From Critical to Prophetic Idealism: Ethics, Law, and Religion in the Philosophy of Hermann Cohen

by

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A thesis submitted in conformity with the requirements for the degree of Doctor of Philosophy
Department for the Study of Religion
University of Toronto

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2013

Abstract
In this study of the nineteenth-century German-Jewish philosopher Hermann Cohen, I argue that Cohen’s major revision of Kantian ethics and moral theology is permeated with concepts drawn from and logically contoured by his interpretation of Maimonidean rationalism and Jewish sources, more generally. Through an idealizing hermeneutic, Cohen normativizes certain philosophical problems in post-Kantian philosophy and addresses them under the title of “pantheism” and “positivism”. Between both pantheism and positivism, Cohen’s idealism presents a middle path, which I describe as “prophetic idealism,” or a philosophy of time and ideality that interprets history, law, and ethical normativity as future-oriented. In other words, “prophecy” intimates a methodological role for temporality in practical philosophy and introduces a new meaning for legality in ethics. Cohen therefore offers a philosophy of Judaism, as a philosophy of religion, by normativizing the idea of prophecy and making it a conceptual model for reason-giving, agency, legal norms and ethical action. By focusing upon the critique of both pantheism and positivism, this dissertation therefore argues that Cohen’s negotiations of nineteenth-century philosophical problems introduces a normative role for Judaism as a public philosophy and the argument concludes by suggesting that Cohen’s philosophy of Judaism is instructive for contemporary public philosophy.
Acknowledgments

I have benefitted from the support of many people, both intellectually and emotionally, over the past few years while working on this project. No one deserves more thanks and credit than my incredible wife, Brauna. There are no limits to her love and support; and to my sons Elias and Benjy, who remind me daily that the future is our homeland. To all my parents, Mom, Dad, Mark, Karen, and Norman; and to my family, Jaime and Brad, Amelia, Taylor, Aurie, and Josh, I love you all.

My colleagues have shared their insights and criticisms in such warm dialogue that I believe myself blessed to have such companionship in philosophical thought. My gratitude goes to Shira Billet for conversations about Kant and social thought, and her and Steven’s profound friendships. To Eli Sacks, my big brother and intellectual role model, who is a friend like no other; to Tim Langille for reminding me that a scholar is nothing unless he is a Mensch first and foremost; to Matt King for showing me the wisdom of interpretation, listening, response, and most importantly, savouring every moment; to Yoni Brafman for sharing his commitment to rational and thoughtful Judaism and profound insights into the meaning of obligation; to Sam Brody for sharing with me his commitment to a world in which prophetic justice is not myth.

At Toronto I benefitted and learned from the wit and wisdom of Tyson Gofton, Karen Nisenbaum, Anthony Bruno, Jason McKinney, and Paula Schwebel, who all shared their generous thoughts and comments on different ideas along the way. At NYU I benefitted from the group therapy, laughs, and encouragement of Hillel Ben Sasson and Lynn Kaye.

I have been fortunate to have many faculty mentors while in graduate school. In my field and beyond, they have all been a source of inspiration. Many thanks to Anver Emon for all his encouragement and thoughtful suggestions in the early stages of my research; he is a truly wonderful teacher and I cannot begin to express my gratitude for his patience and support. To Hindy Najman for her mentorship and conversation. I am so thankful for having been able to
learn from her. To Alan Mittleman, Ken Green, Pamela Klassen, and Leora Batnitzky I am thankful for the example of how to balance serious scholarship and family life.

My sincere thanks goes to Rav Asher Turin, who showed endless patience and kindness toward me and introduced me to the sea of Talmud and Rabbinic literature. My deepest respect and thanks to Rav Dov Linzer, Rav Ysoscher Katz, and Rav Yaacov Love for teaching me how to balance a critical eye with devotion, charitable interpretation, and a sensitivity to the diverse voices in the halakhah.

To my advisors, I owe a profound respect, thanks, and appreciation.

David Novak has been a rav, a teacher, an example of intellectual fortitude and Jewish commitment. I’ve never known a better teacher and mentor, whose willingness to sit and think through questions with me, allowing me the independence to think through problems on my own, making mistakes in the process, yet always guiding me toward a more responsible judgment. He has taught me to look for Torah in everything and I hope to live up to his example.

Bob Gibbs, my teacher, whose depth of soul and thought has been of delight to learn from. So much of him is in this work, both in the margins and explicitly, that it is difficult to credit him sufficiently. But as Rav and Abbaye suggest in Baba Batra 12a-b, when words are said by one and they are said again by someone else in the name of a great man, or even said again to be a halakhah lemoshe misinai, one should know that this is prophecy.

Paul Franks has set an example of impeccable scholarship and erudition. I can only strive for his learnedness and see his philosophical rigour as an ideal to work toward.

I have also benefitted from the generous financial support of a number of institutions, to which I would like to extend my deepest thanks: The Social Sciences and Humanities Research Council of Canada; the Tikvah Fund; the Tikvah Center for Law and Jewish Civilization at NYU School of Law, Cardozo School of Law at Yeshiva University, Yeshivat Chovevei Torah, the Centre for Jewish Studies and the Department for the Study of Religion at the University of Toronto. Special thanks to Fereshteh Hashemi for making my graduate career run so smoothly.
To the many people that are not listed here, you are not forgotten, and your influence and help has been a blessing for me. Please accept my eternal thanks to you all.

Paul E. Nahme
Overland Park, KS
7 Tishrei, 5774/September 11, 2013
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Introduction

Pantheism, Positivism, and Prophecy: The Constellations of Hermann Cohen’s Philosophy

“We encounter three fundamental moments in the thought of this great rationalist: Plato, Kant, and prophecy.”
- Ernst Cassirer (1920)\(^1\)

1 Introduction

Gaining the attention, yet alone the respect, of exponents of Jewish orthodoxy was not a common occurrence for a professor of philosophy in late 19\(^{th}\) century Germany. Indeed, gaining recognition as a “Jewish” thinker with something, albeit minimal in their eyes, to contribute to Jewish thought was even less common. Thus, when R’ Jehiel Jacob Weinberg, the last Rosh Yeshiva of the Rabbiners-Seminar zu Berlin, reflecting on the state of post-war Jewish thought to his student Alexander Altmann acknowledged Cohen as the last example of a “philosopher of Judaism,” despite his many theological reservations, this was nevertheless quite the statement.\(^2\) Cohen’s work had attained such prominence in his own time that Weinberg was certainly not the only Orthodox thinker to take Cohen’s neo-Kantianism seriously. R’ Nehemiah Anton Nobel studied under Cohen and was greatly influenced by Cohen, indeed remaining in close contact with him.


throughout his life,³ and R’ Joseph B. Soloveitchik claimed Cohen as perhaps the greatest example of a systematic philosopher, despite his reservations about his philosophy of Judaism being more “idealistic Kantian” than “Jewish”.⁴ Indeed, the commonality shared by all three of these “orthodox” thinkers would seem to be a shared apprehension about Cohen’s “theological” positions on the one hand, despite the latter’s disavowal of the term “theology,” and a profound appreciation of his idealism, particularly its emphasis upon the intimacy of law and ethics, on the other.

Today, the philosophy of Hermann Cohen is still recognized as one of the most challenging, if perhaps at times incomprehensible product of the golden age of modern German Jewry. The erudite, yet academically terse style of Cohen’s thought leads many to acknowledge his importance, yet few to consider its peculiarities and profundities. Indeed, while Cohen has been incorporated into what might be considered a “canon” of modern Jewish thought, most considerations of his importance centre upon his posthumous work, Religion of Reason: Out of the Sources of Judaism (1919). The increasing number of articles, conferences, dissertations, and edited volumes on the Religion of Reason in the last 20 years testifies to the primacy this work has commanded as the renowned representation of Cohen’s thought. However, the conventional wisdom has led us to believe that Cohen’s philosophy of Judaism—in its systematic presentation—is confined to that final work alone.⁵ The Religion of Reason, so the story goes, represents the height of a career that has been otherwise too often consigned to the annals of German academic philosophy, with its focus upon Kant’s transcendental idealism and its minutiae left to the philosophically inclined, beyond the scope of Jewish intellectual history. While Cohen is often acknowledged as having both founded and contributed to the Marburg school of neo-Kantianism’s surge to prominence at the end of the 19th century, the works that typify this career have attracted

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⁵ Granted the *Jüdische Schriften* evince Cohen’s full-fledged occupation with Judaism, *Religion of Reason* is nevertheless often considered the “philosophical” treatise of Cohen’s Judaism par excellence.
significantly less attention in the Anglophone scholarship on post-Kantian philosophy, and even less attention in German-Jewish studies.\(^6\)

Largely due to Franz Rosenzweig’s reading of Cohen—the Jewish Cohen; where his explicit turn to Judaism in the *Religion of Reason* is interpreted as a break with the system of philosophy and becomes a kind of proto-existentialism of Jewish practice—a generation of scholars of both neo-Kantianism and of modern Jewish thought has been influenced into partitioning Cohen’s thought in two: the Kant interpreter and respected German philosopher, on the one hand, and the Jewish polemicist, teacher and interpreter of Judaism, and ba’al teshuva (a returner to religion), on the other.\(^7\) This partitioning of Cohen’s thought is not only wrong, but it eclipses a central insight into the peculiar logic of Cohen’s systematic philosophy. While this interpretation has been almost definitively challenged and overcome and recent scholarship has accepted that Rosenzweig’s reading reveals more about his own philosophical concerns than those of Cohen,\(^8\) and while a new

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\(^6\) For examples of this kind of treatment of Cohen’s thought in German-Jewish studies, one can consider the paucity of articles on Cohen in the Leo Baeck Annuals over the past 50 years and how the few that do appear treat only Cohen’s historical context. See for an example of a historically enriching treatment, yet one nevertheless influenced by Rosenzweig’s problematic interpretation of Cohen, see Hans Liebschütz, “Hermann Cohen and his Historical Background” LBA XIII (1968). For more purportedly philosophical discussions, see the historically illuminating, yet philosophically limited treatment in Amos Funkenstein, *Perceptions of Jewish History*, (Berkeley, CA: University of California Press, 1993), chapter 7. Funkenstein acknowledge Cohen’s neo-Kantianism in some detail, albeit only as a precursor to Rosenzweig. See also David N. Myers *Resisting History: Historicism and Its Discontents in German-Jewish Thought*, (Princeton, NJ: Princeton University Press, 2009), where Cohen’s place in modern German Jewish history is secured but where his philosophical oeuvre is overlooked. Consider also *German-Jewish History in the Modern Times: Integration in Dispute, 1871-1918*, eds. Michael A. Meyer and Michael Brenner, (New York: Columbia University Press, 1997), chp. 10, where Cohen is acknowledged as among the important figures in post-Emancipation Jewishness in the public eye, such as Cohen’s dispute with Treitschke’s essay “Herr Graetz und sein Judendum” (1879) concerning the Talmud in “Ein Bekentniss in der Judenfrage” (1880), *JS I*, p. 85ff. For treatments of Cohen’s neo-Kantianism to the exclusion of his Jewish thought, even in its dimensions of influence upon his interpretation of Kant, see Klaus Kristian Kühnke *Entstehung und Aufstieg des Neukantismus: Die deutsche Universitätsphilosophie zwischen Idealismus und Positivismus* (Frankfurt a/M: Suhrkamp, 1986); Claudius Muller, *Die Rechtsphilosophie der Marburger Neukantianismus: Naturrecht und Rechtspositivismus in der Auseinandersetzung zwischen Hermann Cohen, Rudolf Stammler und Paul Natorp*, (Tübingen: J.C.B. Mohr, 1994).


A recent example of this tendency to orient arguments about Cohen’s general philosophy on the basis of the Religion of Reason, is Daniel Weiss’s Paradox and the Prophets. Weiss builds an argument concerning Cohen’s ultimately de-ontologized deployment of religious concepts by way of analogy with Kierkegaard’s idea of indirect communication. While I fundamentally agree with Weiss’ interpretation of Cohen in terms of a non-metaphysical interpretation of religion, we differ in our general sense of orientation within Cohen’s system. I prefer to build off of Cohen’s systematic works, rather than his Jewish writings to make this argument. Another engagement with Cohen’s de-mythologized “religion of reason” is Robert Erlewine’s Monotheism and Tolerance: Recovering a Religion of Reason, (Bloomington: Indiana University Press, 2010). Erlewine situates Cohen in a narrative that includes Mendelssohn and Kant, but focuses largely on what he calls Cohen’s “rationalizing hermeneutic” (p. 155ff.). While Erlewine’s general interpretation of Cohen’s RoR shares many parallels with my own reading of RoR, he nevertheless chooses a different focus for his study of than my own focus upon Cohen’s neo-Kantian “Jewish” thought in the systematic writings.
contextualizing the methodological synthesis of Judaism and philosophical system at work in his systematic writings.\textsuperscript{11}

This study seeks to correct that conventional wisdom by reconsidering Cohen’s critical idealism, and his Ethik des reinen Willens in particular, as permeated with concepts and principles culled from Jewish sources that, while most explicit in Religion of Reason, are nevertheless the key to understanding his interpretation of Kant and his neo-Kantian ethical philosophy. In turn, I also argue that Cohen’s Jewish philosophy cannot be understood independent of the problems in post-Kantian German philosophy, and German Idealism in particular. Hence, this study engages Cohen’s philosophy by highlighting both its neo-Kantian philosophical rigour and its conceptual translations of Jewish texts and sources.

That Cohen’s system of critical idealism attracted the attention and even praise of otherwise uninterested orthodox coreligionists may prove to be a helpful topos to guide this study. In this dissertation I argue that Cohen’s philosophy, with its continued emphasis upon legality and ideality, and his Ethik des reinen Willens in particular, is not accidentally intimate with traditional Jewish approaches to the concept of law, or the halakhah. But the dominant presentation of Cohen’s philosophical engagement with Judaism remaining largely confined the Religion of Reason has precluded the possibility of fully examining what attraction Cohen’s philosophy of law and ethics holds for “orthodox,” or what is perhaps a better contemporary appellation, “halakhically-inclined” Judaism. Interpreting Cohen’s philosophy in a manner that unravels the many traces of a kind of “Jewish” legal thinking is therefore part of the task of this dissertation. Indeed, I will argue that Cohen’s Jewish thought lies primarily in his conception of law and the systematic role that legality plays in his philosophy. But teasing out the elements of Cohen’s philosophy of ethics and law, where Judaism and religion in general find their points of contact, is more of a conceptual

\textsuperscript{11} Kenneth Seeskin is perhaps the greatest exception to this trend in Cohen scholarship. By recognizing the uniqueness of Cohen’s interpretation of Maimonides—while noting its inaccuracies—Seeskin has revitalized the study of Cohen’s philosophy as a constructive Jewish thought that sheds light upon the continuity between medieval and modern Jewish rationalisms. As it will become clear in the chapters to follow, I build significantly upon Seeskin’s work. See for example, Autonomy in Jewish Philosophy, (New York: Cambridge University Press, 2004); “How to Read Religion of Reason” Introductory essay to the English translation of Hermann Cohen’s Religion of Reason: Out of the Sources of Judaism (Atlanta: Scholars Press, 1995); Jewish Messianic Thoughts in an Age of Despair (New York: Cambridge University Press, 2012) to name just a few.
reconstruction than a philological project. Indeed, it requires a Cohenian methodology in order to be carried out, and I would like to make this methodological claim up front, namely, that Cohen can only be understood properly by employing Cohen’s own hermeneutic, that of idealizing interpretation.

2 Idealization and Hermeneutics

Cohen’s critical idealism is unique in that it both acknowledges the role of historical as well as normative consciousness. That is, unlike the approach of “historicism,” which was quite influential in Cohen’s time, reducing ideas to individual historical contexts whereby the concepts and exponents are thoroughly relativized to their specific time and place, a “normative” interpretation attempts to abstract the idea and concept from its historical specificity and to focus only on the meaning of the idea in its re-appropriated context. While the pitfalls of historical consciousness lead to the disregard for philosophical interest in ancient ideas or examination of enduring problems, the failures of a wholly normative method lay in the misinterpretation of texts in their contexts that give coherence to the ideas in question. Thus, for Cohen, there is no philosophical question that remains isolated in a historical moment, nor is any question beyond the historical unfolding of science and reason. As Cohen writes in one of his earliest works, concerning the Trendelenburg-Fischer dispute, the history of philosophy must be conceived as more than just the point of view of the historian, rather, “the historian should be a philosopher. The historian should not hesitate to place himself between the contending parties.”

History is written for the sake of the future, for the sake of what “ought to be”. It is precisely through Cohen’s understanding of the normative within the historical—the problem that stills beckons philosophical reflection on the

12 For a discussion of the nominalist orientation of historicism toward individualizing events, see Frederic Beiser’s The German Historicism Tradition (New York: Oxford University Press, 2012), intro. By contrast, Beiser has also criticized the contemporary normative interpretations of German Idealism on the part of Terry Pinkard and Robert Pippin as mirroring part of the neo-Kantian position, but disavowing the historical consciousness of their revisionism. See Frederick Beiser, “Normativity in Neo-Kantianism: Its Rise and Fall” in International Journal of Philosophical Studies, Vol. 17, no. 1, (2009), pp. 9-27

13 Quoted in Poma, Critical Philosophy of Hermann Cohen, p. 5
past idea and its possible relevance today—that he is able to find a role for both a historian and a
philosopher at once. This is more than historical hermeneutics, it is part of a unique conception of
time altogether.

The importance of time for Cohen’s overall philosophy will be a central argument of this
dissertation. Time becomes the purest form of idealization, which makes law and judgment the
primary mechanisms of temporalization. This is to say, in Cohen’s view, law is about action, not an
action that has already transpired; this is mere history. Rather, law is about what I ought to do. It is
about an action that should be. Law therefore temporalizes the very idea of ontology, of being, and
normativizes what experience ought to be like. This play upon the “is” and the “ought”, a central
problem of ethical philosophy, becomes the very site upon which Cohen builds his most profound
methodological principle, tying together the problems of logic and ethics, law and religion, and
monotheism and pantheism. For indeed, religion finds its common cause against the kind of
historicist reduction Cohen inveighs against above in the very fabric of time. This is what Robert
Gibbs has referred to as Cohen’s “messianic epistemology”. Such an epistemology sees the future
as the realm in which Truth could emerge. Contrasted with the historical model of the Greeks,
where truth is located in the past, where “eternity” is a symbol of completed action and past
remembrance, Cohen sees the future as the meaning of history, where the idea of humanity ought
to replace particular “national” histories:

The Greeks never had this thought of history, which has the future for its content. Their history is
directed to their origins. Their history narrates their past of their nation...A history of humanity is an
impossible thought in this horizon. Humanity lived in no past and has not become alive in any
present; only in the future can its form be brought to light...

The future represents the “purest form of idealization” because it is the location of what ought to
be to the exclusion of what is. It is a time in which “past and present sink into this time of the
future. This return into time is the purest idealization.” Thus, as Gibbs writes, this orientation

(hereafter, RoR/ RdV). Translation slightly modified to accord with Gibbs’ exegesis.
15 ibid.
toward time is “historical” only in that “history gains its salience because temporal change is the realization of the ideal. If we have a history, we can find the meaning in the future of the changes of our past and present.”16 History therefore transfigures the past into a norm for the future. Thus, the kind of historical representation that interests Cohen, and the kind of representation that can be termed “idealization”, I argue, is legal history. By legal history, however, I do not mean the kind of historical writing about institutions and statutes, but the lawfulness of reason being articulated within history for the sake of the future. It is the kind of temporalization of the past that leads to normative idealizing. It is a kind of historical consciousness, but only insofar as it concerns the practical beyond the past. This is what Hans-Georg Gadamer describes as the unique hermeneutical role of legal history and interpretation:

Legal hermeneutics serves to remind us what the real procedure of the human sciences is. Here we have the model for the relationship between past and present that we are seeking. The judge who adapts the transmitted law to the needs of the present is undoubtedly seeking to perform a practical task, but his interpretation of the law is by no means merely for that reason an arbitrary revision. Here again, to understand and to interpret means to discover and recognize a valid meaning. The judge seeks to be in accord with the “legal idea” in mediating it with the present. This is, of course, a legal mediation. It is the legal significance of the law—and not the historical significance of the law’s promulgation or of particular cases of its application—that he is trying to understand.17

The kind of normativity that law represents is thus not that of an ad hoc ruling or an arbitrary will. Rather, the legal history of a norm is precisely the account of the idea as something past that signifies in the direction of the future. Hence, the act of judging a norm is not an attempt at (historically) representing the past, but of idealizing the past as a norm. This is the significance of legal ideas for history. But while Gadamer stops at the hermeneutic experience in the present, Cohen’s interest in law pushes beyond. But Gadamer’s helpful outline of the significance of legal hermeneutics for the humanities is what is important here and strikes a similar note with that of Cohen, who believed that ethics, propelled by a science of law, “ought to be the method of the

human sciences”. Ethics becomes the blueprint for the human sciences, which is to say that ethics becomes the lever of historical meaning; science itself becomes normative, for the sake of something more, a better understanding of nature and for the sake of a better world. It is therefore the methodology of idealization, of always trying to identify the idea over the historical reality, of privileging what ought to be over what is, that describes Cohen’s method.

Throughout this study, I will often present Cohen’s engagements with thinkers such as Kant, Hegel, Spinoza, and Maimonides in this frame of “idealizing interpretation”. That is to say, while I acknowledge that Cohen’s own interpretation of these thinkers, and even my presentation of how Cohen reads these thinkers may not be entirely convincing, I aim only at presenting the idealized interpretation because I want to highlight how the normative and legal emphasis of idealism is actually a method for comparison in the history of philosophy. Without idealization, Cohen’s own attempt to compare differing views about nature and idealism would generate a task for the scholar interested in philologically reconstructing Cohen’s interpretations to undertake systematic parallelism and would require relentless philological work, which necessary as it is, nevertheless precludes the kind of study wherein Cohen’s own polemics and rhetorical devices for realizing his own system of idealism can be presented in its maximal detail and in its most convincing argumentation. Thus, for example, I will engage Cohen’s interpretation of Maimonides in particular in chapters 3 and 4, in just such an idealizing interpretation. While I will attempt to engage with contemporary Maimonidean scholarship and probe certain scholarly questions about Maimonides’ text and context, I will nevertheless aim at presenting a Maimonides that is most closely aligned to Cohen’s reading. Therefore, I focus mainly on both Maimonides and Cohen’s conceptions of law in relation to nature and morality, because I want to present the continued relevance of the idea of legality in Cohen’s work as a lens through which he reinterprets other thinkers. It is only through an idealizing interpretation, I argue, that one can fully understand the relationship between ethics, law, and religion in Cohen’s philosophy.

A second methodological point to note is that the term “religion” will appear in this study as a category comprising its own set of concepts, logic, and principles. For Cohen, religion has a
share in reason, consisting in ideas about grounding knowledge, understanding the sequence of causes in nature, relating morality and logical truth, and finding orientation for the world in the idea of God. This rational religion is distinct from dogmatic theology (which appeals to supernatural revelation) insofar as critical philosophy seeks to limit the use of these ideas to being ideal constructions relating to the idea of historical tradition and the possibility of Truth and moral goodness, but does not rely upon such ideas as though they are self-evident and self-contained arguments. For Cohen, the latter use of these ideas also constitute what I will often refer to as “metaphysics”, which intimates ideas that cannot be demonstrated nor given justification without appeal to assumptions of dogmatic or purportedly self-evident claims. Cohen’s philosophy of religion, as I argue in the concluding chapter, provides a methodological corrective to contemporary conceptions of religion and its political, ethical, and legal potentials as a category of philosophical significance insofar as Cohen interprets “religion” as a normative sphere, where ideas found in literary sources of the past are idealized into epistemological and ethical relevance today. Religion is therefore also subject to “idealization” beyond historical specificity or anthropological particularity and rendered a normative domain of ideas that have philosophical functions. Thus for Cohen, I argue, “religion” represents the point of convergence between science and morality, law and ethics, historical and normative consciousness. Cohen’s engagement with religion, both in the Ethik and his Jewish Writings enables us to see the unique methodological role of his philosophy, namely, that despite its anti-metaphysical polemics, it is neither purely positivist, nor, despite Cohen’s systematicity and insistence upon the relationship between synthesis and ideality, is it pantheism. Rather, through his insistence upon the distinction between logic and ethics, nature and morality, and the temporal projection of a future unification of the two, and all the while the insistence upon the lawfulness of reason as that upon which our hypothetical grounds help us build science and knowledge toward the future, Cohen’s philosophy should be described as prophetic idealism. Thus, between pantheism and positivism Cohen constructs an interpretation of prophecy.
3 The Primacy of Practical Reason and the Legacy of Pantheism

In 1785 a famous debate began concerning Spinoza’s philosophy, between the Pietist Christian Friedrich Heinrich Jacobi and the Jewish philosopher Moses Mendelssohn. Known as the Pantheismusstreit, this debate centred on the problem of determinism in Spinoza’s thought and the question of human freedom, but was quickly transformed into a question of how to ground all human knowledge in a first coherent and immanent principle while still insisting upon absolute freedom of the will. The controversy concerned whether or not their mutual friend, the famed German writer, Gotthold Ephraim Lessing, had admitted prior to his death that he was in fact a committed adherent of the philosophy of Spinoza. Spinoza was considered the paradigm of heresy, with his philosophy denying free will and creation, acknowledging a single, infinite substance that he referred to as God, or nature (Deus sive natura), permeating all. The "one in all" was thus the philosophical sign of pantheism. And it was this controversy that provoked such consternation in response to any philosophy claiming to centre all knowledge upon the ideal categories and principles of human reason.

But Pantheism was often apologetically referred to as Spinozism, and though it began as a term of derision with Jacobi’s exegesis, this quickly became an honorific for many 19th century German thinkers. Indeed, Spinoza’s influence was so decisive in the 19th century that economists and legal theorists alike also debated the merits of Pantheism in their disciplinary approaches. By the time of the 20th century, pantheism represented the apex of a materialist ontology, which helped clarify the primacy of scientific materialism. While this story of how the pantheism controversy affects the interpretation of Kant’s theoretical philosophy is well known in its most

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18 As Terry Pinkard notes in his biography of Hegel, the pantheism controversy left its mark on Hegel, Schelling, and Hölderlin to such a degree that they noted in each other’s yearbooks, en kai pan – one and all. See Terry Pinkard, Hegel: A Biography, (New York: Cambridge University Press, 2000).
immediate ramifications, the impact upon legal, moral, and political thought is less commonly discussed. It is the latter implications, therefore, that are of concern to Cohen.

Early on in Cohen’s philosophical career it seems that this connection between Spinoza and Pantheism represented the symbolic entry of Judaism into the world of German philosophy. Indeed, as Heinrich Heine noted, Spinoza had given pantheism to Germany as its new “clandestine religion” and for Cohen, Spinoza represented the unique blend of medieval and early modern, Christian and Jewish thought. This on its own was taken note of by other Jewish thinkers like the reformer Abraham Geiger, and the neo-orthodox thinker, Samson Raphael Hirsch. Whether in agreement with him or not, Spinoza represented the potential of an emancipated Jewry, adding its voice to the Western “monotheistic” chorus. Pantheism and monotheism were therefore symbolically linked in the name “Spinoza” and through the historical narrative traced by Heinrich Heine, so too was the history of German Idealism with Judaism. So it should therefore come a little to no surprise that the constellation of ideas represented by “pantheism” would trigger in Cohen a sense of parochial concern.

Six years prior to gaining his appointment at the University of Marburg, and thus undertaking his monumental reworking of Kant’s philosophy, in 1867 Cohen undertook a study of Heinrich Heine, which cast Heine’s narrative of German Idealism as an attempt to introduce pantheism into the system of knowledge. Hence, at the very outset of Cohen’s career, the problem of pantheism looms large. Yet Cohen’s more mature judgments about pantheism and its greatest proponent, Spinoza, are mitigated in this youthful work by what he, in following Heine, refers to as the “Jewish-pantheistic, which is to say, monotheist-pantheistic” thread of Spinoza’s and Heine’s

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thought. As a point of contact between Christianity and Judaism, philosophy and religion, Pantheism and Monotheism were intimately linked as a vehicle describing the kinship between idealism as true philosophy, and breaking down parochial or tribal barriers, a monotheistic-pantheistic religion, linking Christianity and Judaism.

But Cohen’s considerations of Spinoza and Pantheism change throughout his career as Franz Neuman, Hans Liebschütz and Myriam Bienenstock have pointed out. In Cohen’s more mature system of philosophy and Jewish Writings, Pantheism emerges as a rhetorical target for Cohen’s attempt to ground a “more pure” monotheism as idealism. Indeed Spinoza’s thought became a constant touchstone of polemic for Cohen, later in his life and by the time of his Ethik des reinen Willens (1904), it is clear that Spinoza represents more than just a philosophical symbiosis, since Pantheism now described for Cohen a reductionist and materialistic error in philosophical method; it is, a fortiori, likewise a symbolic threat to a philosophy of Judaism:

Spinoza turns man and the human Spirit into a mode of substance. In the unity of substance alone lay his Being and Truth, and only in relation to substance, which means not only his self and the self of man in general, but also that the law of his will can only be found and sought for in heteronomy. It is always in the world, which shall comfort the restriction of the self.

In this religious direction of pantheism there lay just as much escapism from the world as world sensualism. Hence the Pantheist metaphysics of romanticist historicism is questionable. Here history takes place in the frame of nature; time outshines space; and historical experience becomes a symbol of actuality [Wirklichkeit]. And not merely a symbol, but the principle of actuality.

Spinoza’s error lies in conflating history and actuality, substance and ideality, law and nature. It is through this reduction of truth and meaning to monistic unity that Cohen sees the greatest error of Spinozistic philosophy and the threat of Pantheism. But Spinoza’s philosophy was a major

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influence upon Salomon Maimon, who in turn had inspired Fichte and Hegel to take seriously the contribution of Spinozist Pantheism in correcting certain dualistic concerns of the skeptic of Kant’s transcendental philosophy. Thus Cohen judged Spinoza as having departed from the traditional connection between idealism and monotheism and having corrupted German Idealism as well. No longer is the intimacy between Pantheism and Monotheism to be celebrated; rather, it becomes the precise point upon which the methodological distinctions of Cohen’s idealism turn, and as I will implicitly argue throughout this dissertation, this transformed judgment concerning Pantheism represents the site where Judaism, rather than simply ethical monotheism, emerges as a philosophical resource. This argument becomes clear when we consider Cohen’s polemic against whom he considers the greatest inheritor of Spinoza’s symbiotic, yet reductionist monism: Hegel.

Hegel’s identity-philosophy, as Cohen calls it, represents the height of Pantheism because it took so seriously the philosophy of law as a means of discussing ethics and morality, yet refused to distinguish the methodology of the natural sciences—logic—from the science of law and ethics, nor from the philosophy of religion:

We’ve have already noted that Hegel wrote no particular ethics, and just as little did Schelling. Spinoza had only written an ethic in which logic or metaphysics is included. Thus Hegel’s logic should include ethics. The idea, as the concept is termed in its highest fulfillment, develops itself as the Absolute. And this Absolute is what morality signifies in its highest forms. One knows how the schools [of Hegelians] diverged at this point in the outermost extremes. Religion is such a form of the Absolute, but the Hegelians took the position most opposite and hostile with respect to the problem of religion. The state in preliminary is one such form of the Absolute, but the Hegelians split into political reactionaries and revolutionaries. The point of view of development has not proven to be an unambiguous key concept.24

Cohen idealizes Spinoza’s influence on Hegel, casting it as a false idealism that mistakes the idea with the actual; the Absolute becomes the mediation of what are to be separate spheres of nature and morality. And even religion, which intimates the possible connection, albeit continued separation of these spheres, is either wholly rejected in favour of materialism and historical determinism or is transformed into a hyper-mediated incarnationalism, which borders of the deification of mankind. Whether positivistic-materialistic or pantheistic-incarnationalistic, either

24 ErW, 45.
option is problematic and false idealism for Cohen. Thus, Cohen sees Hegel as a target for his inveighing against pantheism and the space in which an expansive monotheism begins to be parsed according to differing degrees of purity. That is, Christology and Jewish messianism become *topoi* for arguments against materialism and empiricism:

The idealistic form of pantheism appears to rise above this dogmatism of metaphysics. It could even spark the thought that it is more idealistic than the pure ethics in that it posits an equality of Christology of God and man according to the example of a *Deus humanatus*. In first place, the spiritualization of man thus appears more precise and universal as the ethicization of self-consciousness. But then even the idea of God is not only methodologically secured, but objectified by the highest form of being, in the spirit of man. It is difficult to even describe all the spells with which pantheism at all times has ensnared the mind of mankind.\(^{25}\)

Cohen acknowledges the lure of this idealism to lie precisely in its humanist thrust. That the divinization of man enables a more pervasive morality would appear to be a great idealistic achievement. But Cohen believes that such Christology, which can be named as a hyper-liberal Protestantism in Hegel’s thought, risks reducing God to man as such. Philosophically speaking, for Cohen an incarnational ontology is threatening precisely because it appears to unify nature and ideality in a precise and universal manner. This ensnares human reason in hubris, presuming it the arbiter and originator of morality. Morality, law, the state—all become relativized expressions of a divinized human spirit. For Cohen, however, ethics and morality, just as religion and the state, cannot be man-made because they represent ideas that surpass historically material moments and historically individuated persons. Ideas persist beyond the flesh and blood of human avarice. Hegelian idealism is thus so tempting precisely because it presents the virtues of Christology as a philosophical method, asserting access to the Absolute within this world, whether in religion or the state. But as Cohen, the Jewish thinker, is neither willing to accept the Christological position within religion or the Absolute State of Hegel’s constitutional monarchy in ethics and law, his position is clear: anything less than pure idealism is pantheism; anything less than the prophetic God of monotheism is idolatry. And yet, the pantheistic idealism and Cohen’s critical idealism are so closely linked that it may be difficult to discern their differences at first. Indeed, the intimacy

\(^{25}\) ErW, 432.
between pantheism and monotheism serves as Cohen’s basic rationale for re-evaluating Kant and the German Idealists. It may also prove to be the space in which Judaism gains a philosophical principle in relation to “pure monotheism.”

Therefore, the first major argument of this dissertation, which I will discuss in chapter 1, is that the problem of Pantheism represents Cohen’s idealization of Judaism into the method of philosophy, such that Judaism helps bolster a pure idealism that can account for the separation of nature and morality and retain a scientific method that does not fall back on metaphysical presumptions of the exhaustive rationality of humanity. Cohen’s implicit goal, I argue, is to find a space for Judaism within the history of philosophy, and thus, a space for idealized religion within the history of philosophical culture:

Here we will forward a different root of the ancient world, rather what becomes even a root power of our German idealism. And there will come the time when no contrast, much less contradiction is seen between the Jewish religion and the source of the modern Greek, who both united in Christianity.26

Thus, the polemic against pantheism is part of Cohen’s idealization of the history of idealism, and thus does Judaism enter philosophy. Instead of the conflation of ideality and actuality, law and nature, Cohen’s attempt to redefine the meaning of legality and lawfulness in ethics becomes his primary argument for what I am calling a “Jewish” conception of law. Namely, that legality is an ideal sphere that enables the separation of nature and morality, on the assumption that a temporal delay exists between when nature and actuality will become just, good, and unified with truth, or God.

This insistence on temporality can be seen in Cohen’s unwavering commitment to the prophetic dimension of ethics, law, and religion, which enables his idealism to be marked out as unique. As I will argue throughout this dissertation, the thrust of Cohen’s idealism is its emphasis on temporality and futurity, coupled with the monotheistic God-idea, and for this reason I argue Cohen’s philosophy should be understood as “prophetic idealism”.

26 “Der deutsche Idealismus und die Antike”, pp. 184-5.
In chapter 1, I will discuss Cohen’s polemic against Pantheism as Cohen’s attempt to identify this philosophical position for Judaism. That is, Pantheism represents a conceptual problem for Judaism as a philosophical resource since the former insists upon the materialization, mediation, and humanistic reduction of truth. It also fails to distinguish between nature and man, and so nature and morality, or even God and nature. By contrast, Judaism according to Cohen, insists upon lawfulness as the basis upon which knowledge can lead us to discover that which we do not yet know. But Cohen does not refer to Judaism explicitly in his polemic against Pantheism, preferring to contrast it to “Monotheism”. Regardless of Cohen’s changing opinions on Pantheism in his later works, I will focus upon the term as an idealization of the problem that I address in Chapter 1, namely, of the relation between nature and morality or ideality and actuality. I address this question through the lens of Kant’s *Typic of Practical Judgment*, or what I refer to throughout as the “Typic-problem” as the problem of relating what Kant calls *natura archetypa* and *natura ectypa*, of relating a noumenal cause such as freedom and the moral law to action in the world of nature. This problem leads Cohen to revise the very meaning of legality since Kant had failed to offer a conception of moral law distinct from the model of causal lawfulness. By contrasting Cohen’s interpretations of Kant and Hegel’s to relate legality and morality, I will explore this problem of empirical causal law, monistically determining the sphere of ethics, as what I refer to as Cohen’s target in the term, Pantheism.

But in order to understand how Cohen’s polemic against Pantheism extends beyond a problem of knowledge and into the sphere of ethics, law, and action, we must familiarize ourselves with the philosophical context of the 19th century since we can better assess how positivism is likewise not an option for Cohen.

4 Neo-Kantianism: Idealism or Positivism?

The second half of the 19th century represents an era of crisis in German intellectual history. The age of systematicity was waning; German Idealism now appeared altogether bourgeois wishful
thinking in light of the failures of the 1848 revolution. Philosophers, jurists, and scientists were turning away from systematic thinking as the basis for producing facts of knowledge and turning instead to the model of the empirical natural sciences, beginning with facts and deducing knowledge from empirical facts alone. Within the academic humanities—history, philology, and theology—positivism and the natural sciences also served as the methodological model for all investigations into cultural phenomena. If the middle of the 19th century brought a certain “crisis” of philosophy and the sciences, the latter half of the 19th century was the dawn of the hyper-creativity of German intellectuals.

It was the dawn of the technological epoch, with its scientific materialism spawning many parallels within the human sciences and consequently, many great applications of physics and practical mathematics. The humanities followed suit, aiming for scientific rigour and mathematical precision. The crisis of the 19th century presented philosophy with the challenge of the empirical sciences. No longer coveted with scientific primacy, philosophy had to re-establish its role as the agent of critique, clarifying the limits and goals of all knowledge. This became the proper scope of neo-Kantian philosophy. \(^{27}\) In the context of the history of philosophy proper, the terms of discussion of the German idealists were shifted by the debate between Kuno Fischer and Friedrich Adolf Trendelenburg, which focused upon whether the intuitions of space and time were subjective or objective. \(^{28}\) That is to say, what is the validity of these intuitions? Are they purely

\(^{27}\) Beginning with Otto Liebmann and Friedrich Albert Lange, the turn away from the materialist interpretations of philosophy in the wake of Hegel has signaled a return to Kant, with Liebmann largely the epigone. See Klaus Christian Köhnke, Entstehung und Aufstieg der Neukantianismus: Die deutsche Universitätspolitik zwischen Idealismus und Positivismus, (Frankfurt-am-Main: Suhrkamp, 1986). It is no surprise, then, that many of the neo-Kantians first established themselves as “historians” of philosophy. Hence, Kuno Fischer, Wilhelm Windelband, Friedrich Albert Lange all wrote books on the history of contemporary philosophy, seeking to thematize the proper goals of philosophy.

\(^{28}\) This debate concerning the idea or empirical dimensions of Kant’s transcendental aesthetic ultimately concerned whether, as Trendelenburg had claimed, Kant had left a dualistic gap by overemphasizing the subjectivity of space and time, or whether Fischer’s defense was successful, despite Trendelenburg’s claim that the former had imported non-Kantian elements in his defense. See Adolf Trendelenburg, Logische Untersuchungen, 1. Auflage, (Berlin: 1840); 2. Auflage, (Leipzig, 1862); idem. Kuno Fischer und seine Kant: Eine Entgegnung, (Leipzig: Hirzel, 1869); Kuno Fischer, Geschichte der Neuern Philosophie, 3 vols. (Heidelberg: F. Wassermann, 1869); idem. Anti-Trendelenburg: Eine Duplik, (Jena: Dabis, 1870). Echoes of this debate can still be detected in contemporary Kant scholarship, albeit without a sense of its historical roots. See for example, Beatrice Longuenesse, Kant and the Capacity to Judge: Sensibility and Discursivity in the Transcendental Analytic of the Critique of Pure Reason, trans. Charles T. Wolfe (Princeton, NJ: Princeton University Press, 1998). For a historical overview of the interpretation of the a priority of space and time and the debate thereon in Post-Kantian and early neo-Kantianism, see Walter Kinkel, Die Idealität und Apriorität des Raumes und der Zeit, nach Kant. Inaugural-
empirical (objective) or purely psychological (subjective)? In the works of Alois Riehl, Wilhelm Windelband and Emil Lask, this question of psychology and objectivity was largely transformed into a question of culture and the problem of value vs. reality. According to these thinkers, the objectivity of our knowledge exhibits a kind of social validity in cultural consciousness that cannot be reduced to purely psychological factors alone, but so too cannot be reduced to purely cultural ones either.

Another facet of 19th century philosophy in the Vormarz, or the years just prior to the revolution of 1848, was the predominant focused upon overcoming the plurality of systems devised by the German Idealists. Rather than devising systematic conceptions of “science” based upon foundational principles, or self-reflexive knowledge, as Köhnke notes, the philosophy of mid-19th century Germany sought to closely model the methodology of the specialized sciences by focusing upon foundational “facts”. Hence, “facts of science” were indisputably focal despite debate surrounding the grounding of these facts. In other words, the lingering influence of Hegelian Absolute Idealism and the rise of positive science and materialism in philosophy could at least agree on one point: facts of science were of paramount importance for creating a coherent philosophy. Disagreement centred upon the constitution and delimitation of knowledge of these facts, that is, upon epistemology. In this respect, Köhnke has characterized the historical context within which neo-Kantianism emerged an era of oscillation between Idealism and Positivism. That is to say, the Kantian conception of the a priori validity of cognition and knowledge was prioritized, but just as important was the ability to lay claim to knowledge of actual facts, cultural products, and the human progress being made in the sciences and economics.

The southwestern school of neo-Kantianism in particular, in the works of Heinrich Rickert, Emil Lask and Wilhelm Windelband sought a science of culture as the highest expression of philosophy. They were largely interested in a theory of the Sollen, the “ought” of judgment as it

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played out in culture and its historical presentation of values. Hence, this ought was taken largely as a measure of cultural “value” when put into synchronic logical terms. For this theory of judgment, the arguments of the neo-Kantians largely relied upon an anti-metaphysical interpretation of Kant and Hegel, based upon a self-conscious historical hermeneutic acknowledging the departure of their interpretations from the historically accurate projects of the original thinkers. For the southwestern neo-Kantians, value becomes a way of deciphering the solution to the *quaestio juris*.

Heinrich Rickert, for example, eliminated the thing-in-itself with which any representation would correspond, preferring to assign conceptual formation to a manner of codifying historical “values”. Rather than a transcendent reality beyond our knowledge, there is only value, and there exists a transcendental theoretical value of truth that is beckoned forth in the epistemological subject in the form of “stance-taking” (*Stellungsnahmen*). What elicits this stance is the Sollen or ought. But Rickert fails to fully account for how this subjective path to the object of knowledge, wherein an “ought” simply appears out of the epistemological ether requiring content to judgments. And while Rickert tries to account for an objective path that “leads us directly to a transcendent value...Value and ought do not coincide....Only the value which reast upon itself and holds valid as value...is the transcendent object.” However, as Rickert himself explicitly

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29 The neo-Kantians were concerned with the “historically accurate” reading, but took individual license to correct what they saw as “systematic” errors. In contemporary interpretations of Kant, which take similar license in interpolating corrective readings of Kant’s project, Hegel becomes the primary link in reconceptualizing reason as a normative source of social recognition, which enables an objective communication of ideas in society. See Terry Pinkard, *Hegel’s Dialectic: The Explanation of Possibility*, (Philadelphia: Temple University Press, 1988) p. 4; See also, *German Philosophy 1760-1860*. In this respect, Robert Pippin, seeking to normativize Hegel’s reading of Kant, remarks that if, “there is something of enduring value in Hegel’s Logic, it clearly has something to do with his acceptance of the Kantian claim for the relative autonomy or empirical independence of many of the basic categorizations required in the identification of any object, and his novel insistence on the necessity of some sort of intraconceptual assessment of the adequacy of those categorical possibilities, his claim that thought can be said to “determine itself.” Robert Pippin “Hegel and Category Theory” in *Review of Metaphysics*, v. 43, n. 4 (1990), pp. 839-848; p. 846; And of Pippin, Pinkard notes that that “notorious Hegelian category of spirit on this reading is said to be equivalent to social existence, that is, to collectively achieved practices. The rejection of pure intuitions and the move to a historicized version of the categories results in the particularly Hegelian contention that any claim making activity counts as objective only within the practice of institution governing such judging”. Review in *Zeitschrift für philosophische Forschung*, v. 46, 4 (1992), p. 63; cf. Robert Pippin, *Hegel’s Idealism: The Satisfaction of Self-Consciousness*, (New York: Cambridge University Press, 1989), p. 147.

acknowledges, “every quaestio facti” becomes a “quaestio juris”, which subjects itself to the very problem that Salomon Maimon had earlier subjected Kant’s philosophy: validity does not answer the basic question of transcendental idealism, namely, why any correspondence should exist whatsoever between the conceptual schemes and the world of appearances or objects?

