live as a Jew

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that cannot be acquired from legal arguments or philosophical treatises.

Finally, I think ethical wills offer a third way between sheer philosophy on the one hand and *Halakhah* on the other. This makes the genre of ethical wills especially important for Reform Judaism. Our movement goes back to a longstanding debate about what constitutes the core of Judaism. We stand in agreement with many rebellions against strict rabbanism in saying that mere adherence to *Halakhah* is not enough. This critique has been the basis of any number of movements in Judaism, from mysticism to Hasidism to Zionism. On the other hand, we as a movement have at times gone too far in another direction, namely philosophy. The early founders of Reform were convinced they could create a modern, rational, and progressive religion on the grounds of a scientific study of history and culture. The result was often a Jewish ethical culture that had little or no religious content. Ethical wills are a vehicle for teaching us how to be Jewish, not only in terms of neo-Orthodox *Halakhah*, but, more importantly, emotionally and intellectually, without along the way turning Judaism into a secular philosophy. They get right to the point of what the Reform movement has been all about: that Judaism is about bringing the spiritual into our lives. This is an element of our tradition we have been all too ready to ignore or forget.

In his introduction to the reprint of Israel Abrahams' *Hebrew Ethical Wills*, Judah Goldin begins by quoting Moshe Hayyim Luzzato, who wrote a famous ethical treatise, *Mesillat Yesharim*. Luzzato says in opening his work, "I have not composed this work to teach people what they do not already know, but to remind them...of what is well known to them indeed. For most of what I say is nothing more than what most people do know and have absolutely no doubts about. But what is said in the following pages is constantly ignored,

most often forgotten, *because* it is common knowledge and obvious." Jacob, in the story in *Bereshit Rabbah*, knew that his twelve sons understood the tradition of the one God discovered by their great-grandfather Abraham. But in the day-to-day struggles of everyday life, this was a simple truth Jacob feared they would forget. In his perennial and maybe even quintessential Jewish fear, Jacob became in late antiquity the progenitor of what was to become the ethical will, the passage of wisdom from the experience of age to the new generation that will have to carry the religion forward.

I want to close with an observation ascribed to Rabbi Kushner in Jack Riemer and Nathaniel Stampfer's collection. Kushner cites Jacob in Genesis 46:30, when upon seeing Joseph he says, "*Amuta Hap'am* [I will die this time]." Kushner goes on to say that all human beings owe life one death. But if a person leaves behind no one who remembers his values and his character, if a person is forgotten as if he never was, that person dies a second death....⁹ May we be as successful as Jacob in passing along to the next generation not only the techniques of being Jewish, but the moral and emotional wisdom of Judaism as well.

Notes

1. "Bereshit Rabba" (Vilna) 98:3, in J. Theodor and C. Albeck, *Bereschit Rabba* (Berlin 1912), p. 1252.
2. *Bereshit Rabbah* (Vilna edition) parashah 98:3; Theodor-Albeck, parashah 99. For the version in *Devarim Rabba*, see the Vilna edition Parashah 2 (Lieberman, parasha v'etchanan, paragraph 1).
3. The dating of these midrashim is still a matter of some controversy. Leopold Zunz dated *Bereshit Rabba* to the sixth century. His view has been carried forward without comment by H. Freedman in the Introduction to *Midrash Rabbah Genesis I* (London: Soncino, 1939), pp. xxix. Jacob Neusner has argued for a slightly earlier date, to about 400 C.E. See, for example, his *Genesis Rabbah: The Judaic Commentary to the Book of Genesis: A New American Translation*, p. xi. As for

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Leviticus Rabba, Zunz dated it to the mid-seventh century. Mordecai Margulies has a long analysis of the *midrash* and its relation to other works and concluded that it can date no later than the late fifth century. See his *Midrash Wayyikra Rabbah* (Jerusalem, 1960), Part 5, pp. ix-xxxiii. These earlier, fifth-century, dates are also given in H.L. Strack and G. Stemberger, *Introduction to the Talmud and Midrash* (Minneapolis: Fortress, 1992), pp. 304 and 316, respectively.

4. See Joseph Dan's overview of the genre under "Ethical Wills" in the *Encyclopedia Judaica* 14, 530-32.

5. See Judah Goldin's "Foreword" to the JPS reprint of Israel Abrahams' *Hebrew Ethical Wills* (Philadelphia: Jewish Publication Society, 1976), p. 7.

6. The tradition of writings ethical wills did not die out in modern times but has continued, even in the post-Shoah world. See, for example, the collection edited by Jack Riemer and Nathaniel Stampfer, *Ethical Wills: A Modern Jewish Treasury* (New York: Schocken, 1983).

7. Dan, Overview to "Ethical Wills," *Encyclopedia Judaica*.

8. It is interesting in this regard to think of the memoirs of Gluckel of Hameln. These memoirs are in a sense nothing more than an extended ethical will, as she herself says. It may be that the somewhat unorthodox character of the ethical will genre made it one of the few literary vehicles open to women.

9. Riemer and Stampfer, *Ethical Wills*, p. 209.