This theory of validity would appear to avoid any metaphysical claims, and with its insistence that all thinking is judgment, which presupposes the Sollen of what ought to be valid, it might appear that Rickert’s philosophy is a positivist solution to the problems of materialism and speculative idealism. Yet, Rickert insists upon the logical validity of these schemes above all else such that the Sollen or the Ought of valid judgments becomes more of a logical formula of value-relating (Wertbeziehung), rather than an ethical one. Additionally, Rickert’s insistence upon a broader conception of experience than that of the natural sciences, which tries to prioritize the human sciences, nevertheless assumes the “immeasurable manifold” sensible intuition to lay beyond concept formation, by which natural science “generalizes” phenomena according to laws, while the human sciences operate according to an “individualizing concept-formation”. The human sciences, therefore, operate according to values that are “generalized” according to the “unique” individual. The unique, individual “empirical reality” is one “whose uniqueness is related to a value” which Rickert intends to mean that the historian merely acknowledges the value according to which an individual stands in relation, and this relation to the values “preserves” the uniqueness of the individual. Nevertheless, according to Cohen, despite the attempt to keep

32 Rickert, Der Gegenstand der Erkenntnis, p. 130.  
33 Beiser argues that the “normative” or non-metaphysical reading does not establish a connection between “value” and “fact” or nature without the help of intuition, as Kant had understood it. Whether Kant’s understanding of intuition is indeed necessary for Rickert is a question beyond the scope of this argument. See Beiser, “Normativity in Neo-Kantianism: Its Rise and Fall”; This focus upon “fact and value” would of course come to inform the sociology of Max Weber, whose relationship with the southwestern or Heidelberg school has been discussed elsewhere, as are the salient critiques thereof. See for example Leo Strauss’ critique of both Weber and Hans Kelsen in his Natural Right and History. Similarly, Gillian Rose offered her own set of criticisms in her Hegel Contra Sociology, (London: Althone Press, 1981; reprinted in London: Verso, 2009). Neither Strauss nor Rose is historically accurate in their accounts of the birth of this methodology in Weber, but their criticisms are insightful on their own.  
valuation (Wertung) and value-relating (Wertbeziehung) as the methodological role of historical writings. Cohen’s argument is that any historical specificity of the individual over and against the lawful ideality of reason, which is history itself, is a kind of historicist-naturalism or what Cohen also refers to as “Stoicism” in positivistic disguise. It elevates the individual to the realm of a lawful origin of historical experience itself, or what is the same, hero worship:

Hero-worship has not only influenced and cultivated religion but also politics. According to a more contemporary view, the Polis should be based mainly on and through the hero. The hero, beyond just mythology, has permeated the individual and has remained valid [in Geltung] as the driving force of history. All history is only the spirit of men in whom the times are reflected. History is only the mirroring, the reflection; the light source is solely within the individual. This is the basic conception of the Stoa, the conception, which is the consequence of their naturalism itself. If nature consists of the last law of morality, so this correction is implied: that nature constitutes the right [das Richtige] it is right nature. But this right nature can only be represented in people in exemplary instances. Hence the concept of the ideal of the wise.36

Cohen simultaneous levels polemic against Rickert and Rudolf Stammler, whose theory of Richtige Recht followed a similar pattern of reasoning, seeking the validity of laws in individual economic models and historical institutions. Thus for Cohen, while the concept of validity and the Sollen of knowledge becomes a driving concept of his ethics and theory of law, it is wholly distinct from empirical individualities being elevated to the level of norms. This is where Cohen’s idealism is distinct from positivism.

And yet beyond the methodological critique of positivism as over-determining ideality with empirical or material commitments, Cohen’s objection to the model of individuation in concept-formation in the historical sciences clearly resonates as a deeper critique of Christology as a kind of hero-worship. Indeed, Cohen claims that the implicit influence of Stoicism on Christianity is what corrupts the teaching of prophetic messianic within Christianity: namely, that the messiah is not a person or hero, rather, the messiah represents the uniqueness of a transcendent morality.37 Thus,

36 ErW, 29.
37 ErW, 29-30. Here Cohen even claims that the Christological teaching could be philosophically if it focuses upon the uniqueness rather than individuality of the messiah; in this respect, Christianity retains a place within the sphere of pure monotheism if it can reclaim the view that Christ, “as the God-man, is the unique one [der Einzige]”. ErW, 30-1.
positivism represents another facet of Pantheism, which calls forward a critique from the perspective of an idealized prophetic Judaism.

By contrast with the southwestern school, though Cohen and the Marburg school also maintained the “normative” understanding of reason, in Cohen’s work the significance of the Sollen is how it places ethics in a primary systematic position. Despite the dominant representation of Marburg neo-Kantianism as overdetermining the Kantian project with a natural scientific theory of experience, as I will argue in Chapter 1 and 2, Cohen’s polemic against Pantheism and Positivism lies precisely in the attempt to distinguish ethical experience from natural scientific experience. Thus, one of Cohen’s major contributions to the scholarship on Kant (which is still discussed today) is that Kant made a break with his critical philosophy in the practical philosophy of his Metaphysik der Sitten because he abandoned the search for a transcendental a priori of ethics.\(^{38}\)

Where was the Sollen of freedom? The Marburg school sought to return to the critical epistemological problem of the transcendental a priori; hence, logic and ethics had to be resolved at the level of theoretical and practical reason.\(^{39}\) Unlike Gillian Rose’s narrow characterization of Cohen’s neo-Kantianism as a pan-logicism whose normative theory of reason results in a kind of positivist relativism,\(^{40}\) Cohen demonstrates a middle-position between the southwestern school of Windelband, Rickert, and Lask, whose focus upon “knowledge and value” indeed leads them to a vacuity in the normative interpretation of Kant,\(^{41}\) and Natorp and Lange in the Marburg school, whose tendency toward the purity of logic may indeed have over-determined all knowledge in a pan-logicism. However, in his system of philosophy, where logic, ethics, history, law, and religion, all occupy positions within reason, Cohen offers a system that neither divorces the historicity of


\(^{41}\) Indeed, as Beiser notes, this vacuity lead the southwestern school to revise their normative interpretations in favour of Hegel’s logic or through a turn to the kind of psychologism of the early Edmund Husserl or the philosophical anthropology preferred by Max Scheler. See “Normativity in Neo-Kantianism.”
concepts and their production in time, nor seeks to mystify the coherence of judgments and knowledge in the face of this historical baggage. Reason is the source of normativity for the sciences—theoretical and practical—yet it is critically outlined as a historically developing faculty of scientific cognition. Thus, in his introduction to the 3rd edition (1918) of his major work, *Kants Theorie der Erfahrung*, Cohen describes the history of science as the history of reason itself:

...history must nevertheless become a generic concept that encompasses philosophy and science at the same time. If we generally reunite the latter two in a unity, in the concept of scientific reason, the idea of a knowledge of the history of philosophy achieves a veritable determination. The history of scientific reason appears by the same token as the ideal of all knowledge.\(^42\)

In Cohen’s use of historicity in reason, the development of scientific knowledge becomes the history of philosophy; which means that philosophy is a science of knowledge. This is the fundamental reading of Kant that Fichte had also maintained. However, Cohen transforms this principle of scientific reason into the foundation for a theory of reason and judgment, where lawfulness becomes the standard by which scientific reason develops. But Cohen’s understanding of lawfulness and normativity concerns the laws of reason by which judgments are consistently reached throughout the history of reason. And reason includes the lawfulness for judgments in ethics, aesthetics and even religion. Hence, in this history law, ethics, and even religion find their place within a theory of knowledge. For Cohen, ethics is indeed a part of the science of experience and is intimately related to the method of logic. However, as a Kantian, Cohen returned to the question of the transcendental a priori in theoretical reason as a means of locating the transcendental a priori of practical philosophy, which Kant himself had abandoned in favour of the object of duty. Thus, Cohen’s critique of Kant begins with attempting to locate the transcendental a priori in ethical experience.\(^43\)

Neo-kantianism is a reaction against metaphysics on the one hand and an unbridled positivism on the other. While trying to maintain a commitment to Kant’s critical project, without overstepping the bounds of reason, the neo-Kantians nevertheless sought to incorporate the great


lesson of Hegel and the Historicists: history was a part of positive human reason. It is thus between
the poles of extreme pantheism and extreme positivism that Cohen carves out a space within
which to undertake his project. The *Ethik des reinen Willens* is precisely the culmination of this
methodological compromise.

Suspicions aroused by systematic idealism led many in the later 19th century to the belief
that all idealism was inherently political and that the failures of the revolution to bring about the
promised ideal of freedom meant that the thesis of the rationality of the State was mere apologetics
for the monarchy. Hence, science became the neutral and value-free model of free inquiry.
Materialism and biologism became the depoliticized, yet still thoroughly monistic systems of
reference. Even the study of law and state now sought out “purer” grounds, free of ideology,
returning to positive legal facts as the basis for a pure science. Indeed, the influence of materialism
upon legal thought was so pervasive in the Imperial period that even in the 1930s, Hans Kelsen
would write,

Precisely as the world-creating God in the myth of his incarnation must come into this world, must
submit to the laws of this world (and this means: to the order of nature), must be born, suffer, and
die, so too must the state, in the doctrine of its self-obligation, submit to the law created by the state
itself. And precisely as the path to true science of nature is opened by pantheism, which identifies
God with the world (and this means: with the order of nature), so is the identification of law and
state (the recognition that the state is a legal order) the presupposition of a true science of law.44

For Kelsen, Pantheism symbolized the monistic derivation of legal authority from the law itself, the
State identified with the law, which effectively rendered the idea of legislation identical with the
existence of the positive State. In Cohen’s language, this kind of positivism was no different from
Hegelian idealism in that the constitution of laws, of what ought to be the actions performed by
citizens, have been reduced the brute existence of the State as a legal will. Thus, the State as it is
and the laws for how the State *ought to be* are identical. While Kelsen saw this as the reconciliation
of legal positivism and state sovereignty, as the foundation of a legal science that can account for
the sovereign State-will in accord with positive laws, Cohen anticipated precisely this kind of

position in his Ethik as the consequence of Pantheist metaphysics: it is no different that Pantheism in that it sees the actual state and the actual laws as though they were ideal. Past laws and the historical State had somehow been (falsely) idealized as though the “true” law and “true” state. As I will explore in Chapter 2, this is the false form of idealization inherent to the law, according to Cohen. For while Pantheism and Positivism both share with Cohenian idealism the emphasis upon rationally reconstructing the historical past, the temporal directionality of each is quite different.

In Chapter 2, I explore Cohen’s continued use of legality as a means of producing a stark contrast between ideality and actuality, particularly in the sphere of positive law, where his ethical idealism is put to task of describing how ideals and norms relate to actions in the world of history. In this respect, the problem of “positivism” comes to represent the problem of law within historical institutions and how to interpret ethical judgment in relation to law and the State. But in contrast to Hegel and many of the State-law statute-positivists whose work I discuss, Cohen seeks to idealize law in the direction of the future, which is to say, his idealism temporalizes lawfulness as a lever for achieving better laws for a better State in a better world. As a kind of philosophical schauen or “showing” of ideas in the future, Idealism bears a striking resemblance to prophecy and the prophetic meaning of ideas. Thus, I conclude this chapter by pointing out the intimacy of science and idealism as a method for identifying the role of lawfulness in relation to temporality, which I argue is most compelling when understood as Cohen’s translation of prophecy into a normative philosophical ethics and legal thought.

5 Maimonidean Influences on German Philosophy

The term “Prophetic Judaism” had become the slogan of Reform Judaism in the 19th century, and thus a flashpoint in polemic between the reformer Abraham Geiger and “neo-orthodox” Samson

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45 Cohen, “Der deutsche Idealismus und die Antike” in Werke 17, Kleine Schriften VI, 1916-1918, p. 154; see also “Platonische Ideenlehre” KS I.
Both Geiger and Hirsch were indelibly influenced by the philosophical and political changes in German society and the academic atmosphere that had been shaped by Friedrich Alfred Droysen and Leopold Von Ranke, who had extolled “scientific” method in the study of history. Geiger and Hirsch represented two extremes that nevertheless shared the goal of applying this historical and scientifically critical method to the interpretation of Judaism. It is in this atmosphere of scientific and rigorous study of Jewish texts under the rising influence of German historicism that Cohen had also been educated in Jewish texts. Indebted to his training at the Jewish Theological Seminary of Breslau where he studied from 1856-1861, and where he received training from scholars at the centre of the historicist-inspired Wissenschaft des Judentums school of thought, including Heinrich Graetz and Zacharias Frankel, and in the same milieu of Breslau where Geiger, though not as a teacher at the seminary, was a rabbi from 1844-1863, Cohen was thus clearly influenced by both this intellectual and reformist milieu. Yet Cohen was a philosophical synthesizer and spun the meaning of prophecy into more than a simply “ethical” spin on Judaism. Prophecy was the topic of rigorous philosophical work in the history of Medieval Jewish rationalism, which Cohen had been acquainted with through his studies with Manuel Joel at the Seminary. Indeed, prophetology represented the most “systematic” philosophical expression of the great rationalist, Moses Maimonides. As the point of convergence between philosophical reason and divine intellect, prophecy thus represented the border between

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47 See Beiser, The German Historicist Tradition.

48 Orlik, Hermann Cohen, pp.18-20.


50 While Moritz Lazarus, for example, had written of prophetic Judaism in a homiletic manner, Cohen sought a more philosophically rigorous understanding of prophecy and Judaism, writing a scathing review of Lazarus’ work. See Monatschrift für Geschichte und Wissenschaft des Judentums (1899), pp. 385-400 and 433-49.
immanent reason and divine transcendence. And insofar as Maimonides’ prophet reveals the law, prophecy becomes an argument about the relationship between law and transcendence. Hence, the second major argument of my dissertation concerns the influence of Maimonidean prophetology on Cohen’s own ethical idealism. In Chapter 3, I therefore explore how in order to resolve problematic of how nature and ideality relate to each other, which I will refer to throughout the dissertation as the problem of the Typic of Practical Judgment, or the Typic-problem (the problem of a metaphysical dualism left unresolved by Kant, which the Idealists resolve by grounding knowledge and experience in the absolute ‘I’), Cohen turns Maimonidean prophetology into a philosophic principle of his own critical idealism, where the future becomes the site of synthesis and unity of ideality and actuality.

The problem of practical reason remains an inflection of the problem of Kant’s first Critique: relating sense and understanding; relating ideal categories to experience and locating freedom at the nexus between them. The question of practical philosophy and philosophy of law thus becomes: how can lawfulness for morality and juridical law be produced by reason if not upon the analogy to the causal laws of nature? For that seemed to be the answer of practical freedom. And if the laws of nature are the analog for the laws of freedom, how is this not an appeal to empiricism or dogmatism (insofar as the latter presumes nature as casually determined in itself)? The solution to this problem, according to Kant, is the “Typic,” and it is here that Kant sees the figure of a “kingdom of ends” as the schema of lawfulness. The kingdom of ends thus represents a point at which purpose and cause are synthesized.

But according to Cohen, causality has no place in ethics. Rather, action is generated out of an ideal law, which cannot be infringed upon with sensibility. The purity of the idea is the purposiveness of the action, its normativity. Hence, Cohen interprets the concept of a kingdom of ends as the crux upon which his revised theory of law can idealize action in relation to futurity. This becomes the true form of law: its idealization of legal subjects on the basis of the idea of humanity. Ethical self-consciousness, the “I” of ethical judgment, becomes a task (Aufgabe), not a cause. Hence, the idea of the monotheistic God understood in prophetic Judaism, who grounds
the idea of one people, of humanity under God, becomes the source of the ethical—\text{and logical—} “I”. The purposive model of the prophets provides the index of temporality that judgment requires. As I noted above, it is an index of the future, where idealism projects unity to logic and ethics, nature and understanding. This future projection of God and humanity as brought into accord, which Cohen analogized to science and reason, is the prophetic impulse of Judaism.\textsuperscript{51} Hence, prophecy becomes a philosophical principle of Cohen’s critical idealism; prophecy becomes the link to ethics and the pure will in the temporal dimension of eternity and the future.

But prophecy also becomes a lever for Cohen’s systematic philosophical goal of relating the question of ethics back to the problem of logic, and in turn the problem of culture as such. Thus, Cohen also sees religion as contributing to the task of idealism itself, of which Idealism has played the role of “de-mythologizing”.\textsuperscript{52} But idealism’s tenuous historical relation with metaphysics is a threat to the purity of method, which Cohen wants to secure for philosophy. Cohen sought to overcome the backsliding into metaphysics that he claimed had become the domain of Absolute Idealism. Thus, in chapter 4, I will explore how Cohen’s theory of correlation represents the revision of legality as the source of the “I” of knowledge itself, the problem of transcendental psychology, which takes prophetology as the model for producing this I on the basis of its encounter with alterity, with the Other, or the I of God. The law and its implicit temporality of future-orientation becomes the point of contact for an idealized Kant in relation to an idealized Maimonides. Consequently, I argue that Cohen’s account of the God of Ethics over and against the God of Metaphysics is driven by the prophetological model of time and legality. Prophecy becomes a middle-way between metaphysical Pantheism and Positivism.


\textsuperscript{52} Consider the narrative Cohen traces of German Idealism in relation to Christianity and Judaism in ““Der deutsche Idealismus und die Antike” in \textit{Werke 17, Kleinere Schriften VI, 1916-1918}, pp. 149-185.
Prophecy becomes a philosophic principle, which means the following: reason is temporal. As temporal, the normativity of reason hinges upon the future as the site of synthesis and unification of the objective and subjective problems of knowledge. In this respect, Cohen spins out of the debate between F.A. Trendelenburg and Kuno Fischer concerning the subjectivity time and space in Kant’s transcendental analytic as well as the status of the \textit{a priori}.\footnote{Now largely forgotten, the Fischer-Trendelenburg dispute was a significant moment in the post-Hegelian German philosophical world. This debate concerning the idea or empirical dimensions of Kant’s transcendental aesthetic ultimately concerned whether, as Trendelenburg had claimed, Kant had left a dualistic gap by overemphasizing the subjectivity of space and time, or was Fischer’s defense successful, despite Trendelenburg’s claim that the former had imported non-Kantian elements in his defense? See Adolf Trendelenburg, \textit{Logische Untersuchungen}, 1. Auflage, (Berlin: 1840); 2. Auflage, (Leipzig, 1862); idem. \textit{Kuno Fischer und seine Kant: Eine Entgegnung}, (Leipzig: Hirzel, 1869); Kuno Fischer, \textit{Geschichte der Neuern Philosophie}, 3 vols. (Heidelberg: F. Wassermann, 1869); idem. \textit{Anti-Trendelenburg: Eine Duplik}, (Jena: Dabis, 1870). Echoes of this debate can still be detected in contemporary Kant scholarship, albeit without a sense of its historical roots. See for example, Beatrice Longuensese, \textit{Kant and the Capacity to Judge: Sensibility and Discursivity in the Transcendental Analytic of the Critique of Pure Reason}, trans. Charles T. Wolfe (Princeton, NJ: Princeton University Press, 1998). For a historical overview of the interpretation of the \textit{a priori} of space and time and the debate thereon in Post-Kantian and early neo-Kantianism, see Walter Kinkel, \textit{Die Idealität und Apriorität des Raumes und der Zeit, nach Kant. Inaugural-Dissertation}, (Jena: G. Neuenhahn Universitäts-Buchdruckerei, 1896). For Cohen’s own statements on the Fischer-Trendelenburg Dispute, see his essay, in volume I of \textit{Schriften zur Philosophie und Zeitgeschichte}, 2 vols. Ed. Albert Görland and Ernst Cassirer (Berlin: Akademie Verlag, 1928). Cf. Andrea Poma, \textit{The Critical Philosophy of Herman Cohen}, p. 4ff.} Through the spectrum of this latter problem, Maimon’s skeptical claims concerning the understanding resurface, albeit in a de-metaphysicalized form. For Cohen deploys the insight of Maimonidean prophetology, much as Maimon did before him, as a way of resolving the post-Kantian idealist problem of reconciling sense and understanding, or of the metaphysical dualism, which, as Paul W. Franks has argued, the post-Kantians sought to resolve with what Franks calls a “holistic monism”.\footnote{See Paul Franks, \textit{All or Nothing: Systematicity, Transcendental Arguments, and Skepticism in German Idealism}, (Cambridge, Mass.: Harvard University Press, 2005), p. 85.} By contrast, Karl Ameriks has claimed that autonomy provided just the kind of monism that would solve the theoretical-practical divide. Yet, the problem of correlating theoretical and practical reason is precisely how Maimonides discusses prophetology. Hence, while it is a radical reinterpretation, Cohen saw Maimonides as the crucial link in a more robust idealism. For according to Cohen’s interpretation, just as Maimonides had rejected both the reduction of ethics to a set of technical
skills, he had equally renounced the Pantheistic forces of neo-Platonism, and this was precisely the desideratum Cohen detected within post-Kantian idealist philosophy. Hence, for Cohen, prophecy enunciated this intensity of temporality in overcoming Pantheism, since the future, rather than an eternal present or past, is the locus of actualization of action; where truth and knowledge are predicated upon an ideal of (deferred or ideal) eternity; where God signifies perfection; and where virtue is the vehicle for self-perfection, for achieving the “I”, is retrieved from a source that is often missed in accounts of Cohen’s system and its philosophic pedigree. For while Plato, Leibniz, and Kant are readily acknowledged as sources of Cohen’s neo-Kantianism, Cohen’s thought has most importantly, Maimonides as a progenitor with whom I wish to familiarize readers.

But certain questions should be raised at this point: where did Cohen cite Maimonides as his model of resolving this problem in Kant? How could an appeal to such pre-critical metaphysics be warranted in critical idealism? Similarly, how could such a study appeal to an anachronistic comparison as a clue to answering questions about Kantianism? Indeed, for a historical reconstruction, such questions would seem to require archival materials and facts. But in a philosophical reconstruction, what we have in front of us are philosophical problems. But one particular historical colouring gives more support: the work of Hermann Cohen, in its attempt to solve the problem of Kant’s dualism, resorts to a similar model as does Salomon Maimon, who explicitly acknowledges Maimonides as his guide to securing an interpretation of Kant. Yet,

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55 For a reading that would support Cohen’s claim that Maimonides’ Aristotelianism in ethics is not an anthropological techne, while basing this claim in the context of his medieval interlocutors, see Aviram Ravitsky, “The Doctrine of the Mean and Ascetism: On the Uniformity of Maimonides’ Ethics” (Hebrew) Tarbiz, vol. 79, no. 3/4 (2010-2011), pp. 439-469.

56 For a reading of Cohen’s interpretation of Maimonides that focuses upon the philosophical potentials for his own time, rather than historical accuracy and philology for which Cohen had criticized the Wissenschafts des Judentums school, see Aaron W. Hughes, “‘Medieval’ and the Politics of Nostalgia: Ideology, Scholarship, and the Creation of the Rational Jew” in Encountering the Medieval in Modern Jewish Thought, J.A. Diamond and A.W. Hughes (eds.) (Leiden: Brill, 2012), pp. 17-40; p. 32ff.

57 It was Friedrich Kunze, in his Die Philosophie Salomon Maimons (Heidelberg: Carl Winter, 1912), p. 339, who remarked first upon the similarity between Cohen and Maimon, particularly in the turn to the infinitesimal. Cf. Andrea Poma The Critical Philosophy of Hermann Cohen, p. 2789 n. 9. However, there is further reason to bring Maimon into this neo-Kantian discussion. Consider for example Emil Lask, whose doctoral dissertation on Fichte gave a pride of place to Maimon’s skepticism as influential upon the immediate post-Kantians, Fichte especially. See Frederick Beiser “Emil Lask and Kantianism” in The Philosophical Forum, vol. 39, no. 2, (2008), pp. 283-295.
Cohen only cites Maimon in passing, acknowledging their shared theories of the differential of intuition. How do they arrive such similar readings of Kant, then? The signal difference is Cohen’s refusal to reintroduce metaphysics into his own philosophy. Nevertheless, both Maimon’s and Cohen’s reliance upon Maimonides in conjunction with Leibniz’s theory of the infinitesimal as a model of time demonstrates the veracity of Maimonidean elements in the post-Kantian milieu. Indeed, Shmuel Hugo Bergmann went so far as to attribute this lasting trace to the projects of Fichte and Hegel. Thus if the spectre of Maimonides was in any way present in the post-Kantian idealism of these thinkers, then it is no wonder that Cohen saw something more robust in the mathematical infinite of Leibniz when refracted through prophecy, than the potentially kabbalistic colouring that were purported to be the hue of Spinoza’s thought, which Fichte and Hegel preferred.

If prophecy can interpreted as a philosophical principle of Cohen’s idealism, then it should be discussed as a principle of temporality. Time is the crucial contribution, for it is time that provides the context, contours, and shape of judgment. Thus time becomes implicitly legal; which is to say, the symbol of the possible. For example, the norm projects an action that ought to take place. That is, the norm points to an action of experience in the future. But the norm cannot be sketched without first having a kind of basis in experiential elements, a knowledge of what should transpire in the world. This is indeed Hume’s problem of inferring causal sequences as a matter of faith rather than knowledge. But if the knowledge of nature is already synthesized with the knowledge of ethics, then there is only “necessitation” of actions. But if the law represents the future where an action could take place, and indeed, ought to, then it is only possible that it will take

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59 The influence of Maimonides upon many of the 18th and 19th century Jewish Enlighteners or maskilim as well as reformers is quite a significant contextualization of the trends in German Jewish thought of the time. As Steven S. Schwarzschild has pointed out, the inverse influences appear—namely, of imposing Hegel and Kant upon a reading of Maimonides—in the work of Nachmann Krochmal. See Steven S. Schwarzschild, “Two Modern Jewish Philosophies of History: Nachman Krochmal and Hermann Cohen” unpublished D.H.L. dissertation (HUC, 1955).


61 Consider Leibniz’s correspondence with Spinoza, and his comments referring to Johann Georg Wachter’s _Elucidarius cabalisticus_, sive _Reconditae Hebraeomphilosophiae brevis & succincta recensio_ Rome, 1706, wherein Wachter compares the philosophy of Spinoza to that of the kabbalah. See Leibiniz, “Comments on Spinoza (1707)” p. 272.
place. The law becomes an idealization of unification of both theoretical and practical reason. Taken together in a principle then, there is no threat of naturalism or Pantheism (the post-Kantian solution to this problem of actualization), as well as no simple retreat into skeptical idealism, where no access to the world is possible without thinking. Because the temporalization of judgment allows for the following: the norm has a past, a history which is for the sake of a possible future. Reason and science are the historical tales of the production of the categories of thinking, such that we can describe the world in consistent, logical terms. In this way, a chair need not be described every time it is encountered as a material, substantial object, occupying 4x2 ft., impenetrable, supportive, adjacent to the objects that persist around it, etc. No, a chair is a chair only because we have represented such an object in both precise mathematical terms, as well as in everyday experience. Yet, the future uses of this norm of knowledge, that a chair is a chair, cannot be simply enumerated. Indeed, there is no definitive mastery of the chain of possible experiences. This is what Kant understood as a problematic for reason in imagining an idea of a whole as such; a wholeness of all possible experiences. But the temporalization of judgment enables us to make claims about particular and possible uses in the future. Hence, ethics opens the domain of practical reasoning about the world and its experiences such that I can will the action of sitting in the chair. That is, I can produce this experience from reason and the normativity of experience, which is a recalling of the past, or at least, a kind of nostalgia for a possible experience that could have been. The ability to discern the future experience as a norm of judgment is the role of law. And it is the way that law is used both in theoretical as well as practical reasoning that enables this use of logic and ethics to will a future.

In conclusion, prophecy becomes a vehicle for my interpretation of Cohen’s Jewish thought as a response to Pantheism and Positivism. Prophecy represents a temporality within legal judgment. And while there has been much attention given to the role of messianism in Cohen’s thought (Schmid,62 Fiorato,63 Poma,64 Gibbs,65 Kavka66) the fact remains that Cohen often speaks

of a “prophetic messianism”. Without the prophecy, there can be no corollary in the messiah. Hence, Cohen employs this principle of prophetic ideality, where the norm discerns a future through appeal to a past, as the basis for his temporalization of law and ethics as a science of history and a “true idealism”. Both hermeneutically and systematically, Cohen therefore draws upon concepts culled from Judaism in order to achieve this theory of idealism.

One closing word, however, should be said concerning Cohen’s idealism. Cohen likewise interprets idealism as a philosophical position through the lens of monotheism and thus becomes one of the more prominent themes in Cohen’s thought in his critique of Pantheism. That is, monotheism becomes a vehicle for discussing religion in the public sphere—religion, and neither just Judaism nor Christianity alone. Indeed, as Leora Batnitzky has noted, Cohen’s idea of Jewish religion is coloured with Protestantism, which cannot be overlooked. But this fact gives greater credence to the claim that idealism as monotheism becomes a kind of methodological point of contact for religion in philosophy. As Cohen claims, the modern world inherits its religious garb, but it is up to the future generations to stake a claim for how the modern world, its science and its culture, appears:

Here we have reached the point as to overtake the entitlement of this whole appearance of strangeness of the Jew within the modern world, insofar as it is Christian: it appears as though this Christian world were an entirely independent creation of Christian ideas, in which the Jew had not significantly contributed as a creative subject. So it was at the beginning. So it has remained the same in the middle ages. So it has yet again occurred in the beginning of the modern period. So it is left up

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63 Pierfrancesco Fiorato, Geschichtliche Ewigkeit.
64 Andrea Poma, The Critical Philosophy of Hermann Cohen.
67 Of course, this is not to suggest that messianism does not play its own kind of role in schematizing the future. See Gibbs, “Lines, Circles, Points”. Cf. Cohen, Religion of Reason, pp. 249-250.
to the present day. And so it will remain as long as this entire culture remains in the basic garments of their religious and moral world.\textsuperscript{68}

This appearance of Christian ideas as the source of the modern world, however, requires us to push forward in scientific, humanistic, and philosophical research because it is only thus that we will discover the increasing proximity of the history of the future, where neither Jew nor Christian is isolated. Rather, the human sciences enable us to write the history of humanity. As an example of this, the science of religion itself draws us forward such that,

...especially in the contemporary period, the more the Hellenistic Origins of Christianity are revealed, the more urgent is the excellent maintenance of [studying] classical antiquity. And if religion has until now at least not been successful at arousing the sense of the humanitarian mind [menschheitliche Gemüt], of the one humanity to the nations, then as unrelated as it is to it, the vision of scientific insight, training and experience must be directed to it.\textsuperscript{69}

The study of religious history, of antiquity, is the key to achieving a history of humanity. Science thus finds its intimacy with religion, with the vision of the prophets. As such, Cohen’s thought is directed at this history of the future, of humanity, where distinctions so necessary for scientific method may one day be cast off. This is Cohen’s messianic epistemology, as Gibbs calls it, or as I describe it in his philosophical worldview, his prophetic idealism. Only thus will the kingdom of knowledge be achieved, by studying the past for the sake of the future. This burden of carrying the prophetic idealism into the future of philosophy begins with idealizing very task of Judaism into philosophy itself:

A further opposition is formed by that of the peoples (die Völker) and mankind (die Menschheit), and it is apparently still exacerbated: Israel carries election as its vocation of professing belief in God; but herein a single nation does so in opposition to the whole of humanity. But this opposition ought to only lead toward unity. This unique people ought to be for the sake of humanity, insofar as it fulfills its vocation: to spread the unity of God out to the whole of humanity. Humanity, the unity recognized by the one God, ought to be the Vaterland of the unique ones, to be chosen people to spread the faith in God.

... This is the significance of the kingdom of God as the ideal of world history.\textsuperscript{70}


\textsuperscript{69} Cohen, “Der deutsche Idealismus und die Antike”, p. 184.

\textsuperscript{70} Hermann Cohen, “Das Gottesreich”, Werke 16: Kleine Schriften V, 1913-1915, p. 48; JS III: 174
Thus, does prophecy describe idealism and unite the strands together. Prophetic idealism enables Idealism to be a philosophy shared by Christians and Jews since they can abide by a belief that morality will trump nature; that culture can be shaped in the image of humanity, not tribal or anthropological specificity. In a sense, this is the idealization of election, the task for a Jewish philosophy: to philosophize a normative culture of humanity. Thus, after exploring the role of “correlation” as a kind of positivized prophecy, I consider how Cohen’s continued attempt to introduce Jewish themes into German philosophy presents us with a contemporary understanding of Cohen’s project. I therefore conclude the dissertation with a brief consideration of how Cohen’s philosophy of ethics, law, and religion presents a “normative” and “historical” interpretation of ideas found in a religious tradition, namely, Judaism, and suggests a normative dimension for the philosophy of religion beyond theology or historicism. It is through traversing these points of tension between Pantheism and Positivism that I believe Cohen “prophetic idealism” becomes a model for normative discussion of religion, ethics, and law within the modern world.
Chapter 1

Ethics, Nature, and the Polemic Against Pantheism in Cohen’s Neo-Kantianism

“...It cannot be denied that pantheism has made great progress in our age. The writings of a part of Europe bear visible marks of it: the Germans introduce it into philosophy, and the French into literature. This appears to me not only to proceed from an accidental, but from a permanent cause.

When the conditions of society are becoming more equal, and each individual man becomes more like all the rest, more weak and more insignificant, a habit grows up of ceasing to notice the citizens to consider only the people, and of overlooking the individual to think only of their kind... The idea of unity so possesses itself of man, and is sought for by him so universally, that if he thinks he has found it, he readily yields himself up to repose in that belief... Amongst the different systems by whose aid philosophy endeavors to explain the universe, I believe pantheism to be one of those most fitted to seduce the human mind in democratic ages. Against it all who abide in their attachment to the true greatness of man should struggle and combine.”

- Alexis de Tocqueville, La Démocratie en Amérique (1835), pp. 541-542

“No one says it, but everyone knows that pantheism is an open secret in Germany... Pantheism is the clandestine religion of Germany...”

- Heinrich Heine, Zur Geschichte der Religion und Philosophie in Deutschland (1834)

1 Introduction

Any serious engagement with the work of Hermann Cohen—really, any engagement with modern Jewish thought, for that matter—must take its bearings from the work of Immanuel Kant. Kant’s insistence upon the legality and rule-oriented nature of cognition and knowledge, as well as his commitment to deontology (rules of duty) in ethics and law, make him the architect of modern philosophy; and indeed for modern Jews, he represents the entry point of Jewish thought into the public sphere, insofar as Kant provided a modern lexicon for ideas long discussed in Jewish
Yet even though Kant’s philosophy is a watershed in terms of modernity, beginning the quest for public, ratifiable knowledge on the basis of rational argument rather than heteronomous authority or tradition, the other side of this Janus-faced moment in the history of philosophy is that Kant also triggered something of a trauma in the meaning of religion, morality, and law in the modern world. That is to say, Kant’s practical philosophy with its insistence upon autonomous freedom and positive legal reasoning, also enabled the possibility of the rapid advance into materialism and positivism in the interpretation of law and politics in the 19th century. With the historical development religion, law, and ethics quickly neutralized by positivism and materialism, only an empty shell of cultural meaning remained for why and how human beings ought to obey laws and ought to be ethical.

But how did Kant’s philosophy, with its insistence upon a pure a priori structure of laws and principles, make room for an epistemology of materiality and positivity? For Hermann Cohen, Kant’s systematic genius in developing a pure idealism whereby concepts, principles, and ideas are the bases for knowledge of the natural world is simultaneously the root of Kant’s major error: while Kant’s idealism, according to Cohen, yielded such magnificent insight into human knowledge by focusing upon the concept of nature in natural science as the basis of experience, in the practical sphere, however, this same natural scientific model of experience obtains as the paradigm for ethics and excludes any distinct form of ethical experience. In other words, despite Kant’s insistence upon purity and the deduction of laws of cognition a priori, his philosophy overdetermines ethical reality with laws of causal science; empirical nature rather than norms or ideas become the driving force. In this chapter, and throughout this dissertation, therefore, I explore this fundamental revision of Kant’s philosophy on the part of Cohen: natural scientific

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1 Thus Isaac Breuer, citing the blessing upon seeing a gentile sage in T.B. Berakhot 58a, writes “Blessed be God, who has given us the wisdom of Kant” in Mein Weg (Jerusalem: Morascha Verlag, 1988), p. 54. Cf. Paul Franks “Jewish Philosophy after Kant: The Legacy of Salomon Maimon,” in The Cambridge Companion to Modern Jewish Thought, Peter E. Gordon and Michael Morgan (eds.) (New York: Cambridge University Press, 2007), pp. 53-79; See also Alan Mittleman, Between Kant and Kabbalah, Albany: State University of New York Press, 1990); Alan Mittleman, Between Kant and Kabbalah: An Introduction Isaac Breuer’s Philosophy of Judaism, (Albany: State University of New York Press, 1990), p. 12, notes that while Breuer was likewise attracted to Kant as a categorical explanation of the human condition, he had no palate for Cohen, interpreting him as having conceded “Judaism” to “Kantianism” rather than reading Kant “Jewisly”. It is precisely my claim in this dissertation that Cohen read Kant in just such a fashion. See also Leora Batnisky, How Judaism Became a Religion (Princeton: Princeton University Press, 2011).
and ethical experience indeed share systematic levies and thruways to one another, yet they must be methodologically distinct and mark out their own distinct ways of relating ideality and actuality. If nature and ideas, natural science and ethics, cannot be distinguished, a larger problem remains with religious, legal, and political significance: the problem of pantheism.

Kant’s exclusive focus upon nature, according to Cohen’s interpretation, motivates a running polemic that Cohen wages throughout his system of philosophy, the problem of pantheism. On the surface, this polemic is pitched as a response to a systematic problem in Kant’s philosophy, one that Cohen presents as a summation of all of 19th century German philosophy, particularly the post-Kantian idealists, Fichte, Hegel, Schelling. However, it would miss the point of Cohen’s own philosophical hermeneutic were we to try and assess whether Cohen’s interpretations of Kant and the Idealists is historically accurate. Indeed, the very accusation of lacking historical accuracy was one for which many neo-Kantians were criticized in their various returns to Kant.² For Cohen in particular, it is important to contextualize his philosophy according to the problems of the later 19th century, rather than those of the earlier half. Kant’s philosophy was now construed in the context of the biological and special sciences, an idealism contrasted with materialism and positivism rather than empiricism and transcendental realism. Psychologism, physics, and scientific method rather than speculation and rational theology reigned supreme.³ In this light, we can interpret Cohen’s polemic against the systematic idealists, such as Hegel and Fichte as less of a question concerning the particulars of their systems and more so as an attempt to access a cultural-symbolic problem of knowledge in the humanities and natural sciences, of which the system-thinkers represented the most rigorous representatives: this is the methodological priority of philosophy to the natural sciences, as a meta-science.

But the larger problem of concern to Cohen is the culture of philosophy in Germany; the influence of religion and politics upon the methodologies of the human sciences (and vice versa), with philosophical reason as the vanguard. However, Cohen’s implicit concern, as I argue

³ See Köhnke, *ibid.*, pp. 327ff.
throughout this dissertation, is that the lingering metaphysical forms of Christianity, with an insistence upon incarnation, materiality, monism, and human intercession, have biased the sciences in favour of methodological analogues such as materialism, positivism, and skepticism, which is to say, an overreliance upon human consciousness as the fact of scientific priority and consequently, of final validity as well. Indeed, for Cohen the cultural problem of philosophy is that it represents a Janus-faced coin of both pantheism and positivism; pantheism representing the insistence upon monism, identity, and systematic determination of knowledge based upon natural science, and positivism representing the immanence of rational truth to human reason alone based upon the principled deduction of knowledge from the fact of a logical truth, the principle of identity, or the I=I. In a sense, pantheism represents the problematic logic of natural scientific experience and positivism represents the problematic obtrusion of this pantheist logic into ethics, law, politics, and religion. To Cohen, both sides represent metaphysics, and indeed, both represent the most neutralized form of Christianity, which is why Cohen sees ethics, given its particular intimacy with religion, as the pride of the human sciences and the key to reversing this overdetermined meaning of philosophical systematicity.

2 Cohen’s Critique of German Idealism

In order to better assess the cultural-symbolic meaning of idealism and philosophy for Cohen, I want to first outline how Cohen interprets pantheism and its relation to German Idealism. Since in many instances Cohen’s readings of Hegel and Fichte are cursory and at time misleading, I do not wish to evaluate the accuracy of his account, only to present a narrative according to Cohen which should better help us understand his identification of a normative problem in his own time: the problem of positivism in ethics and law. In this respect, I want to outline Cohen’s idealizing interpretation of these thinkers. But the meaning of “idealism” for Cohen is more than just philosophically significant; it is likewise a national inheritance. As he writes in his essay of 1916, “German Idealism and Classical Thought,” by referring to the moniker “German Idealism” Cohen
has taken, “the national moment in a scientifically basic concept, in Idealism, and objectified it.”

But Cohen is likewise concerned with what Heinrich Heine had also identified in the national moment of idealism, namely, that clandestine religion, pantheism. Hence, the problem of idealism is one that brings together science, ethics, and religion with the underlying question of how Judaism might contribute to the meaning of German Idealism in the 19th century and beyond.

According to Cohen, the German Idealists initiated a turn toward pantheist positivism by seizing Kant’s fundamental insight into human knowledge, that reason is a faculty of laws, and yet they failed to adequately relate the meaning of ideality, of idealism itself, with the differing scope of reality in ethics from that of natural science. This monistic view of experience, according to Cohen, is due not to the Idealists’ interpretations of Kant so much as to their reliance upon Spinoza as the solution to Kant’s otherwise problematic dualism between transcendental ideality and empirical reality. He writes,

One can perhaps recognize no greater basic concept of significance [enabling] a coherent inner consistency to the philosophical Romantics [as a movement], than in their dependence upon Spinoza. Schelling, like Hegel, and despite many variations, even Schleiermacher all begin with pantheism. The mistake of pantheism lies, however, not originally in the threat to the God-idea; this piece is but its consequence. The error of the Pantheistic foundation and principle shows itself in the concept of man and therefore within the problem of ethics. When God and nature are the same, at the very minimum, so too are man and nature the same. And thus the distinction between being and ought becomes nothing.

It is certainly not by accident that neither Schelling nor Hegel had written an Ethics in its own proper treatment and under its own particular title. And Schleiermacher stood himself before all else in one of his foundational treatises against this distinction. All identity-philosophy is pantheism, if it does not even attach the distinction in the concept of thinking itself that leads to the distinction between Being and Ought.

The threat of God and man being identical is a consequence of a more fundamental, methodological problem, Cohen claims, namely, of nature and ethics being conflated. The

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5 For the various approaches to Kant’s philosophy in terms of dualism, monism, or renewed skepticism, see Paul Franks, All or Nothing: Systematicity, Transcendental Arguments, and Skepticism in German Idealism, (Cambridge, Mass.: Harvard University Press, 2005).
6 Hermann Cohen, Ethik des reinen Willens, (Berlin: Bruno Cassirer, 1904/1921), pp. 15-16. Hereafter, ErW. Unless otherwise noted, all translations are my own, and refer to the 1st edition, unless substantially altered in the second and third editions, and then citations are noted accordingly.
problem of pantheism is thus the problem of identity. That is, when no distinction can be found between the is and the ought. Such a problem assumes a metaphysical posture precisely because the logical meaning of this law of identity interprets substance, not as “the foundation-laying and presupposition of relations,” which makes of substance a fictional ground for the infinite number of possible attributes, but assumes its foundational inherence within a modification thereof. Thus all attributes of substance are reducible to this same substance, or this one attribute; all possibility is reduced to necessity. Consequently, ideality and reality are confused with a logical abstraction, and then overdetermined by this abstraction.

Cohen believes he can achieve a more coherent system of idealism by maintaining the methodological distinction between logic and ethics. Rather than assume the abstract meaning of legality in the law of identity, Cohen sees legality in a richer, more normative dimension. By normative, I mean to say a law has purposiveness, pointing in the direction of a task or reason, rather than a principle or ground. Thus, Cohen claims that the difference between Pantheistic idealism and his own idealism is the insistence upon ethics as a distinct sphere of legality and ideality. The laws of natural experience cannot be conflated with the laws of ethical experience, despite sharing a common normative schema of cognition. Thus, even the law of identity cannot be a law of ethical will. The problem of pantheism is therefore the problem of identity, of the overdetermination of ethics with a logical abstraction, since

...[a]side from the logical judgment and the law that corresponds to this judgment, identity has nothing of its own particular content. Identity expresses an abstract relation, but not a logical action, wherein this relation is completed...

Identity thus misconstrues the proper role of logic in determining relations which can then be ascribed to a substantial nature; ideal relations which are hypothesized as mapping onto nature.

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ErW, 438: “Substance has no other content than to form the substrate for the attributes, which in turn exhaust the content of substance. Identity therefore means here the determination of the general fiction of substance by one of the infinite attributes that, as would any other one, realizes that fiction. Thus proving the identity as much as a restriction, such as the propagation of substance.” [Die Substanz hat keinen andern Inhalt als den, das Substrat zu bilden für die Attribute, welche allein den Inhalt der Substanz erschöpfen. Die Identität bedeutet demnach hier die Bestimmung der allgemeinen Fiktion der Substanz durch eines der unendlichen Attribute, welche, eines wie das andere, jene Fiktion realisieren. So erweist sich die Identität ebensosehr als eine Restriktion, wie als eine Ausbreitung der Substanz.]
This assumption that what is and what ought to be are identical is, at first blush, therefore a logical problem. But it is more than that alone; the problem of pantheism is also the problem of relating man and God, of correlation, and thus, of practical import, since

pantheism draws relations together [and turns them] into attributes, and makes Correlation into identity. It forms the following: God is nothing other than nature, and just as much nothing but morality.\(^8\)

If God is everything, both nature and morality, and what’s more, if morality is nothing but nature, then what is and what ought to be are ultimately nothing more than God. Implicit to this presentation of pantheism is Cohen’s suspicion of Hegel’s (in)famous remark at the beginning of the *Philosophy of Right*, that “What is rational is actual; and what is actual is rational”.\(^9\)

For Cohen, pantheism is therefore both a logical and an ethical problem. But the unifying theme of the problem of pantheism is likewise its solution: since, the problem of ethics begins with the question of ideals being related to the real world. It is simply a question of how these ideals relate, and in one symbolically fatal blow, Cohen summarizes what he believes to be the failure of Hegel’s idealism to achieve this relationship:

By no means is actuality the scale and the principle of moral reason. By no means does moral reason coincide with actuality; the moral law with the positive laws of historical reality in law and state. This is where we find the cavernous difference between Hegel and Kant: for Kant would say, what is rational, that is not actual, but it should be actual. The difference between is and ought not only distinguishes in general two worlds, but thereby distinguishes the worldview of pantheistic metaphysics from that of the ethical, since it is theoretical idealism. It distinguishes it from the ethics of self-legislation.\(^10\)

Self-legislation is thus the cornerstone of ethical idealism and of Cohen’s return to Kantianism as a viable source of ethical law. Self-legislation as a theory of ethics will therefore help Cohen describe the different meaning of legality in nature from that in morality. It is this latter distinction that Cohen believes to be a systematic problem even in Kant’s practical philosophy.

\(^8\) ErW, 438.
\(^10\) ErW, 314/331
3 Legality and Morality

The problem of ethics and law is a systematic problem of naturalism in philosophy, since Cohen claims the idealists render Being as “the All” and nature as substance. Thus, “pantheism is naturalism”. This systematic problem, however, begins with a flawed understanding of legality itself. It thus becomes Cohen’s task to revise the meaning of legality for ethical experience.

This systematic problem, as Cohen writes, begins with Kant’s distinction between legality and morality in his *Metaphysik der Sitten*. Cohen writes,

...the concept of the law finds its greatest difficulty develop on the very site upon which it has its deepest ground. Kant made law [Gesetz] a focal point of ethics. And yet, he distinguished legality [Legalität] from morality. Morality is rooted in the law [Gesetz], but it is not legalist [Legalität]. One immediately sees from this, though it is invalid, the suspicion as though the law undermines ethics, making ethics insufficient unto itself and unfree. This is the suspicion concerning legality; not so with morality. It is precisely law that distinguishes morality from legality. But before we try to illuminate this deeper potential to the sense of “law” any further, we ask above all for the sense of “legality.”

For Cohen, this distinction between legality and morality is animated by an antiquated suspicion concerning “legalism” in morality. In other words, as Cohen intimates, Kant’s distinction between legality and morality stems from an incorrect understanding of the meaning of “legality”. But it is also more specifically the problem of Kant’s terminology that leads Cohen to focus upon what legality means. According to Cohen, Kant was imprecise in his use of the term and this imprecision has led to much confusion. On the one hand, Kant insists upon two kinds of laws, those of natural necessity and those of freedom. But Kant fails to identify which markers of apriority can be noted when discussing these differing laws. But on the other hand, Kant insists that laws are a result of categories, thus, one must identify how a priori construction of laws of nature and ethics relate to each other. Thus, we must beware of confusion, since,

One most often thinks of law as a fundamental law, as the Constitution of the Kingdom of Morals; consequently as the analogue of the fundamental laws of nature, and therefore natural law itself. But again the ambiguity that lies in laws of nature surfaces, and that makes law therefore appear as though a law in my members. Thus, from the first moments that the law signifies the constitution.

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11ErW, 253.
and the kingdom of morality, since it is guaranteed, would ensure that other moment that the law
was suddenly overlooked, that law is a natural law of consciousness. Thus is the methodological
idealism of ethics confused and paralyzed from the ground up.¹²

Nature derives its principle of legality from the same source as ethics: reason. But the kind of law
that enables this distinction is an ideal law, and so it cannot be a law identified in nature, in
phenomena as such. Rather, the problem of pantheism is the attempt at harmonizing nature and
consciousness, nature and thinking.

For Cohen, this flawed understanding does not originate with Kant, but rather, “originates
with Paul’s polemic against the Mosaic teaching, which he designated and recognized as “law”
[Gesetz].”¹³ It is on account of this prejudice against legalism, which Cohen clearly intimates as a
prejudice against Jewish legalism, that Kant seems to fear any mixture of ethics and law. Hence,
for Cohen, the status of law within ethics is not only a systematic concern, but resonates on a
cultural-symbolic level as well. For Cohen, this question begins the entire inquiry into the role of
religion and ethics within the modern philosophical worldview.

Kant’s separation of legality and morality has a fateful flaw for idealism, according to
Cohen. Without the nuanced sense of legality which Cohen associates with the very idea of a
“moral law” the form of lawfulness left over for ethics and morality must be culled from the only
remaining sphere of objectivity: empirical nature. Without making a modal distinction between
causal laws of nature and noumenal or ideal laws of ethics, Cohen argues that Kant has
unwittingly transformed his ethics into a kind of naturalism.¹⁴ This is the problem with Kant’s so-
called “Typic of Practical Judgment,” the theory of how moral autonomy or freedom can bring
about an action in the empirical natural world. If the laws of nature are simultaneously the laws of
“freedom” then how has Kant avoided the age-old problem of determinism? In other words, for
Cohen, Kant has abandoned the distinction between is and ought.

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¹² ErW, 247
¹³ Ibid. Consider Leora Batnitzky’s discussion of how Cohen criticizes Kant on this basis of the Pauline polemic and how this
critique likewise demonstrates the Protestant categories of Cohen’s own envisaging of Judaism. See How Judaism Became a Religion,
p. 55. I will return to this point in the concluding chapter.
¹⁴ ErW, p. 371
In this mistaken attempt at modeling ethical law upon causal law, Cohen charges, the metaphysical pitfalls of pantheism emerge. Cohen’s account of ethics and law is therefore and attempt to resuscitate a theory of law within ethics, which Cohen believes to be the proper account of critical idealism. In other words, ethical idealism is the theory of law as the foundation of experience. But before discussing Cohen’s ultimate revision of Kant’s Typic and the associated problems of freedom, moral law, and autonomy, I want to first outline some of Cohen’s other revisions of Kant’s theoretical philosophy. In the next section, I will outline Cohen’s interpretation of categoriality, the thing-in-itself and the meaning of the transcendental ideas as a precursor to my discussion of nature and moral law in the following sections.

3.1 Natural vs. Ethical Experience: Cognition and Normativity

In his first major engagement with Kant’s practical philosophy, *Kants Begrundung der Ethik* (1877), Cohen writes that while the theory of experience begins with mathematical laws of cognition, the theory of practical or ethical experience must begin with laws as well. Hence, reading Kant, Cohen learns this fundamental lesson of cognition: the critical idealist seeks the conditions for the experience of something. That is, the critical idealist, in this search, produces the reality in question from the laws of cognition: the categories of the understanding and the system of principles that apply the categories to experience. Kant’s first *Critique* attempted to outline this relationship between categories and the system of principles as the a priori conditions for cognition of a possible experience. But in Cohen’s neo-Kantian account, Kant’s faculty of sensibility and indeed all sensible intuition is excluded in favour of the constitutive function of the understanding—to provide an object in general, which is the place-holder for judgments, whether synthetic or analytic. For Cohen, the categories of the understanding, which modally orient the possibility of cognition, provide the very forms of thinking itself. The *a priori* character of knowledge means that knowledge is rule-oriented.

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15 Cohen, *Kants Begrundung der Ethik*, (hereafter, KBE), p. 121
For Cohen, a priority signifies the condition of unity—unity being the condition of experience. All experience must be spoken about with the idea of continuity and combination into a representable “unity”. Indeed, the primary meaning of the “category” is its figure of apriority of the “synthetic unity of the manifold”. A manifold must be unified by the category and its judgment. This characteristic of thinking, which is thus a combination of the understanding as the ground of logical judgment and reason as the ground of dynamic thinking, is the production of reality according to rules. The understanding (Verstand), for Cohen, is thus juridical. And as for Kant, Cohen sees the metaphysical deduction of the categories of the understanding to be necessarily prior to the transcendental deduction. That is, the generation of the categories as the form of thinking is prior to the generation of the object of experience through the deduction of the categories. Hence, Cohen eliminates intuition as the basis for the production of the object, preferring the system of principles and the schemata that are produced a priori as the basis upon which the mathematically infinite realm of sensation is conditioned in advance by a function of infinitessimality. In following Kant’s words, the quaestio juris of the categories is applied to producing the quaestio facti of the object of experience. Achieving unity to the understanding is the function of judgment, which according to Cohen, is the function of a category. Hence, for Cohen, categories are in fact judgments, which relate disparate parts to each other in the united act of a judgment. The lawfulness of the understanding is always correlated to the unity of the judgment.


17 See KTE, p. 146, and Cohen, Logik der reinen Erkenntniss, (hereafter, LrE), (Berlin: Bruno Cassirer, 1902/1914), p. 123, where Cohen identifies Kant’s anticipations of perception as the basis for replacing synthesis and sensation with origin and the objectification of a unity in the form of an infinitesimal qualia of magnitude. Marco Giovanelli provides an insightful account of how Cohen’s own philosophy builds upon the work of psychophysics, such as the theorem of the Weber-Fechner model: we can represent, through the categorical law of continuity of diminished intensity of force over matter, that an event of sensation is occurring even if we cannot perceive it. Since perception is merely subjective consciousness, this psychological basis of sensation is derivative to the lawful grounding of scientific objectivity. This is the basis of our knowledge of subatomic particles, for example. We cannot see them, but they can be represented by laws of thinking. See Marco Giovanelli, Reality and Negation—Kant’s Anticipations of Perception: An Investigation of its Impact on the Post-Kantian Debate, (New York: Springer, 2011), pp. 162-178.
This is the insight of transcendental idealism for Cohen: its unity. The unity of the laws that produce experience does not imply that experience is itself ever achieved, however. Rather, as a transcendental condition, it is always in the process of producing experience; it is never completed. This is the mathematical infinity of reality. As Cohen writes,

...experience, taken in its fully widened content, is certainly never achieved for us. The possibility of experience cannot be reduced to the actuality [Wirklichkeit] of experience. The limits [Grenzen] of experience are not identical in meaning to the Ends [Ende] of experience. The formal conditions of experience are distinct from its material conditions...

...It must be affirmed in an altogether explicit manner that, concerning the categories, Kant does not evaluate this third degree of the a priori over the unity of and the constitutive value of the categories and the principles for the form of experience. He therefore proves not only the transcendental significance, but also the metaphysical one of the categories.\(^\text{18}\)

For Cohen, the “constitutive” forms of experience—the entire notion of the production of reality—shape the scientific contour of reality. The rational reconstruction of reality—its mathematical modeling—is how we account for the real world. This is the determination of its existence. But the unity of experience is likewise the constitutive contribution of the understanding, and hence, of the categories. Providing unity is its lawful function. This alternative lawfulness is therefore one of striving to provide a unity to cognition by constituting experience through the principles and categories that are the forms of experience.

As Cohen notes in his contrasts with Herbart, this theory of the categories and their constitutive role is not to be taken as a mere psychologization of Kant. Rather, the forms of intuition and the categories are productive processes of unity and synthesis. That is, they are logical forms and conditions for experience. Whereas psychology mistakes the formal and material conditions of experience by placing the categories into the physical organs of the mind, Cohen maintains the importance of distinguishing formal and material as logical and transcendental constructions of the understanding and reason, stressing the production of a synthesis between the two in the generation of experience itself. In this light we can see that Cohen’s main contention with many other Kant interpreters is that we must understand the constitutive and regulative

\(^{18}\) KTE, 249 2ed./ Fr. 277
functions of reason and the understanding as necessarily correlated – that is, the character of unity that marks the transcendental, applies just as well at the level of the “System of Reason” as a whole and its idea of wholeness or normativity. In this respect we can see that “synthetic unity” is an “originary” force of unification for Cohen:

The categories must be thought as “forms of the understanding,” just as we must think of space and time as forms of sensibility. Even this expression “form,” even more than that of “originary” must not be understood in a psychological manner. Just as sensibility links geometric intuition to physics, the understanding must reconcile the synthetic unity of logic to physics, to the pure science of nature.¹⁹

For Cohen, the description of the “forms of the understanding” attempts to heighten our awareness of the fundamentally “metaphysical” (which for Cohen, means logical) element of apriority in Kant’s thought. The understanding is the source of rules. As we saw before, for Kant the faculty of understanding brings the juridical character of continuity and anticipation to the manifold diversity of things and appearances. For Cohen, even the understanding as the juridical source, is a productive faculty. It is a continuously developing faculty of syntheses. It is synthetic unity. But Cohen goes one step further in his description of the relation between the understanding and reason: the juridical character of the understanding partakes of the formal unification of diversity in general. That is, the understanding, with its forms, is the element of unification of thinking in general. Therefore, Cohen sees the forms of understanding to mirror the forms of sensibility, the latter’s main task being the unification of the diverse manifold of sensible intuition. The “forms of understanding,” by analogy, unify the diverse manifold of formal intuitions. Indeed, for Cohen’s latter thought, the form of intuition become categories in and of themselves, whereas intuition becomes a moniker for an action of thinking.²⁰

In a manner similar to Fichte, Cohen sees the understanding as fundamentally unified with reason as a task of thinking:

Synthesis must achieve unity. It is therefore a “unification”. Through this task [of unification] all the characteristics of thinking are accounted for. They all take on the end [bezwecken] of unification of

¹⁹ KTE, pp. 250-51
the elements of consciousness, which are presented in the manifold of intuition, even if “unification” is particularized to each of them.21

The relation between the transcendental and metaphysical deductions depends upon a principle of unity.22 This principle serves to correspond the two. This principle is, in the system of philosophy, judgment: an act of unification of diversity – Urteil.23 This unity of judgment is the unification of judging diversity. Judgment becomes an action, a principle and an orientation for the unification of diversity. Normativity thus becomes the backbone of idealist philosophy for Cohen, making judgment a source of unification. For both the constitutive unity of an object as well as the transcendental ideal of reason as the unity of all cognitions in the Truth of a “whole” become modes of normativity. Indeed, as we shall see in Cohen’s Ethics this dual-modality of normativity is the foundation for his theory of law. At present, however, we can see that this lawfulness to both the understanding and to reason becomes the normativity of judgment itself. The metaphysical and transcendental are related through this activity of judging which brings the unity of thinking to bear upon a world that must be ordered scientifically but regulated by an ideal sphere of how the world ought to be. In other words, reason requires the practical aspect of ethics. This is the originative force of thinking and the source of normativity.24

What is significant is that Cohen does not simply attribute lawfulness to the constitutive role of the understanding in achieving a unified “object in general”. Rather, the unity of judgment is applied retroactively to the system of reason as well. Hence, the regulative use of the ideas also

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21 KTE, p. 251-52
22 Whereas for Kant, transcendental apperception is this principle of unity, Cohen’s system transforms this principle into judgments which have the task of unification. See LrE, p. 36; Holzhey, “Cohen and the Marburg School in Context,” p. 16. The Logik thus eliminates intuition while turning judgment into the cognitive force at work. I’ve been stressing how Cohen’s Kant interpretation prior to 1883 was still emphatically juridical, however, with the publication of the Infinitesimal-Methode, this juridical reading is correlated to the temporal principle of the infinite judgment and coheres the logic of Cohen’s own system. Cf. Steven S. Schwarzschild, “The Concept of the Infinitesimal” in Steven S. Schwarzschild’s Nachlass, forthcoming.
23 These judgments seek the concept, to justify the hypothetical idea by bringing a justified concept, schematized through the concept, into relation with the object of judgment. Reinier Munk has characterized Cohen’s understanding as a form of preservation of separate pieces (die Erhaltung der Teilen) of an original separation (Ur-Teil). See Reinier Munk, “Alterity in Hermann Cohen’s Critical Idealism,” in Journal of Jewish Thought and Philosophy (JTP), vol. 9 (2000), pp. 251-265. In this respect, the task of holding these parts together is the work of correlation—the preservation of the object of the concept with the force of the normative idea.
exhibits a lawful feature. As we shall see, this lawfulness of reason, however, contributes the alternate prong of Cohen’s temporalized normativity: the transcendental ideal. The entire system of reason partakes of the production of reality through the synthesis of judgment. Reason, in its role of regulating and giving purpose to judgments therefore provides the ideal of reason—to reach an unconditioned. But as Cohen notes, this function of reason is fulfilled by the very idea of a thing-in-itself, which I will discuss in what follows.

3.2 The Idea and the Thing in Itself

The distinction of critical interest now is between the appearance of something in the world and the thing as it is, or, the thing-in-itself. As we have seen, the relation between concepts and ideas provides the logical ground of judgment as an ideal activity. However, it remains for us to understand how the natural world is produced as a reality-lens, so to speak, from ideas. Hence, the objectivity of an object becomes the next logical step in determining the normative source of reason and its reality. Here, Cohen takes us further into his understanding of the ideality of the object.

The categories produce a concept of an “object in general”. In this realm of pure thought, the object produced by the categories is an idea. It is the object in general which Cohen takes as the thing-in-itself. That is, insofar as Kant claims that the indeterminate object of an empirical intuition is called an appearance, the production of the indeterminate object is nevertheless through a rule of determination: the categories produce an object in general from a rule. As the part of the rule-abiding nature of the understanding, the law of the understanding (the law of possibility) is the production of a possible object in general, which in its indeterminateness is


\[\text{[26] KBE, p. 22}\]
called an appearance. But for Cohen, the thing is a production of reason as well, insofar as it sets a limit to judgment, and hence, is an idea:

Things are in as much and insofar as they are Ideas. Things are phenomena. Are they therefore appearances? No! Phenomena are, in as much and insofar as there is law, in which they achieve being, in which the flux of phenomena achieve subsistence. The Law is itself therefore the simplest expression of every thing-in-itself...27

For Cohen, the thing-in-itself is correlated to the law of the understanding. The sensible manifold is related to what he calls the intelligible manifold, the idea of unity of a thing as an organizing principle. The unity of experience is consequent to the unity of lawful judgment. The manifold of thinking is therefore the ground of experience through this common feature of the understanding: lawfulness. Nature is thus the product of the laws of thinking, as Kant claims. As Cohen further extends this logic, it is “the possibility of experience [that] first grounds the possibility of the objects of experience.”28 The obscure conception of the thing-in-itself, which for Kant marks the difference between our subjective knowledge of a thing over and against an objective knowledge of it, was a particular problem for Kant. It represented a realm barred from access, of which we could not obtain knowledge unless an absolute intelligibility was posited, as with Hegel. Similarly, Maimon and Fichte sought to ground things in themselves in the infinite intelligibility of the understanding. But Cohen sought intelligibility to the thing-in-itself without the use of the Absolute; instead, he claimed it was an idea—a regulative idea. He writes,

Here we come upon a grave difficulty in Kant’s terminology, namely, in the relationship between the idea to the thing in itself. It is precisely here that Fichte would be engaged in his vocation, and here he came to the presumption that he was enhancing Kant. We know from logic that the problem of things in themselves for Kant is not fully solved and that it cannot be fully solved for his part, because the concepts of reality and actuality had not been brought to full clarity and precision. Here we have now to see how this basic problem hangs together with just such a problem in the determination of the idea.29

28 KBE, p. 23
29 ErW, 24-5
Rather than affirm the empirical realism intimated by Kant as part of a dualism that the transcendental mediates, Cohen sought to idealize the thing-in-itself in order to secure a limitation to the transcendental at all costs. As a limit, the thing-in-itself serves as the example of where objective knowledge of experience is based on judgments that are normative; beyond the idea of a thing-in-itself, knowledge could not pass.

On the basis of this major deviation, it must be pointed out that Cohen has reinterpreted Kant in a manner that deviates from scholarly consensus. Nevertheless, if we are to take Cohen on his account of the transcendental we find a particularly noteworthy contribution that emerges: the regulative idea of the thing-in-itself signifies a practical limitation upon the bounds of reason itself. That is, there are certain ideas that are firmly planted as limits to our speculation. Judgments are therefore purely logical determinations of the possibility of experience that are normatively limited in reason by an idea of an unconditioned limit. Without ascribing unknowability to the empirical world of experience, Cohen affirms an unknowability to reason itself. Ideas form the foundation for logically justifying judgments. Therefore for Cohen, unlike Hegel, the thing-in-itself becomes an idea or hypothesis, rather than the determinate moment of a relative infinity, that is, the symbol of an infinite intelligibility which Absolute knowledge soon overtakes.

Cohen’s conception of the thing-in-itself as an idea is more interesting for what it tells us about the character of ideas, and of less interest in the sphere of Kantian scholarship. By turning the idea of a thing on its own, barred from access, into a regulative idea means that Cohen sees the idea itself as a normative entity. Regulative ideas therefore limit the pretension of judgment. The thing in itself as an idea of something complete and sufficient is hypothetical and therefore

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30 Paul Franks notes that Cohen and the Marburg school intentionally collapse the constitutive/regulative distinction of Kant’s philosophy. Indeed, in Franks’ reading, Cohen transforms the metaphysical and transcendental deductions into a methodological argument, whereby the metaphysical deduction must be prior to the latter so that the transcendental deduction can purify and correct the missteps of the former. See Paul W. Franks, “Serpentine Naturalism and Protean Nihilism: Transcendental Philosophy in Anthropological Post-Kantianism, German Idealism, and Neo-Kantianism,” in The Oxford Handbook of Continental Philosophy, ed. Brian Leiter and Michael Rosen, (New York: Oxford University Press, 2007), pp. 243-286. But Kant lends credence to the Cohenian interpretation when he claims in the appendix to the transcendental dialectic that the understanding exerts a “transcendental use...so that the systematic unity of a substance’s many powers are postulated and an apodictic principle of reason is erected.” (B 678) But this latter reading is fraught with debate, in which I do not wish to become entangled at present.

characterizes the ideas more generally. The idea is regulative because it is the “form of a whole” unto itself. The form of a whole is thus a regulative form for all cognition, something for which we need an idea, but for which no experience could ever fully determine through judgment. The idea is therefore normative and regulative for judgment serving as the form of a lawful limitation to cognition. Judgments about sensation, about reality, are judgments that are lawfully construed; this is the function of the understanding, to bring a rule to bear upon a fact of consciousness and to dialectically justify that conceptual fact through judgment. But the role of reason is to limit judgment to this unity of a thing in itself, a whole, a completed thing. Such an idea remains a task of reason, and so, merely hypothetical. But as we shall see, this normative characteristic of the hypothetical becomes a decisive idea of grounding in Cohen’s thought. It is this latter aspect of lawfulness, that of reason, that brings Cohen’s idealism more clearly into view as a normative theory of reason.

In this normative sphere of the ideas, Cohen therefore makes the jump to the practical through the idea: normative or regulative ideas become the basis of cognition by providing the form of a whole for judgment, but they also provide the basis for determining judgments about that which is not yet in the world: practical actions. However, unlike the modern constructivist reading of Kant, Cohen sees the idea as a limit for reason, and not a limit of reason. That is, the genitive directs a limitation toward possible judgments rather than finalizing judgment. Reason is practical because it concerns judgments about that which is as well as that which ought to be: this is the significance of the transcendental: it schematizes the objects of experience as objects formed by rules. The rules determine the adequate categories that serve to represent and cohere judgments about these objects; indeed, the rules that schematize these objects help the generation of those objects as actualities that correspond to ideas. The ideas thus serve as the normative conception for

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32 KTE, p. 122: “Form is sensibilium species, which is generated when the manifold affecting sense is coordinated naturali quodam animi lege. It is, consequently, itself the law of coordination. It is form, understood neither as sense impression by the affecting ‘thing’, nor ‘adumbratio aut schema quoddam objecti, se nonisi lex quaedam menti insita. [A reflection or projection of the object. It is only a law internal to spirit.] This form is not given and produced by things (per forman seu speciem objecta sensus non feriunt); but, so that the manifold “combines itself into a whole of representation,” an internum mentis principium is required by which the manifold remands a form (species) “according to constant and internal laws.”
what ought to be, and therefore, the ideas themselves achieve being.\textsuperscript{33} The ideas (the domain of reason) have being; they are more than simply representations (the domain of the understanding). Insofar as the judgment is a representation of a representation\textsuperscript{34} – the synthesis of representations – the status of the sensible is therefore intimately linked with that of the idea, the former as the basis of cognition, the latter as the ordering end. It is the idea of a unified world that gives the amalgam of representations their sense of lawful order, with the idea as an end (Zweck, and hence, a normative goal).\textsuperscript{35}

Cohen’s reading of Kant therefore presents us with two major insights: first, the understanding and reason are related through the unity of judgment. In turn, as we shall see below, judgment is a temporalization of all thinking oriented toward this unity, albeit in an infinite future. But most importantly here is that the understanding and reason together produce the constitutive and regulative function of ideas and concepts. Reason produces the reality of experience as well as regulating that reality with ideas. Both aspects are lawful. Secondly, Cohen turns Kant’s “thing-in-itself”—the object barred from intelligibility—into an idea. Hence it is something within the realm of ideas itself, which admits of unintelligibility. Rather than pointing to an absolute beyond reason, Cohen has traced the limits of reason from within, and hence, truly criticized the limits of human reason.

But striking in this reading is the lesson learned from the first Critique, namely, that reason is essentially moral in character. That is, though reason is producing and criticizing the norms and limits it must adhere to, this is not to say that the subjective standpoint or especially “human” reason is pulling all the weight. Cohen’s idealism traces its own insufficiency. Reason cannot be accounted for in the past. Rather, the morality of reason—its normative basis—is precisely its project of cognition: it is a task to know the world and the limits of thinking. In other words, through this

\textsuperscript{33} See Paul W. Franks, “Jewish Philosophy after Kant” in The Cambridge Companion to Modern Jewish Philosophy. (New York: Cambridge University Press, 2007) p. 57 “Although not, like the categories, constitutive of the object of knowledge, the ideas are regulative of the project of knowledge, constituting reason itself.”

\textsuperscript{34} Kant emphasizes the unity of the judgment as an act of spontaneity of the understanding, itself “a mediating cognition of an object, hence the representation of a representation.” A 68/B 93

\textsuperscript{35} See Franks, \textit{ibid}. 
idea of infinite judgment and the hypothetical nature of ideas, the limits of thinking—the idea of wholeness and completion; the juridical unity of judging experience—Cohen opens reason without appealing to a dogmatic Absolute. The limits of reason are mathematical, not physical or geometric; that is, an infinite temporality, not a spatial abyss or obstruction. As a moral horizon, however, this limit is nevertheless a product of the lawfulness of reason itself. And as Kant claimed in the “discipline of reason,” through the unity of judgment the immanence of the understanding is related to the transcendence of ideas. It remains for us to see how Cohen uniquely turns to ethics as the answer to this transcendence. But we must note well that this fulfillment of reason remains a task, which also presents the unification of nature and ethics, like the understanding and reason, as a projection and project.

The content of the transcendental ideas and their objects hinges upon the transformation of the thing-in-itself into a noumenon. Cohen maintains that the noumenal form of the thing-in-itself is what gives coherence to thinking. Hence, the thing in itself becomes a purpose-oriented limit concept indicating the resolution and reconciliation of all thought in a kind of unity:

Thus, the three [transcendental] objects, which only metaphorically bear the name of ‘object’, are the three expressions of the thing-in-itself. Kant did not make use of this means of designation, and even less so of the following, under which we desire to illustrate each of the three genera: the world is the thing in itself for outer appearance; the soul is the thing in itself for inner appearance; God is the thing in itself of all thinking in general. All three are not merely formulations of the task exemplified by the thing in itself, but rather, they are attempts at resolution.

Insofar as the thing in itself becomes a noumenon, Cohen has transformed Kant’s problem of the “object in general=x” into the problem of an objectification of the whole of possibility as such. That is, the world, the soul, and God become things-in-themselves as attempts at resolving the ultimate goal of synthesis of all thinking with nature. But Cohen’s insistence on the purity of thinking from any empirical admixture requires this noumenal goal as an ideal that sets the task of thinking on route. It is this task-oriented movement of thinking that again brings willing and

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36 As we will see in the chapter 4, this is also the basis for Cohen’s revision of the role of intuition in judgment, which begins with his InfinitesimalMethod of 1883.

37 KBE, 38
thinking into proximity, for here again, we are facing the problem of idealism: the actualization of the ideal.

In this respect, the ethics represents a more fully consistent idealism because it places greater value upon ideas. The thing in itself is no longer the lingering trace of metaphysics, of the something barred from cognition in a realm of mystical supernaturalism. Rather, for Cohen, the idea gains its specific form and meaning in its normative orientation. Hence,

The terminological value of the “idea” lies in the distinction between is and ought. Kant had the keen insight that revealed to him the secret of the Platonic idea. The term idea had come to be misused in modern languages, its sense would be swaying, its proper value superseded. The idea is by no means equivocal with representation. And certainly should not be equated with cognition. Plato had made this mistake, and had not even distinguished the is from the ought... [But] Kant restricts the use of the idea, apart from the regulatory uses of the idea in the biological sciences, to the practical use of reason, to the ought of ethics.

Certainly any distrust of Kant's intention would be completely unfounded in relation to the expression of this value of the idea. By contrast, we have merely to mention the dithyrambic price of the idea and its esteemed distinction by means of which and by the power of which he sought to erect the vast sphere of ethics. But for the most unreserved recognition of the leveling force in the power of the idea, we must still pay attention to the relation in which it stands to the thing in itself. This question is raised more threateningly and insidiously as the laws of nature and its prototype, the synthetic principle. For with the latter it is easier to see that the thing in itself was only a piece of fabric leftover of the unscientific, dogmatic superstition. One has the law of nature in his hands; one constitutes within himself a natural force and in the latter also the being and effects of nature, and yet he still asks after the thing in itself.³⁸

The relationship between the thing in itself and the idea is therefore the problem of metaphysics, natural science, and ethics all in one. It is through the relationship between idea and the things of nature that Cohen commences his problematization of critical idealism. While Kant had introduced the a priori status of ideas in relation to natural science and even the conception of laws of nature, rendering natural forces a characterization or fiction constructed from ideas, he nevertheless retained the thing in itself as a lingering piece of metaphysics. Hence, Cohen believes an ambiguity threatens the methodological purity of the “idea” as a vehicle for normative ethics; likewise, if this ambiguity in the “idea” remains, so too will there remain an ambiguity in the

³⁸ ErW, 24
concept of legality. Without clarification, the confusion of nature with ideality, and nature with ethics, remains prominent.

To rescue the status of the “idea” for ethics, Cohen must introduce a restricted value to the kind of “being” of ethical ideas and actions. This kind of being must retain the a priority of critical idealism and distinguish the value of ideas for both logic and ethics. This value can be found in the *Sollen*, the ought:

...Therefore the idea must be completely sublated in the Ought. There must not stand for it a thing in itself in the background. The idea is the Ought. The ideas mean nothing more than prescripts of the practical use of reason, which are summarized in the Ought. In this Ought lies the being-value of ethics. This Ought describes and determines the will, which forms the content of ethics. 39

We see here that Cohen is interrogating the precise relationship between ideas and the world of experience, but in order to do so, he must likewise invest the normative scope of ideas with a more pregnant meaning for practical philosophy than in natural science, since ethics and law have to deal with freedom and will within the context of the most clearly noumenal idea, the moral law, the fullest meaning of the *Sollen*, the Ought. In this respect, Cohen must not only demonstrate the regulative use of ideas within natural science and then in ethics, he must also account for the origin of action on the basis of norms, or as Kant described it, the relationship between freedom and action. This is the problem of the Typic of Practical Judgment.

3.3 Ideal Norm and Action: The Typic-Problem

Cohen sees the formal character of the categories to constitute the distinct realm of ethical “experience”. In ethics, the “material” of this experience is the will. 40 But even as the will may take on the matter of ethical experience, it is nevertheless based upon the lawfulness of reason itself, and thus, the basis of the deduction of an action which is continuous with the moral law. For Cohen, the moral law is itself the lawfulness of reason, which like Kant, means that the pure will, a

39 E-W, 26
40 KBE, p. 165
The idea of the good, however, has nothing to do with being in this world, of this nature: it must therefore be "beyond being" (ἐπεκείνα τε ουσίας).

Usually this is taken to mean God's transcendence, particular monotheism. We see, however, that it has sprung out from the idealism of ethics, from the "primacy of practical reason," as Kant has influenced this concept. And so it can be understood well that the idea of good has been made out to be the Platonic God. By contrast, we have understood transcendence to be only from our propensity, namely, to distinguish the moral from all being of nature.\footnote{ErW, 161-2}

The good is the highest expression of both knowledge and morality, which is the expression of the intimacy of theoretical and practical a priori, for Cohen. Judgment seeks the objectivity of knowledge, whether in logic or ethics, and in the case of the practical reason, the will is the immediate relation to the idea of a practical law for actions themselves. In this respect, the pure will becomes the dissolution of intuition in ethics, for intuition schematizes a causal connection of commercium, which is wholly different than that kind of relationship that obtains between moral rational beings.\footnote{KBE, pp. 136; 137-8; cf. Kant KrV, B 290}

But the relation between action and ideal, between the world of natural scientific experience and the world of ethical ideas and their actualization cannot be collapsed together. Rather, Cohen insists that ethical idealism must be strictly delimited from incursion on the part of

\footnote{KBE, pp. 162-3}
\footnote{KBE, p. 135}
\footnote{ErW, 161-2}
\footnote{KBE, pp. 136; 137-8; cf. Kant KrV, B 290}
empiricism and materialism. This is the reason why Cohen must revise Kant’s “Typic of Practical Judgment,” which is Kant’s attempt to describe the relationship between intelligible and sensible nature, or as Cohen would prefer, between natural scientific experience and ethical experience.

Kant begins his discussion of the Typic with the following distinction:

...whether an action possible for us in sensibility is or is not a case that stands under the rule requires practical judgment, by which what is said in the rule universally (in abstracto) is applied to an action in concreto. But a practical rule of pure reason first, as practical, concerns the existence of an object, and second, as a practical rule of pure reason, brings with it necessity with respect to the existence of an action and is thus a practical law, not a natural law through empirical grounds of determination but a law of freedom in accordance with which the will is to be determinable independently of anything empirical (merely through the representation of a law in general and its form); however, all cases of possible actions that occur can be only empirical, that is, belong to experience and nature; hence, it seems absurd to want to find in the sensible world a case which, though as such it stands only under the law of nature, yet admits of the application to it of a law of freedom and to which there could be applied the supersensible idea of the morally good, which is to be exhibited in it in concreto.\(^45\)

The problem that Kant detects, based upon this division, is that the idea of the moral good is supersensible, not something that can be experienced, and so has no correlate in “sensible intuition”. How can judgment according to the laws of pure practical reason apply to actions that belong to nature? In other words, how can laws of freedom apply to laws of nature? It is a rephrasing of the antinomy of pure reason, with this introduction of a different focus for our analogy, namely, the typic of legality.

Kant claims to solve this problem with the use of the schema—the model or paradigm offered up by sensible intuition to the use of transcendental imagination to sketch the intelligible character of the action that should take place in nature. The schema is the result of an intuition of experience, which is worked over by the pure concepts of the understanding. This is the work of theoretical reason. However, in practical reason we have a different problem. In the particular instance of practical laws, the schema that Kant seeks is not provided through intuition, since the good has no intuition. Kant must seek a “schema of law itself”\(^46\) insofar as the question of how actions are caused on the basis of pure practical reason is not the same as the causality of nature.

\(^{45}\) Ak. 5:68

\(^{46}\) ibid.
Since Kant maintains such a stark division between archetypal and ectypal nature, how the moral law and the moral good are actualized within ectypal nature is not clearly outlined. Neither the moral law nor the moral good have intuitions because they are “forced upon us” as synthetic a priori principles. Consequently, Kant sees the solution to the lack of intuition for the moral law to lie in the understanding rather than the imagination, which usually provides a schema (which suggests that the kind of intuition fitting for this lawfulness is not be intellectual, else it would be a product of the imagination). Hence, the understanding puts before reason the idea of a law: “such a law, however, as can be presented in concreto in objects of the sense and hence a law of nature, though only as to its form; this law is what the understanding can put under an idea of reason on behalf of judgment, and we can, accordingly, call it the type of the moral law.” Since there is no intuition for the law, the form of a law of nature becomes the model of necessitation; causal necessitation.

Cohen’s problem with this account is multifaceted. Setting aside the question of its accuracy in terms of Kant’s own thought, it is important to note Cohen’s polemic: nature must not encroach upon the autonomy of ethics. And likewise, the model of causal lawfulness will not suffice as the model of ethical lawfulness. Subsequently, to triangulate ethical ideality with ethical action will require a different venue than sensibility and intuition. Cohen must therefore reinterpret the meaning of intelligibility and the moral good. Hence, Cohen must refocus the actuality of ethical ideals upon temporal determinations, hence, as purposiveness and in terms of the schematism, namely, the rational production of an action from reason. Thus, Cohen writes,

The intelligible character [of ethics] does not mean an intelligible cause, but only an intelligible purpose, the purposive end [Endzweck], which is the essence of the moral. But in which Being is his purposive goal realize? In the Ought [Sollen]. And which Being signifies this Ought out of the Being of the task? In what relation does it stand to the Being of nature?

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47 cf. KdU, Ak. 5:593-405
48 Ak. 5:69
49 ErW, 371
The origin of an action on the basis of an idea and norm is what Cohen is after. Whereas action may appear to be an effect produced by a cause, Cohen is rather interested in how a purposive determination of action can be sought when we turn to the ethical *Sollen*, the “ought” as opposed the ontological *Sein*, the “is”. The basic problem of legal and ethical philosophy, which Cohen likewise identifies as the Humean catalyst for Kant’s transcendental idealism as a whole, is the basis for a modal distinction announced in ethics. This modal distinction is likewise afforded by the distinction between thinking and willing, which as Kant had introduced, enables the origination of a moral action from purely a priori grounds, namely, the pure will.

While Cohen modifies the meaning of the pure ethical will, as I will discuss below, it is important to note here that the pure will is understood as the transcendental practical a priori, that is, the will is enables what Kant terms an obligation to an “objective-practical law.” However, by refocusing upon the *Sollen*, the ought, and upon purpose rather than causality, Cohen subverts the problem of the Typic and reorients the question of how the will originates action on the model of a different kind of lawfulness from that of causal nature. In his *Ethik des reinen Willens*, this question becomes more pronounced, and there Cohen claims that it is through the relationship of freedom to self-consciousness, which becomes the task of the will to actualize, that the problem of action arises once again. But here again in the *Ethik* this problem concerns the distinction between thinking and willing. Just as thinking must schematize the norms of knowledge with possible experiences, so too, the will must relate to the actualization of the norms of the law that mandate its actions. For Cohen, this is the problem of relating logic to ethics, of relating thinking to willing.

And it is a problem that Kant was attempting to solve in the Typic. Thus,

One should also here note a sharpness in Kantian terminology, which has cast strong shadows in this primordial light. Kant dealt with our problem under the title of the typic of practical reason. The typic is distinguished from the schematism. In nature, the categories are realized. Kant describes this realization under the expression of schematization. The schema is the pure form, rather the pure configuration. This is possible in nature. Since space and time are the pliable areas in which the terms can be arranged. All requirement and every measure of reality is given here and provided. The terms are as pure forms, configuring forms. This is the concise sense of the schematism.\(^50\)

\(^50\) ErW, 371
The difference between the Typic and the Schematism, according to Cohen, lies in the fact that the origin of action cannot be considered a fait accompli at any point in its origination. That is to say, since freedom is the origin of action, freedom itself would first have to be determined and produced as a positive noumenal reality. But this is precisely a problem that Kant neither fully resolved in the antinomies of the first Critique, nor in the Paralogisms. Rather, freedom, in Cohen’s eyes, remains a task, a goal, and a purpose that orients all action.\(^{51}\) By reconfiguring the emphasis of the Typic in contrast to the Schematism, Cohen means to distinguish how pure cognition of nature requires the judgments of space and time as constructed through the system of principles, whereas in ethics, space is not a factor. Indeed, since empirical causality is replaced with purposive end, the temporal dimension of ethics becomes the only form of form of the Sollen. Thus, the future becomes the proper domain of ethical action. Legality now achieves a noumenal status as a kind of temporal modality.

Whereas Kant attempts to limit noumena to a merely negative definition, as a limit-concept, as well as his attempt to limit freedom to a negative concept of self-determination,\(^ {52}\) Cohen has removed the major impediment that lead to Kant’s duality: the thing-in-itself is a regulative idea, which is to say that the noumenal reality of the idea is its finding a ground within in thinking itself. That is to say, Cohen can assert a positive meaning to both freedom and the noumenon because both are projected tasks of the understanding. Also, since intuition has become a moment of the action of thinking, rather than a faculty of its own, we see that the mathematical infinite of reality is correlated to the law of continuity of the understanding. Thus, the object is produced through the judgment about what is not-nothing, what is not \(=0\) but also infinitely small approximating 0. It is the “function” that is generated from the judgment, as Kant explains in the anticipations of perception, which Cohen radicalizes into a logic of origin of objects. The noumenal reality of the idea thus becomes the projected goal of the judgments about objects, and this demonstrates the eminently practical use of the noumenon: it shows the

\(^{51}\) Ibid.

\(^{52}\) B 307
normative and real meaning of what experience ought to be. The most significant example of this noumenal reality is the moral law.

3.4 The Moral Law and Noumenal Reality

For Cohen, the moral law is a reality (unlike Herbart’s) that is distinct from the natural laws of causal relations. Yet, Kant’s mistaken use of the typic was not without reason. The lawfulness of nature helps schematize what is at stake in ethics: the action, which is an experience. Hence, the being of the idea is the being of the action. The question is how this action, qua idea, is caused? In other words, is freedom a noumenal cause of a phenomenal action?

For Cohen, the distinction between Sein and Sollens becomes the distinction that eliminates the possibility of sensible intuition or intellectual intuition solving the problem of how we enact a deduction of the transcendental a priori for practical reason, reaching the “positive” concept of freedom. Rather, Cohen extends his theory of the noumenal reality of the moral law, and of freedom in the positive, transcendentally deduced sense of being homo noumenon, to resolve Kant’s own dualism, as well as to develop his own theory of ethical cognition.\(^{53}\) That is, Cohen sees freedom as a task of reason, like the cosmological significance of the world-whole, or God. It is the proximity to the task of attaining an ideal of reason that Cohen turns to the temporality of the idea, rather than its empirical or phenomenal immanence, as the key to giving noumenal reality efficacy.

For Cohen, the regulative use of the ideas of theoretical reason are the basis for the proximity between the theoretical and practical uses of reason. It is through the lawfulness of the transcendental deduction of the categories, and the system of principles that are applied to objects of experience on the basis of those lawful principles that Cohen is able to sketch a smoother transition from theoretical to practical than Kant himself. For Cohen, the systematic function of

\(^{53}\) KBE, pp. 242-245; By focusing upon the human being as a rational being, Cohen polemicizes against a kind of empiricism that results in a moral anthropology. In chapters 3 and 4, I will argue that this is similarly Cohen’s interpretation of Maimonides and that it helps us better understand Kant’s mistake in the "Typic of Practical Judgment".
reason is to draw upon both pure intuition and thinking to generate the object of knowledge. Through the lawful application of the Schematism and the principles which can anticipate perception, as well as chart from where, how much, to what degree, and in which order of succession and persistence causes in the natural world ought to occur. And just as from the transcendental deduction and the system of principles, Kant arrived at the conclusion that transcendental apperception was the basis from which freedom could be postulated as the potential solution to antimonies of causality, so too Cohen believes that freedom in this transcendental sense, rather than in Kant’s practical assumption, is the key to achieving the transcendental deduction of the moral law. The significance of this move is that Cohen does not rely upon the external causal model of lawfulness, nor upon any kind of intuition for this lawful deduction. Rather, through the division of “is” and “ought” – the basic moral problem – Cohen extrapolates a solution to the Kantian separation of legality and morality: the moral law has a noumenal reality that is characterized by its Sollen, which indicates that it has a kind of status as a transcendental idea, a regulative kind of being, and thus, a temporal reality.54

In the Critique of Practical Reason, Kant initially tries to distinguish between the laws of nature, which are causal, and the law of practical reason. Insofar as practical judgment is concerned, we must somehow assess the character of the action that is to be brought into being on the basis of practical reason. Nevertheless the action, once determined, transpires in nature and so must be considered from the perspective of laws of nature as well. While Kant claims that laws of nature do not determine the will, because the pure will is a priori practical reason or the ability to determine one’s own will without appeal to natural causality, he nevertheless must tread carefully when considering laws of causality, which have categorical deductions, unlike his idea of freedom. Such juxtaposition between laws of freedom and laws of nature therefore reintroduces the problem of moral “necessitation”. Kant writes:

...the moral law, even though it gives no prospect, nevertheless provides a fact absolutely inexplicable from any data of the sensible world and from the whole compass of our theoretical use of reason, a

54 KBE, p. 152
fact that points to a pure world of the understanding and, indeed, even determines it positively and lets us cognize something of it, namely a law.

This law is to furnish the sensible world, as a sensible nature (in what concerns rational beings), with the form of a world of the understanding, that is, of a supersensible nature, though without infringing upon the mechanism of the former. Now, nature in the most general sense is the existence of things under laws. The sensible nature of rational beings in general is their existence under empirically conditioned laws and is thus, for reason, heteronomy. The supersensible nature of the same beings, on the other hand, is their existence in accordance with laws that are independent of any empirical condition and thus belong to the autonomy of pure reason. And since the laws by which the existence of things depends on cognition are practical, supersensible nature, so far as we can make for ourselves a concept of it, is nothing other than a nature under the autonomy of pure practical reason. The law of this autonomy, however, is the moral law, which is therefore the fundamental law of a supersensible nature and of a pure world of the understanding, the counterpart of which is to exist in the sensible world but without infringing upon its laws. The former could be called the archetypal world (natura archetypa) which we cognize only in reason, whereas the latter could be called the ectypal world (natura ectypa) because it contains the possible effect of the idea of the former as the determining ground of the will. For, the moral law in fact transfers us, in idea, into a nature in which pure reason, if it were accompanied with suitable physical power, would produce the highest good, and it determines our will to confer on the sensible world the form of a whole of rational beings.\footnote{55}

Kant wants us to think of nature as running a parallel track to that of the supersensible world of the understanding. The latter has its own form, which by virtue of being formal, need not interrupt the “mechanism” of natural causality. Yet Kant’s idea of natural causality is also ascribed the function of the understanding to prescribe the form of laws. Hence, the two tracks run parallel in the same domain—namely, of the understanding. This is the source of the confusion. Nature does not have its own independent laws in itself; such a thesis would overturn the critical philosophy at its core. In order to truly comprehend Kant’s argument here, which is about heteronomy and autonomy, we must consider the role of empirical intuition, which the first Critique presents as the form of sensibility, or subjective consciousness. Empirical intuition is the representation of an object that we have experienced in nature. Hence, the intuition is considered, not pure, but empirical. This is what Kant now calls “heteronomy”. By contrast, the pure intuitions a priori, space and time, are not conditioned by nature or sensibility, for no concept could ever be represented without being thought as occupying some space and enduring throughout some time.

\footnote{55 Ak. 5:43}
This is what Kant would now refer to as autonomy, and in practical reason, represents the pure will. Consequently the natura archetypa is a kind of paradigm of pure autonomous determination of the will under the moral law. It is the world of the moral good, which would mean, the purely produced action according to the moral law. However, the natura ectypa would be the world of sensible experience in which the action actually transpires. As Kant says, the archetypal nature is a form that we transfer upon the eptypal nature, and in so doing assign a form of a whole of rational beings to the sensible world. The moral good therefore becomes a formal assignment from the one world to the other.

The relationship between sensible and intelligible natures, a recurring theme of Kant’s transcendental idealism, becomes the focus of Cohen’s criticisms when it comes to practical philosophy. For Cohen, the Typic-problem is that sensible nature really should have no bearing whatsoever upon the norms and ideals of ethics. Indeed, ethics gains its status in the “primacy of practical reason” precisely because ethics represents the “purest” idealism possible, namely, the idealism of Plato. For Plato, the idea of the good is idea that terminates all accounts of knowledge (logon didonai). It is the hypothesis sufficient unto itself qua hypothesis. Hence, it is the figure of transcendence. But the power of this idea is its practical import.

The being of nature must be distinguished from the idealism of ethics. Indeed, the consequences of all ethical ideas must not be sought after in the historical and positive institutions of natural anthropological man. Indeed, as Cohen often comments, this is the shortcoming of Aristotelian ethics by contrast with that of Plato. The purity of the idea and its distinction from nature is what enables Cohen’s conception of a critical idealism that methodologically distinguishes between logic and ethics, between nature and ideal. Hence, sensible nature finds no place within ethics. Rather,

[w]e recognize, however, a new difficulty within our problem. The actuality of morality must be based on nothing other than nature and history. But at the same time, nature and history may not constitute the model of our desired actuality. The basic law of truth makes the claim of a correspondence between the two problems in the methodologically basic concepts of knowledge. But at the same time, it also preserves the distinction between them in the scope of this basic idea. There this foundation-laying is built into mathematics; however, for the Will, there is only the analogue of mathematics, to be found in
law. Thus, the distinction between the actuality of moral concepts and that of natural ones must remain unshaken. A mathematical nature cannot be claimed for moral reality. The self-preservation of energy must never be made identical with the conservation of energy. Freedom can never arise without rest in causality; it may not enter into causality. The pure will is not pure knowledge. This brings us to an important consequence.

We have learned in the *Logic of Pure Cognition* that actuality is in no way determined by sensation; we have learned that sensation is only a symptom of this problem, whose solution, indeed whose treatment has already been left to the discretion of scientific thinking. It thus highlights an important policy for ethics: namely, problem of actuality in ethics is to be just as little dependent on sensation as its ultimate foundation just as it is never the case for the nature.56

We see here how the correspondence between nature and ethics must indeed exist, but it constitutes a correlation rather than an identity. That is to say, as Cohen will pursue this methodological concept further in his *Religion of Reason*, the correlation between these two spheres hinges upon their modal relation to one another, their independence from one another in terms of ideality, but their fundamental congruence when distilled through historical experience. Hence, nature and history take the shape of the experiential data that can be idealized in the normative sphere of law and ethics. But this normative sphere has a life of its own, independent of the historical accrual of events and actions. Thus, sensibility is not a determinate moment in the actualization of an ideal within ethical action. Quite to the contrary, the scientific construction of action which exists within positive law and the juristic enterprise of judging lawful and unlawful actions according to historical statutes, institutions, and cultural norms, imposes an a priori structure with the origination of action. Since legal rights are purely constructed as triangulations of norms and possible outcomes, the right represents the legal action purely constructed from reason alone. Thus, while nature and history occupy the position of context within which idealized norms are refracted, this context is not the goal of juristic activity or of ethical judgment. Indeed, as Cohen continues, he notes that even his own logic of pure cognition has no stake in a realm of sensibility, hence, the kind of actuality that will be found in ethics will be wholly otherwise. This is the meaning of Cohen’s recurring analogy between mathematics and the science of law. Positive

56 *E-W*, 374-5
law thus has a function within the field of morality and the moral law must be coordinated with
the legislative act of pure will, this is the meaning of autonomy for Cohen: self-legislation.

4 Conclusion: The Harmonization of Nature and Morality

I have presented Cohen's critique of Kant and German Idealism in terms of the Typic-problem, of
relating nature and ethics, or ideality and actuality. Throughout, I have tried to present Cohen's
revision of the meaning of legality in terms of the Ought, of what ought to be. This kind of
normativity enables a more thorough idealism, according to Cohen, precisely because it places its
focus upon purpose, upon time, and the future possibility of action. But the question that remains
to be addressed, as it was for Kant, is how nature and morality, how ethical idealism and natural
science can be brought into a kind of harmony such that this does not represent simply a
problematic dualism, which the Idealists had originally attacked in Kant's own thought. For the
answer to this lingering question, we must turn to the purposive orientation of law and ethics: the
kingdom of ends.

For Cohen, the Typic-problem brings two accounts of experience into collision, and
therefore enters into the sphere of ideality where religion has historically operated. Thus for
Cohen, the problem is that the Typic not only represents the point of contact between logic and
ethics, the world of natural experience and the world of ethical experience, it also represents the
point of contact between ethics and religion. Through the figure of the kingdom of ends as the
posited goal of unification between these realms, the normative dimension of ethical ideals takes
on the future-oriented determination of a religious concept:

Herein lies the main source of the collision between ethics and religion. And this collision cannot in
principle be obviated through the kingdom of ends. This idea is precisely what is obscured by the
Typic, namely, that the kingdom of ends certainly has no other meaning than to take the form of a
signpost for the purposive end of the driving force of the world, in which ends in themselves are
misused by being treated as an absolute means. And what guarantee thereby does the kingdom of
ends provide that the kingdom of means will be presented in a different way: that self-consciousness of morality will attain supremacy.\footnote{E\-W, 375.}

Since purposiveness takes the place of causality and time takes the place of space, the legality of ethics concerns the realm of possibility and futurity. This is what brings ethics closer to religion and away from nature. But the kingdom of ends is the realm of moral sovereignty. In other words, it is a realm wherein the noumenal moral law has entered into more than a modal relationship with nature and experience. The question therefore turns upon the possible eschatological resonance of this figure of future harmony. For Cohen, this yet again intimates the problem of pantheism, which shows itself at the point of contact between ethics and religion as well.

According to Cohen, the problem with Kant’s moral philosophy is its insistence upon moral law distinct from legality. That is, as I argued above, the kind of legality imported into post-Kantian idealism, according to Cohen, is one wherein naturalism and causal law somehow harmonize with the personal will of a natural being. Thus, for Cohen, it is not difficult to trace a line from Stoicism to Christianity to idealism:

Herein lies a profound contradiction, which penetrates the entire system of the Stoics. Ideal and nature, both should simultaneously exist, but both restrict and injure one another. This stoicism is passed into Christianity. God became individual. Here we completely rule out the problem of monotheism and pay attention only to the ideal meaning that Christ has for mankind as an individual. His meaning as God is thought only and exclusively from the perspective of his meaning as a man, and therefore only in terms of the human constitution of morality. At base, this alone is the deepest root to the conception of the deity of Christ, not in Paul, perhaps not even in John, but quite unmistakably in the Greek patristics. And so it continues to act have its effects in the history of philosophy. Christ is the ideal of the human race according to the pious Malebranche and Leibniz. From this undogmatic, most ideal conception on, we must hence take the demand of the individuality of God-men.\footnote{E\-W, 29-30}

If Christ is treated as an individual, the problem of empirical personhood arises. Indeed, if Christ is taken to be an individual like any other individual, then the fundamental constitution of morality is at base, a positive human contrivance. Indeed, for Cohen, this is not to say that the problem of pantheism is inherent to all Christianity and so too the problem of Christology.
Rather, Cohen’s concern is with the mythologization of divinity, of transforming the idea of transcendence, of the good, into a human artifice or what is fundamentally the same, into a natural force of anthropological whimsy. For ethics to remain ideal, this materialization of the moral law in the person of Christ must be resisted. And yet while Kant’s critical idealism may hold the resources for Cohen to achieve this kind of revision of the moral law, Kant’s own rational theology leads ethical idealism astray.

The connection between Kant’s legal and moral philosophy and his philosophy of religion lies in the concept of autonomy and its formal expression in the categorical imperative, specifically the first and third formulations of the categorical imperative. The first formulation is: “act only in accordance with that maxim through which you can at the same time will that it become a universal law.” Kant goes even further in the Groundwork, claiming this formulation is the same as saying, “act as if the maxim of your action were to become by your will a law of nature.”\(^{59}\) This is the formal criterion of legislation itself. But Kant coordinates this formulation with the following one: “So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means.”\(^{60}\) Humanity, Kant maintains, is the rational unity of a subjective and objective end in itself. That is, humanity becomes the representation of a rational being, which is an end in itself. Likewise, this end of humanity conditions the kind of ends that reason has at all. Hence, the figure of humanity adds another layer to the meaning of the autonomous lawgiving will and the figure of a “kingdom of ends”.

Kant maintains that the universal form of legislation concerns the idea of a kingdom of ends, where all rational beings are members of the kingdom, by which “I understand the systematic union of various rational beings through common laws...if we abstract from all the content of their private ends we shall be able to think of a whole of all ends in systematic connection (a whole of both rational beings as ends in themselves and of the ends of his own that each may

\(^{59}\) Groundwork, Ak. 4:421.

\(^{60}\) Ak. 4:429
set himself), that is, a kingdom of ends.”61 Humanity is the form of a whole, the kingdom of ends as such. The relation between the kingdom of ends and the kingdom of nature or earth, however, is less clearly established. If we recall Kant’s argument in the Religion, the constitution of an ethical kingdom on earth is the figure of harmony, but only upon the basis of the autonomy of a “holy will” or the idea of the “God-man”. Thus, we can better understand Cohen’s criticism of the “God-man” by first understanding Kant’s Christological spin on the moral law.

Kant’s argument runs roughly as follows: The idea of duty has the goal of humanity in sight. But humanity must be personified and presented “in its full moral perfection” in order for the formal end of autonomy to be the correspondence of freedom and the moral law. Humanity must be personified in the person of a sovereign qua moral exemplar and “[t]his human being, alone pleasing to God, “is in him from all eternity”; the idea of him proceeds from God’s being; he is not, therefore, a created thing but God’s only-begotten Son, “the Word” (the Fiat!) through which all things are, and without whom nothing that is made would exist...”62 This moral exemplar is therefore a human being in full perfection, which is to say not a natural being at all. He is not only the condition of moral law being perfected through a perfect moral freedom, but is also the condition of nature and that “through which all things are”. Thus, he cannot be a product of nature:

...in the appearance of the God-man, the true object of the saving faith is not what in the God-man falls to the senses, or can be cognized through experience, but the prototype lying in our reason which we put in him (since, from what can be gathered from his example, the God-man is found to conform to the prototype), and such a faith is all the same as the principle of a good life conduct.63

He is the logos that unites nature, reason, and morality. He is not the historical Jesus, but the moral exemplarity of the “God-man” and he becomes a teleological unity of nature and morality that

61 Ak. 4:433 my emphasis.
62 Ak. 6:60
63 Ak. 6:119
only this purely moral freedom can provide. This is the idea of Christology in Kant’s rational
religion.⁶⁴

But in Cohen’s view, despite Kant’s insistence on keeping the God-man ideal, Kant
nevertheless assumes the physical natural world to enter into the pure realm of morality in the
unifying nature of the God-man; that is, the Stoic problem of interpenetration and mutual
restriction of nature and ideal. But the restriction of the ideal is the restriction of God to human
artifice. Thus, for Cohen, the individuality of Christ and the figure of the God-man becomes the
problem of the pantheism of moral culture:

...[This is] the meaning of the Christian theory of Redemption that arises out of the mythological
concept of the God-man. Now ethical culture does not arise from out of God, because it comes only
from God; rather, God is equated with man. Hence, I achieve redemption and therefore freedom
not only from God, but rather just as much from man.

Here myth goes together with pantheism. And from here on out casts an overview of its un-
ethical movements, which out of both sources of ethical consciousness are always developed anew to
all sides. Both sources, however, are sources of spiritual, even ethical culture; they are not, however,
pure basic groundings of philosophical cognition. Even pantheism may be a religion; but philosophy
it is not, if by philosophy is meant the idealism of the self-cognition of reason. Strict accounts belong
to self-cognition. In a significant way, the Logos of Greek philosophy meant both.⁶⁵

The meaning of self-cognition, of the founding of moral and ethical culture within man, within
man as divinity, is the problem of pantheism. Although now we begin to see how the problem of
religion in relation to ethics brings yet another element into focus: ethics and religion concern the
political existence of a plurality of people, and thus, culture represents more than just the large-
scale projection of individuality onto many others.⁶⁶ This is the added problem of Christological
individuality for morality, according to Cohen. It is the mistaken form of idealism that represents

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⁶⁴ For a discussion of Kant’s attempt at transcendentlalizing the moral self on the model of Christology, see Jonael Schickler, 

⁶⁵ ErW, 304

⁶⁶ The idea of individuality is the problem and the idea of God must maintain its own distinct content. ErW, 438: “What could be
the believed preference in regard to the problems of nature and morality for pantheism? That leveling the distinction between
nature and morality is of neither methodological nor practical benefit should be clear. Hence, the advantage, so universally
accepted, can only refer to transcendence. Once the God-idea is given its own, particular content, so one is able to just as well
represent the same idea as a person. But a person must be an individual nature, and against such supernaturalism, which the
individual nature must irrevocably forfeit, could the whole identification of God with nature, protect against.
humanity as an aggregate of individuals, rather than enabling a purer concept such as a “people” in relation to a “state” to bring ethical ideality into the political realm as well.  

The problem of ethics and religion relates to politics insofar as the fate of a people rests in the idea of moral culture itself. If moral culture is based solely upon the ideal of human beings qua human beings, then there is no ideal to strive for, for greater justice than what is. Hegel’s adage risks being reified, such that what is actual, is rational. For Cohen, the relationship between ethics and religion is based upon how the kingdom of ends projects a distinct sphere of ethical legality, which can be used to triangulate positive state laws and elevate the ethical consciousness of citizenry. In this respect, the ideals of future justice, of the promise of a harmonization between nature and ethics becomes paramount. And so, it is at the highest peak of ethics, within the turn toward the state and state-law, that the God-idea once again emerges as the figure of harmonization between these distinct spheres of ideality and actuality.

However, if the God-idea signifies the unity of nature and morality, then this must not be confused with the kind of pantheistic identity. Rather, for nature and morality this unity signifies an incorporation [Vereinigung], a harmonization of nature and morality. A contradiction must not be left open between morality and nature, and no contradiction between the claim [Forderung] and its satisfiability when each one is dependent on the other. This harmonizing unity forms its own proper content, in which identity can have no occupation, that is, the content of the God-idea.

The God-idea represents the harmonizing unity of an idea at the helm of a unifying act, or a continual process of unification. Thus, the potential contradiction between nature and ethics is redirected into the idea of unity, for which the God-idea gains as an idea of continued idealization. In short, the God-idea represents temporality and the possibility of correspondence between

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67 Cf. ErW, p. 32; ErW, 311-12: “The idealism of ethics has been hampered by religion and politics, which have obscured and weakened the fundamental law of truth. Religion has, maximally, yielded in its opposition to science, but minimally, it has reserved for morality its parallel rulings. And politics has always considered ethical idealism as its greatest danger, and self-legislation as an intrusion into its jurisdiction. The latter forms the ground of all the distaste of positive law for natural law. In contrast, however, though without principalled consciousness, all the reform and all groundbreaking revolution in religion, as in politics, is due to ethical idealism The Hypothesis of the idea becomes a historical attempt of hypothesis. Reforms and Revolutions are the periods of experimental ethics. Therefore, the theoretical principles come back to them.

This lacking idealism, however, has its objective base mainly in the mistaken notion of nature. We noticed this already in regard to the psychological nature of man. Its nature is valid only in general. Heteronomy can therefore be referred to as the outright idolatry of nature. And monotheism proves itself in fact as a preparation for idealistic morality, at least in so far as an underground for it is found in that nature is ruled as the ‘moral world’.”

68 ErW, 438
irreducibly different spheres that are nevertheless irrevocably connected. The possibility of positive law, scientific laws of nature, historical institutions of state and religion, and the ideal realm of ethics and morality all gain coherence through this idea whose content possesses the temporal entwinement of them all. This is the difference between ethical idealism and pantheism: the God-idea, which represents the temporality of ethical reason as such. The very fact that nature and ethics must be distinguished and yet all the while kept intimately parallel to each other determines the power of the Sollen, of the Ought, of ethics as the power of future unity when law and action could become one; when nature could be made better.

The God-idea therefore crowns ethics. But the God-idea also forms the basis for the entire direction of ethics as the science of law: to identify the state as an ideal of ethical self-consciousness correlated to the idea of God. The kingdom of ends became the representation of a distinct kind of temporality in the noumenal sphere of ethics: that of eternity. But the kind of natural institution that remains to be correlated with such ideal temporality is found in the historically actualized state. Thus, ethics and nature find their correlation within the science of law, where history is the sphere of natural experience into which ethical norms find their modal correspondence, shaping the world of experience as a world that is ideally regulated by judgments. Thus, just as in natural scientific experience there is a world-whole as a regulative unity, and in ethics and religion, the God-idea represents the association of nature and morality, so too in ethics as the science of law, the function of the state-constitution will be the representation of temporalized unification:

Thus, the State, as the task of self-consciousness, represents the constitution of the ethical subject, which is the task of a unity to all the parts of the will. This constitution of self-consciousness of the state is the analogue to the unity of nature, which is the object of theoretical consciousness.69

The constitution of a state is the analogue to the hypothesis of a future unity of the object in natural science as well as the unity of ethics. The unity of the law is the constitution. The actualization of positive law in history, through the form of a legal constitution, must become the

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69 ErW, 232
guarantee that the ethical Ought can be correlated by a science of law, to correlate with the ‘is’ of the positive state. Only through the science of the determinate principles of action (norms) can the science of law maintain this study of the moral norms. Hence, the rule of law becomes the fact with which ethics commences. Only by distinguishing what the state is from how it ought to be can the threat of pantheism in positive law also be mitigated. Yet again, we see that Cohen’s suspicion about the Hegelian maxim that “the actual is rational; the rational is actual” introduces another context in which Cohen will enter his polemic against pantheism. And we will witness yet again how Cohen brings ethics, law, and religion together even in the sphere of positive law. This is the task of the following chapter.
Chapter 2
The Ethics of Law between Positivism and Pantheism: Hermann Cohen’s Practical Philosophy

“The determinations of a substance that are nothing other than particular ways for it to exist are called accidents. They are always real, since they concern the existence of the substance (negations are merely determinations that express the non-being of something in the substance). Now if one ascribes a particular existence to this real in substance (e.g., motion as an accident of matter), then this existence is called “inherence,” in contrast to the existence of the substance, which is called “subsistence”. Yet many misinterpretations arise from this... Now on this persistence there is also grounded a correction of the concept of alteration. Arising and perishing are not alterations of that which arises or perishes. Alteration is a way of existing that succeeds another way of existing of the very same object...”

- Kant (1781/7)

“By constitutional amendment, I mean change in the text of the constitution through a purposeful act of will; by constitutional transformation, I mean change that allows the text to remain formally unchanged and is caused by facts that need not be accompanied by an intention or awareness of the change. I need hardly mention that the theory of transformation is much more interesting than that of change...

...Yet the limits of the constitution, like all limits drawn by law, are always unclear; there is no guarantee that statutes that are intended to be based on the existing constitution will, nevertheless, not violate it, thus resulting in an undesired, or at least not expressly desired, amendment of the constitution. Constitutional precepts are often unclear and elastic, and only the legislator gives the firm meaning through implementing laws, just as only the judge creates clear awareness of the content of the statutes he is to apply.”

- Georg Jellinek (1906)

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1 Introduction

With the zenith of absolute idealism coinciding with the dawn of Germany’s liberal revolutionary aspirations, Hegel’s retrospective formulation of the rationality of the actual state became suspect in his own time, and that much more so in the years following the revolutionary period of 1848-9 (Nachmärz). In the hangover of a failed revolution, the idealization of the Prussian state seemed anything but rational. Indeed, those who carried the mantle of Hegelian philosophy after his death, championing an idealization of the Prussian State as a legal entity, with its ideal subjectivity and sovereignty within the substantial will of the monarch and the constitutional arrangement of the estates system, were deemed apologists for the imposed constitutional monarchy of Friedrich Wilhelm IV. Thus, when Hegel writes of the state that it is “the rational in and for itself,” we can see how Cohen’s estimations of the Hegelian state are, if not necessarily accurate, at least in sync with the Zeitgeist of post-unification Germany. Indeed, in the years leading up to unification in 1871, an attitude of adverse suspicion toward systematic idealism developed in philosophy and legal thought, which as Klaus Christian Köhnke writes, now found a replacement:

The era of systems-thinking would be finished and advances in philosophy were to be anticipated only upon an epistemological basis... “Extreme” sensualism and materialism - as it was then called - made absolute a way of thinking that almost all contemporaries employed more or less simultaneously. How and to what extent the empirical in philosophy was to be foregrounded, that remained strongly controversial, but that it influence philosophical theory to such a degree of intensity, this would decisively determine the difference of almost all post-idealistic philosophies from those of the era of systems-thinking.  

Epistemology was elevated to the rank of a pure science and like pure science the facts of nature would have to be the foundational starting point of knowledge. By contrast with systematic idealism, the argument proceeded, materialism and scientific Erkenntnistheorie would be purified of all metaphysical as well as ideological and political residues, which Hegelian idealism most commonly represented. For while Hegel maintained that his idealism was indeed a scientific

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worldview, that he built his system up from a principle rather than a fact left scientific purists to question, “What if in addition these systems follow a non-scientific, political or critical intent?”

Thus, idealist political and legal theory was considered equally conflated with ideology and metaphysics, whereby systematic assertions of freedom as a principle of philosophical knowledge were quickly averred as nothing but whimsy or speculative apologetics for the monarchy. The time had come, it seemed, for a “purer” science.

While Cohen also adopted and championed epistemologically focused philosophy and marshaled a turn away from metaphysical idealism, he nevertheless claimed that the purity of Erkenntnistheorie must be mitigated by the critical posture of Kantian idealism. Rather than assume a critique of 18th century dogmatic metaphysics had exhausted the scope of “critical” idealism, Cohen sought a theory of pure cognition that could be critically delimited as what he referred to as Erkenntniskritik, as the task of idealizing science as a pure construction of reason, over and against materialist reductions of science to psychologized epistemology. Thus he writes,

While Kant himself still debated with psychological representations and conjectures, by following his sense in the spirit and the letter of the critical system, we objectify reason [Vernunft] within science. The critique of reason is critique of cognition [Erkenntniskritik] or of science. Critique puts to task that which is pure within reason to the extent that it discovers the conditions of certainty upon which rest knowledge as much as science.

Thus the critique of cognition distinguishes Kantian idealism from all other forms of idealism; it explicates and defines the contents of that which is transcendental. Idealism, at bottom, reduces things to phenomena and to ideas. Erkenntniskritik, by contrast, deconstructs science according to the presuppositions and the grounds that are admitted within the laws of science and to which the former are destined. Idealism directed by the critique of cognition thus does not have for its objects things and processes, not even to its advantage those of consciousness pure and simply, but rather, facts of science.

The proper function of critical idealism is to serve as a critique of science, of the presuppositions of science and its conditions of possibility. Only thus will idealism be a philosophical method by which the grounding of science can be secured. By contrast, materialism and psychologism (which Cohen equates with “sensualism”) simply assume the identity of nature and thinking, of cognition.

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4 Ibid., p. 110.
5 Ibid.
6 Hermann Cohen, Das Infinitesimalmethode und seine Geschichte, Werke vol. 5, p. 6 para. 8
and facts of science. Yet again, we see that Cohen’s methodological interest is based upon a fear of reductive monism or what he calls Pantheism: Wissenschaft or science must be able to account for the distinction between is and ought, between the Sein of nature and the Sollen of ethics. Thus, the laws of science must be carefully critiqued in order to ascertain the meaning of certainty or what the southwestern school of neo-Kantianism described as “validity” (Geltung).

While a common representation of the differing trajectories of Southwestern and Marburg neo-Kantianism tends to follow the appellations of Emil Lask, who dubbed Marburg thinkers “pan-logist” while referring to the southwestern school, who considered the infinite intelligibility of both the world of nature and culture, as interested in the “pan-archy of the logos,” this reductive characterization fails to appreciate the nuance in Cohen’s interpretation of Wissenschaft, or science. According to Cohen, critical idealism is based upon Kant’s first Critique, which rightly or wrongly, Cohen chose to interpret in the vein of the Prolegomena and thus, as a theory of the cognition of experience in the natural sciences. In Cohen’s view, therefore, Kant is primarily a philosopher of science. However, Cohen’s understanding of the meaning of science is expansive and as should be clear from Chapter 1, also finds a methodological application within ethics as well. For Cohen, science represents the transcendental method, the task of determining the original purity of a constructed experience, or what Tyson Gofton refers to as determining the “function of sensibility” as an “a priori (analytic) serial order”. In this manner science treats of experience as that which can be generated from a null-position of a mathematical function, an anticipation of set-theoretical mathematics and logic. Science is thus a critical analysis of facts, which are deemed purely constructed. This need not be limited to the sphere of the natural sciences. Indeed, ethics is precisely what grounds the natural sciences insofar as the ideal lawfulness, common to laws of thinking and laws of action represents the ideal ground of the

\[8\] Tyson Gofton, Analysis, Systematicity and the Transcendental in Hermann Cohen’s System of Critical Idealism, PhD Dissertation, University of Toronto, Department of Philosophy, (2013), pp. 46-7
\[9\] Ibid.
methodological distinction between logic and ethics.\textsuperscript{10} Mathematical reality thus represents the pure construction of the principles of all cognition, hence, the transcendental method \textit{qua} science. By identifying the legality (\textit{Gesetzlichkeit}) of cognition and thinking, Cohen thereby adopts a similar position to most late 19\textsuperscript{th} century neo-Kantians, namely, of classifying the \textit{validity} (\textit{Geltung}) of principles and categories, a priori. This is the work of science. The very idea of legality is at bottom a principle of methodological commonality to science as the exposition of lawful ideas of reason, and so ethics too must be oriented transcendentally toward the principles and categories of ethical experience, namely, norms and actions, and the agent of those actions, the human being (\textit{Mensch}).

The human being and the actions prescribed by law represent the facts of ethics understood as a scientific comportment. But ethics is itself comprised of particular scientific canons, according to Cohen. Indeed, this is what distinguishes a properly scientific or \textit{critical} ethics from particular religious traditions and religious ethics, which often presume the mantle of universality, despite their historical blindness to their presupposing yet a more universal method of ethics.\textsuperscript{11} As we will see in the following chapters, ethics indeed has a unique relationship with religion, however, considered as a method and scientific posture there is yet another science which treats of the human being, the object of ethics, in categorial or serial representation, namely, as individual, plural, and universal: the science of law and state (\textit{Rechtswissenschaft und Staatsrechtslehre}).

The science of law represents purely constructed facts a priori such as norms, rights, and laws. The positive law represents the order of norms and valid rules of action according to the purely constructed object of the law, the legal subject (\textit{Rechtssubjekt}). For Cohen, therefore, just as a natural science must resist the temptation of monism and materialism, so too must a theory of ethics as a science of law, pay strict attention to the ideality of norms rather than any material or positive institutions of law. As a science of the \textit{Sollen}, of the ought, the science of law shares the

\textsuperscript{10} Ibid., p. 211.
\textsuperscript{11} ErW, 58-9.
foundational relation to the science of nature, whereby neither subject nor object is ultimately prior to the ground of cognition itself:

The method of purity explains in these [man considered in nature as well as in culture and history] not only the concept of object and the concept of subject, but what is an even more foundational concept, which shapes the goal of all cognition: the concept of law [Gesetzes].”

Hence, the legal subject is an object of the law and helps ground the ethical subject of the law, which becomes its task and goal, but the law itself is the productive origin of ethical cognition, and neither subject nor object. Legality is therefore the fundamental nexus between nature and ethics and it is likewise the systematic concept resisting the lure of Pantheism.

For Cohen, the science of law is the next step in developing his revision of the meaning of legality and Kant’s Typic-problem, which I began to explore in the previous chapter. However, Cohen’s polemic against Pantheism is also furthered in his treatment of legality in ethics and law. The problems of monism, materialism, and the empirical-causal model of law, he argues, are precisely what lead legal positivism and historicism astray, since this model of law understands legality, rule, and statute, in terms of necessitation of natural events. Hence,

it is not only the statute-rule [Satzung] that has lasting effect in [the meaning of] the law, but [so does] the “fixed” and the “unchangeable,” which the dogmatic connotation obtains in the meaning of law.

This dogmatism is naturalism and empiricism as much in ethics as it is in logic.

Not only does the problem of dogmatism and empiricism haunt epistemology and logic, but so too ethics and law. Against the trend of his own time, Cohen therefore seeks to redefine the meaning of law and the meaning of the science that studies law in terms of critical idealism. Hence, the law must not be materialized or turned into a psychological object of thinking. Such reductionism is no better than the metaphysical idealism of subjectivity and identity-philosophy. Just as Cohen’s neo-Kantianism is a response to trends in late 19th century academic philosophy, so too is Cohen ethics a response to trends in late 19th century legal thought. In Cohen’s time, the Kantian and post-Kantian foundations of legal theory were replaced with an incipient form of positivism and

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12 E-W, 92
13 Ibid.
Realpolitik that mirrored the political machinations of the failed revolution. Now, the basic question facing the German states was a combination of two major themes: On the one hand, the monistic path of monarchy, or a liberal subjectivist grounding of legal rights. In the pre-March revolutionary era, these contrasting options were presented in the debate surrounding a constitution in Prussia, however, in the post-revolutionary or Nachmärz period, wherein constitutional thought was now the stock-in-trade of political and legal theory, these options represented something more: they represented what Cohen sees as the flipside of metaphysical Pantheism. In elevating the state to the ground of subjective freedom, and positive law to the grounding of ethical self-consciousness, law has essentially inherited the causal empirical structure of “laws of nature” and his goal is to rescue a normative ideality of ethics as a scientific canon for law and state. Cohen likewise believed that rampant materialism had simply assumed the Hegelian thesis of the actuality of state as an ethical ideal in an inverted manner, albeit in the disguise of statutory legal positivism and Realpolitik of state-sovereignty.

The legality of the State thus becomes the site of a debate surrounding the objectivity and positivity of law. From the perspective of ethics and politics, the state represents the only tangible form of reason in history. For Cohen, therefore, the polemic against identity and monism, materialism and psychologism, must not stop with logic and epistemology. If ethics is to be reserved its proper role as a science, then the study of positive law must be returned to properly idealist grounds. This is the problem within Cohen’s focus. He must therefore be interpreted with this larger context in mind, that is, located between a kind of pantheism and a kind of positivism that were growing ever more intimate with each other. The Ethik des reinen Willens (1904; 1907; 1921) represents a sustained engagement with the very foundations of the German liberal legal tradition, namely Kant’s Metaphysik der Sitten, and at the same time an attempt to introduce all of the concepts of the positive state—constitution, state-will, the “purity” of law, and the freedom and self-consciousness of the state in law—that were prominent in Imperial German legal theory into a

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14 Michael Stolleis, Public Law in Germany: 1800-1914, (Berghahn Books, 2001), p. 255, observes that, “[b]asically, the liberals began to accept what the representatives of the counter-revolution had always said, namely, that idealism without real power is built on sand and—an ominous thesis—that parliaments were not capable of powerful political actions.”
critical idealist system. But in Cohen’s unique methodological way, these themes were refracted through the prism of his theory of judgment, time, ethical monotheism and most importantly, his reworking legality. Hence, in this chapter I will begin by surveying some of the most prominent concepts concerning the positive law and the positive state that emerged during Cohen’s time, as well as his attempt to negotiate a fine line between natural and positive law. My argument will largely hinge upon Cohen’s philosophical intimation of ethics as inherently legal, which will open another line of questioning for Cohen’s thought. Since Cohen’s redefinition of ethics, law, and the relation between natural science and ethics not only subverts the post-Kantian and positivist thesis, it also introduces a different set of textual and conceptual sources for Cohen’s theory of ethical law. As I will argue in conclusion to this chapter and what follows in the remaining chapters, it actually opens the space for Cohen’s “Jewish” thought within the system of philosophy.

1.1 Chapter Overview

In this chapter, I present Cohen’s Ethik as an attempt at reinterpreting Kant’s practical philosophy in a more rigorously “idealist” manner. Cohen offers an interpretation of autonomy, freedom, law and state, in terms that are neither beholden to metaphysical idealism nor positivism. On the one hand, Cohen insists that the subject of the law is produced at the end of the deduction of the law. Hence, self-consciousness that is reached through the state is not based upon my individual autonomy. Rather, the structure of contract law is such that a dialogical relationship between I and You is always already assumed as the units that the law produces. Hence, this positivist interpretation of contract negates the metaphysical or logical principle of identity at the foundation of law. Likewise, legal action precludes the kind of abstraction that is consequent to idealist versions of law. By the same token, Cohen resists the positivist interpretation of law and state by introducing the historical and temporal categories of singularity, plurality, and totality as the pure concepts through which the legal order is produced. And even still, by turning to the model of the Genossenschaft, Cohen insists that law must be interpreted as a plurality of units
oriented by the law. But the law does not operate causally or biologically. Hence, he refuses to introduce Gierke’s materialist interpretation of human collectivities as well as refusing to accept coercion as the form of objectivity in public law. Rather, the dialogical consciousness of law, where plural agents are always presupposed as the result of the law, of the contract, ensures that state-law takes the form of a virtue ethic. This is the meaning of consciousness: a paradigm or “typic” for my action. And I will demonstrate how these revisions not only redefine legality as a temporally flexible conception of action, but also demonstrate the normative relationship between ethics and religion within the foundations of positive law.

2 Legal Philosophy in Nachmärz Germany

In Hegel’s wake, Right Hegelians believed idealism had provided a kind of historico-rational foundation for interpreting the contemporary state, with its monarchic principle and imposed constitution understood as a rational outgrowth of the historical development of self-consciousness. This identity of law and state with the autonomous moral will thus collapsed Kant’s theoretical and practical distinction, seeking to ground all lawfulness, whether cognitive or positive-practical in the principle of self-consciousness, which was interpreted to be the substantial will of the Kaiser. In the wake of the failed revolution of 1848, this principle of self-consciousness was largely seen as a product of a metaphysical account of freedom, rather than a truly positive, liberal humanism. Hence, the salient question of the day: what is the positive justification of the law without religion or metaphysics, and can this justification be conceived “purely” through law, without reference to morals, ethics, or politics? If Kant’s alternative account of law was still a viable option, then objective law should be based upon materiality alone, namely, human reason.

In the second half of the 19th century, there was a growing interest in the autonomy of law as the realm in, through, and by which all normative authority could be deduced. Hence, in the place of transcendent justifications for sovereign power, the rule of law within the state itself took on a kind of secularized significance for the jurists of the Imperial era (1871-1919). Significant to the post-Hegelian discourse of law, however, is that positivity and materiality absorb the conceptual structure of speculative idealism—the dialectical process; the actualization of rationality in law—and infused the sovereignty of the state with the characteristic of natural power and force.

State sovereignty of law, constitutional law or the legal state—however one translates Rechtstaat—became the dominant force of practical philosophical import. Thus, the jurists of the Imperial era had the task of harmonizing these seemingly contradictory principles of theological conservatism in conceptual form and liberal positivism in content. Consequently, the constitutional monarchy of Friedrich Wilhelm IV, along with the imposition of a constitution engraining the principle of transcendent authority of the Kaiser above the law, would accentuate the climax of the pantheistic tendencies that had been culled from the legacy of idealism with the addition of a new kind of natural or material entity: the legal statute and the constitution. The new materialist and positivist philosophies joined with theological-legal content and culminated in the assumption of a new field of legal and political philosophy in the German Reich: Theorie des Staatsrechts.

2.1 State-Law Theory: Pantheism within Positivism?

In practical philosophy, the state therefore came to occupy the place of subjectivity, uniting the concepts of a legislative will and a sovereign or substantive force as executor of legal reality. The state as “legal personality” was a theme inaugurated by Wilhelm Eduard Albrecht in an 1837 essay

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16 For an overview of the legal theory of this period and its relation to the philosophical worldview of materialism and psychologism, see Chris Thornhill, German Political Philosophy: The Metaphysics of Law, (New York: Routledge, 2007), chapters 7 and 8; Peter. C. Caldwell, Popular Sovereignty and the Crisis of German Constitutional Law: The Theory and Practice of Weimar Constitutionalism, (Durham, NC: Duke University Press, 1997); For an overview of neo-Kantian jurisprudence in particular, see Deniz Coskun, Law as Symbolic Form: Ernst Cassirer and the Anthropocentric View of Law, (AA Dodrecht, Netherlands: Springer, 2007), chapter 9 in particular.
and was soon solidified as the predominant conception of the state as a fictive persona and thus the centerpiece of public law. But the development of the theory of the state in Germany, which blossomed in the Imperial period, also had a philosophical significance, which I will explore in more detail in this chapter. In particular, the state was sought as a supplement to theological institutions in Germany, and was consolidated through Bismarck’s Kulturkampf against “ultramontanism” and the Catholic Church as a political entity. The state became the embodiment of the very real, yet very positivist metaphysics of the Imperial period.

Legal philosophy in the German Reich, which I will refer to as the Imperial era (1871-1918), represented a revolutionary moment in the history of constitutional interpretation and general state-law theory. The inclination to discuss the state as a legally constituted and totalized entity (Rechtstaat) stemmed largely from the latter half of the century’s inheriting the idealist formulation of the state as the metaphysical unity of spirit or a subjective entity, which Fichte and Hegel had sealed in the principle of autonomous freedom. But the Imperial era was no longer a period of metaphysical speculation. Inspired in part by the rise of the positivist, materialist epistemology of the earlier left-Hegelians and neo-Kantians such as Friedrich Adolph Trendelenburg and Kuno Fischer, the penchant of legal theorists in the later 19th century focused upon the scientific study of the law as a humanly constructed and posited entity. Beginning largely with Carl Friedrich von Gerber’s attempt to eliminate all ethical, political and moral trappings from his study of the law, a conception of legal authority now developed, which focused upon the concept of force and domination.

Along with Gerber’s goal of expiating morality and politics, Paul Laband’s famed treatment of the Prussian Constitution of 1871 helped shift interpretation of the law toward the exclusion of

17 The legal person of the state replaced any discussion of the persona moralis which may have intimated private law categories, such as the Pandects (Puchta) and some early organicists of German law had intimated. See Stolleis, P. 321. Cf. H. Denzer “Die Ursprung der Lehre von der juristischen Person (persona moralis) in Deutschland und ihre Bedeutung für die Vorstellung von der Staatspersönlichkeit” in La Formazione Storica Del Diritto Moderno In Europa, Atti del terzo Congresso internazionale dell Societa italiana di Storia Del Diritto, vol. 3 (Florence, 1977), 1189-1202.


metaphysical arguments as a new kind of “practical philosophy”. For Laband, as for Gerber before him, the positive state and the positive constitution were fused as one, insofar as the basic fact with which this object originates is a “legal will” or the subject of legislation. That is, a gesetzgebende Gewalt, or legislative force becomes the fact of positive legal constitutionality. The legislative force of any constitution, for Laband, must be found in a “will”, which stands behind the legislation of a “valid statute”, which Laband defined as a “legal rule” with substantive content that enabled the articulation of a legal will. Hence, this circular definition of the statute created a space for interpretation of legislation that is either “administrative” or “substantive” leading to different articulations of the legislative will behind the statute itself, and thereby rectifying any apparent dilemma of legal limitations upon sovereign power.

While it may appear rather dubious that such circular logic could become the basis of Laband’s Gesetzespositivismus, it is precisely through this distinction that Laband was able to interpret the budget crisis of 1862-1866, wherein the Landtag or popular assembly did not ratify the budget and constituted a failure to pass a statute according to Article 99 of the Prussian Constitution of 1850. However, reinterpreted as an administrative law by Laband, this loophole enabled an ex post-facto justification for the Kaiser’s continued rule on the basis of the previous year’s budget. Rather than accept Bismarck’s suggestion that the monarch had filled the “gaps” in the law due to the reliance upon the “monarchic principle” which F.J. Stahl had fused into a metaphysical state-philosophy, Laband demonstrated the prowess of positivism to reinterpret the events in light of the existing law: Article 62, while requiring the executive legislative force to be shared between the Kaiser and the Landtag, only applied in the case of “substantive statutes” and

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20 Peter. C. Caldwell, Popular Sovereignty and the Crisis of German Constitutional Law; Michael Stolleis, Public Law in Germany, 1800-1914.


23 Caldwell, Popular Sovereignty, p. 18.
not administrative statutes. Hence, Laband’s distinction had preserved the very definition of legislative power in Article 62 while, as Peter Caldwell writes, permitting “the government to continue functioning indefinitely, with or without the Landtag’s (sic) consent, as long as the existing tax laws were not altered.” That is, while the tax law is a substantive norm, the budget is an administrative one, and thus, not a substantive statute infringing upon the constitutional definition of sovereign authority, which consists of agreement between monarch and assembly. For Laband, only through a constitutional interpretation of the State as a total will that operates in unison according to the laws, is it possible to see that neither the Kaiser nor the Landtag exerted any kind of independent claims to sovereignty. Rather, the division between laws maintained the “legal business” of administration as a realm of disagreement without challenging the sovereignty of the “state-whole”.

What Laband’s theory of the state-whole, which was largely culled from his reading of Carl Friedrich von Gerber, introduces is the elimination of the monarch as the central place of final decision. Rather, the laws of the state and the constitution bind all the individual members of the state, and enable a unified whole to represent the state-will as the will of the people.

But Laband’s positivism, while maintaining a distance from any concern with politics, morality or history, also inspired an even more totalizing form of positivism, which retained the traces of the German historicists and the idealists of the earlier century. Yet, since so much of Germany’s unification was based upon Bismarck’s Realpolitik and Machtpolitik, some historians interpreted the shift from idealism to realism as inevitable: the kind of idealism and romanticism that had inspired the historical school of law of the first half of the 19th century had now given way to quite contemporary and positive ideas of the state-whole. In other words, the very diagnosis of political theology that Carl Schmitt would latter detect in the late Imperial state-law theorists was a result of waning theological and idealist metaphysics being placed front and centre while having

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24 Ibid., p. 19.

their content lobotomized and in their place, the concepts of statehood, sovereignty and the juristic persona of the state taking over the conceptual framework of the earlier model. Albeit from insidiously differing motivations that Cohen, Schmitt nevertheless summarizes the attitude of late 19th century legal philosophy succinctly:

Conceptions of transcendence will no longer be credible to most educated people, who will settle for either a more or less clear immanence-pantheism or a positivist indifference toward any metaphysics. Insofar as it retains the concept of God, the immanence philosophy, which found its greatest systematic architect in Hegel, draws God into the world and permits law and the state to emanate from the immanence of the objective.  

Thus, the kind of pantheism that had been emblematic of Absolute Idealism had become a full-fledged positivism, a translation of metaphysical pantheism into a statutory kind.

Similarly, we see that the state becomes a kind of end in itself, which absorbs the basic principles of Kant’s political and legal thought, without elaborating any of the metaphysical clutter associated therewith. One such example is found in the work of Rudolf von Ihering, whose theory of the auto-limitation of the state appears to venture the very same moves as Kant and Fichte had done with the auto-limitation of the principle of right (Recht). In public law, what Kant and Fichte had schematized with coercive force, Ihering does with the state’s self-limitation of its own statutory constitution. As we saw, for Kant the authorization to use coercion was part of the analytic concept of right, which at the same time, intimated that the very limitation upon the subjective freedom of the rights-holder was something that must be deduced in advance of experiencing an external right, or remains an external and empirical causal force. As Thomasius had argued before him,  

Kant had maintained that the external force of causal nature was exerted by the will that is rightfully coercive of another when it is warranted. Hence, it is this externalization of the internal principle of analytic right that triggered the German Idealist response in turning to intellectual intuition. Consequently, for Fichte, the Anstoß of the self-positing will was the deduction of an object in general, the not-I, as well as the limitation imposed

upon the I of willing from imposing itself in the place of the world. As a result of intellectual intuition, Fichte grounded the I’s positing of the not-I as a logical operation that externalized itself in the form of the will, which is practical reason at its core, and insofar as the object in the world is an end of the striving will, it is the basis of all thinking.

With this brief recollection of Kant and Fichte, we can better understand what Ihering called the self-limitation (Selbstbeschränkung) of the State. For Ihering, the modern state is by definition a form of “absolute power” limited by law. The power of the state (Staatsgewalt) cannot be drawn from any heteronomous source. Indeed, the state is defined as the self-origination of its own power. Yet, it must limit its power to a potentiality alone. That is, the power of the state must be limited in actuality by law, while in potentiality it is absolute.28 This self-limitation of the state was absorbed, no doubt, from the very elaboration of absolute freedom and autonomy in the post-Kantian practical philosophy of Fichte, Hegel and even Schelling, whose Berlin lectures of 1842 on the “positive” philosophy had became a force of influence in the imperial period.29 Indeed, as we will see from the rise of neo-Kantianism, the positivism in epistemology of the time had not given up on the idea of the infinite, it is rather that as a metaphysical concept that had no determinate ground for its assertion, the late 19th century thinkers had dismissed such a concept and turned instead to the mathematical infinite, which was interpreted as a more tangible reality to quantify. Hence, the real infinite was now analogously placed into the theory of the state as the basis of the absolute and infinite power of the state, which in a quasi-kabbalistic self-contraction of its infinite power, became manifest in the form of law. Amidst all the positivism of this new state-law theory, the question remaining here is whether this pantheism of the positive state was not in itself the


29 In many ways, Schelling’s emphasis upon the role of intuition and reflective thinking in relation to experience as the positive source of knowledge reflects a transition toward the materialist interpretation of the infinite positivity of reason and its grounding. However Schelling was interpreted, the trace of his dichotomy left its imprint upon Stahl and others in the latter half of the 19th century. See Friederich Wilhelm Joseph von Schelling, The Grounding of the Positive Philosophy: The Berlin Lectures, (Albany: State University of New York, 2007), p. 114f. cf. Bruce Matthews’ introduction in particular.
manifestation of an even more consistent form of liberal Protestantism. But this is a question I wish to avoid answering at present.

2.3 Law and Morality Amidst State Religion and Secular Law

One of the consequences of the cultural struggles in the Reich was that many jurists aimed at a conception of the state that would be distinct from “society”; that is, since Hegel had maintained that society was a stage of recognition of the state within itself, many jurists of the Imperial era sought to distinguish between the social institutions which seemed irreconcilable with each other—the estates, the nobility, the bishoprics and ecclesiastical properties, the evangelical Protestant Church, and the newly emancipated Jews—and the state proper, as the seat of sovereignty. Whereas law was the external garb of the state, moral theology and ethics were relegated to the sphere of confessionalism, banished from the public sphere, as it were. Thus was the great quest for “secularization” in the German empire.

In the political realm, while the Catholic Centre Party sought to temper both the liberalization of law and rights within the Popular assembly as well as the increasing anti-Catholic legislation of Bismarck’s design, the reality of the moral theological critique was premised upon the role of religion within the state: a largely Protestant State religion.  

This question of how the liberal idea of religion of the jurists influenced their conception of citizenship and identity amidst questions of corporate personality of the state and its communities, thus complicated the kinds of formulations that Gierke and Preuss (both Protestants, while the latter a convert from Judaism), attempted to provide for their vision of a secular Rechtstaat. Indeed, by “secular” it must be understood that the German state was Protestant in all its institutional forms, but the growing influence of the military during the Imperial era was also aimed at achieving a kind of civil identity

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premised upon military service.\textsuperscript{32} In other words, new institutions were vying for the seat of civil unity, but the focus of religion in the German state was becoming every more relegated to the personal, internal and individual.

The growing search for a secular civic ethic coincided with a general distaste for the kind of moral philosophy that had dominated the previous century. Hence, in the imperial era we see emerge what Eggert Winter has called a kind of “moral skepticism”.\textsuperscript{33} With the growth of the positivist jurisprudence in the Imperial German state, the conception of ethics and religion as purely private concerns thus demonstrated one of the major blind spots of the Imperial jurists. In their search for a state free of confessional partisanship, they in fact enabled the kind of political theology that would emerge in the early Weimar era: the reactionary traditionalist emphasis upon institutional power and collective unity. Nevertheless, what is also significant is that amidst this positivization of the formerly theological concepts of the monarchic principle and the sovereignty of the state, the positivists had, as it were, established pantheism as the state legal philosophy. For the vision of sovereignty offered by the statute positivism of Laband, Jellinek, Gierke and Preuss ultimately seeks to impose the transcendent legislative will upon the immanence of a secular state: the self-limitation and self-regulation of the sovereign state through the formal creation of content of the norms that govern the Rechtstaat. Hence, the substantive norm that Laband sought as the key to formal interpretation of constitutional law became a kind of finite content generated from the infinite form of legal statutes.\textsuperscript{34} That is, when taken as a statute that has substantive normative force, Laband interpreted the constitution as a kind of material or natural will that has the force of sovereign creativity. In this respect, without attending to the problems of autonomy, self-legislation, and the origin of the law itself, Laband merely consolidated the kind of post-Kantian idealism of Fichte and Hegel, albeit in secular guise. It is this infinitely self-regulating state that

\begin{itemize}
\item \textsuperscript{32} Nicholas Stargardt, \textit{The German Idea of Militarism: Radical and Socialist Critics 1866-1914} (New York: Cambridge University Press, 2008), p. 76.
\item \textsuperscript{33} Eggert Winter, \textit{Ethik und Rechtswissenschaft: eine historisch-systematisch Untersuchung zur Ethik-Konzeption des Marburger Neukantianismus im Werke Hermann Cohens}, (Berlin: Duncker and Humblot, 1980)
\item \textsuperscript{34} This kind of generation of validity amidst an infinitely changeable nature reflects the positivist tendencies of the Southwestern school of neo-Kantianism discussed below.
\end{itemize}
becomes the form of an organic or natural entity permeated with the infinite, albeit now the infinite is the law itself, able to regulate and generate itself on its own grounds. And it is precisely against this juristic metaphysics that the attack of Hermann Cohen’s ethics of law is directed, but also indelibly influenced and shaped according to its very basis.

3 Cohen’s Ethik in Historical Context

As it must be obvious by now, Cohen’s practical philosophy does not devote particular attention to the subject of duty in the manner that Kant does. Whereas Kant’s theory of right, as well as Fichte and Hegel’s, began with analytically constructing the scope of private right, beginning with the account of possession and the nature of an object within the sphere of subjective use thereof, Cohen’s practical philosophy pays little attention to the role of objects in the account of right. Rather, his ethics is fully fused with an account of the public nature of the law, hence, the noumenal reality of the moral law as a formal sphere through which the law applies to humanity first and foremost. The legal individual is only individuated on the basis of the law. As we will see in what follows, just as Cohen’s transition from the theoretical to the practical use of reason focuses upon the objectivity of the judgments involved, so too his philosophy of law focuses upon the public character of right. In this respect, we can now better understand how Cohen’s own juristic context, as discussed above, will become increasingly significant. For insofar as ethics becomes a theory of public law, the theory of state will also become a theory of ethical self-consciousness. I will now turn to this discussion of Cohen’s Ethik more explicitly.

Cohen’s Ethik des reinen Willens is conversant with much juristic debate in Germany at the height of Imperial German “State-Law” theory, but equally polemic. By introducing a serious and systematic philosophical basis to this discussion of legal science and the purity of law, Cohen diverges from the path of other legal thinkers by trying negotiate between the “purity of law” as a full-blown positivism that negates morality, religion, and politics on the one hand, and the kind of metaphysically-inclined revisions of natural law theory emerging from the Romanist and
Germanist offshoots of the Historical School on the other. In the debates surrounding the writing of Cohen’s *Ethik*, both the Historical School and the Corporatists agreed that “natural law” had become the stuff of myth, to be left behind, along with medieval superstitions and the threat of neo-Roman and Papal tyranny. Beginning with Grotius, Pufendorff and especially Kant, a theory of natural law more palatable to Lutheran Protestant thought had introduced successive “positivizations” of the law by “naturalizing” reason; if reason was the criterion of natural law, then, human reason was a natural legal organ. Hence, with Kant’s attempt to model the lawfulness of the “moral law” upon the laws of causal nature, we saw that the conception of positive law dominant in German liberalism was beholden to this externalized autonomy of freedom. But Cohen’s goal is precisely to reserve a place for moral law that is neither causal-empirical nor historico-positive. Thus, a larger methodological issue surrounds Cohen’s *Ethik*.

At the same time that Cohen began drafting his system of philosophy, a particularly relevant debate was developing in the study of economics, enveloping the study of law and political history as well. In the 1880s and 90s, Carl Menger and Gustav von Schmoller exchanged a series of pamphlets attacking each other’s methodological assumptions. The debate concerned the methodological grounding of economics as a human and cultural science. While Schmoller, representing the German Historical School, focused upon the question of material history as the scientific and causal explanation for human phenomena and behaviour, Menger, representing the Austrian School, argued that only systematic and logical first principles could underlay a scientific study of human culture and economic activity. In the sphere of jurisprudence, this debate concerning the material or ideal grounding of the study of human action developed in parallel with Rudolf Stammler’s publication of *Economy and Law* in 1896. Stammler also attacked the

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37 While Stammler was a great neo-Kantian jurist, and teacher of Hans Kelsen, he was attacked by Max Weber precisely for his attempt to reduce the sphere of “material history” to a nomological reconstruction, while nevertheless depending upon the model of lawfulness of empirical causality. For an overview of Weber’s critique, see Guy Oakes, “Introductory Essay”. Indeed, in this
materialist presuppositions of the Historical School and tried to articulate a theory of pure and logically ideal law grounded in a normative, rather than causal science of law.

But for Cohen, even the attempt at modeling human action on the “formal” basis of causal law would result in an empiricization of law and ethics. Under the influence of his time, Cohen claimed that indeed law and ethics must be elevated to the status of science, and that this can only be done by understanding the laws of this science as laws of reason. Consequently, Cohen sought a “purity” of law that was based upon the comprehensive method of the transcendental a priori; that is, by beginning with the conditions of the possibility of experience, Cohen sought the a priori lawful rules for an experience; an ethical experience since it is built from the Sollen, the Ought. As a normative theory of the logical, ethical and aesthetic judgments of reason, Cohen therefore turned away from all materialist and empirical starting points in philosophy. Specifically in the realm of practical philosophy, as a theory of the Sollen, this meant that jurisprudence must become the “organon of ethics,” as Robert Gibbs has claimed. This means that ethics must begin, not with an empirical fact, but with a transcendental fact: namely, the concept of man.

Within the concept of man, Cohen believed we could isolate the pure will that brings this concept from singularity, to plurality (man among men) to totality (the state) which again becomes a singularity among other states en route to the ideal of humanity as the plurality of states brought together under international law. In other words, Cohen’s idealism in practical philosophy takes up all the themes of the Staatsrechtslehre I have been discussing, while maintaining a primary focus: refuting Kant’s original error of separating legality from morality.

In what follows, I would like to begin unpacking Cohen’s vision of law and State and how this vision implies a return to a discussion of how the corporate yet ideal legal person shifts the shared critique of Stammler’s thesis, Cohen and Weber are much closer than often noted. Nevertheless, such a comparative study remains beyond the scope of this study and is thus a desideratum.

38 While Robert Gibbs is not ultimately persuaded by Cohen’s insistence upon the state as the epicenter of the relationship between law and ethics, opting for Kant’s focus upon the community as understood in his Religion, Gibbs’ nevertheless admits that Cohen’s conception of the principle of normativity that helps enunciate the ethical critique of law is paramount to recovering the centrality of legality in ethics in contemporary critical theory. See Robert Gibbs, “Jurisprudence is the Organon of Ethics: Kant and Cohen on Ethics, Law, and Religion” in The Critical Idealism of Hermann Cohen, ed. Reinier Munk, (Dodrecht, Netherlands: Springer, 2010), pp. 193-220.
emphasis of a theory of state onto a theory of ethical subjectivity; that is, in the sphere of the subject of the law, which must be the climax rather than, along with the German idealists, the presupposition of the system of philosophy. I will then conclude by considering how Cohen’s break with Kant intimates Cohen’s insistence upon a different understanding of lawfulness, namely the prophetic and Jewish conception of law as infinite and its judgments as temporally hypothetical. Hence, rather than accepting the usual scholarly claim that the Marburg school represents a kind of return to natural law, I will begin to shift the argument toward Cohen’s use of “prophecy” as the basis of his ethics of law.

3.1 The Concept of Man and the Concept of Action

Cohen’s critical idealism is an account of a priori cognition. A priori cognition is the mathematical construction of reality from the laws of thinking. By mathematical modeling, however, I mean dynamic mathematics acknowledging the limits of positivity. Each particular object of knowledge is a hypothesis of its reality. However, this hypothetical reality is nevertheless the only possible object of knowledge. Yet Cohen argues that ethics is indeed a priori cognition, and law is the normative force of reason in action. The transcendental method applies to law and ethics, beginning with a fact in need of critical justification. In ethics and law, this transcendental starting-point is the concept of action.

As a priori cognition of action, ethics is the cognition of how action is grounded in law. The study of this production is the science of law, which must be known from hereon as “ethics”. This is the scientific worth of ethics in Cohen’s sense—generating actions from law is the justification of action in ethical science a priori. Through judgment, the action is cognized in its ideal form; “right” is the production of this justification as a norm. Similar to theoretical cognition, where the object in general is generated from the categories, the action of Right is

produced from a law that ought to be enacted. A norm, for Cohen, is an ideal unity of action and its justification, which the science of law takes as the basis for ethics.

But insofar as ethics shares in the idea which logic taught us to be regulative as well as constitutive, Cohen conceives of the proximity of logic and ethics as the basis of critical idealism. Thus, in the opening chapter of the *Ethik*, “the basic law of truth” we find that logic provides an account of how judgment finds its truth in the logical concept of truth. Logic is the substructure for the method of ethics. However, as we saw, the regulative function of the transcendental ideas are their task-like function. And the idea that Cohen identifies as bringing logic and ethics into proximity, but also the idea that maintains their methodological distinction is the idea of the good. As we shall see, therefore, the ideality of the good becomes an idea providing coherence to the ideal construction of Right.

As an *organon* of laws, reason is therefore the normative agent of the particular *canons* of the sciences. In the *Ethik des reinen Willens*, Cohen describes the relationship between ethics, law, and history as the derivative scientific canons, while in the introduction to the *Religion der Vernunft* he introduces the systematic role of religion. The concern with methodological unity is based in reason itself. Concerning logic and ethics, however, we see the pinnacle of the systematic unity of reason. There is an analogy, Cohen tells us, between mathematics grounding physics just as ethics grounds law. There is methodological unity to logic and ethics: the logic in scientific cognition grounds ethics as legal science and legal cognition. He writes, “[c]ertainly in reference to the methodical substructure of the ethical and logical conceptual-elements there remains a distinction, which figures just as for the distinction between the science of law and the mathematical natural sciences, and is formed [as an analogy] through hindsight to their methodical construction [Aufbau].”

The relation between logic and ethics shares the use of the ‘concept’; it is the uniting point of logical and ethical method. But they also share the use of the regulative idea. Hence, the lawfulness of the understanding and of reason, producing both an object in general (for cognition) and the idea of a whole or unconditioned (of reason) is the structure of ethical and legal judgment

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40 ErW, p. 67.
as well. While ethics is not identical with logic—that is, ethics cannot simply be based upon mathematical modeling—because it produces actions from will, insofar as ethics is analogous to mathematical modeling, it maintains a correspondence to the objects of experience. Unlike Kant, therefore, ethics is not metaphysics; it is concerned with experience and reality. Thus, the theory of experience forms a basis for the theory of action. But Cohen’s idealism begins with the concept and idea: the conceptual elements shared with logic, but also, the hypothetical ground of all scientific inquiry. The concept of man is, therefore, the beginning of ethics.

“Man” is a dual-concept, an ambivalent concept (Zweideutigkeit). “Man” signifies both a singularity as well as a plurality. Man and city are the correlated concepts that announce the conceptual unity found in man.41 “Man” is also the concept shared by both religion and ethics. In both, however, “man” is an ambiguous concept; are we concerned with an isolated man, an individual? or, “man” as the plurality of men, with the “city” and, finally, with “humanity”? To put the question differently, how do we account for the “rights of man” and the ethical ideal of humanity as the basis of objective rights, as Kant claimed? Are “rights” socially conditioned or inherent and natural? As yet, we cannot tell.

Man is a conceptual beginning and can be characterized as the object of science: the science of man (Geisteswissenschaft), or the human sciences, the humanities. The idea of human science takes “man” as a concept with which to ask after the structure and order of social phenomena. Keeping Cohen’s logic in mind, we must therefore understand the concept of man to constitute a fact of reason with which we must begin a transcendental deduction of its conditions. That is, we must ask after the justification for this concept of man. Man is both a citizen and so a neighbour, as well as national resident and so, united in plurality with others. Man is therefore a dual, and not

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41 In the Ethik, Cohen acknowledges Socrates, whose concern was with the concept of “man” and the “city”, as having discovered in “man” three crucial elements: the “concept” (eidos); “the concept of man”; and “man”. Both the city and man represent conceptual elements with which to construct an account of the existence of man. Man is therefore the construction of a category from a concept. Man is the object, also, of a science of this concept: virtue. Socratic virtue is knowledge; knowledge of self is the first science. But for Cohen, it is not until Plato provides the idea as the actual justification for the concept that Idealism as a philosophic science in this Greek sense, takes root. The science of man thus begins as Idealism. Idealism is the philosophic grounding of science. Hence, by sharing both the “concept” and the “concept of man”, Religion and Ethics employ a philosophical method derived from Idealism: the scientific construction of actuality from Reason as a generative faculty.
a total concept. Singularity, plurality, and totality, each as a judgment in Cohen’s logic, plays a role in this deduction of the concept of man. But as we shall see, the judgment of man as a singular or plural entity, creates the conditions for the judgment of a state as a totality. And even at the level of the state, the total is but a singularity against the backdrop of more singular entities. Hence, as a concept, the duality of “man” represents the future inherent to the generation of the concept; the concept is always temporally relative and always incomplete, whether as “man” or “state”.

The duality of man can now be understood as neither a completed concept nor a determinate existence inhering any absolute rights or claims. Rather, the concept of man, as a relative concept, must be expressed through another concept that provides unity for man in particular actions. This concept is the concept of action itself. Law begins with the concept of an action. That is, the action is both the content of a norm as well as the redress for the sanctionable action. Action is therefore another dual-concept. From the law, actions are generated as oughts or norms. As I noted above, in critical idealism, judgments produce objectivity from the infinitesimal “origin” and their ideal of completion remains a hypothetical idea. But reason is juridical because of this temporality. Hence, the law produces things; laws are the source and origin of the subjects they produce while the object of the action must be achieved. That is, “objectivity” is sought through the work of justification. Through judgment about what law claims there ought to be, we must provide the account of how law articulates the action in question—the norm stipulated. Ethics is a concern with what I ought to do.

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42 The dialectic of the concept, for Cohen, is the infinite generation of the concept. It is the task of justifying the idea, the hypothesis, which can never be complete for this would signal a determinate end. This temporalization of thinking and judgment has serious implications for ethics as well: the very concepts that provide objectivity within ethics are unfinished. That is not to say they are less objective. Rather, the very structure of objectivity in Cohen’s logic is a task, which does not culminate in the determinately negative moment, as it does for Hegel, of an infinite self-positing; rather, the infinite is the futurity and continuity of the dialectic itself: “The concept is, namely, not only not given at the outset and must become generated, but it is also not given at the end of the generation; [generation] no conclusion and no end is given for it [the concept]. Its end would be its negation. Its existence [Dasein] consists only in its generation, and its generation designates no end, insofar as it is a proper concept. That is, the concept is task [Aufgabe].” (ErW, p. 162 2nd Ed.)

43 Cohen’s understanding of the “Ought” must be taken as the foundation of the scientific orientation of Ethics—that is, Ethics is the possibility of a certain kind of cognition. Cognition implies, in turn, that the conditions of a possible experience and the normative requirements for experience to transpire, are made intelligible through the ideas. Hence, the Ought stipulates something that ought to be. But at the same time, the idea is; it is the condition of experience as well as the conditioning activity of thinking as judging.
This legal character of ethics takes the hypothetical structure of (regulative) ideas as the production of actions and subjectivity from the law, which is never final, never complete. Subject and object are produced because the law of reason coordinates subject and object in the concept of the action. We cannot have an action that is not the objective account of a concept of action, and likewise, there cannot be an action without an actor. However, we shift the focus from the agency of a subject working upon an object, to the idea of Reason containing the formal rules for the coordination of subject, object, and action in our understanding of them. This is what Kant called the transcendental dialectic at work. Specifically in ethics, for Cohen, the Ought has the particular characteristic of indicating something that “ought-to-be”, and so, is not yet, as well as being an idea that already is. This modal distinction of the “ought” clarifies how ethics is cognition and helps us achieve a clearer focus on the conceptual elements of logic and ethics: the unity provided by action, which predicates the future synthesis of nature and ethics. If we recall Jacobi’s challenge and the Idealist’s response, this unity of nature and ethics, or nature and freedom, was found superfluously grounded in the “I” of subjectivity. But Cohen seeks the idea of ethical action, as an always futural task, as the work of achieving that unity. This is Cohen’s refutation of Pantheism with the turn to ethics: unity is always a task.44

Just as the concept is a task, so too the object of the concept is a task, the action is both a condition and a task, not only of thinking, but of the Will:

The Being of the Ought is the Being of Willing, the Being of the Will. It is not given being. It is not given as the to-be-generated-being, of which is here formed to objects. For the object is here only exclusively Action. And only Action is here the task; the task of the object [Gegenstand].45

Action represents the “object” of cognition in the method of ethics. Action is the conceptual unity and the object of the concept as a task. Actions are the products of judgment and decisions, and they also transpire as causal events and relations. But actions are also representations at the level of ideas. I can model and construct an action in the realm of ideas. Likewise in law, the action is the constructed object of a norm—that is, the action is what is stipulated as the tort, the contractual

45 ErW, p. 169
pledge as well as stipulating the sanction or sanctioned action. But the action is also a task, as a concept, for the action must be achieved as the carrying-over of the will into a determinate existence (Dasein). This is a significant modification of the theory of experience found in Kant. Cohen sees the cognitive norms of experience as lawfully guided by judgments of the understanding and reason’s ideal of a whole. But the judgments of ethics require a carrying over of thinking into willing. Volition becomes the expression of a norm through its judgment and actualization. Willing is therefore practical reason. The will cannot be reduced to thinking, however. It must remain a continuously developing will, which has action as its task. Therefore, the task of thinking is to will actions. Actualizing the ideal, which is the telos of reason, becomes the norm for ethics. Thinking must try to be willing, but will never substantiate itself as willing. Willing is the action of striving to be this unity of thinking and willing. The two remain distinct.

To clarify this relation between thinking and willing, we must understand how actions are themselves tasks—the normative performance of something, bringing-it-into-being; willing. Willing is a kind of anticipation. It is a projection into the future, on the basis of a norm. Hence, the action is a performative category. It borders ethical norms and positive laws, which are achieved in history, through the will of a state (this latter point is yet another task, as we shall see). In ethics, “objectivity” to ethical judgment is a task that is never complete. Positive laws are the objective expressions of a continuous, “pure” willing. But this pure will is the expression of reason in its attempt to synthesize nature and action. Hence, the ought issues an incomplete content. We must continue to judge what ought to be, and so ethics finds another nexus with logic: nature can be changed.  

What becomes evident from this account of “action” and the “ought” is how the will becomes the point of focus. The will articulates the agency of the action, or rather, the force of the action. For Cohen, the will is the force of movement that brings the idea as an ought into the

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46 See ErW, p. 440; Frederick C. Beiser makes a similar observation concerning Fichte’s philosophy. See Beiser, German Idealism, p. 278; Poma also notes Cohen’s similarity to Fichte in this respect, see Poma, The Critical Philosophy of Hermann Cohen, p. 74; cf. For different interpretation of Fichte’s relation to neo-Kantianism, see Paul W. Franks, “Serpentine Naturalism and Protean Nihilism” p. 248.
realm of an actuality. That is, to will something into being is to reach above the bodily drives, sensations and motivations of desire, appetite and the like, and acknowledge the method of making the will represented in the “ethical action” my own will. In a sense, the methodological focus of ethics is the formal outline of how reason is moral. It is the responsibility of the agents of thinking to express the pure will announced in action and law. Hence, the will is the force that expresses the first conceptual element of a theory of “right”. The will has a right insofar as the will is the expression of a normative action. As a positive law of the state-will, then, the will is actualized as a right.

In summary, we have thus far seen that action, ought, and norm are interrelated in the legal nature of reason. As a juridical organ of ideas, reason produces the conceptual elements at work here. Cohen’s theory of objectivity derives from reason, producing elements through the transcendental method. And the critical idealist sees this accounting for ideas and concepts as the work of thinking; it is a theory of critical cognition. But this critical justification of action is also a kind of striving to unify knowledge and nature. It is an attempt to synthesize the ideal of Reason with the actions of experience. The will therefore expresses this continuous goal of actualizing the good.

We are working with concepts of all the conditions for the experience of ethics, law and history. So far we have some basic elements in play, but we must see how this objectivization of man’s right is achieved through a concept of the legal will. For willing is the vehicle of action in law, history and ethics. And though willing and thinking are related, in the purity of these concepts, there is nevertheless a movement from ideal to actuality that is propelled by the will. The individual of ethics is therefore a juridical person, a legal will. Hence, ethics becomes a transcendental science because it begins with a “constructed” ideal of man. Man is not empirical, but based upon the image of the pure will, a legal fiction.
3.2 Pure Will and the Basis of Right

Law serves as the scientific starting point for ethics for three reasons. First, because it mediates between the individual and the state, the law serves as the expression of actions posited within the state. But, secondly, the law also stipulates the actions in which the subject of a right is able to actualize her individuality and so, gain the objectivity of legal action as a member of a plurality and totality. In other words, the individual achieves a “will” in acting according to law and recognized in/by the state, and the state receives a will through the historical positing of (ethical and individual) actions as laws. This combination of a positive law and a rational law therefore creates the unique hybrid of lawfulness that Cohen always plays with. Additionally, the pure will achieves the ethical action only through the use of the virtues that are inherent to the law.

Law is the source of the mediation; it mediates between the individual as a juridical person and the state as a juridical person conscious of itself.\(^47\) Thirdly, law is the expression of the actions willed into being.\(^48\) That is, for Cohen, a norm is prior to the generated action, but the science of law provides us with a justification for the actualization of actions. We can account for the conditions of possible experience through an account of what is rightfully actionable. Hence, for Cohen, “a right that is not actionable is not a right.”\(^49\) Law is therefore the expression of the will in its actionability. It is the mediation of state and individual and it expresses the mediating concept

\(^{47}\) ErW, p. 490

\(^{48}\) Willing something into existence is therefore to express the will, a movement of will, into actuality. Cohen therefore attempts to hold together the work of logic and ethics through the holding-together of yet another duality: the relation between thinking and willing. The latter duality is decisive because it helps articulate the relationship between objectivity in judgment and the determination of the subject of a judgment. For Cohen, ethics concerns the will, since volition is the action of thinking carried over into the normative concept of what to do. But volition is also characterized by the freedom of generating a dynamic event. That is, ethics concerns freedom of the will. Ethics also includes an attention to the role of affect—the drives and senses that seek to determine a will to its actions. Only by taking ethics as a science can we truly distill the dynamics of a free will. Likewise, the will becomes distinct from thinking by taking this idea of a pure determination of the will as a juridically generated agency of the will. Hence, for Cohen, ethics must be understood through the science of law, for it expresses the will as an expression of right. The latter is not a concern with sensible motivations for action, but rather a question of norms: it is what is rightfully to be done and, hence, an ought.

\(^{49}\) ErW, p. 65
of continuity, the will. The theory of right is the theory of will. We must therefore further develop
the relationship between the will in law and ethics.

For Cohen, as we saw in the preceding chapter, the principle of infinitesimal continuity
provides a horizon for judgment. This horizon is the anticipation of a future wherein the
justification of the hypothetical idea will arrive through the dialectic of reason seeking unity with
Truth. That is, the idea of truth is the hypothesis of completion. It is a regulative idea for
judgment and bears the search for consistency forward. In ethics, the idea of truth is also operative
but as we saw from the discussion above, the logical form of judgment is modally distinct in ethics:
we are in the realm of the being of what ought to be, and so our ethical judgments seek to actualize
norms as hypotheses for practical action. These norms, shared with logic, are the actions of
judgment. Hence, law is our starting point, since, “...two souls live in the I. It is only to the
oneness in the ode of isolation that the I seeks; the other seeks the We. And by taking this
direction, it navigates the law, the law of the self. The law lies beyond this lonely ode of the
isolated self.”50 The continuity of judgment, as in logic, is infinitely proceeding with the
anticipation of a future in which the totality of human association will be reached. Thus, as I
noted above that “man” is a dual-concept that related singularity to plurality, so too the will must
be seen as the logical expression of the categories that structure our dialectic. That is, the will is the
principle of continuity, which unites, through actions, the singularity, plurality, and totality of
men, whether an individual, and contractual pair, or a state.

The duality of the will is its infinitesimal quality. That is, the will is the force that brings
actions as oughts, into actions that are. While Trendelenburg, Cohen’s teacher, characterized
thought as movement and motion, Cohen claims the will is the motion of thinking, without being
reduced to a law of thinking or nature. That is, the will generates the action as a right, through the
movement through law. This movement begins with the most basic legal elements, however, and
that most intimate idea of the will in legal thought: the contract. Contract expresses the direct

50 ErW, p. 329.
relation between the will of juristic persons in relation with one another. But the dynamics of the contract begin, for Cohen, in the speech act which lays a claim upon the I of legal action. Hence, the law and the claim of the other precede the I of the legal person. The claim is articulated in the *stipulatio* or the formula of the contractual pledge. In Roman law, this pledge took the form of a formal promise: *Spondesme! Spondeo.* The “I” is called to account for itself in contract. In this account, two anteriorities are confirmed: the other who claims me, precedes me, and the law precedes us both as the formula for expressing ourselves. The “I” therefore finds objectivity in the law. But the will expressed is both the will of the other calling for a pledge, as well as my will to respond. In other words, the law mediates between us, and gives us each our subjectivity. Consequently, the law articulates a sphere of continuity between the two of “us” and our decision to incorporate our wills continues the life of the law. But as a theory of right, the action produced—the will of this joint legal personality or *societas*—requires unity. That is, right is the pure unity of the action. Hence, a theory of right nevertheless achieves unity, yet originates in alterity. The will provides the purity of right: a unification of diversity in the legal action.

For Cohen, these are the unique characteristics that make contract, as opposed to property, the basic legal relation. Implicit here, is a polemic not only against the German Idealist’s first principle of systematicity being the “I” of subjectivity, but also a polemic against liberal political and legal theory.

This is now precisely the new path that leads to the principle of self-consciousness: that we first and foremost do not look to the law as its [self-consciousness’] own law, but as a seemingly foreign one. This is the paradox in this concept of self-consciousness. We know of no I without you, therefore no self without you or we. Therefore, we are also not seeking in the law the absolute I. Unlike Locke’s basic premise of natural right or Hobbes’ conception of the revolt against nature, the presupposition of property negates the objectivity of the law as a product of reason. By

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51 *"[u]nd zur Handlung gehören zwei Subjekte, wie wir dies an der Rechtshandlung erkannt haben...Das Selbstbewusstsein kann für den Willen und für die Handlung nicht das Bewusstsein des Selbst, als eines Einzigen, bedeuten. Es muss vielmehr dieses Selbst den Andern nicht sowohl einschliessen, als viel mehr auf ihn bezogen werden." ErW, p. 212.

52 ErW, p. 266. "Das ist nun eben der neue Weg, den hier das Prinzip des selbstbewusstseins fuhr: dass wir das Gesetz zuvorderst gar nicht als das eigene Gesetz suchen, sondern als ein scheinbar fremdes. Das ist die Paradoxie in diesem Begriffe des Selbstbewusstseins. Wir kennen kein Ich ohne Du; also auch kein Selbst ohne Du oder Wir. Daher suchen wir auch das Gesetz nicht absoluten Ich."
contrast, for Cohen all right begins with the generation of objectivity of the I in the other. That is, the I is claimed by the other in this contractual structure. Insofar as the will is a concept uniting singularity, plurality and totality, the generation of action is the unification of disparate parts. Like judgment in logic, this is the role of willing: to hold-together the disparate parts of law. The action is willed into being, from the idea of its ought. The action, strictly speaking, is the carrying-over of an address (the speech act of the pledge) into a claim: the Other makes a claim upon me. This becomes the formal articulation of the action of law. It begins with the contractual formula and leads to the willing of our society together. The generation of this legal action is, therefore, a uniting of these individual moments in the concept of a “we”, the societal will is not a conglomerate of individuals choosing to unite. Rather, the will articulates the form of ethical will, and the “I” pledges itself to it; our contract is reached through the objectivity of the law which generates the persona of the legal will found in this contractual action: the fiction of the juridical person. Unlike traditional social-contract theory, Cohen begins with the objectivity of reason, of the lawfulness of the concepts and judgments of reason. The law, as ideal norm, points to the action that is its mandate. This action must be actualized, and its actualization becomes the expression of will. In order to become “my” subjective will, however, I must be claimed by someone else. 53

The law is always before me. As Michael Zank puts it: “Law presupposes a notion of unity of legal subjects that can be taken to include all human beings.” 54 The social contract is therefore a type of rational lawfulness that I cannot avoid. I am already implicated in being claimed. I have no choice in that matter. My freedom of will comes only through my already being legally bound. The objectivity of the individual legal agents to this contract is achieved through the conceptual unity of the action, which gives a formal coherence to the steps involved. This is the unity of right: it begins in alterity and culminates in unity, but that does not mean that it is now subjective, tout

53 “[d]er Rechtswille muss daher in bestimmten, vorgeschriebenen Worten ausgesprochen werden. Es ist, als ob durch die Formeln, an Welch das Rechtsgeschäft gebunden wird, die Willenshandlung, in der die Rechtshandlung beruht, an die Aussprache gebunden werden soll.” ErW, 193.
court. The origin of right infinitely continues to condition the right, just as the force of the will infinitely motivates our contract. And in seeking unity, the contract between juridical persons needs recognition in the State—the self-consciousness of ethical action. This latter unity, however, like all unities, remains a task for a plurality of willing individuals.

3.3 The Contract and Ethical Self-Consciousness

Cohen understands a right (Recht) as an address that claims “me,” it is accusative. The address and the claim represent another facet of action: the legal action is a decision – the decision on the part of the particular wills is at the same time the decision to incorporate – the merger is the decision.55 Contrasted with Carl Schmitt’s appeal for pure personality as the fulfillment of decision in law, Cohen neither bases the decision upon property (empirical) nor upon personality (anthropological) but rather, upon the pure will that mediates all persons; the pure will as the law itself. How can an individual decide law without the merger of community that law inherently represents? 56 In other words, the contract is the first expression of a claim upon me, from which I derive my right. I only achieve legal personality through an objective context that is conscious of my right. The contract expresses the will of action as a merger that in turn gives me the means to pledge my faith to the social “we”. Right is a theory of the juristic person—the agent of legal action, which is “fictional” because it unites “us”. This juristic person is the merger of wills at the heart of law.

The type of contractual relationship described by Cohen is not a typical social contract, precisely because the will of this contract is not stagnant, nor singular. It is, rather, total, which is not to say “absolute”. As a totality, the pure will of contract is infinitely generated through the

55 ErW, p. 219
56 A significant study could be offered in comparing Cohen’s understanding of the incorporation of the I and the You in the juridical order as part of the “legal decision” to the theory of Carl Schmitt. The very question of the decision and its relation to the Neighbour or the Other (friendship/enmity) could be contrasted to Cohen’s emphasis upon the poor and the stranger both throughout the Ethik and the Religion of Reason. Cf. ErW, pp. 584-5
objectification of subjective rights and individuals. The objectivity of the contract is also in continuous movement. The pledge of loyalty is therefore never complete:

In this manner, however, the State cannot fundamentally pass on the task that is designated through the formula of *pacta servare* (contract of loyalty). And this formula signifies simultaneously *fidem servare* (pledge of loyalty). In these contracts, the State preserves loyalty. And this loyalty takes shape, despite all misuses of executive force, as the State’s ground-layed-for-it as well as its ethical law; its law, to be respected as [itself, a] juristic person and to be subservient to the highest and most exact model of ethical self-consciousness.\(^57\)

This pledge of contract is not simply a futural promise; and so, it is indeed a contract. Rather, the fidelity of this loyalty is, as Cohen tells us, nevertheless subservient to an even higher foundation: that of ethical self-consciousness. Self-consciousness is the generation of the I out of the sources of the Other; out of the law of the Other, and the recognition of these legal personalities in the pure will that is self-conscious of these contracts and preserves them. This is the figure of the State.\(^58\)

The State is not a metaphysical self-consciousness, but an objective context of recognition for legal actions. Built upon those contracts, however, Cohen sees the State as achieving its own juristic persona and therefore being obligated to the very same law as individuals: the State, therefore, must be ethical.

4 Otto von Gierke and the *Genossenschaftsrecht* School

As I outlined above, a dominant theme of the Imperial State-law theorists is the relationship between personality of the state and the individualistic rights assigned thereby. Indeed, we can also detect that the hierarchy flows largely in the same direction: the state is the highest expression of legal subjectivity, while the individual legal subject is subject to the highest principle of state power, which in the German Empire, was the Kaiser. But another movement reacted against this

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\(^{57}\) ErW, p. 229

\(^{58}\) This statement may be clarified as follows: The State, which is the realm of law, is the synthesis of various combined judgments and actions expressing laws. A totality of state is built through combining communal aspirations and synthesized through the accounts that each gives and their reasons for maintaining a community within the state. This totality is merely the hypothetical union of an idea, which has its expression dialecticized through what amounts to “public reason,” which for Cohen, is simply Reason.
dominant legal theory, largely attributable to the way in which the positivists such as Gerber, Laband and Jellinek had adopted the conceptual edifice of the great scholarship on the Roman law by Savigny, and imposed upon these concepts the content of their contemporary positive law. For Otto von Gierke, rather than impose the Romanist concepts of individuality and the *persona ficta* of legal subjectivity upon the German legal tradition, it is by focusing upon the units of society beyond these definitions that Gierke built a theory of law upon the foundation of a theory of cooperatives (*Genossenschaften*). For Gierke, the driving force of the law is not its conceptual abstraction into systematic units, but its development from organic human experience:

> Out of marriage, the highest of the associations (*Verbindungen*) which do not extend beyond the life of the individual, grow families, clans, tribes, and peoples, communities, States, and associations of states in richly abundant gradations; and for this evolution no other limit is to be conceived than that sometime in the distant future the whole of mankind should band together in a single organized commonwealth, and thus give visible expression to the fact that it embraces only the members of a single great whole.  

With these opening lines of his great four-volume opus, Gierke defines the legal relations of the contemporary state as organic developments of the real lived experience of the human being. Hence, against the fictive status of the legal subject, Gierke believed that the organic development of these associations is reflected in the history of the German legal tradition, which valued the cooperative, whether in the form of a labour collective or guild, or an agrarian community.

Gierke thus represents another strand of the 19th century philosophical response to Hegelian Absolute Idealism in the form of a heavy-handed materialism. Through his continued elaboration of the structure of the *Genossenschaft* as made up of “individual will particles” that, rather than fictively assigning legal representation to an individual that can will on its behalf like the Roman *societas*, the *Genossenschaft* is an organic whole that is constituted from the material arrangement of the individual wills within it, such that the “personality of a *Genossenschaft* is the legally recognized capacity of a human association to be the subject of rights and duties as a united

whole distinct from the sum of associated persons.” The unity that Gierke envisioned, as indicative from the opening lines of the book, will ultimately culminate in a single organic entity known as a “commonwealth” that will gain some kind of legal representation by virtue of its being determined by the internal law of the Genossenschaft itself. Hence, its “organs” represent it as constitutionally determined, and if they were to act in a capacity beyond that pre-determined organ, they would be considered to be acting beyond the scope of the Genossenschaft, and hence, not recognized thereby.

While his theory represents a romantically inflected, though nevertheless materially influenced take upon the nature of the legal relation, Gierke faced similar questions as his positivist contemporaries concerning the nature of the state. The state, while still a form of Genossenschaft, is nevertheless defined in the same terms of self-limitation and self-authorization as the positivists. For Gierke, the modern state,

...stripped of its mystical character and traced back through its natural development (Werden) instead of to a supernatural origin, is not generically different from the narrower Genossenschaften of public law... contained within it, but is related to them as the complete to the incomplete stage of evolution. It is the product of the same force which we still see daily on a small scale building up universals of a limited sort over particulars. It is thus homogeneous with the communes and associations. But great to be sure, is the extent of the consequences bound up with the single difference that the State as highest universal has no further universal above it, is sovereign. Consequently while all other Genossenschaften are determined by something outside themselves, and find their ultimate regulator outside themselves, the State is wholly determined by itself alone and carries its own regulator in itself.

For Gierke, the self-limitation of the state remains the very definition of sovereignty, however, it is, unlike the positivists, not a result of the statutory interpretation of the constitution but rather upon the basis of the natural development of the Genossenschaften according to their own “internal laws” which enable the determination of each “organ” of the association as having a legal role. In this light, Gierke’s theory of sovereignty of the state culminates in a kind of universality that limits itself through the dynamics of internal law qua Genossenschaft and self-regulation through its

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61 Ibid., Gierke, p. 469; Emerson, State and Sovereignty, p. 135.
62 Emerson, ibid.
63 Gierke, Genossenschaftsrecht, I, pp. 832-33; Emerson, State and Sovereignty, p. 138. (trans. sl. Mod.)
constitution. The latter gains a particular kind of universal status by virtue of the territorial laws that it encompasses, which the Genossenschaft does not. Hence, even at the final stroke of Gierke’s attempt at justifying the self-limitation of the state, we see the organic and material element of natural causal law becoming the basis of the organicist development of community in this turn to natural territorial sovereignty as an attempt at achieving normative universality.

While Gierke’s theory would prove problematic for many, Hugo Preuss, largely responsible for the Weimar Republican Constitution, was to take great note of Gierke’s theory. Preuss attempted to de-structure the concept of sovereignty that had been inherited by the Imperial jurists and like Gierke, assign a kind of “collective persona” to the institutions that make up the state, such as the “Gemeinde, Staat, und Reich”. While the latter two have territorial integrity, the former is subject to the other two within the hierarchy. Both Preuss and Gierke thus assign a “real” personality to the corporate entity, which gains its “force and vitality” as a group entity. Thus for Gierke as well as Preuss, the corporate personality of the state is not a fictive unity, but permeates each and every organ of the whole. It is the fullest expression of the Pantheism of legality, insofar as the reality of the personality of the state lives in each one of its members without being locatable in any single entity.

Thus we see that in the Imperial period, the theory of the state and sovereignty was developed through increasing steps toward the decentralization of the personality of the state. However, this decentralization was either enacted through a statutory positivism, eschewing all political, moral and theological appendages as irrelevant to the juristic and normative meaning of sovereignty or by taking the fullest expression of the sovereign state to be manifest in a corporate entity that is materially adhesive to the organic structure of human community. Neither the positivist nor organicist theory, however, could take account of the still very significant role that

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64 Emerson, *State and Sovereignty*, p. 150.

65 Ernest Barker, “The Discredited State” in *Political Quarterly*, (1915). pp. 111: “As for the State, so for all fellowships; there may be oneness without any transcendent one...We may be content to speak of associations as schemes in which real and individual persons and wills are related to one another by means of a common and organizing idea.” Cited in Emerson, *State and Sovereignty*, p. 152.
moral theology played in the life of the state, and most emphatically so in the historical drama of the Kulturkampf which could not efface the theological presence of moral normativity.

4.1 Cohen’s Theory of the Corporation

Cohen’s theory of law is, we can see, the balancing of historical moments of legal thought, whether Romanist or Germanic, Pandektist or Corporatist, with the idealist logic of actualization which we find in the modern state. For Cohen, therefore, the ideality of law is always conditioned by its beginning with the fact of law; the historical fact which must be purified through critique. Hence, for the associative and dialogical communities of law that inform the formation of the state, Cohen must acknowledge these historical communities as, in Germany in particular, factual conditions of the state. In Imperial Germany, the pluralist legal culture was the result of an attempt to unify the municipal autonomy and multiple Länder and the Junker jurisdictions that each had laid claim to in its own communal identity and respective laws. Hence, Cohen begins with the contract as the foundation of legal thought in order to idealize the factual state of law and reach the higher unification of the totality of the state.

From the discussion of the guilds and corporations as legal person, Cohen then moves to the Romanist and historical association of the “family” as a primary element of social order, albeit in its factuality, that must find correspondence with the legal plurality of contractual existence that is the ethical consciousness of norms. For the corporate will expresses the first form of the state, but the relative association of the family—as an empirical concept—must likewise find its identity within this corporate difference:

In what concept, then, can we position this relative community [of the family] amidst all of its levels over and against the character of the fellowship or corporation, to which the concept of the juristic person corresponds and, accordingly, becomes the exact and indubitable representation of the value of ethical self-consciousness? It may not be treated by broadening the degrees of affect, so that the I, as though it had a large stomach in which to incorporate ever more particularities and in which it
would have to increase; not along the path of such expansion is the concept and self-consciousness of
the juristic person fulfilled. The sought-for and pursued concept is the concept of the State. 66

While the concept of the juristic person arises from the fellowship or corporation, the communal
caracter of association also bears a historical and factual existence in the family. This relative
community must find its logical purification in the idea of the will in order, not to abstract from
reality, but to ground this very existence in a normative right. The state is thus the purification of
the empirical, not in an attempt to disenfranchise the communal autonomy of guilds, estates or
municipalities, but in an attempt to identify the logic of anticipation, where the future of the state
is also the attainment of the “I” of legal personhood, and so ethical self-consciousness for each
citizen. 67 Such a future regulates the state’s attempt to coordinate these communities with its ideal
totality, and thus, secures their normative existence in constitutional protections. This future is
also the segue to the ideal of humanity, that condition of the categorical imperative where each
individual citizen not only seeks to achieve their rights and freedoms, but also to act ethically in
the name of humanity.

In this respect, it seems that the state would be the last concept with which one should
begin an account of ethics. Yet the state in question is not the empirical state. Much like Hegel,
Cohen is seeking a state that recognizes its ideality as the condition of the actualization of ethical
laws. However, such a concept is, much like the autonomy of freedom, not presupposed, but a
task:

66 ErW, p. 228

67 Through the objectification of the I in the Other, the hypothesized idea of ethical self-consciousness gives juristic persona to the
fellowship. In other words, the law of Reason schematizes the German fellowship with the Roman Society, which is a fictional
person, and therefore demonstrates the historical positivity of the law of Reason. These historical expressions of the law of Reason
coordinate the rationality of the State. Hence, Cohen’s theory of law is not metaphysical but is rather philologico-transcendental.
Law and ethics are necessarily correlated in the idea of ethical self-consciousness. This idea arises through the contractual claim of
the Other upon me, and is actualized (in part) through the state as a context of recognition, hence, a “we” entity. Interestingly,
Cohen sees juristic persona to express moral personality. That is, ethics is a theory of action and a theory of will. As a legal action,
the will becomes a persona. This fiction of personality is on account of the ideality of the law. But for the methodological reason
that the legal subject is an ethical person, the model of the ethical self-consciousness becomes the state, an objective context for
moral Reason to be actualized. This is Cohen’s idealism of law: justice is never contained within the State, but is a task of the state.
For the law to be unified with the good and the just, this ideal of ethical self-consciousness in the state must be approximated. That
is, recognition of the consciousness of the I is the striving for the further justification of the concept of the person, here a fiction of
fellowship, and so the I needs the state to confirm moral personhood. Yet another alterity mediates the I of self-consciousness, (225)
the “We”. But this infinite task of achieving the Justice of law remains for the infinitely generated Pure Will.
There are many, indeed many good qualms that arise against this thesis [of turning to the state]. We are accustomed to think of the concept of the State under the concept of power, according to the Roman State law of Imperium and Dominium. Under these concepts, sure enough, the borders of public and of private law so often and simply overflow one another...

...The self-consciousness of the juristic person is the self-consciousness of the unity of the will; the unity of the will that is in a position to be fulfilled in totality. And [should] this highest unity ought to be recognized in the State? If one puts aside the difficult biases against the continual misuses of State-power [Staatsgewalt], to whose history and compromises one can then make the difficult resistance to such objections, thus, here a symbol and ideal fiction for a scientifically real thing can be reinstated. Now we have, however, already considered that a juristic fiction is a more serious concept, that one cannot deprive its value as a hypothesis and that one also cannot allow it to be confounded with an aesthetic symbol. Therefore, the concept of the State-will must be freed of every suspicion of being a symbolic abstraction for the concept of the juristic person to become just.68

While the empirical state bears the historical facts of domination and violence, the ideal of the state must be taken as a scientifically real idea—that is, for Cohen, we cannot give up on the scientific potential of a concept because of the empirical shortcomings from the ideal. As a fiction that unifies the diversity of wills and communal autonomies, the state becomes the ideal of how to secure the existence of these associations through a normative contract. Just as Cohen described the contractual nature of the basic legal units of action and contract, so too, we must understand that the sovereignty of the state is derived through the ideal of humanity which each singularity in its plurality schematizes with regard to this ideal of law. Hence, constitutional law becomes the schema of rights and freedoms in the future of this ideal; humanity becomes the objective future for the ratification of rights in the form of the constitution.

The political expression of this concept in the “social contract.”69 However, it is distinct from a contract insofar as Cohen does not delimit the private law–public law continuum, as

68 ErW, pp. 228-229, 229
69 The will belongs to an individual: to man. The concept of man is the element of legal action as well as ethical meaning. Man has a will to do right and wrong. We must therefore determine how Cohen’s idea of “purity” of will, the unity of concept of action in law and ethics as expressing a norm, begins with the concept of man. From “man,” ethics must achieve the purity of a non-admixed concept of man, which is achieved through the concept of a higher totality, a task for “man” to reach, namely the logical schema of the idea of “humanity”. For Cohen, Kant’s attempt to identify the formal unity of humanity in one’s person is the highest expression of the transcendental deduction of the I of practical reason: the I of humanity. That is, humanity is the object of a concept of man, which does not merely legislate its own unity as an end. Humanity, as an idea for which I can have no experience, is therefore regulative for the task of achieving the concept of self-consciousness. The ‘I’ is the conceptual unity of self-consciousness, but the ‘I’ can only be achieved through the judgment of the I as a “singularity” in relation to both a “plurality” and
Hegel or Kant does, and so does not fall victim to Hegel’s repudiation of Fichte’s “social contract”. For Cohen, the pure will of the state is not a contracted will, but a condition and purpose of the state-contract. Cohen tells us that Rousseau’s *volonte de tous* is helpful in expressing the transition between individual and state, but does not go far enough in explaining the legal structure of the state. From the foundation of the contract is the state the expression of totality of wills. Hence, the Constitutional *Rechtsstaat* is the highest expression of ethical self-consciousness is we understand the culmination of action and freedom in the laws that are normatively deduced through reason and thus, the basis of the contractual relationship between citizens of the state. Their recognition of each other and of the state is the recognition of the will as a principle of continuity, which propels the movement of the state toward the future of a more just State.

The State is the highest expression of this self-consciousness, which, through the social contract described here, acknowledges that even the self-consciousness of the State is beholden to yet a higher idea, a higher hypothesis. This is the idea of humanity, which forces the totality of the State to be pluralized again, amidst a higher ideal of unity. Humanity, is the ethical correlate of God, the highest self-consciousness that reason can project. Humanity, therefore, gives the State its ideal for constitutional and international law, which Cohen believes are the expressions of that very ethical basis that the State is based upon and must preserve.

We see here how Cohen has maintained fidelity, not only to the idea of contract as the basic legal relation, but also, fidelity to the transcendental method: the ideas of ethics are norms for action but through the production of the pure will and the idea of a moral person, the moral nature of reason must deploy the regulative function of transcendent ideas in order to limit the pretension of reason, particularly in the State. The State is not an absolute. It is rather a limited

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*a totality*. That is, the infinite judgment—saying what the ‘I’ is not—must judge “humanity” as the objectivity in which the individual ‘I’ is achievable, as a mediated concept. Hence, the ‘I’ of “man” cannot self-objectify itself. Rather, in the idea of Humanity, the ‘I’ of self-consciousness is determined as a singularity and an individual by contrast with the regulative and constitutive idea of a totality of men. Humanity therefore requires a concept that will provide the representation for it and serve as a schema for the task of achieving this self-consciousness. At one level, the will is the concept that accounts for the continuity between the categories, beginning with action as a basic legal unit and moving toward a higher plane of judgment, the totality of the state. The state provides such a concept and therein, the objectivity for the I of man. For Cohen, this dialectic of the I is most clearly represented in the logical structure of the law: the continuity of the will provides the conceptual link between these categories, while “action” provides another schematic link for this dialectic.
fiction of personhood, which bestows, retroactively, the individual rights to citizens as well as being the model for ethical self-consciousness for those citizens.

5 How to Avoid the Idolatry of the State: Law as Idealization

As I argued in the previous chapter, Cohen takes issue with both Kant and Hegel’s attempts to achieve a correspondence between the ideal and the actual. While I explored Cohen’s revision of Kantian practical philosophy in the previous chapter, I began this chapter by briefly and indeed reductively surveying the Imperial German legal theorists of the late 19th century. But the influence of Hegel’s political and legal philosophy on the post-March era is palpable as well, insofar as both history and the Rechtstaat or legal State become the high points of legal theory, and merits brief if again reductive exposition. Clearly, Cohen’s emphasis upon self-consciousness and the relationship between ideality and actuality represents an implicit rather than explicit, but nevertheless sustained engagement with Hegel’s philosophy due to its systematicity and rigour. And indeed the influence of Hegel’s thought is all the more palpable for Cohen because it can be located in the monism of State-law theory. Since according to Cohen’s interpretation of the State-law positivists all law ultimately reduces to the state-sovereign will of legislative force and the legal organs of the state become the representation of a single entity having legal personality, there remains no room for the theory of law that begins with contractual relationship and then proceeds to develop toward a goal of self-conscious State personality or “self-consciousness”. And yet for Cohen, the ethical self-consciousness represented by the State is so similar to Hegel’s that it becomes a perfect metaphor for the intimacy, despite having a fundamental distinction drawn between them, of pantheism and monotheism, between a State sovereign that is both ideal and actual and the pursuit of ever greater degrees of justice for the State as a future goal.

As I have noted more than once, Cohen’s polemic begins with Hegel’s claim that the State represents more than just a positive historical institution; the State is the expression of ideality itself,
According to Hegel’s presentation, the State represents the mediation of individuals’ consciousness with the customs and positive laws legislated by the sovereign legislature and thus, the substantial freedom of ethical Spirit. All this is accomplished in the mediation of the ethical ideal and the actual State.

Cohen draws a parallel argument in claiming freedom to exist within the ethical self-consciousness of the State. However, for his part, this remains a goal of ethical action, history, and the future-orientation of legal norms. That each and every individual self-consciousness gains its own determinate being and knowledge of self through the reflection within the State is the point at which the two thinkers diverge. According to Cohen, while the State represents ethical self-consciousness, this is only as a conceptual task (Aufgabe). The ethical idea cannot be substantialized (which is admittedly more so Hegel’s language in the phenomenology than in the Philosophy of Right). This preference for the substantialization or actualization of the ethical idea within the state presumes the State to have the same character of reality as sensible nature and thus makes a methodological error. Thus, according to Cohen,

Moral concepts do not have their methodological character according to this relationship to scientific sensibility, to the scientific representation of actuality. The mathematics of ethics, law [Recht], enables the essence of freedom not to be actualized...But it in no way becomes fact of actuality in law and state.\(^\text{71}\)

The directionality of idealization differs between Hegel and Cohen. While for Hegel, the actuality of the State must be idealized into its past, for Cohen the actual State does not contain the


\(^{71}\) ErW, 371-2
actuality of the moral concepts that propel it. The State must not be retrofitted as an ideal simply because it is. Rather, it *ought to be* a better State.

This is the purview gained by embodying morality within a conception of legality, yet another element shared by Hegel and Cohen. For Hegel’s part, he claims that Kant’s greatest error is also to have separated morality and legality since this effectively empties morality of any content whatsoever, rendering the moral law a vapid fiction. Morality remains an abstract form of infinite universality without a finite determination through which to achieve content. Thus, Hegel claims that morality and legality are united once again in the state, since the state represents the “union of freedom and necessity” in its constitutional arrangement. But the constitution provides the laws that enable individual conscious beings to recognize their freedom, their virtue and patriotism, in the State and so, find objective institutions of morality.

For Cohen, this attempt at “actualizing” freedom in the kind of consciousness of laws and institutions, in the form of a constitution, is cyclical and presupposes the State as a consciousness that produces the laws in order to educate individual citizens. This is done from the top down and thus, deductively, yet by commencing with the State as it is, proceeds to inductively represent itself as universal. Such presupposition of the State as the actuality of freedom obscures what Cohen believes to be the fundamental lesson of Kant’s Typic-problem, namely, that actualization of ideality is a task and thus, a temporalized process pointing into the future, not the past:

This is the fatal error of false substantialization that Hegel commits, in that he attributes to the State the actuality of moral reason, the substance of morality. But if the adequate actuality of the moral idea may not be fitted into law and state, where in the world it is to look then? Perhaps in religion?

And further on, Cohen adds:

But we already saw that Hegel recognizes the substance of morality [*Sittlichkeit*] in the State. Indeed, he distinguishes this concept of the State, upon which the substance of morality is dependent. And this actuality does not mean the eternity of actualization [*Verwirklichung*]. Thus one can acknowledge

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72 Ibid., para. 135.
73 Ibid. para. 265
74 ErW, 372
in this the conclusion of idolatry of the state, which is an ambiguity in Pantheism, and by means of it remains unvanquished.\textsuperscript{75}

The difference between the Hegelian and Cohenian State rests with time; with the temporalization of the ethical Ought in relation to the existence of the actual State. For Hegel, the actuality of the State reflects the rationality of its concept which grounds its historical coming-to-be, and so idealizes the positive State into the past, while for Cohen, the positive institution of the State is idealized into the future rendering it transcendentally critiqued as a fact. Hence, the idealization of law remains a common feature shared by Hegel and Cohen, but it is precisely the difference in direction of that idealization which makes their respective idealisms at odds, as Cohen sees it. Thus, Hegel reaches into the past, while Cohen reaches toward the future. For Cohen, this is likewise the temporality of Monotheism versus that of Pantheism, since the idolatry of the state is projecting its static past as eternal, while the futurity of the state remains the goal of unification and justice.

Temporality within law therefore represents the proper character of legality as ideality. For Cohen, this is the basis of his theory of law in relation to the positive institution of the State within history. Hence, Cohen’s attempt to negotiate the Typic-problem once again surfaces, now facing historical reality as a sphere within which legality must be modally distinguished. The meaning of futurity therefore grounds the status of history for critical idealism.

5.1 Historicism and Naturalism

As Frederick Beiser has noted, the German Historicists revolutionized Western thought. By refuting the eternal or essential form of any ideas and placing them in the context of particular place and time, the historicist method enabled legal theorists to abandon the natural law tradition and begin to particularize legal norms and legal systems. As Beiser notes, the historicist thesis presupposes a nominalist orientation whereby, “it explains the historicist’s emphasis upon the

\textsuperscript{75} ErW, 434
omnipresence of change, for his elimination of eternal essences and permanent forms in the flux of history."\(^76\) Thus, for the post-Hegelian rise of historical consciousness in the humanities, positive law assumed an exalted status as the creation of a popular spirit or Volkgeist.\(^77\) Largely under the influence of Friedrich Karl von Savigny, this historicization of law decisively altered the framework through which ethics, law, and politics had been classified.\(^78\) No longer was natural law theory to exert the kind of metaphysical and “ultramontane”\(^79\) influence that had justified the tyranny Fichte claimed it had thrust over the German spirit, impeding its unification into a nation-state,\(^80\) rather, Savigny and members of his school such as Friedrich Julius Stahl\(^81\) maintained that the very spirit of this people, the Volkgeist contained the seeds of its development toward freedom and true self-consciousness. Hence, the era of legislation and statutory interpretation represented the climax of this kind of historical consciousness reaching its fulfillment.

But despite the distaste for natural law and despite historicism’s attempt to achieve a positive account of human institutions in history, Cohen claims that historicism nevertheless takes


\(^77\) Ibid., pp. 98-166; 214-252; See also George Kelly, *Idealism, Politics and History: Sources of Hegelian Thought* (Cambridge: University Press, 1969).

\(^78\) Friedrich Karl von Savigny stands as one of the most influential thinkers of the 19th century, whose conception of the people’s spirit as a source of law (volkgeist) transfigured the Protestant Christian State into a national entity. His work on the Roman Law and its historical transformations throughout the introduction into Germanic law became the basis for his theory of historical consciousness of a people as embodied in the positive law itself. See Frederick Karl Von Savigny, *Vom Beruf unserer Zeit für Gesetzgebung und Rechtswissenschaft*, (Heidelberg: J.C.B. Mohr, 1828). Cf. Beiser, *The German Historicist Tradition*, p. 237f.

\(^79\) For a detailed discussion of the seeds of Bismarck’s later legal attack upon the Catholic Church, see Michael Gross, *The War Against Catholicism*.


\(^81\) Two of the most prominent exponents of the idea of a Christian Rechtstaat—the Christian state as the embodiment of the true Rule of Law—Savigny and Stahl believed that the only solution to the theological-political problem was to see in the post-1848 imposition of a constitution by Friedrich Wilhelm IV as the expression of the true personality of the monarch, which was grounded in the absolute telos of the State: the ethical kingdom. For a historical commentary on Hegel’s philosophical context, see Rolf K. Hocevar, *Hegel Und Der Preussische Staat: Ein Kommentar Zur Rechtsphilosophie Von 1821* (München: Goldmann, 1973). Stahl therefore sought to overcome what he saw as the objectification of Spirit in Hegel as a perversion of the true nature of law: its ethical expression. Thus, he writes: “The civil municipality is not separated from the ecclesiastical. The same local nature is binding for the secular as for the spiritual task. In fact, in that the spiritual task is the foundation upon which collective life rests, historically it was often the ecclesiastical association (parish) which was first, to which the civil municipality was joined.” (S. 6, p. 19-20) and “Accordingly, the purpose of the state is not merely the fulfillment of ethical ordinances, but also a service and obedience to the person of God, and the establishment of a kingdom for the honor of God, and so should the ruling authority and people consider it” (s. 49, p. 114-5); Stahl *Philosophie des Rechts, Philosophy of Law: The Doctrine of Law and State on the Basis of the Christian World-View*, IV, *Doctrine of State* trans. R. Alvarado (Aalten, Netherlands: Wordbridge Publishing, 2009); See also John E. Toews, “The Immanent Genesis and Transcendent Goal of Law: Savigny, Stahl and the German Christian State” in *The American Journal of Comparative Law*, vol. 37, no. 1 (1989) pp. 139-169.
the same route travelled by naturalism, since “history” simply replaces “nature” as a causal ground. In other words, the problematic meanings of legality and spirit, culture and history, have all been conflated:

Thus is the basis for the internal connection of the concepts of naturalism to those of historicism, which is the naturalism of history. The psychological concept of experience is its tyrant. History is thought as though it were nature. Therefore, the past prevails. It assumes for itself the image of eternity. So Rousseau is an inherent preparation for Kant. He changes the concept of nature, he destroys the harmony of nature and history, nature and culture.\(^8^2\)

We see Cohen leveling a similar criticism against historicism as he does against Hegelian idealism:\(^8^3\) namely, the interpretation of time is precisely the weakness of historicism. That is to say, historicism fails to acknowledge the forward direction in which ideas push ethical, historical, and political experience into the future. By positing the historical conditions of law to be the final meaning of the law, the static definition of the past reigns supreme and so too does the "psychological meaning of experience.” For Cohen, this suggests that no distinction has been rendered between the historical experience described in terms of sensibility, of physical actuality and the like, and the ethical interpretation of a fact of history, which is to say, its idealization into the future. And it is precisely the latter idealization that is fundamentally the role of law. Hence, Cohen further criticizes this methodological flaw in historicist legal thought when he writes:

The historical school of law derives law from the spirit of the people [Volkgeist]...[According to Savigny] [l]aw and State are constructions of Spirit, but the Volk is a product of nature. How could one bring the natural concept of the people into connection with the religious ideas of the "whole of humanity", which Savigny does not discard, yet still maintain the clear consistency that connects the individual to this whole of humanity, namely "before he can have an awareness of it." Thus humanity is already laid out for the Volk in the cradle. However, humanity could surely not be content with this unconscious reserve.\(^8^4\)

\(^{82}\) ErW, 312/Werke, 329

\(^{83}\) ErW, 239; “Volkgeist is only apparently something different in Hegel's Absolute Spirit. Even this Absolute Spirit has its reality [realität] in the actuality [Wirklichkeit] of the individual national spirits. And just as the law is the spawn of an individual Volkgeist, so does the philosophy of law have for its content, the representation of these spawn of the individual Volkgeist. In Hegel's bias, he sees in the world of Spirit only the world of the concept, and the dialectical movement of the concept is also for him the world history, the history of the moral Spirit [sittlichen Geistes].”

\(^{84}\) ErW, 237-239/ Werke 252-253
The tension within the concept of *Volkgeist* is that it simultaneously posits a moral-ideal concept and a natural-anthropological one as the source of law. If both the natural fact of a people and the ideality of Spirit are to create law, what distinguishes this legality from natural laws, to which Savigny voiced such unreserved scorn? According to Cohen’s revisions of Kant, it should be clear that the second tension within this concept is related directly to the first, namely, that the relationship between a particular people or *Volk* and the whole of humanity are formally parallel to the problem of nature and morality: the empirical fact of a people cannot be the basis for the universality of legislation which the moral law represents, that is, the formal expression of Kant’s categorical imperative, the vehicle for the idea of “humanity”. Thus, for Cohen, we return yet again to the fundamental problem in the definition of legality: law must be idealized and reserve for itself a methodologically distinct sphere from nature. Cohen continues:

...the *Volk* becomes "national spirit" [*Volkgeist*]. Therefore the natural growth of the *Volk* should not be recognized as the exclusive author and creator of Law and State. The *Volk* had to be sublimated in the *Volkgeist*. However, the problem has thus become only more difficult and flagrant. Is the *Volk* in and of itself *Geist*, and does it have *Geist*? How is this different from the national spirit of the mythical notions of genius and the Penates? The ethical concept of spirit, and another may not give it - theoretical *Geist* does not exhaust itself in it - the ethical concept of *Geist* points to the task of self-consciousness as state; the natural concept of *Volk* in the hypostasis of *Volkgeist*, however, cannot be regarded as the creator, not as the bearer of this task. The historical school of law rooted in naturalism, which endows to the usual type of spiritualism and as such represents this task.\(^\text{85}\)

The assumption of a national Spirit raises the specter of Pantheism once again since it renders nationality, this anthropological fact, into a determining principle of moral Spirit. By contrast, the State must remain a legal construction, an ideal that has not been actualized, but remains a goal for future laws to *actualize*. The constitution of the state therefore represents the ideal being of the law, its own proper *Sollen*, and the task of achieving self-consciousness therefore becomes the goal for an individual to recognize herself as a subject through legal actions that the state mandates in positive law. But the individuality of the I of self-consciousness comes only through the ideal end of humanity found in the form of law itself, that is, in the universality of form that ideal legality represents. Hence, the particularity of a Volk cannot be the basis of a State, rather the constitution

\(^{85}\text{Ibid.}\)
is the basis of the State, the law is the basis of the State. Hence, the State is the schematization of the idea of humanity in the constitution.

6 The Kingdom of Ends, Positivism, and Religion

As a problem of teleology, the task of self-consciousness—the mediation of individuality and state—requires Cohen to address the question of an end (Zweck) of action. The end is a goal. It is a projection of the task at hand. Thus, Cohen brings the problem of the State into conversation with Kant’s idea of a kingdom of ends, as well as asking the fundamental question for idealism, “Is this kingdom of man of this world?” The kingdom of ends becomes a problem only if Cohen’s idealist account of actualization (Wirklichkeit) is obscured by Hegel’s actualization-thesis. Recalling Cohen’s categories, the judgment of actuality requires the infinite future in which a unification and final synthesis of the ideal and real will condition the possibility of a unity of Nature and Ethics. Thus, Kant’s understanding of ends in the Typic, as an analogy to the schematism, applies the categories according to the generation of substance and nature. But for Cohen, the kingdom (Reich) best describes this realm of ends, for it is neither a schematism, nor a symbol, but an idea, a final end (Endzwecke). Hence, the kingdom of ends requires the fundamental law of truth to which Cohen’s logic and ethics is beholden—the ideal of God as the bringer of Truth symbolizes an ideal that resists all attempts to schematize a sensible form to this idea. God remains an idea that qua idea, resists formalization. This is the significance of the ethical ideal, that it surpasses the State; only the God-idea can demonstrate this surplus for the meaning of humanity and law beyond the actual state.

The kingdom of ends therefore demonstrates the idealism at work: while the actualization of nature required the intensive magnitude of space, the pure will of ethics requires the category of time, infinite time, and hence the future. For ethics, it is not “past and present that designates

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86 ErW, p. 369
87 ErW, p. 376
the appropriate correlation in which thinking and willing have their contents generated, but Future and Past.88 But here we see that the Typic-problem not only represents the point of contact between logic and ethics, the world of natural experience and the world of ethical experience, it also represents the point of contact between ethics and religion. Through the figure of the kingdom of ends as the posited goal of unification between these realms, the normative dimension of ethical ideals take on the futural determination of a religious concept.

Herein lies the main source of the collision between ethics and religion. And this collision cannot in principle be obviated through the kingdom of ends. This idea is precisely what is obscured by the Typic, namely, that the kingdom of ends certainly has no other meaning than to take the form of a signpost for the purposive end of the driving force of the world, in which ends in themselves are misused by being treated as an absolute means. And what guarantee thereby does the kingdom of ends provide that the kingdom of means will be presented in a different way: that self-consciousness of morality will attain supremacy?89

Morality is therefore that which lies noumenally beyond, surpassing the State. Thus, the kingdom of ends represents the reign of temporality over the spatial actuality of a positive State. So too, the sovereignty of the State is surpassed by an infinite sovereignty, a rule of morality that can only be represented through the form of the God-idea.

“God” acquires a positive meaning for ethics, which cannot be equated with positivism. Rather, God becomes the idea tying together ethics, the science of law, the science of nature, and what Cohen continued to revise throughout his life as a science of culture, whether it be a transcendental psychology or a philosophy of religion.90 But as a philosophy of religion develops in parallel to the historical science of religion, Cohen’s method becomes clear: the method of purity seeks to identify the common principle of reason shared by ethics, law, and religion in the particular sources of Judaism: the principle of legality which can have no other origin but the God-idea. The State is not the origin of law. Rather,

[i]the law is to be recognized as the groundlaying, which is laid in self-consciousness. The task of self-consciousness is indeed but a hypothesis of self-consciousness. And as the task, it signifies nothing

88 ErW, p. 377
89 ErW, 375
90 See Begriff der Religion im System der Philosophie (Giessen: Alfred Töpelmann, 1915), pp.2-5; 110. For Cohen’s interpretation of the meaning of Volkgeist as literary sources, see RdV/RoR introduction, para. 17.
other than the call to the self. Thus, the task of self-consciousness becomes the law of self-consciousness, because it is the groundlaying of self-consciousness. Thus no external task can be the issue, it is rather the innermost development of the basic idea of the hypothesis, which is carried out in the requirement of the law. And it is simultaneously the clearest and most natural diversion from all egoistic, transitory, changeableness of the isolated individual, which is pursued and carried out by the law. How I my self am not given in the "I", that originates to me already in the first impulse of the will, only by being performed in the action, I recognize self-consciousness as a law as I have recognized it in the state.

The concept of law ... must be the guiding star of my self-consciousness. Only thus can I be free from the suspicion that with all my will and act I would still remain imprisoned in kind of metabolic circle, that I would remain only a purely isolated individual. For the law here means precisely the separate, the only law [das einzelne Gesetz], and yet it is able to irrefutably substitute the concept of law. This goes beyond the authority of a natural law, which rules out pathological exceptions. Here, however, should the separate, the individual law, in all its wickedness nonetheless be a symbol of eternal and true law. So one can see from this that the concept of law, as the separate, the individual law, is necessary and irreplaceable for the pure will and self-consciousness.91

This is the new meaning of legality for ethics and morality. That the law is the ground of self-consciousness, of the State; that the I of selfhood cannot be presupposed. The law is the separated, particular law of which it is unclear what exactly Cohen means. This uniquely legal legality distinguishes itself from all positive laws and all natural laws. It is thus a law fundamental to cognition, to reason as such. It is the law of science, the law of reason. This seemingly sinister law, this unique law symbolizing the eternal and the true law intimates the Pauline polemic against the Mosaic law, which I outlined above as part of Cohen’s motivation for revising the Typic. Thus, we see that the meaning of legality must be idealized to incorporate both ethical law and religious law, which is to say, the meaning of a universal law predicated of the God-idea.

But Cohen’s methodological interest requires him to defend this last claim from the charge of metaphysics and heteronomy. This, he argues, is achieved by carrying out a philosophy of religion understood in its intimacy with transcendental psychology. Of the latter, Kant had attempted, and failed to outline, in his theory of autonomy. His tarrying with transcendental psychology veered too far into the metaphysical:

91 E-W, 252
The error, in which Kant’s idea of autonomy is mired, is that the Self is given, already present, being assumed and presupposed; that it only has to be demonstrated in moral actions as its manifestations. This is the methodological error. The Self is in no way, and especially in no ideal form, previously available before it is set out, and it in no way needs only to be demonstrated; rather, the Self must be generated. And the Self can be generated in legislation. In the latter and by means of the force of the latter originates action. Thus is the shape of the process we are developing.

Action is no longer a development from out of the Self; rather it is conditioned by legislation, which is the legislating of Selfhood, so that even the Self is conditioned by legislation. Therefore, self-legislation is not about legislation from out of the self but legislating into selfhood [nicht etwa die Gesetzgebung aus dem Selbst, sondern zum Selbst]. It comes from out of legislation and in the latter, the Self is first witnessed [bezeugt]; the Self is generated [erzeugt]. The concept of autonomy therefore does not have the meaning of the law coming from the Self. But also therein is its endpoint neither expressed, that the law leads to and then from the Self. So important is this difference, and so much does this alone already alter the prevailing view of autonomy, that the proper methodological sense of the concept must be taken up and directed to the idea of legislation.92

Legislation must be the grounding concept uniting ethics, law, and religion. But insofar as ethics and law are not predicated of a self-sufficient I of legislation and turn upon the futurity of action and implicit dialogical Other within the I, so too the very meaning of autonomy must be transformed for Cohen. Autonomy is no longer the principle of the self-conscious I, but the principle of the law itself. Hence, autonomy now signifies the origin of law:

Autonomy, by contrast, is itself concerned with the origin of the law. The law is what makes action action; not the person, not the I. Thereby, the interest in the problem itself is transformed. It no longer depends upon the impenetrable obscurity of a free beginning of action; rather it is directed to the grounding question of every proper science, that is, to the question of law. And when the possibility of ethics, as Kant in particular had framed it, is built upon the possibility of the moral law [Sittengesetzes] then will this be from here on out our question: what does freedom signify if it is assumed as the consequently achieved centre of the law. So emerges from the concept of universal legislation, the concept of self-legislation, or autonomy.93

By becoming the law, autonomy now means the objectification of the objects of ethical cognition prior to the subject being produced. Such a model means that Cohen can envision an ethical consciousness of the State, represented in its positive laws, as the kind of task that ethical cognition must strive for. Hence, Cohen stresses this ideal of universal legislation and freedom as the ultimate goals of ethical cognition, much as unification and synthesis are the goals of Cohen’s

92 ErW, 321
logic. Self-consciousness is what I want to achieve through my actions and through my moral action based on law. Law therefore becomes an ideal normative order that produces the subject on the basis of being objectified by the law itself.

But ethics as self-legislation, as the grounding and origin of the self, is simultaneously the foundation of Cohen’s philosophy of religion as an attempt at achieving a critical, pure psychology. Thus, Cohen’s reinterpretation of the Typic also implies a revision of autonomy as a fundamentally unfinished project of legislating selfhood. But this temporalization of selfhood, I argue, is the foundation of Cohen’s attempt to positively interpret religion as part of a philosophical system. Indeed, autonomy is an attempt at paralleling Prophetic Monotheism, which Cohen later outlines explicitly as the theory of “correlation”. But in his ethics, as a polemic against both positivism and pantheism, this prophetic dimension can only be viewed from the perspective of legality and autonomy, which now becomes the very model of dialogical consciousness.

7 Conclusion: *Wissenschaft des Judentums* as a Methodological Middle?

In conclusion, Cohen’s presentation of law and the state clearly reflects his attempt to redefine the meaning of legality for ethics. Critical idealism must account for the contributions of positive law, namely, in articulating the ideal construction of action on the basis of a norm and a legal judgment. However, Cohen’s critical idealism simultaneously distinguishes itself from positivism by maintaining what I referred to as “idealization” within the law. That is, the temporal dimension of ideality is the foundation of the law, not its historically experienced institutions. Thus, law as idealization means that Cohen refuses to incorporate what he sees as the naturalist tendency in historicism, which has crept its way into positivist legal interpretation, particularly in emphasis upon the State as a total legislative force and will. The substantialization of the sovereign will of a state cannot be the source of law, nor can the positive state; for Cohen, the idealization of law is that historical institutions of law and statute are temporalized into their future meaning of *being*
more just. Hence, the very definition of the moral law acquires this new connotation from Cohen’s reordering of the grammar of law: the moral law means that law ought to be moral. Law indicates what can be otherwise, and thus, having reoriented the meaning of legality for ethics, Cohen likewise asserts a counter-argument to Pantheism as well. That is, moral law indicates that law can always be otherwise; that its character is not that of necessity, but of possibility. This in turn suggests that the origin of law cannot be a self-identical will. Identity has no room in law because idealization means that something other can always arrive. Indeed, this is precisely why Cohen insists that the moral law, all legality as such, resists the presentation of a self-generation of content. The metaphysical problem of intellectual intuition, the problem of form and content being produced by the understanding, which I will discuss in the following chapters, has no room in the generation of legal subjects. The law is from God. This is the symbol of temporality within the idealizing law. The law is always otherwise than I or You. Thus, the I of humanity, the I of ethical self-consciousness, could never be sufficiently represented in its formal universality were Cohen to have ended with his Ethik. Yet another exposition of the I as a task must be undertaken. This is the I of God, which only a philosophy of religion could examine fully since it would attempt to account for transcendental psychology. This is the connection between ethics and religion: that the legality of reason generates the possibility of the “I” and thus, reason itself can now be viewed as the representation of the lawfulness of alterity.

Cohen nevertheless concludes the main argument of his Ethik by insisting that the God-idea is the basis for the model of objectivity of the positive law and state. What kind of ethical idea is God, then? How can Cohen maintain that his philosophy is neither theological nor metaphysical when he insists that God is the equivalent of the concept of Truth? The answer to this question lies precisely in the way Cohen interprets religion and science (Wissenschaft).

Cohen’s entire theory of purity, must be understood as the task of idealizing a normative dimension out of historically specific ideas and theories, distilling this historical trajectory of ideas themselves, and thus, of introducing these ideas into contemporary conversation. This is the meaning of Wissenschaft, as a critique of metaphysics and a pantheist theology because it opposes
the principle of identity, which the Idealists assigned to autonomy and freedom. Hence, Cohen writes,

Therefore, as long as the correlate of consciousness is leading the way, when dealing with the problem of God metaphysics must follow paths which are removed from transcendence, and are instead marked out from the very beginning by identity. Yet transcendence comes not from this cue provided by Plato, but rather from the God of the prophets. Metaphysics therefore enters into a new dualism as it comes to waver between all forms of supernatural theology and pantheism.\(^{94}\)

For Cohen, ethics must become the science that leads to a third option beyond the pantheism of intellectual intuition, the identity of consciousness on the one hand, and the positivist objectivism that bases all legitimacy purely upon the state as the representative of natural force and empirically determined causal lawfulness. This positivist trust in the force of a legal will and Sovereign power is simply materialism. Hence, between either pole of pantheism and positivism, Cohen sees ethics. That is, while both poles represent the spectrum of 19\(^{th}\) century debates about “secularity”, albeit calling it by a different name, such as “methodology” and the “human sciences”, Cohen turns to ethics as a kind of normative methodology located somewhere between the two. Hence he writes,

Ethics must, indeed, ground and consolidate its independence only in the method—but not by disregarding and ignoring the historical forms in which ethical thoughts have, to the greatest extent, established and manifested themselves. Just as ethics has to attend to these formations in law and state, so too must it cultivate sensitivity to, and sympathy for, those ethical thoughts that make history in myth and, in particular, in religion. It must not hand itself over to the form which those questions assume there. Yet without prejudice with respect to the object, it must turn to those forms in which the matter of ethical life—outside of ethics, albeit themselves in the struggle against ethics—has nevertheless managed an expression of value and importance.\(^{95}\)

Method is the key to deciphering the historical focus of Cohen’s thought: history demonstrates the individual moments of ethical actualization, in the laws of states, in the history of theory, and in religious tradition. Hence, the method of science is the method of seeing an ethical norm in religious life and of distilling or idealizing that norm for the sake of a contemporary question. This is the meaning of Judaism for Cohen, as a contributor to the ethics of law. Hence, as a critique of so-called “secular” or neutral methodologies in the social sciences, for Cohen, Judaism is one such

\(^{94}\) E\(\text{W}\), p. 408

\(^{95}\) ibid., p. 408-9
example of how the normative ideals of Judaism or any religion can and must be harnessed by a critical philosophy. This is the meaning of ethics as a science, and it is likewise the link that establishes the intimacy of ethics and religion.

Cohen uses the term “science” or *Wissenschaft* to describe ethics, like logic, as a “method”. Whereas Cohen insists on the natural sciences in his *Kants Theorie der Erfahrung*, Cohen likewise insists in his *Ethik des reinen Willens* that the *Geisteswissenschaften* have their own proper methodology. Further, as I will argue in the following chapters, Cohen returns to this very sense of “Wissenschaft” in his *Religion of Reason* when he places science and history in methodological comparison in the approach to religion.⁹⁶ Hence, when it comes to treating religion, as in science in general, Cohen writes, “[t]here is only one path to science, and for every science in the field of the *Geisteswissenschaften*; it consists of research into the sources [Quellenforschung].”⁹⁷ Research into the “sources” of Judaism, which becomes Cohen’s later task in the *Religion of Reason*, is the task of a “science” of Judaism. But not only to present sources as in the mode of an antiquarian; rather, Cohen maintains that,

The God of Judaism is not the God of Jahvistic or Elohistic sources—we confront all of these questions of Biblical criticism and we give them the widest latitude—our God is the historical God of the prophets; the God that is revealed in the historical development of prophecy. However, we give preference to the this God-idea in the vitality and the modernity of the present era, over all, in the place of Pantheism....The living, methodical connection between Idea and Actuality [*Idee und Wirklichkeit*] shapes the *Ungund* of God.⁹⁸

The science of source criticism need not preclude commitment to the philosophical God-idea, since this God is the ideal of reason itself. Hence, it is through the “science” and “method” of Judaism, of recovering the “sources” of Judaism, that Cohen articulates a critique of pantheistic metaphysics even at the level of the study of religion. Monotheism represents a methodological defense of a normative idealism against the grain of speculative idealism and the positivism of State-law theory, or even secular/liberal Protestant biblical criticism. By *Wissenschaft*, Cohen

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⁹⁷ Hermann Cohen, “Salomon Neuman” in JS II: p. 431
⁹⁸ Cohen, ibid., p. 433
invokes more than just natural science. Rather, in the manner of the 19th century, Cohen also intimates historicism and its subcultural brethren, the historical study of Judaism—the Wissenschaft des Judentums. Without bearing in mind this meaning of “science,” of the kind of scientific systematicity with which Cohen combined a normative interpretation of religion, of the lesson of a religious tradition understood in both a historical and a normative context, the science of law of ethics by which Cohen launches his critique of both Kantian naturalist-positivism and German Idealist metaphysics is lost. That is to say, Cohen introduces “Wissenschaft” as a title that helps describe his conception of Judaism. Judaism means the normativization of method, of bringing a conception of unity as the goal of science, to the forefront of his epistemology. Hence, when understood from this perspective, Cohen resembles a normative theorist offering religion into the public sphere. Hence, we can now understand what Cohen means when he writes in his Ethik, God is the meaning of Truth.

Rather than referring to Cohen’s interpretation of religion as positivism or metaphysical theology, I will refer to it as a normative interpretation. In particular, Cohen’s arguments concerning ethics, law, and autonomy can be understood as a “normative” interpretation of prophecy and prophetic “sources” in the Jewish tradition. For example, the prophetic dimension of autonomy can be found in how the God-idea itself enables the turn toward a dialogically constituted I of selfhood. The legislation of the self, which the law enables, is likewise the relationship between prophetic reason and God. Thus, autonomy can be revised to include God as the source of morality. This is the meaning of the God of ethics:

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101 ErW, p. 437
Thinking about God therefore had to be regulated by God’s thinking himself. But where does theology assume the power to recognize the thought of God? It never would have been left to the religious freethinking to recognize the self-deception [Selbstronisierung] of this presumption; it would have taken offense at the blasphemy that lies herein, if theology would not have here gone together with religion. But all this is traced back especially to myth. Revelation, emanation and all the expressions of the self-development of the Absolute remain internally familiar and blameless, for it lays claim to the self-unfolding, self-representation of the Absolute. The individual phenomenal form can thus only be offensive, but the problem of revelation, however, is a natural and a necessary one. That is the sense [Sinn] of God, that he appears, he reveals himself. Within this fact itself does not lie the force of heteronomy. This arises only through the specification of thought into the words.

The word of God is the instrument of God’s thinking. Thus the word of God is an analogue to the laws and principles of scientific reason. This gives rise to the incomparable contrast between ethics and theology, which as such, is thought of as the contrast between ethics and religion. Here also is the contrast between the formation of historical consciousness and theological religion. That the illumination of human minds can be given from God gives no offense to historical formation of consciousness [geschichtliche Bildung]; revelations are required by the same law as the conceptual emanations of the Absolute. But that the wording, that the lettering would be authored in such revelations, however, ruffles the historical formation of consciousness [gebildete Bewusstsein], and herein through the religious, not the theological, crooked and hardened is only reinforced. In any case, progress in research opposes such revelations of the cohesive fixity of the word. The new revelation must appear as an epilogue. And what word of God, which is considered as a unit, can be represented as uniformly arisen and maintained? Can God’s word no longer be verified in each unit when treated as a gradually arisen work of a national literature? But even apart from the literary, each religion undertakes so many discountings, interpretations, and idealizations in their words of God, that they are everywhere subjected to overt correction. Nevertheless, when the historical facts and the literary documents in which the facts are included, are referred to as God’s word by theology, this type of theonomy must be described as heteronomy.102

Legality can now be better interpreted as the analogy to the word of God, which is to say, in analogy to laws and principles of science. Between the positivist interpretation of revelation as a product of human consciousness, which Cohen has clearly already rejected in his critique of historicism, and the metaphysical-theological interpretation of God as embodied within revealed text or an intermediating messiah, Cohen again idealizes the word of God to mean the very legality of reason itself. Put differently, and as I will argue in the remaining chapters, Cohen offers a normative interpretation of prophecy, which attempts to idealize the prophetic language and its philosophical elaborations in medieval Jewish rationalism, as a means to reinterpreting the meaning of legality in ethics and religion. In sum, it is precisely this revision of legality as the

102 ErW, 315/333
fundamental basis of reason in analogy with revelation that opens the prophetic meaning of law and autonomy within Cohen’s thought. Between the pantheism of an individuated revelation which bases morality within humanity and a positivism of historical consciousness reducing revelation to anthropological projection out of humanity, Cohen sees the law and the idea of God as the temporalization of selfhood, reason, and the very fabric of scientific and ethical cognition.
Chapter 3

The Principle of Prophetic Idealism: Cohen’s Maimonidean Typic of Practical Reason

R. Abdimi from Haifa said: Since the day when the Temple was destroyed, prophecy has been taken from the prophets and given to the Sage. Is then a Sage not also a prophet? — What he meant was this: Although it has been taken from the prophets, it has not been taken from the wise. Amemar said: A wise man is preferable to a prophet, as it says, And a prophet has a heart of wisdom. Who is dependent upon whom? Is not the smaller dependent upon the greater? Abaye said: You should know this already [the proof that prophecy has not been taken from the wise is] that a great man makes a statement, and the same is then reported in the name of another great man. Said Rava: What is the problem with this? Perhaps both were born under one star. But rather [than Abaye’s claim] said Rava: you should know this already [the proof] from this: that a great man makes a statement and then the same is reported in the name of R. Akiba b. Joseph. Said R. Ashi: What is the problem with this? Perhaps in this [issue], he was born under the same star. Rather, said R. Ashi: you should know this [the proof] in that a great man makes a statement and then it is found that the same rule was a halakhah spoken to Moses at Mount Sinai. But perhaps [the man] was no better than a blind man [finding his way] through a window? — And is it not that he gives reasons [for his opinion]?

- Babylonian Talmud, Tractate Baba Bathra 12a-b

1 Introduction: The Problem of Nature and Ethics

For Cohen, ethics not only crowns the system of philosophy as its apex, but marks the distinction between the classical idealism of Plato, and even Kant, from the kind of metaphysical idealism with which Cohen diagnoses the post-Kantian milieu at its core. In the previous chapter, I outlined how in Cohen’s Ethik des reinen Willens, he made this argument by defending the claim that the “ethical self-consciousness” of the positive, political state is the ideal goal of unity to the normative ideas of reason. For Cohen, the kind of ethical self-consciousness in which he is
interested is a positive construction of law and ethics—the state—rather than an abstract logical principle alone, which for the Idealists, is the principle of the \( I=1 \). Thus, the object of ethical cognition is the will—the lawful will—and consciousness thereof is recognized in its actions, represented by the laws of the state. Ethical action is the object of cognition, and the law becomes the normative origin of self-consciousness.

In Cohen’s neo-Kantian terms, this ideal unity of the ethical object is produced without the help of intuition, or any given object. Rather, as an object that is generated out of the logic of judgment, the logic of origin, the ethical object of the state is the externalization of the pure will; it is the positive action produced by the will, which is an eternally productive source of ethical energy. Whereas the object of cognition in the natural sciences is part of the natural world understood as in infinitesimally continuous flux and change, the world of ethical reality is a noumenal or ideal realm of the pure will, which generates actions that indeed transpire in the world of nature, albeit through the modality of a centrifugal force,

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1. See above Chapter 2; Ethik des reinen Willens (ErW), p. 319; Hence, the law requires "...two subjects belong to the action, just as we have recognized to be the case with the legal action...Self-consciousness, for the will and for action, cannot mean consciousness-of-self, as though of the one and only [Einziges]. Moreover, this self must not so much encapsulate the other, but more so to become expression [auf ihn bezogen werden] of the other." ErW, p. 212.

2. That is to say, as I explained in chapter 4, the will is a kind of infinitesimal continuity to the activity of thinking. Thinking and willing are distinct for Cohen insofar as thinking is an activity of producing the logical object, while willing is the activity of producing the purely, positively constructed action of the object; rather, its actualization. Similar to Hegel’s triadic logic of actuality, this dialectic production of the object stems from Cohen’s rereading of Kant, however, it differs from Hegel fundamentally in that the role of the subject-moment in the dialectic must follow the actualization of the object itself. For an account of Cohen’s idea of the will as a kind of positive energy, see Hartwig Wiedebach, “The Physiology of the Pure Will: Concepts of Moral Energy in Hermann Cohen’s Ethics,” in The Journal of Jewish Thought and Philosophy (JJTP), vol. 13, (2006), pp. 85-104. For an account of Hegel’s positive negotiation of the dialectical production of the object, see Robert Stern, Hegel, Kant, and the Structure of the Object, (New York: Routledge, 1990); for a nuanced interpretation of the relationship between life and action in Hegel’s logic, see Karen Ng, “Hegel’s Logic of Actuality,” in Review of Metaphysics, vol. 63, no. 1 (2009), pp. 139-72.

3. This infinitesimal flux, as in calculus, is represented as the differential between something and nothing, which is to say, a judgment must do the work of integration of the posit on the assumption of a function. Hence, for Cohen, the law of continuity which grounds pure thinking in its judgments about particular moments of reality is what preserves them as well as producing the object in general of cognition. See LrE, 12; 72; 238; cf. Reinier Munk, “Altnität in Hermann Cohen’s Critical Idealism” in JJTP vol. 9, (2000), pp. 251-265; p. 253. For a concise explanation of Cohen’s logic of origin and its use of integration in calculus as a means of generating a discrete variable or object of cognition, see Robert Gibbs, Correlations in Rosenzweig and Levinas, (Princeton: Princeton University Press, 1998), p. 49f. For Gibbs, Cohen’s logic of origin was so influential for Rosenzweig partially due to this use of integral calculus, which, as Pierfrancesco Fiorato and Hartwig Wiedebach note, leads Rosenzweig to lessen his critical stance toward Cohen’s Logik despite the mathematics being a large part of his initial frustrations with the Logik. See Franz Rosenzweig, “Letter to Margrit Rosenstock, August 27, 1919” in Die “Gritli”-Briege an Margrit Rosenstock-Huessy, eds. I. Rühle and R. Mayer, (Tübingen: Bilam, 2002) p. 119. Cf. Pierfrancesco Fiorato and Hartwig Wiedebach, “Rosenzweig’s Readings of Hermann Cohen’s Logic of Pure Cognition,” in JJTP vol. 12, no. 2, (2003), pp. 139-146.
pushing an intensive motion outward.\footnote{Cohen, Ethik des reinen Willens (ErW), p. 18; 124; 133; In these instances, Cohen employs the terminology of calculus to describe this as the “tangent problem”, which dissolves the need for the pure intuition of space, enabling the “principle of continuity as the presupposition for the law of continuity” to become the basis of the theory of experience. For insight into Cohen’s conception of the mathematical infinite and its practical implications, see Marco Giovanelli, Reality and Negation – Kant’s Principle of the Anticipation of Perception: An investigation of its impact on the post-Kantian debate, (Dodrecht, Netherlands: Springer, 2011), particularly chapter 4.} The Kantian faculty of sensible intuition, which I discussed in the previous chapter, is replaced by a judgment of origin, a pure thinking of the object as a future task to be achieved.\footnote{Cohen, Logik der reinen Erkenntnis (LrE), 239-40.} In ethics, this temporal dimension to logical judgment (the infinite task of producing the object) replaces the role of intuition and draws upon the normative role of reason in shaping ethical action: hence, willing an object on the basis of the future correlation of ideality and actuality, and the eternity or continuity of the ethical will. By opposing the idea of any “given object” and the insistence upon its pure production, Cohen emphasizes the practical focus of his critical idealism.\footnote{See Cohen, Ethik der reinen Willens (ErW), p. 142; see also, Helmut Holzhey, Cohen und Natorp vol. 1. p. 145; cf. Fiorato, Geschichtliche Ewigkeit: Ursprung und Zeitlichkeit in der Philosophie Hermann Cohens, (Würzburg: Königshausen & Neumann, 1993), p. 72.} That is to say, whereas in the Logik, Cohen speaks of intuition’s attempt to suspend itself in an “eternal present” of logical judgment,\footnote{LrE, p. 61ff.} for Cohen, the only “present-time” of the judgment—its attempt to preserve the disparate moments within it—must be for the sake of what is to be, for the future.\footnote{LrE, p. 62.} The past and the present are only predicable of a future that brings the task of reaching a logical coherence.\footnote{Fiorato, Geschichtliche Ewigkeit, p. 80ff.} So too in ethics, this figure of the future and the eternal present, expresses the logic of judgment, albeit through the normative configuration of actions that must transpire in experience. That is, from the action of thinking arises the action of willing a norm into experience. Out of the relationship between logic and ethics and the future temporality implicit to the distinction between the “is” and the “ought” being asymptotically coordinated, there therefore arises a “messianic dimension” to Cohen’s critical idealism: the logic of origin becomes fused with Cohen’s interpretation of nature as the historical development of the theory
of “creation,” since the idea of creation requires the positive idea of a unity between these worlds, an idea that transforms the natural world of experience into the ethical world of experience. This, Cohen claims, is the purpose of the monotheistic idea of God, namely, an idea of Truth or the future unity of is and ought. The monotheistic conception of creation is, for Cohen, inherently ethical.

As we saw in the previous chapter, for all of Cohen’s anti-metaphysical interpretation of the will and the legal basis of ethical subjectivity, the perspective that emerged was a theory of law wedged firmly between positivism on the one hand, and pantheism on the other. That is to say, whereas one part of Cohen’s critical idealism sees the formal characteristics of the law, its recognition as having substantive content, and the content itself to all bear strict correspondence to its legal origin, he rejects the interpretation of ethics that predicates practical and theoretical judgments of a metaphysical interpretation of reason and its thoroughgoing principle of the “I=I” or identity. Rather, Cohen interprets law and ethics as a strictly normative deduction of the practical a priori, or the lawfulness of ethical action. Hence, through the attempt to maintain reason as the source of law, rather than a metaphysical principle in the ether of “Spirit”, Cohen argues for a positive, yet ethical grounding of law. But the connection to logic must be visible, since for Cohen, the necessity of temporality in judgment is that it indicates the difference between what is and what ought to be. The monotheistic theory of creation therefore takes on an ethical significance because it introduces a supplement to the pantheistic or metaphysical idealist interpretation of action and ethics: “instead of immanence: correlation,” which is to say, nature is not an absolute. Only the hypothesis of a future where ideals and actions are aligned can be

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10 Cohen, Begriff der Religion im System der Philosophie (BR), p. 47; Religion der Vernunft (RV), p. 78-81; 174; 193; 359f.; For the most insightful discussion of how Cohen’s Logik begins to develop the messianic temporality of Cohen’s later philosophy see Pierfrancesco Fiorato’s Geschichtliche Ewigkeit, p. 85 ff.
11 ErW, pp. 83-4; 421; 427.
12 ErW, p. 424.
13 LrW, p. 236.
assigned to ethical and natural cognition. This is what ethical monotheism, and its messianic epistemology, signifies.14

In this chapter, I begin by outlining Cohen’s conception of the methodological relationship between logic and ethics as a development of Cohen’s idea of the ethical idea of God, which concluded the preceding chapter. I argue that Cohen reinterprets the relationship between nature and ethical action as a way of achieving a different kind of ethical lawfulness. Hence, Cohen’s goal is to revise the Typic-problem, which concerns how ethical actions take effect in the world of nature. Many of the problems Cohen detects in Kant’s thought are avoided by introducing the ethical idea of creation into logic. By insisting upon the purpose of action as opposed to causal beginning, Cohen shifts focus onto the temporality of ethical judgment. But this philosophically “purified” religious language of temporality brings Cohen into more explicit confrontation with a looming influence upon his thought, namely, Maimonides. Therefore I next turn to Maimonides’ theory of creation, prophecy, and the attributes of action reconstructing an interpretation of Maimonides’ Guide of the Perplexed that helps shed light on Cohen’s own thought. In this chapter, I will highlight how Cohen interprets the meaning of creation and prophecy as correlates to logic and ethics, while in the next chapter I will examine how Cohen develops Maimonides’ theory of attributes into his theory of correlation. I then conclude by returning to the problem of temporality and causality in Kant’s Typic and argue that Cohen introduces the logic of prophecy and messianism into his conception of the “kingdom of ends,” which signifies the ethical goals of action.

1.2 Logic and Ethics; Pantheism vs. Monotheism

Cohen places logic and ethics in a particularly important relationship within the system, which reveals a conceptual layer that permeates his entire philosophy; namely, the idea of creation, which

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is influential for his logic of origin, grounds an ethical conception of nature and experience. Consequently, for Cohen, the connection between ethics and logic is the key to defeating pantheism, for the monotheistic idea of God insists upon the separation of these realms. The logic of pure cognition, of pure thinking, must be systematically and methodologically correlated to the ethics of pure willing insofar as both share experience as the epicenter of their cognitive value. However, the natural world and the object of pure cognition, is not the same world of ethics and its object. Rather, the kind of “purity” of which Cohen constantly speaks is the idealization of these two worlds and two models of temporality: for logic, it is nature while for ethics it is law and history. Hence, Cohen writes that:

nature and history inevitably form the presuppositions of [the method of] purity. It is not only the fundamental law of truth that places the ideal and nature in correlation; rather, it is the very first natural presupposition, from which the method of purity starts. The natural will is not the pure will. The natural man is not the pure man. The empirical I is not the pure I. But if there were no natural man with natural will and natural self-consciousness, then the method of purity could not begin; it would have absolutely no meaning.\(^\text{15}\)

As we saw in chapter 1, Kant’s ethics sought the natural world, the \textit{natura archetypa}, as the realm in which the will of ethics finds its union with the pure transcendental object.\(^\text{16}\) For Kant, this connection could explain how a noumenal cause has an effect in the phenomenal world. But by making this theory of natural causality the model of lawfulness, Kant presupposed the world of natural science as the basis of his ethics. So too we saw that this was a major move on the part of Fichte, using the moral law to explain the problem of the thing-in-itself and the self-in-itself, as well as Hegel’s premise for overcoming Kantian dialectic and its categories with a more vitalist framework for constituting normativity. Nevertheless, here Cohen diffuses all such attempts at unifying the natural and ethical worlds, because he insists that this division is as a methodological one.\(^\text{17}\) There is no ontological separation, because pure thinking and pure willing are not

\(^{\text{15}}\) ErW, p. 413.

\(^{\text{16}}\) See above, Chapter 1; Kant, \textit{Critique of Practical Reason}, Ak. 5:43

\(^{\text{17}}\) For Cohen, the term “method” means that a philosophical construction of the objects in question is precisely what it means to think or to will. Method is thus a kind of normative determination of the objects of cognition itself. Hence, Cohen insists that the “transcendental method” outlines a “fact” of science with which to begin the cognitive production of an object from a priori conditions, and the meaning of this a priori status lies in its conditioning the possibility of the fact itself; hence “pure cognition” is
schematized through the intuitions of space and time. Rather, “infinitesimal reality [which is an infinite origin in thinking itself] is therefore the presupposition for the concept of law, which the term function now designates.”

Cohen understands ethics to provide its own pure concepts of temporality and does not rely upon any intuition of space. Rather, nature becomes an ideally typified fact to be purified by the method of ethics.

Whereas Kant sought to unify the relationship between morality and political history by turning to causal nature, Cohen acknowledges that the theoretical use of reason sees nature as its unified object. However, in ethics this object is what nature ought to be, hence, the pure will is technically the object of ethics. As Pierfrancesco Fiorato has pointed out, Cohen’s shift to an idealist grounding of being in ideas, is the explenandum of his theory of temporality because it is through the continuity of the will and the ideality of the norm pointing to the “being of what ought to be [das Sein des Sollens]” that indicates there is a necessary temporal suspension of the actualization of the will; rather, it is a transcendental condition, which is inherently temporal. But the kind of temporality at work in Cohen’s thought is informed by Cohen’s interpretation of “the theory of creation in religion” which, as Cohen later remarks in his Religion of Reason, becomes a theory of renewal and preservation. That is to say, for Cohen, the model of time at work in his logic and ethics is the model of creation and messianic future. Preservation and futurity, which


18 LrE, 240. Ernst Cassirer would take Cohen’s definition of function and reinvent the wheel of neo-Kantian theory of science in his Substanzbegriff und Funktionsbegriff: Untersuchungen über die Grundfragen der Erkenntniskritik, (Hamburg: Felix Meiner Verlag, 1910/2000); For the influence of this kind positivism upon state-law theory in the imperial period, as I discussed in Chapter 4, see Georg Jellinek, Allgemeine Staatslehre (Das Recht des modernen Staates), vol. 1, (Berlin: Verlag von O. Haring, 1900), p. 153ff. For the a general overview of the use of the terms substance and function in the idealistic philosophical milieu, see Rudolf Eisler, Wörterbuch der philosophischen Begriffe, vol. 3, (Berlin: Ernst Sigfried Mittle und Sohn, 1910), p. 145f.

19 Cohen, Kant’s Begrundung der Ethik (KBE), p. 162.

20 Ew, pp. 13; 249

constitutes the logic of judgment,\(^{22}\) is deployed in ethics to account for the legal continuity of the world of natural science and the world of ethics:

Ethics leaves aside nature and the natural properties of man, for it can achieve its purity only in such abstraction \(\text{[Abstraktion]}\). However, when it has carried this out, then the question—which goes back to the beginning—whisks its whole structure \(\text{[away]}\) into a spectre \(\text{[Luftgebilde]}\).

This becomes the characteristic fate of ethics—that it must detach itself from nature, and yet seems as if it were chained to it; Prometheus represents its fate. The prophet has said it well: heaven and earth may pass away; he thinks them well-grounded on his rock, which for him is formed by God. But ethics cannot pass by this question. With this question, ethics does not veer over into a foreign interest; securing nature and its duration in order to win support and security for its eternity is the matter of concern that belongs most properly to it. It must, in all thoroughness, pose the question that the ordinary \(\text{[type of]}\) idealism generally poses. What meaning does this question have for ethics? What would follow for it and its fundamental concepts if nature were to possess no actuality, or if nature were to pass away? One sees that, from this point on, the problem of eternity assumes an entirely different character. Usually, it is regarded as something that conflicts with the religious conception of creation, and therefore as a position of naturalism. Here, though, this problem serves to extend this question into the infinite past. What was ethics before there was a nature?\(^{23}\)

For Cohen, ethics is intimately connected with nature despite being detached from it as well. But only through this kind of Promethean fate, of being chained to the rock of nature despite suffering the eternally recurring depletion of nature’s sufficiency to the idea represented in ethics. That is, ethics represents a dimension of time that is distinct from the temporality of nature. It must be asked, therefore, “what was ethics before there was nature?” for it is precisely this kind of question that points to the ideal grounding of the norms of ethics: they subsist beyond the ontology of nature, and yet, they presuppose that nature will in fact exist. Therefore, though ethics must remain ideally grounded, ethics gains the figure of eternity through the image of nature’s temporality. That is to say, eternity is an ethical representation of time. There is a transfer of natural time into ethical time, since in the realm of nature, the eternity of the world is precisely the kind of pantheistic model of causal time that Cohen rejects. For this reason, as I will discuss in what follows, Cohen cannot accept Kant’s version of the Typic, where causal time and causal lawfulness

\(^{22}\) L\(\text{E}\), p. 72ff.

\(^{23}\) E\(\text{W}\), p. 415
are superimposed onto ethics. Rather, Cohen insists that eternity is a model of time reserved only for ethics, while creation must presuppose the finitude of causal time.

Having summarized Cohen’s argument to this point, it might be helpful to step back for a moment and ask: is Cohen’s “anti-metaphysical” theory, despite itself, intoning a kind of religious metaphysics? How can Cohen speak of “eternity” or “creation” without presupposing a metaphysical frame? The answer, I believe, lies in Cohen’s philosophical deployment of critical philosophy to reinterpret a medieval theological problem: namely, the problem of the eternity vs. the creation of the world. It is a problem famously dealt with by Maimonides, and interestingly, Maimonides sees this problem as intimately connected with that of prophecy. The latter is a theory of knowledge, which Cohen interprets implicitly through his theory of time. And as Cohen will later acknowledge explicitly, the kind of temporality with which ethics is concerned is the model of time of the prophets.24

Cohen’s interpretation of eternity and the future stems directly, I argue, from his reading of Maimonides and it is through this image of eternity, which also intimates the meaning of “futurity” as the point of contact between the temporality of nature and that of ethics, where Cohen introduces the prophetic insight of Maimonidean rationalism. For in Kantian terms, the noumenal reality of the moral law and its homo noumenon as the ideal person of ethical individuality,25 makes it possible to sketch a consistent interpretation of law and time: Cohen turns all judgments in ethics and public law toward the future, for it is only there in which we can hope to see a just outcome, and it is only the future that holds out the possibility of making the “ought” into what “is.” This image of future unification is likewise learned from the annals of a philosophy of religion: it is another intimation of the prophetic messianism that Cohen insists upon, namely, the idea of God.26

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24 ErW, pp. 381; 384ff.
25 KBE, pp. 241-245
26 ErW, p. 384
Whereas Kant grounded the unification of morality and political history (legality) upon the autonomous model of the “God-man,” for Cohen, the futurity of ethics and its normativity relies upon an idea of God that is not consummated in nature. This is the monotheistic God, the prophetic messianism of monotheism. This is the God of ethics, not metaphysics:

If it now turns out that the concept of God brings about the necessary connection between eternity and nature, [and] therefore between ethics and logic, then with this the methodological character of the God-concept has proved itself. This concept belongs in the character of modality; this concept constitutes an expansion of modality insofar as it no longer merely brings about the required combination of concepts in the gradual advance of research, but rather makes possible the required combination of two parts of the philosophical system. This combination of logic and ethics corresponds to the fundamental law of truth. And so the concept of God becomes—in this precisely defined sense—the concept of truth.

Logic and ethics, nature and morality, legality and morality, are all unified in the ideal God-idea. As a concept that belongs to modality, this idea of God gives ethical possibility its basis for connecting the archetypal and ectypal natures of the Typic. Thus, the possibility of ethical action is conditioned by the hypothesis that truth will be predicated in a future time, in an eternal horizon of futurity that draws actions forward and never leaves them hypostatized in an “absolute history.” Ethics and law demonstrate the unfolding of time into the future.

### 1.3 From Kantian to Maimonidean Idealism

In the ethical idea, according to Cohen, metaphysics endures a serious blow to its exclusive insistence upon logic. When Cohen first realized this tension between nature and ethics can be speculated upon, but there is little factual confirmation. It is clear already from a letter from 1880 that Cohen had discovered Kant’s idea of God in the first and second Critique—the postulate—could only be fortified against metaphysical idealism by the monotheistic concept of God, for

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27 This was the concluding argument of Chapter 2. See above, pp. 54-7.

28 ErW, p. 417

there Cohen had found an example of a God of ethics. But the meaning of this God of ethics, as opposed to metaphysics, stems from yet another trajectory often overlooked in Cohen’s thought.

For Cohen, the best example of this kind of transformation of the idea of God from being a metaphysical to an ethical idea—which is to say, playing the role of a temporal rather than logically principled idea—can be seen in the example of Maimonides, for whom “his metaphysics has as its interwoven epicenter his ethics.” Thus, while Cohen acknowledges that Maimonides was engaged in the language and systematic philosophizing of medieval Judaeo-Arabic philosophers, whereby metaphysics constitutes the highest occupation of thinking, it is also through Maimonides’ philosophizing about the law that he becomes the greatest example of a critical idealist, for whom the ethical idea of God transforms the grounding of his metaphysical apparatus. In what follows, I would like to engage Cohen’s Maimonides, paying attention to the strands of Maimonidean thought that lend themselves to this neo-Kantian reading. I make no claims to present a “historically accurate” account of Maimonides, and just as Cohen maintained, such a portrait of a philosopher remains, at best, “antiquarianism.” Rather, I will reconstruct the Maimonides whom Cohen considered a paradigm of what he calls “classical idealism.”

While in the previous chapter I argued that Cohen redefined the problem of legality through the spectrum of his contemporaries’ positivism and developed a thesis of the purity of law, there is yet another motivation for his philosophical innovations. Through the insistence upon the temporal future, the lawfulness of rational judgments, and the ideality of moral normativity, Cohen draws upon a set of philosophical resources with which his German and Kantian audience would no doubt have little to no acquaintance. For Cohen, the history of philosophy is not limited to the contemporary historical problems of any one thinker; these are the presumptions of naïve historicism. Rather, for Cohen, the problems in the history of philosophy are placed upon a hermeneutic continuum that spans the time period from Plato to Herbart, and therefore leaves no

30 RoR, p. 231
31 Granted, the term “idealism” is not one that Maimonides himself ever employs.
32 Consider Rosenzweig’s account of how Cohen perceived the great scholar of the Wissenschaft des Judentums, Leopold Zunz, who considered philosophy a lesser pursuit than the scientific perspective of history: “He could have been a great historian, and yet was only an antiquarian.” Rosenzweig, “Einleitung,” in Kleinere Schriften, p. 308, n.
problems or ideas untouched when they may have bearing upon the problems of contemporary philosophy. Part of Cohen’s project for a critical idealism involves sketching the history of philosophy for the sake of idealizing philosophical problems in history and placing them in a kind of perpetual conversation. Through this lens, the arguments I would now like to make here and in the next chapter should be less surprising; namely, that much of Cohen’s argument with Kant regarding the separation of legality and morality, which I discussed in chapter 1, stems from a constellation of philosophical concepts that Cohen inherits from Maimonidean rationalism. While Cohen’s reading of Maimonides is indeed controversial because of its transformation of Maimonidean metaphysics into problems in ethical philosophy, it is nevertheless somewhat consistent with the dominant 19th-century trend in German Jewish thought and its obsession with Maimonides,33 as well as intimating the kind of idealist program that Cohen explicitly described as his method time and time again.34 In this relation to Maimonides, Cohen therefore navigates the problems of his time—positivism, pantheism, intellectual intuition and materialism in ethics—with a return to a Maimonidean conception of time and ideality. This conception of time and ideality, helps Cohen resolve the problems of intellectual intuition—concerning the content of the categories and their formal normativity being rooted in a temporal principle akin to apperception, but as we’ll see in the following chapter, based upon the future predication of synthesis—as well as the problem of legality and morality in ethics, on the basis of Maimonidean “prophecy.” That is, prophecy becomes a philosophical principle that helps explain Cohen’s insistence, as we have seen above, upon the future fulfillment of ethics, law, politics, statehood, justice, as well as truth and knowledge in the realm of logic. Cohen’s insistence upon the future is due to the model of history and time that he sees in the prophets, not as much in the Hebrew Bible, despite his many

34 cf. Charakteristik Ethik Maimunis (CEM) in Herman Cohen, Jüdische Schriften (JS) vol. III (Berlin: C.A. Schwestschke & Sohn, 1924), pp. 221-289; See Cohen’s remarks on history in the introduction to the 3rd edition of Kants Theories der Erfahrung as well as in the introduction to Das Prinzip der Infinitesimals-Methode und seine Geschichte (PIM). For the kind of historical hermeneutics that Cohen often employs.
references thereto, but more so to the medieval Judaeo-Arabic predilection for a philosophical prophetology.\textsuperscript{35}

At this point, insofar as this is a philosophical argument, it remains to be proven why such a claim is important. But before I make the explicit argument in favour of reading Cohen through the lens of Maimonides in this manner, I want to turn to Maimonides explicitly and offer a reading of the \textit{Guide of the Perplexed} using the kind of hermeneutic that Cohen himself applied; that is, I want to read Maimonides without intonating the metaphysical apparatus which cannot be denied to any accurate historical presentation of Maimonides. Historical accuracy, however, is not my aim. Rather, I want to philosophically reconstruct the Maimonides that is continually again referenced in Cohen’s \textit{Religion of Reason} (1919) and his \textit{Charakteristik der Ethik Maimunis} (1908) in order to show just what it means to read themes of medieval Jewish philosophy into the German Idealist milieu.

In what follows, I will reconstruct a reading of Maimonides that seeks to relate the theory of creation (nature) with the theory of prophecy (ethics), which would be amenable to understanding Cohen’s reading of Maimonides in the \textit{Charakteristik} essay. Hence, while I try to contextualize Maimonides in his own philosophical milieu, I make no claims to interpreting him in the scholarly conventions of today; rather my interest is in philosophical reconstruction for the sake of my reading and better understanding of Cohen. Rather than presenting the accurate or definitive reading of Maimonides, I hope only that this interpretation is plausible. I will begin with Maimonides’ theory of creation, followed by an account of his prophetology, and all the while I will be setting up the following section on Cohen’s own interpretation thereof, to better access the distinction between pantheism and monotheism animating Cohen’s own reading, the distinction between nature and ethics or logic and ethics animating my own, and the meaning of eternity and futurity in the relationship between creation and prophecy, logic and ethics.

\textsuperscript{35} For indispensable scholarship on the question of prophecy and how, for medieval Jewish thought in the Islamic context, this became a rhetorically as well as logically charged category for the elaboration of rationalist interpretations of rabbinic law, see Howard Kraisel, \textit{Prophecy: The History of an Idea in Medieval Jewish Philosophy}, (Dodrecht: Netherlands, 2001).
2 Maimonides on Creation and the Miracle of Law

While I am about to present a very different Maimonides than that of the commonly accepted scholarly consensus, I nevertheless agree with the dominant scholarly opinion that Maimonides’ theory of creation mirrors his theory of prophecy. For in the latter, we find Maimonides’ theory of the intellect and knowledge. In this respect, the arguments that Maimonides makes concerning prophetic knowledge are crucial to understanding his legal thought (since law is a product of the prophet). Regardless of what Maimonides actually believed, the significance of modern scholarship on this question concerns the three parallel arguments that Maimonides outlines concerning creation and the three (and according to some, four) arguments for prophecy. Roughly, they are as follows: C1) creation ex nihilo according to the law of Moses; C2) the Platonic argument (potentially involving eternal matter, but ultimately created at some point in time; and C3) the argument of Aristotle for the eternal and necessary existence of the world, hence, not created at all. These three arguments are paralleled by the three positions on prophecy: P1) that of the masses, which holds if God wills it, anyone can become a prophet; P2) that of the Aristotelians, who believe in moral and intellectual perfection as a sufficient condition for prophecy; and P3) that of the law of Moses. The key to the connection between creation and prophecy, I believe, rests in

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37 While some scholars have argued that there is a correspondence between the naturalistic interpretations of prophecy and creation, while the traditional Mosaic views are also equally aligned, the basic conclusion that all these scholars draw is that Maimonides commits himself to the relationship between prophecy and creation as a hypothetical; the correspondence presents a means to philosophically elaborating the possibility of miracles and the limits of naturalistic and scientific understanding. Hence, I do not wish to enter the debate concerning which positions are correlated with each other. Rather I would merely like to acknowledge that these scholars have all deepened our understandings of what is really at stake in Maimonides’ Guide of the
the account of miracles to which Maimonides’ alludes in II: 25 of the Guide\textsuperscript{38} where Maimonides suggests that “alteration” or change in the “order of habit” is introduced by the law.

For Maimonides, the traditional account of the creation of the world presents a problematic tension between the revealed account of the Torah and the limits of demonstrative knowledge and human reason. The tension concerns whether something that is declared within revelation can be rationally accepted even though it cannot be proven according to demonstration. While demonstration is the term of art that Maimonides, along with his Islamic counterparts such as Ghazali and Ibn Rushd (Averroes) employ for scientific, empirical knowledge, we encounter a unique difficulty here in the case of the creation of the world. This difficulty concerns not only an event for which none could be present and thus observe, but it also points to the difficulty of relying upon revelation in order to ascertain a fundamental truth of knowledge. In other words, if we accept the traditional account of creation of the world \textit{ex nihilo}, then we must entertain a non-demonstrable truth as the condition of demonstration.\textsuperscript{39} But what is unique about creation is that it is concerned not with just any kind of demonstration, but with the demonstration of something that is the consequence of the “law.” The law therefore assumes an explicitly epistemological role from the outset of Maimonides’ discussion.

\textit{Perplexed} by highlighting the following: the Mosaic interpretation of creation and prophecy does not sit comfortably with the philosophical imagination, swayed as it is by the Platonic and Aristotelian alternatives. As Kenneth Seeskin, though questioning the degree of correspondence between the specific views on creation and prophecy, rightly points out: “if [Maimonides] had wanted to agree with Plato or Aristotle, he would have said so and interpreted the prophetic tradition accordingly” (Seeskin, \textit{Maimonides on the Origin of the World}, p. 181). But Maimonides did not.


\textsuperscript{39} It is a difficulty of rationally comprehending God and his activity, which Ghazali had famously made apparent in his account of miracles. \textit{Cf.} Al-Ghazali, \textit{Tah\j\=ut Al-Falasifa}, trans. by Michael Marmura as \textit{The Incoherence of the Philosophers}, (Provo, Utah: Brigham Young University Press, 2002), chp. 7.17. Ghazali claims that the philosophers attempt to predicate reality of logical ideas relies far too much upon predicking the material world upon the ephemeralicity of the human (\textit{hylc}) intellect. Hence, to simply attribute God with the formal idea of necessity would strip God of the pure activity of his will. Ghazali took issue with the logical determination of nature for just this reason: providence must be beyond the predication of the human intellect alone. Maimonides, however, is not interested in logical determinism. Rather, the question of creation is problematic precisely because it cannot be proven. As a scientific rationalist, Maimonides therefore asks, much as Kant would, what facts we have that are in need of logical justification. Maimonides thus applies a transcendental critique to the idea of creation.
The relationship between law and knowledge concerns cause and effect in the order of nature. Thus, in II:25 Maimonides gives a subtle argument for the nature of possibility that the “divine law” introduces into the natural order. He writes,

...the belief according to which the world exists in virtue of necessity [jihat al-luzum; heb. tsad ha-hiyut], that no nature changes at all, and that the customary course of events cannot be modified with regard to anything—destroys the Law in its principle [al-shari'at bi-agluhu; heb. ha-dat me-'iqarah], necessarily gives lie to every miracle, and reduces to inanity all the hopes and threats that the Law has held out, unless—by God!—one interprets the miracles figuratively also, as was done by the ahl al-batin [Ismai'ili]; this however, would result in some sort of crazy imaginings.40

Maimonides’ language here invokes comparison with that of al-Ghazali’s, Tahfut al-Falasifa, where the latter claims that the “miraculous” (ma'ajiz) has the status of “changing the course of habit” (mu'atadah; heb. huts mi-minhag), implying that creation consists of a “customary course of events” which yields a certain type of necessity, or at least customary repetition.41 However, to claim that such a course cannot be changed destroys the law. How is the law related to creation so much so that to deny the possibility of creation, as well as miracles and the providential promises of the law, destroys the law in its principle?

If the law introduces a miracle-like moment into the order of creation—a moment that is the product of prophecy—then there is something peculiar about the role of law in orienting the temporal elements of both creation and prophecy. Amidst both his description of arguments surrounding the eternity of the world and the arguments surrounding the universal accessibility of prophecy, Maimonides points to a tension that the law introduces. The law points to the ethical dimension of eternity and prophecy points to the ideal perfection of the knowledge of God. In other words, there is a kind of inverted transposition at work in this juxtaposition. There is something unique about temporality in Maimonides’ thought, evident in these sections, which Cohen detects and redeploy in his own philosophy.

40 II:25.
41 Ibid. See Ghazali, Tahfut, 7.17. By contrast, the appeal to the figurative sense of the batin, would recall much of Farabi’s association with the Isma’ili doctrine of esotericism, undoubtedly au courant in Fatimid Egypt. Consider the argument of Fauzi Najjar attempting situate Farabi in an Ismai’ili context. Dubious as many of the analogies might be, Najjar’s basic contextualization of Farabi remains important to consider. “Farabi’s Political Philosophy and Shi’ism” Studia Islamica no. 14 (1961), pp. 57-72.
First of all, there is something telling about Maimonides’ conception of the “miracle” of law, which is hinted at in his opening discussion in the *Guide* concerning “image” (heb. *tselem*). There, Maimonides states that the equivocal meanings of the Torah must be illuminated with an eye toward their rational truth. In the case of similitude (*tselem*; image, likeness) Maimonides interprets this term as something like a mathematical principle behind shapes and forms of real objects. For example, the Torah tells us man is created in God’s image. For Maimonides, this means man is created in a rational image, the ability to comprehend ideas, not in the anthropomorphic sense of image. Maimonides distinguishes between natural form and appearance (heb. *temunah ve-toar*), and image (*tselem*). The natural form (*to’ar*) and appearance of a thing has a deeper basis for its very existence in the image (*tselem*): “The term image...is applied to the natural form, I mean to the notion in virtue of which a thing is actualized (ar. *tajawhara*; heb. *nit’atsem*) as a substance and becomes what it is. It is the true reality of the thing...In man that notion is that from which human apprehension derives.” The image is what is the most actual, or most substantial in any thing; hence, in man the “image” is rational apprehension. In Maimonides’

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42 The idea of a hermeneutic purpose to metaphors and symbols (the mashal of midrashic parables) allows for the analogical interpretation of scripture, which Maimonides employs quite consistently. In this respect, as James Diamond has argued, Maimonides reads in the vein of a midrashist, and hence, in light of a traditional hermeneutic, albeit with the added layer of his rational philosophy. See James Diamond, *Maimonides and the Hermeneutics of Concealment: Deciphering Scripture and Midrash in the Guide of the Perplexed*, (Albany: State University of New York, 2002), pp. 14-16.

43 A style of interpretation not uncommon, especially in the Spanish milieu. See for example, Abraham Ibn Ezra’s long commentary at Ex. 23:21 as well as the quasi-pantheistic language of “one” and “all” in his *Sefer HaShem* as well as his *Yesod HaMenah ve-ha*Sod Ha-Tenah. Elliott Wolfson argues that Ibn Ezra’s reference to God as “kol” or “all” is not a pantheistic equation of God with all creation but rather a description of the “active intellect” which would be consonant with the Spanish philosophical style of which Ibn Ezra is usually recognized for being paradigmatic. See E. Wolfson, “God, the Demiurge and the Intellect: On the Usage of the Word *Kol* in Abraham Ibn Ezra,” in: REJ, 149 (1990), pp. 77–111. By contrast, Howard Kreisel argues that there is more pantheistic significance to Ibn Ezra’s language, see H. Kreisel, “On the Term *Kol* in Abraham Ibn Ezra: A Reappraisal,” in REJ, 153 (1994), pp. 29–66. Wolfson’s argument makes more philosophical sense in light of the kind of modal difference between the active intellect and the transcendent God, which is not simply a question of a kind of “dogmatic” neo-Platonic position, as Kreisel counters, but suggests a commitment to a kind of Maimonidean *doccta ignorantia*, which Ibn Ezra’s rationalist tone, as Wolfson notes, would seem to be kept in tact. See Ibn Ezra’s short commentary at Ex. 24:10 “*ha-maskil yavin*” cf. Wolfson, ibid., pp. 80-82.

44 *Guide* I:1

45 Hence, Maimonides follows Farabi but not Alexander of Aphrodisias on this point, divorcing the “substantiated” intellect or thing from the ontological materiality of the form and body to which it is supposedly assigned its “actuality”. For Maimonides, the intellect in act is a perpetual perfection which is detached from finite materiality. For a masterful overview of this question in Farabi and Maimonides, see Alexander Altmann, *Von mittelalterlichen zur modernen Aufklärung: Studien zur Jüdische Geistesgeschichte*, (Tübingen: J.C.B. Mohr (Siebeck), 1987), pp. 77-79. Altmann argues for the kind of interpretation of “*tajawhara*” which I argue for here, a kind of substantialization that is not materialized.
explanation, the image is the source of apprehension, which is the true reality of all things. That is
to say, the true image is not the natural material substance of the thing, but rather its
comprehension in the intellect. Maimonides’ conception of knowledge, therefore, begins with the
definition of rational construction. The ideas are the source of reality for being and nature. Thus,
“let us make man in our image, was the specific form, which is intellectual apprehension, not the
shape and configuration.” For Maimonides, the shape and configuration of a geometric model is
predicated of the image—an intellectual apprehension. God can only be spoken of through the
intellectual apprehension. God cannot be diagrammed as though having a natural form, and this
becomes important for the prophetic imagination of God’s unity, as we shall see.46

This theory of intellect was a difficult logical concept for many of Maimonides’ Jewish
contemporaries to accept, for it seemed to lack any material cause in God for the cosmos, as well as
to eradicate God’s immanent providence from creation.47 But Maimonides sought to empty his

46 This interpretation of Maimonides is of course not entirely new. Indeed, Averroes’ Risalat or “Decisive Treatise” makes a similar
claim, defending the religious rationality of mythological descriptions of God with philosophical argument. The medieval exegete
David Kimhi also distinguished between the use of rational argument and parabolic meaning in his disputational treatises. See
David Berger, “Christian Heresy and Jewish Polemic in the Twelfth and Thirteenth Centuries,” in The Harvard Theological Review,
vol. 68, no. ¾ (1975), pp. 287-303; Anna Sapir Abulafia, “Jewish-Christian Disputations and the Twelfth Century Renaissance” in
The Journal of Medieval History, vol. 15 (1989), pp. 103-125. This was also part of the method of response by Nahmanides in the
Barcelona disputation against the charges of Pablo Christiani. See Robert Chazan, Barcelona and Beyond: The Disputation of 1263 and

47 The relationship between finite and divine intellect was often discussed in terms of “conjunction” in medieval philosophy. The
neo-platonic tradition beginning with Plotinus and Porphyry had sought to understand the relationship between immaterial
and the material world, hence, the demiurgic principle summons forth the 
logoi
of the created world without relying upon any
created matter as a means. See Plotinus Ennead 3.2 [47] 2; Porphyry ap. Proclum in Tim. 1.396, 3-26; Sorabji, pp. 158-159. Indeed,
Philo makes a similar claim that, though perhaps largely misinterpreted, was greatly influential upon early Christian writers such as
Origen, Clement, or even Gregory of Nyssa and much can be said about Philo’s understanding of the Logos and how this is not a
demiurgic creator, but the ideational blueprint for creation, which would be consonant with the type of idealism which Richard
Sorabji attributes to Gregory of Nyssa. See Sorbaji, Time, Creation, and the Continuum, chp.18; Cf. Gregory of Nyssa, in Hexaemeron,
PG 44, 69B-C. But Maimonides’ account was not entirely palatable to many Jewish philosophers. Maimonides relies upon a theory
of the intellect that is correlated to the divine, Active Intelect, and conjoins with it when the pure apprehension of eternal
intelligibles is achieved. Hence, this neo-Platonic theory of the emanation of the intellect was found questionable to many, such as
Moshe Narbonne (see note 58 below), just as Farabi’s was found questionable by Ghazali. Moshe Narbonne, following Averroes’
epistle on the conjunction of the intellect, took issue with the conjunction-hypothesis, as did many other thinkers influenced in this
light by Aristotle’s book Lambda of the Metaphysics, in particular Don Hasdai Crescas. Whether Maimonides is indeed arguing for
“conjunction” has been debated since his own time. Consider Harry A. Wolfson’s reading of Crescas and the nature of attributes in
the cosmological argument with Maimonides. See Harry Austryn Wolfson, Crescas on the Problem of Divine Attributes, 3 vols.
(Philadelphia: Dropseie College, 1916). For a consideration of how Crescas was influenced by Ghazali in his attempts to critique
Maimonides, see Julius Wolfson, Der Einfluss Gazalis auf Chisdai Crescas. Leipzig: Druck Von W. Drugulin, 1905. The medieval
commentators Profiat Duran (Ephod) and Joseph Shem Tov Ibn Shem Tov are examples of more traditionalist commentators, and
understanding of the law of the materialism of causality. There is a “conjunction” of the overflowing intellect of pure activity—God—and man’s hylic potentiality to achieve activity. For Maimonides, what is distinct about the conjunction of intellects is the special epistemic status gained by the idea of God, which is one of the fundamental truths of knowledge: namely that the ideas of action and intelligibility are united in God. In other words, the idea of God unifies action and ideal. This is the very definition of the word “God” for Maimonides. Hence, God’s actions are unlike the material actions of man. Rather, the intellection of pure action is an overflow (al-jaiz) of ideality:

[I]t has been said that the world derives from the overflow of God and that He has caused to overflow to it everything that is produced in time. In the same way it is said that He caused His knowledge to overflow to the prophets. The meaning of all this is that these actions are the action of one who is not a body. And it is His action that is called “overflow”.

What is produced in time bears the mark of causality. Since the “world derives from the overflow of God” as well as “everything that is produced in time”, creation is an “action” of overflow. But just as the scholarly debate about prophecy and creation pointed out, Maimonides corroborates this relation by claiming that the “overflow” of God’s creation is the same as the “overflow of knowledge to the prophets.” Hence, knowledge of creation is the product of prophetic knowledge; they are, as it were, both miracles of knowledge. But insofar as they are actions called “overflow”, they are not material causes; they are not the same as “human actions.” Rather, by returning to disagree with the naturalistic consequences of prophecy for the kind of omnipotence they wish to ascribe to God. As a modern exponent of their kind of traditionalism, see Lawrence Kaplan, “Maimonides on the Miraculous Element in Prophecy.”

The medieval Islamic and Jewish rationalists understood the intellect as a mark of separation between potentiality and actuality; that is, active or agent intellect is separate from the hylic or human intellect. The agent intellect is thus the activity of intellection, which any thinking being can experience, albeit with limited success. The imagination, however, is the source of the image-representations giving the active intellection content, which the pure form and image of the intellect requires in order to be communicated. Indeed, for the medievals, the imagination pulls so much weight because we are often thinking in terms of images and representations, and so the activity of intellectual comprehension is not the same.

See I:68 Maimonides’ discussion of intellection, intellect and intelligible. Interestingly, Salomon Maimon seizes this moment in Maimonides’ interpretation of the intellect as his model of the infinite understanding upon which he models his interpretation of intellectual intuition. See Salomon Maimon, Givat Ha-Moreh, at I:68.


Guide II:1
Maimonides’ appeal to law as the source of alteration, we can now offer an account of the conditions for the possibility of change. The miracle that is “held out by the Law,” just like the legal status of “creation,” is not a material interruption of causality but a rational account of how possibility and indeterminacy are at the foundation of rational knowledge. This is perhaps why Ibn Tibbon translates the Arabic ma’ajiz with the Hebrew term ‘ot as opposed to nes or niflaot in order to connote a sign and symbol, or proof, hence, an ideic, as opposed to material alteration. The law signifies the a priori possibility of modifying habit (mu’atadah; heb. minhag) and the general conditions of action. This is also the meaning of the law in Hilkhot De’ot, for changing a person’s natural habits is precisely the goal of the law, which finds the mean for different people’s natures and helps them seek perfection. Such a theory of providence, miracle, and creatio

demonstrate a posteriori the creation of the world, nor the purpose held out as a promise by the law. But the miracle of law is that it demonstrates the image of apprehension of the origin and purpose of law in ideas, with past and future coordinated as origin and end, respectively. Furthermore, since “overflow” is the key to God’s action both as the source of creation and prophecy, the law becomes the mediating link (as possibility or miracle) since the prophet legislates law through his knowledge of God.

52 The term ‘ot has the connotation of being an argument or deduced proof, which suggests that there is an implicitly rationalistic colouring to its use in Ibn Tibbon’s thought. For a particular overview of the word as it relates to Maimonides’ Guide and its translation from Arabic, despite the particular manuscript in which this term is discussed has been damages leaving the corresponding Arabic term unclear, see the nevertheless extremely illuminating and recently discovered medieval Hebrew-Arabic dictionary in Mauro Zonta, “A Newly Discovered Arabic-Hebrew Medieval Philosophical Dictionary, Including Key Terms of Maimonides’ Guide” in European Journal of Jewish Studies (EJJS), vol. 1, no. 2 (2007), pp. 279-318; see p. 288. As Zonta notes, for the connection between ‘ot as “argument” and proof (mofet) in Ibn Tibbon, see J. Klatzkin and M. Zobel Thesaurus Philosophicus Linguae Hebraicae, 3 vols. (Berlin, 1930), I:30.

53 Mishneh Torah, Hilkhot De’ot 1:5-7; Consider Guide III:32 where Maimonides discusses the unchangeable character of inner human nature.

54 As we will see in what follows when dealing with creation Maimonides distinguishes himself from the kind of idealist alternative presented by the neo-Platonists, who distinguished themselves from Gnostic theories of creation in time, by presuming a kind of eternity correlated to the immaterial first principle of the universe. Hence, the overflow of the One principle could be immaterial and atemporal. Generation thus becomes the preferred term of art. See for example Taurus’ commentary in contra Proclus, 145, 13-147, 25, re. the demiourge. Sorabji, p. 164. For Maimonides, this distinction between what is and is not produced in time is crucial, and when we turn to the law in particular, I will explain this further. Time is the context for causality; but likewise, the overflow of everything in time is analogous to the overflow of knowledge to the prophet. Hence, the overflow that characterizes the action of God is an ideality. It is a constant flowing of the idea of unity between action and idea, insofar as the idea of God is thought by any human mind. This medieval epistemology and psychology leads to the “privative” theology that Maimonides later sketches, however, we must first acknowledge this conception of time in knowledge: the idea of overflow is an idea of continuity, infinitude,
Maimonides' position appears to be that of the traditional rabbinic understanding of creation *ex nihilo* (C1), while the position of Aristotle (C3) and Plato (C2) are both rejected. While the scholarly debate discussed above takes note of this significant chapter in the course of Maimonides' discussion of the different views of creation, none to my knowledge have taken note of the legal implications of Maimonides' argument herein. It is as follows: insofar as the eternity of the world cannot be demonstrated scientifically (*a posteriori*), the law introduces possibility into an otherwise coherent conception of causal necessity. It introduces possibility by simply claiming that necessity (corresponding to a naturalistic kind of eternity because causes and effects are eternally related in necessity) cannot be proven sufficiently. But in introducing possibility, which is not demonstrated but only asserted as possible, the law likewise introduces a paradox for demonstrative knowledge, namely, demonstration rests upon prophecy. Unlike the fact that “the deity is not a body [which] has been demonstrated; [and] from this it follows necessarily that everything that in its external meaning disagrees with this demonstration must be interpreted figuratively,” Maimonides asserts quite simply that “the eternity of the world has not been demonstrated.”

We therefore cannot interpret it figuratively. While demonstrative science would have us believe that God is not a body, this view can be reconciled with scientific demonstration, since it can be demonstrated according to scripture and reason. But the eternity of the world according to Aristotelian cosmology cannot be so demonstrated and, “destroys the law in its principle.” Although we do not interpret figuratively, we accept creation since “the Law has given us knowledge of a matter the grasp of which is not within our power, and the miracle attests to the correctness of our claims.” Maimonides’ major contention is that the law is the fact that accounts

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55 II:25, pp. 327-328.
56 cf. Guide I:1
57 ibid, II:25; It is significant to note how this differs from Kaplan’s attempt at retaining the parallel of C1 and P3 but excludes miracles from the formulation.
for knowledge of creation. The law is also the beginning of a critical account of miracles or providence, since the law becomes a norm of knowledge.

2.1 Temporality and Prophecy

The relationship between creation and prophecy, or the law, therefore hinges upon knowledge, and knowledge begins with the idea of God. But the idea of God is known most perfectly through the prophetic intellect, which translates this knowledge into law. The law, therefore, marks the temporal character of revelation. It is normative by pointing to a hypothetical ground of our knowledge of the past (creation) as well as normatively indicating the route to perfect knowledge in the future. This modal function of prophecy makes sense when we heed the fact that for Maimonides this revelation is rational, occurring within reason and, therefore, a miracle in the sense of a promise. The promise of the revelation at Sinai is the promise of a purpose to nature and a purpose to a people.

The law announced at Sinai brings the promise of perfection, both intellectual and bodily. Yet according to Maimonides’ account of the providential moment—the revelation itself—the primary subject of revelation is God, not the law. And as we saw above, God cannot be apprehended but in the pure form and image; He cannot be diagrammed or given content. Hence, the prophetic knowledge of revelation becomes a condition of the law, for the ideas of law are regulative and constitutive—they regulate and proscribe action—and give a formal condition for a real content in action. As Cohen understands him, this is Maimonides’ approximation to Kant and to transcendental idealism because it is his approximation to Plato. The normative ideas of law are correlated to the laws of the understanding. Now we must inquire as to what this prophetic knowledge means as a condition of law.

As I argued above, for Cohen, the relationship between the logical and ethical spheres is the idea of God. So too for Maimonides, the supreme intellectual principle that unites creation and prophecy is the idea of God. Hence, Maimonides claims that at Sinai what is revealed is that
God is one and there is no other God. The pronouncement marks the attainment of pure intellectual truth. Yet the unity of God announced at Sinai is also a principle of rational import: as an intelligible ground of knowledge, this principle of God’s unity points to past, present, and future: there is God. This eternally ideal truth, as Maimonides tells us in *Hilkhot Yesodei Ha-Torah*, is a principle and pillar upon which *all* knowledge rests. Yet Sinai, Maimonides will tell us, is the event at which the prophetic law is announced. But no normative action is commanded of this first intellectual truth; that is, the principle of God is not a law of the same character as other laws. Yet Maimonides considers the first commandment of his *Sefer Ha-Mitsvot* (Book of the Commandments) the belief in God.\(^{58}\) How this rational principle, which grounds all knowledge, becomes a first-order norm of the law leads directly to the question of temporality and purpose in law.

In order to understand the significance of this legal nature of God’s existence, we must understand the teleology of the law for Maimonides. For him the rationality of the law [*ta’amei mitsvot*] is guaranteed by the purposive orientation of the law predicated of God.\(^{59}\) At Sinai, the revelation of the two rational principles, deemed by Maimonides respectively as the first two commandments, are the rational principles of the law, the *muskalot*, on the basis of which,

the Sages permit considering as admissible that all Israel only heard at that Gathering one voice one single time – the voice through which Moses and all Israel apprehended *I* and *Thou shalt not have*, which commandments Moses made them hear again as spoken in his own speech with an articulation of the letters that were heard.\(^{60}\)

Israel “hears” the first and second commandments of God, and nothing more. Whereas the Torah tells us the “the blare of the horn grew louder and louder. As Moses spoke, God answered him in


\(^{60}\) Il: 33, pp. 364-365
thunder" (Exodus 19: 19), Maimonides identifies the hearing of this one voice of thunder and no other as a hearing within reason. The “letters that were heard” were indistinct (perhaps the “blare of the horn”) and thus not yet the commandment-form which they “hear.” Hence, Moses must translate the providential event into law. “Hearing” becomes intellectual apprehension: the “voice” is “apprehended”; the same apprehension attributed to Moses is attributed to Israel. Just this once, prophetic and hylic intellect partake of the same structure of representation.61

The nature of the commandments, that God exists and that He is one, Maimonides tells us, highlights the intellect in actu attainable by human rationality. The theoretical principles of knowledge of God are ideal and rational and according to Maimonides, attainable through “proofs”; hence, methodological science:

these two principles, the existence of God and his Unity, can be arrived at by means of reasoning, and whatever can be established by proof is known by the prophet in the same way as by any other person...But the rest of the commandments are of an ethical and authoritative character, and do not contain [truths] perceived by the intellect...62

The first two commandments need no interpretation on the part of the prophet—all people can know them. Again, as I noted above, the experience of providence can be demonstrated, retroactively, a posteriori, and the Torah is this proof; yet the arrival at this proof required the use of the hylic intellect in combination with the imagination.63 Hence, the prophet and the masses were all in concert as recipients of the revelation at Sinai. Yet the prophet’s translation into the legal form of the revelation became the step into the normative. The ideal of reason became regulative

61 Here Maimonides certainly had precedent for his view of the created nature of the “words” of revelation. The inheritance of medieval disputes between Arabic-speaking Christians, Muslims, and Jews concerning the trinity and anthropomorphism show the particular me-ontology (as Martin Kavka calls it) of the Jewish philosophers. Hence, Sa’adya Gaon claims, “the terms ‘spirit’ and ‘word’ are created things, referring to the articulate speech revealed by God to his prophets...” Sefer haemunot II, 6. Hence, the prophet is nevertheless the conduit for a created thing such as the word. Cf. Harry A. Wolfson, Repercussions of the Kalam in Jewish Philosophy, (Cambridge, Mass.: Harvard University Press, 1979), p. 90. Wolfson notes Sa’adya’s argument in the context of a dispute with Christians and Muslims concerning the Christological pre-existent ‘word’ of God and the growing dominance of the Islamic belief in the uncreated Qur’an, which had come into ascendency after the rise of al-Mutawakkil’s reign in 847. The mu’attila view was that even the pre-existent codex in heaven (al-lauh al-mahfuz) spoken of in Qur’an 85.21 was itself created. See al-Baghdadi Usul al-Din, 106, al-Ash’ari Maqalat, 598. Cf. Majid Fakhry A History of Islamic Philosophy, 62-3.

62 II:35

for all subsequent judgment of human action or as Maimonides called it, “the regimen of rule.” Insofar as the ethical truths are not contained in the intellectual realm, the prophet must be the guide to reaching the truth of the law—an ethical truth. But given that there are these intellectual principles which are attainable by natural science and reason alone, so too must there be a normative basis, accessible to all, for knowing what counts as virtuous or ethical actions. The muskalot that are revealed are these intelligible principles and the role of the prophet is to render them into “his own speech with an articulation of the letters that were heard.” The prophet must translate the intelligible universal principles into figurations of language. He must provide, through his imaginative faculty, the appropriate representations to communicate the universals. Therefore, if the principle of God’s unity is a rational principle grounding all knowledge, then law must be understood as a linguistic figuration of revelation. Consequently, revealed law is a translation of universal principles—purpose, the eternal good, perfection as such—into particular norms for human action. For God cannot be apprehended in content and so the transcendent and regulative ideal of God’s being must become an orientation toward what can obtain content: the legal norm. Even the legal norm points to the future as the context for determinate action, which provides the norm with content.

But as for God’s unity, the people can only grasp Him as a rationally intelligible principle. Yet the prophet must communicate the law as the content of revelation. Hence, the essential principles behind the revelation “are knowable by human speculation alone...with regard to everything that can be known by demonstration [i.e. by reason alone], the status of the prophet and that of everyone else who knows it are equal; there is no superiority of one over the other.” The translation of a general orientation for all action, a translation of purpose into words, thus takes the form of the linguistic persona of law: The “apprehension” of the “voice” was the

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64 Sa’adya writes: “The real meaning of the term speech (alkaul: hadibbur) which He conveyed through the air to the hearing of the prophet or the people...” ibid. II:12. Wolfson also notes similarities in Bahya Ibn Paquda’s The Duties of the Heart, (kitab Ma’ani al-Nafs). For a more ontologized interpretation of the Sinai event, for which the transition from hearing into seeing must be made manifest, Wolfson also cites Nissim ben Jacob’s Megillat Setarim: “The Israelites perceived the voices and saw them glittering in the midst of a cloud and the darkness and their form and lettering appeared to them in the air in the manner of ordered speech.” See Wolfson, ibid, p. 90, n.

65 Guide II:30, p. 364
apprehension of the basic grammatical units of all legal form, “I” (anokhi) and “There will not be for you” (lo yihyeh lekha), or “I” and “You.” 66 I am the source of purpose; You are the one tasked with its achievement. For Maimonides, these principles form the ground of law. 67

I have argued that rational knowledge is grounded in the principle of God’s unity—an eternal truth that orients all knowledge, both prophetic and hylic. The law is the figuration of this intellectual principle: the orientation of all action around a principle of purpose. As I understand him, Maimonides is setting the stage for the teleology of law to help us understand the purpose of politics: to attain an eternal good within a finite norm; that is, the ethical dimension of the law,

66 Consider the personalization of this command, which Rosenzweig tries to intimate through the pure language of love. For Rosenzweig, the personalization of the command is that it addresses itself to an imperative “now” of love, whereas any intimation of temporal duration and futurity becomes law. See Franz Rosenzweig, Der Stern der Erlösung, The Star of Redemption, By contrast, Maimonides’ emphasis upon Prophetic reason enables a different modality to relation between law and command. Indeed, the command cannot be materialized into law too court, and in this respect, it is only through the reasons for the commandments that law returns to its own proper temporality, namely, prophecy. Compare with R’ Avaraham Ishak Ha-Kohen Kook, “Fragments of Light: A View As to the Reasons for the Commandments," in Abraham Isaac Kook: The Lights of Penitence, the Lights of Holiness, The Moral Principles, Essays, Letters, and Poems, trans. Ben Zion Bokser, (New York: Paulist Press, 1978), pp. 303-323. The Rabbis (Hagal) had a slightly different way of dematerializing revelation at Sinai – See Pesiqta de-Rav Kahan, 109b-110a; Tanhuma, Yitro, 40a-40b. See also Shemot Rabba, III, 6. - “I am that I am” [means] I am called according to my deeds”.

67 An alternative consideration of this theory of speech could be found in Maimonides Iggeret ha-Shemad. Haym Soloveitchik famously argued that Maimonides argument was simply insufficient on halakhic grounds. But Soloveitchik assumes that the supersessionism of Islam is the repudiation of Judaism as a valid revelation. This argument is presented as an a fortiori one. From the mere phraseology of the Shahada, which is ostensibly Maimonides’ focus in the Iggeret, Soloveitchik concludes that the shahada equals Islam. In other words, Soloveitchik follows the reasoning that the prophetic validity of Islam equals idolatry. This is never proven, particularly if we consider the relation between language and speech and action. It is never clear in Maimonides’ letter whether the mere utterance of a speech act leads a fortiori to idolatrous acts or even halakhically prohibited ones. The goal of my reading is to show the dual teleology of this reasoning. With a consideration of the Noahide legal order in the Mishneh Torah, we could alternatively conclude that Maimonides’ idea of the ends of the law justify the subordinate actions that nevertheless do not preclude the possibility of returning to the ideal norm of the law. Soloveitchik willfully neglects the distinction between ideal and material when he claims that Maimonides’ defense of the profession of the Shahada is a profession of prophecy, meaning, an ideality of speech. Instead, Soloveitchik quotes the well-known mishnah of Sanhedrin 60b, “These are they that are to be stoned...The idolater [is culpable] whether he worships or sacrifices or burns incense or pours out a libation or bows himself down to it or accepts it as his god or says to it, ‘Thou art my god’.” The key sentence in this mishnah, which Soloveitchik seizes, is the last clause, whether one “says to it, Thou art my god”. Soloveitchik concludes from this that “the mishnah asserts that idolatry can be effectively worshipped by mouth as by hand or foot and that Jewish law recognizes no difference between the two.” (287) Here Soloveitchik neglects the mode of address which the mishnah evokes: one must speak to an object. Mere speech is not the same as communication, yet alone a speech act that is intended as ruse or subversive. In other words, the shahada is a legal form that asserts a claim regarding something intangible, prophecy. But Soloveitchik seeks to efface this open ended speech act, which is the specific focus of Maimonides’ defense. For such speech acts that are not directed to an object can be simulations and thus, lies. Soloveitchik simply rejects any argument for language that does not abide by his halakhic nominalism. Through this view of speech having no material object as its aim, Maimonides’ defense, though weak it might be on halakhic grounds, nevertheless is persuasive on philosophical grounds (although perhaps differently than how David Hartman has argued in response to Soloveitchik). The same God can be intended as a referent; the prophetic message of Muhammed need not be affirmed because it is not an object but a supposition of Islam itself. While Maimonides’ argument is not the strongest, there is nevertheless a coherence to it. See Haym Soloveitchik, “Maimonides’ Iggeret ha-Shemad: Law and Rhetoric” in R. Joseph H. Lookstein Memorial Volume ed. L. Landman (New York: Ktav Publishing House, 1980), pp. 281-319.
the eternal, must be brought to bear upon the natural actions of social beings. With this view of the prophetic law, another purposive ideal, an eschatological dimension of the law emerges whereby the eternity of the law’s purpose might find an eternal resting place within the world of creation. I want to stress here that for both Maimonides and for Cohen the idea of God, qua idea, is the excessive non-foundation of the law itself. The idea of God unites the unknowability of creation and the legislative eternity of the prophetic intellect in a common principle. This is yet another facet of Maimonides’ “idealism.”

The idea of God as a rational principle grounding all knowledge cannot be an idea that has content. Hence, Maimonides’ privative theology seeks to eliminate that which is not activity in God, and God, qua idea actively exceeds any content provided for Him, becoming a regulative ideal of the purpose of creation. In other words, just as I noted above that the very definition of “God” is an idea that has action (not a body), we might say that the idea of “God” is in itself an infinite judgment concerning God: God is not something that can have material “existence.” God is wholly otherwise. It is, however, only in the future where the intellect of man is perfected (actualized as ideal) that God will unify the dualisms of human knowledge. Hence, the prophetically announced future of Isaiah and Amos become the hallmarks of Maimonides' prophetology: the law is the condition of purpose for both nature and action, creation and knowledge, man and God.

2.2 The Purpose of Nature and the Purpose of Law

In order to understand the relationship between nature and prophecy, between law and knowledge, I want to return to the principles of rational revelation: the I and You. These principles are thus codified as the first and second commandments, not as laws to “believe” but in

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68 We can begin to see the relationship between Cohen’s reading of Kant and Plato and his reading of Maimonides: the ideas of transcendence such as purpose, wholeness, or in this case, knowledge of the all, God or Truth, become the coordinated normative ideals of reason as such. Thus, the relationship between logical and ethical truth is found most clearly in law. Ideas become normative because they are grounding hypotheses, which as we see in Maimonides, become the premise for the future: the messianic kingdom of political sovereignty, but I will return to this idea below.
a Platonic manner, ideals that ground law and at the same time exceed the law as ideals. Hence, where Plato teaches transcendence through the good, Maimonides teaches transcendence through God. That is, the task of the prophet is to demonstrate how God is represented in law and yet, exceeds law as God exceeds all else. This is the translation of the prophetic law and the reason why the *muskalot* are codified as laws. It is also the ground of legislation and juridical teleology.

Knowledge of these principles through theoretical speculation does not provide the purposive orientation toward the future in an identical manner. As Maimonides says, the equality between prophetic knowledge and theoretical speculation concerns, “everything that can be known by demonstration [a posteriori].” Demonstrable knowledge of God’s unity is demonstrable if and only if the representation of such knowledge is translated into the language of law. But the prophetic law, the translation of Moses, is the truly normative element of revelation. For it is now the law of Moses which retains the index of the source—the I of God—and points toward a future wherein God’s purpose for creation and law will be attained. The prophetic dimension of revelation is, therefore, this pointing toward the future where the orienting principle of God and the orienting purpose of law (good) are identical with human apprehension.

The purpose of the law is idealized through the purpose of knowledge itself: to know that God is One; the teleology of the law maintains that this is the reason for law; the eschatology of the law, by contrast, maintains that this is the world to come—a lived knowledge of God. With this parallel of purposive orders, we can now turn to Maimonides’ understanding of the purpose of the law itself. The prophet’s knowledge of God is uniquely oriented toward the political art. That is, through the knowledge of unity of God, the prophet becomes a legislator. For the condition of knowledge, Maimonides tells us, is perfection of the intellect and body: the attainment of pure active intellection, achievable only through the law. Thus, he writes,

...if you find a law the whole end of which and the whole purpose of the leader [ra‘is] thereof, who determined the actions required by it, are directed exclusively toward the ordering of the city [al-madīna] and of its circumstances and the abolition in it of injustice and oppression; and if in that law attention is not at all directed toward speculative matters, no heed is given to the perfecting of the rational faculty...the whole purpose of that law being...the arrangement...of the circumstances of people in their relations with one another and provision for their obtaining, in accordance with the
opinion of that leader ra’is, a certain something deemed to be happiness – you must know that Law is a nomos. 69

There are laws that seek to arrange the political order. That is, Maimonides is willing to concede that a law oriented toward achieving “happiness” – a good in its own right (telos) – is, though a law worthy of study, nevertheless not the divine law. Yet the nomos is legitimate law. Similar to Cohen’s view presented in Chapter 2, here it seems Maimonides demonstrates this principle of idealism in law: the form of law is an ideal construction. However, without the content of law regulated and oriented toward a norm such as the good, idealism would simply be formalism. The prophetic law thus has the form of the nomos, but also the content of the divine purpose. This nomos is concerned with the harmony of citizens amongst each other and an abolition of injustice. Thus, with the city as the focus, it cannot be said that this ruler is concerned with the Divine. The human nomoi aimed at the welfare of the city pertain to the welfare of the body – “the improvement of their [the citizens’] ways of living with one another.” 70 Law pertaining to this welfare of the body, and so of the state, is thereby not a law that is (strictly speaking) a Divine Law ordained for the sake of the good or Truth of creation. Rather, the faculty of ruling as a capacity natural to man serves as Maimonides’ justification for God’s creation of man with the ability to seek and achieve justice, which is indeed a good attainable by reason and thus, a part of the hierarchy of purpose to creation. The bringer of the nomos may have the purpose of the good of the body – civic order – but lack the true purpose of both knowledge and action: God. Of the latter, Maimonides continues, and claims, that,

...If on the other hand, you find a Law all of whose ordinances are due to attention being paid, as was stated before, to the soundness of the circumstances pertaining to the body and also to the soundness of belief – a law that takes pains to inculcate correct opinions with regard to God, may He be exalted in the first place, and with regard to the angels, and that desires to make man wise, to give

69 II:40; It is significant to note Joseph Albo’s triadic division of the law into natural, conventional and revealed bears a certain influence of this Maimonidean view, but is more consonant with the Thomistic division of the law. For a discussion of Albo’s theory of law that also addresses the Maimonidean tradition of the ta’smei mitsvot (the reasons for the commandments), see Yitzkak Heinemann, The Reasons for the Commandments in Jewish Thought: From the Bible to the Renaissance, trans. Leonard Levin, (Brighton, MA: Academic Studies Press, 2008), p. 141ff. Similarly, see Heinemann’s discussion of Sa’adya’s division into mitsvot sikhliyot and shimiyot is based upon a. The division is always important when it hinges upon the temporality of knowledge of law in The Reasons for the Commandments, pp. 51-57.

70 III, 27, 511
him understanding, and to awaken his attention, so that he should know the whole of that which exists in its true form - you must know that this guidance comes from Him, may He be exalted, and that this Law is divine. 71

The divine purpose brings the finite good of bodily perfection into accord with the higher end of intellectual perfection: an idealization of knowledge and action in a future unity of knowledge and action in “its true form.” In other words, the purpose of the divine law is to dissolve the distinction between body and intellect, between knowledge and action, and thus cohere the pure law as unity. Hence, prophetology is Maimonides’ idealism.

The division of the laws into nomos and shari‘ah is part of the general schema of Maimonides’ idealism. The relationship between the knowledge of God and the action of law finds unity only in the postulated future, where the process of prophetic bringing-into-nature is continued into the Messianic era. It is for this reason that Maimonides’ teleology of the law partakes of a dual-schema of temporality: both causality and law are oriented around the miraculous law. The distinction between knowledge and action, nomos and shari‘ah, hinges on that which is created in time and that which mediates time. Hence, Maimonides’ conception of the good as the orientation of all method, whether natural-scientific or legal-scientific, abides by the same structure as that of Plato and Cohen: the normative ideas orient all judgment toward the future, where the good is posited as a unification of all dualisms. For Maimonides, therefore, there are two levels of purpose as well: the natural-causal and the legal. 72

71 II: 40

72 Most basically, this interpretation suggests that creation is taken up by reason as an epistemic ground upon which to reason about the law. For Maimonides the law supplies a crucial ground for knowledge, which is not concerned with whether the world was actually created ex nihilo. Indeed, this is similar to the famous argument of Leo Strauss against the interpretation of Julius Gutmann. For Strauss, Maimonides fundamentally holds that the law is the foundation for philosophizing. It is the unique authorization of the duty to philosophize. See Leo Strauss, Philosophy and Law: Contributions to the Understanding of Maionides and His Predecessors. 60; 64; 90. Strauss maintains that it is not simply a coherence of revelation and reason that Maimonides upholds, but a fundamental concern with the limits of rational knowledge. In other words, unlike Gutmann’s assertion concerning “rationalism with a belief in revelation” Strauss counters that revelation is a brute fact that conditions the very science understood as “rationalism”. Hence, “the philosopher needs the revelation if he knows that his capacity for knowledge is in principle inadequate to know the truth...Maimonides, the classic author of medieval Jewish rationalism, is filled with this conviction.” (64). Further, Strauss understands the unique prophetic knowledge of the legislator as a kind of translation of the supra-philosophical knowledge represented by revelation into a datum of philosophical knowledge. Hence, Strauss suggests a similar line of thought when he claims that, “[i]t is in prophetology that the revelation, as the law given by God through a prophet, becomes a subject matter of philosophy...” (ibid, 104). However, insofar as creation is incorporated into Maimonides’ jurisprudential conception of law as having divine authority, the law requires this claim to creation as the foundation of its own internal coherence. While creation
Regarding the causal teleology of creation, Maimonides abides by the Aristotelian division into telos and agathon. The first, telos, is a determinate end as a finality of process: “...a finite end can only be sought with regard to all things produced in time that have been made through the purpose of an intelligent being.” This type of end concerns a process begun in time; that is, a temporal procedure and hence a craft or technical accomplishment. The purpose of any given thing in nature is immanent to the order of causal time, “[a]nd purpose can only be conceived with reference to the production in time of something so produced.” Finite ends are thus part of the order of causality. Such an end, for Maimonides, is distinct from the end of all things, a transcendent idea that is not subject to experience. Hence, he continues:

On the other hand, one must not, as we have said, seek the final end of what has not been produced in time. After this preamble, you should know that the final end of all that exists ought not to be sought—neither according to our opinion who assert that the world has been produced in time, nor according to the opinion of Aristotle who holds that the world is eternal...it is manifest, according to natural science, that every natural existent must necessarily have a final end; but that final cause, which is the noblest among the four causes, is hidden as far as the majority of species are concerned.

In the Nicomachean Ethics, Aristotle famously announces at the outset that the good is an orientation, a pursued goal and purpose. For such an orientation, the pursuit of a goal requires a craft for its attainment. Thus, Aristotle conceives the good as an idea that orients thinking. It provides thinking with a method. He writes, "all craft () and all inquiry ()" aims at "some good ()" and it is therefore right () to say that all things are oriented to a good (Nicomachean Ethics, I:1, 1094a). Method and craft thus represent an immanent procedure oriented by the good. But the good is not contained within that procedure. It is not its product. It is, rather, an orienting purpose. Aristotle does not stop at the theoretical orientation of craft and method. Indeed, akin to pursuit of a goal in thinking is a pursuit in activity and the quest for accomplishment, the task of doing (π). The distinctness of a good is its role of orienting the task. It is the illumination of the task as having need of a method. That is, orientation enables the pursuit. Activity is thus a process that culminates in a product as well, oriented as it is to the task at hand. The idea of the good or, a good in particular, is not an intermediate goal as is an end (). Ends are steps on the way to a goal, themselves subordinate to the orientation and pursuit of the good. Ends are immanent to the procedure or method. But this characteristic of the result is still a characteristic of many actions (π), crafts ( ), and sciences (π). Without the good as orientation, the product ( ) would not be valuable. The good is the ground of this orientation and gives the product its value.

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74 III:13

75 II:40, ibid. 449
That which is produced in time must be said to have an end. Yet the production of something outside of time must not be sought, even though it too exists. What is interesting is that Maimonides here returns us, after all that has been said, to the problem of the creation of the world. Though acknowledging the idea of the creation of the world in time (much in the manner of Kant’s antinomies, whereby the very act of creation of something which partakes of temporal order can be said to occur in time) Maimonides nevertheless claims that we cannot seek the end of all things—which is not in time, per se. That is, the latter is the purpose of all that is including the world as well as that which is beyond the world. If the ideas revealed to the prophet—the ideas of God’s unity, of the I and You of legal order—are not participant in time, then these ideas must again become the source of the question, where do the purpose of the law and creation find unification?  

The reading of Maimonides I have sketched above also sees the idea of God as a unification of two realms of knowledge, neither of which can presuppose an absolute demonstrable foundation. Rather, creation and prophecy both reveal the necessarily temporal cognition of the law; that is, the law is an origin of both aporias. We can only know about prophecy through the law as its product, and we can only know about creation through the law as its accounting. Between these two poles of time, of the retrospection of creation and futurity of the law, the prophetic intellect represents a site of correlation where the prophetic task is to translate the unknown dimensions of knowledge into normative language for the sake of human action. This is what Cohen calls the “God of ethics” the monotheistic idea of God, and a messianic God at that.

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76 As Warren Zev Harvey and Sarah Klein-Braslavy have argued, this portrait of Maimonides’ theory of the good appears to be subjectivist, in that the finite human intellect applies this typic to the infinite intellect’s purpose, which Harvey reminds us is an amphibolous concept; God’s purpose is not of the same type as man’s purpose. Nevertheless, Howard Kreisel has argued in favour of an objectivist definition of the good in Maimonides, on the basis of his reading the meaning of “good” in Maimonides’ thought to be a positive end of the practical intellect, and so a moral end. However, these scholars effectively reduce the philosophical meaning of the good in the neo-Platonic metaphysics and impose a distinction between theoretical and practical that is beholden to the post-critical (post-Kantian) modern philosophical lexicon. I will argue, in what follows, that Maimonides’ theory of the good is correlated with the Right (haYashar) and is in this respect consonant with rabbinic theology. It is at the same time consonant with Maimonides’ Platonic idealism, and the rationale for this argument, I will show, has to do with the correlation between teleology and eschatology.
3 Cohen’s Maimonides: the Idea of the Good and the God of Ethics

As we saw above, Maimonides maintains that there is an intimacy between creation and prophecy. They are the main spheres of knowledge. For Cohen, the relationship between creation and prophecy is equally important, albeit in terms of logic and ethics, as these terms now articulate Cohen’s continued insistence upon distinguishing monotheism from pantheism: that the latter bases itself solely upon logic, while the former maintains ethics as its epicenter. And the plausibility of the reading of Maimonides presented above is that it helps clarify the source of Cohen’s conception of “ethical monotheism,” namely, the modal use of prophecy to link creation, prophecy, and the law. That is, the eternity of the law is presented in its own autonomous temporal sphere, which prophecy must translate into normative actions that ought to obtain in the causal time of nature. But the significance of prophecy is that it holds out a promise of uniting the purpose of nature and the purpose of law in a messianic future where God will actualize the unity of knowledge and action. Hence, Cohen’s reading superimposes the methodological distinction of logic and ethics upon the Maimonidean schema of creation and prophecy. Maimonides’ theory of prophetic knowledge, which unites past and future in the unity of the ideal perfection of knowledge of God, can thus be interpreted as philosophically parallel to “ethical monotheism” and Cohen’s “God of ethics.”

For Maimonides, God’s unity is a first principle of knowledge, but only insofar as we cannot say more than that the God-idea is a ground that un-grounds itself. That is, the privative theology of the “attributes” of God becomes the site for what Cohen calls an “infinite judgment.” For Maimonides, we cannot say what God’s essence is beyond saying that it is not lacking in something. Thus, he writes,

You accordingly ought not to set forth in any respect the attributes of God in an affirmative way—with a view, as you think, to magnifying Him...But regarding the other attributes that occur in the
books of the prophets and are recited during the perusal of these books...they are attribute of action...or they indicate the negation of their nonexistence in God.77

Attribution, for Maimonides, should be the ascription of non-impotence or non-incapacity on the part of God. Whereas both positive and negative attribution have the same effect of particularizing its object as a member of some class or category other than the one asserted.78 Yet for Maimonides, if we understand God’s attributes only as descriptions of his ways, as attributes of “actions,” then we avoid this predication of God with something that is unequivocal to Him, since “…[His] ways and characteristics are identical. They are the actions proceeding from God...in reference to the world.”79 In other words, God’s eternal ideality cannot be predicated by human language, since God is not of this world. But we do make reference to God vis-à-vis this world. When God’s actions are perceived, which is to say a result of his “action” then we see that “whenever one of His actions is apprehended, the attribute from which the action proceeds is applied to Him.”80 God is “called” such and such although God is not the subject of predication, merely an action that indexes God as active.81

The attributes of action signal the kind of “un-grounding” that Cohen also claimed as the basis of Plato’s idealism; that is, the hypothesis of the good, which shows itself to be an idea that pushes past its form as an idea and becomes the ground of other ideas. Interpreting Maimonides in line with Plato, Cohen sees in the idea of the good a crucial difference from other ideas, and so of special importance in ethics:

even the good cannot become more than idea, and hence hypothesis. However, the content of ethics distinguishes the idea of the good from anything that is in the heavens and on earth. And so by means this distinction in value of this content, [the good] for its sake as hypothesis, is granted a privileged terminology.82

77 Guide I:59, p. 142
79 Guide I:54, p. 125
80 ibid.
81 Seeskin, ibid. p. 50
The distinction in value in ethical content between the good as idea and all other ideas is what gives ethics a particularly primary role in the structure of knowledge. Thus, for Cohen, Maimonides’ commitment to a God of the good means that Maimonides transforms the medieval Jewish axiological distinctions of the parts of the Torah, and transforms a traditionally metaphysical problem of knowledge into a uniquely ethical one. In the genealogy of “idealism” that Cohen is presenting, Maimonides therefore makes the leap from metaphysics to ethics in his account of the idea of God, who is a God of the good. For Cohen, the Aristotelian form of metaphysics simply loses its coherence insofar as the idea of the good becomes the “adequate hypothesis” (ἱκανόν) of all scientific cognition. Cohen therefore makes a hermeneutic parallel between the Platonic articulation of this idea of the good, which is the ground that un-grounds itself as axiologically distinct from all other ideas, and Maimonides’ negative attributes and God-idea:

83 It is also the idea of the good in this intellectually perfect and highest sense, even if for Cohen that means ethically cognitive, that distinguishes Maimonides’ ethics from the anthropological form of Aristotle’s. To this effect, some scholars have also interpreted Maimonides’ use of Aristotelian ethics to illuminate an expressly non-Aristotelian theory of intellect. For example, Maimonides often discusses the “doctrine of the mean” in ethics, not as a means of advocating any one principles ethical action, as though ethics were a dogmatic enterprise, but rather as a means promoting the highest knowledge of God. See Aviram Ravitsky, “The Doctrine of the Mean and Asceticism: On the uniformity of Maimonides’ Ethics” (Hebrew) in Tarbiz, vol. 79, no. ¾ (2010-11), pp. 439-469. By contrast, a classic example of the Aristotelian interpretation of the ethical good in Maimonides’ conception, which bears the marks of Strauss’ dualistic reading into exoteric and esoteric layers of the Guide, see Daniel H. Frank, “The End of the Guide: Maimonides on the Best Life for Man” in Judaism, vol. 34, no. 4 (1985), pp. 485-496. For a critical engagement with Strauss’ dualistic reading of the Aristotelian and Platonic layers of the Guide, very much under the influence of the late Pines, see Warren Zev Harvey, “How Leo Strauss Paralyzed Scholarship on the Guide of the Perplexed in the 20th Century” (Hebrew) Iyyun vol. 50, (2001), pp. 387-396.

84 Republic 510c-511c (Bloom translation): “...These things they make as hypotheses and don’t think it worthwhile to give any further account of them to themselves or others, as though they were clear to all. Beginning from them, they go ahead with their exposition of what remains and end consistently at the object toward which their investigation was directed...then go on to understand that by the other segment of the intelligible I mean that which argument itself grasps with the power of dialectic, making the hypotheses not beginnings but really hypotheses—that is, steppingstones and springboards—in order to reach what is free from hypothesis at the beginning of the whole. When it has grasped this, argument now depends on that which depends on making no use of anything sensed in any way, but using forms themselves, going through forms to forms, it ends in forms too.” Temporally, this beginning is beyond foundation (π), and thus, a hypothetical beginning. This is the movement of cognition. The most sovereign idea of all, the good, therefore, takes pride of place as a beginning or orienting goal of Justice in the Republic. The good, therefore, is the idea beyond being which itself, in its primacy, is precisely an ungrounding of the ground. This is the significance of the Helios parable in The Republic: the natural sovereignty of the good is the hypothesis for judgments and knowledge, which bring-forth the normative concept of judgment in time. Leo Strauss’ claim that the political knowledge of justice in The Republic is precisely not attainable by human reasoning would be consonant with such a reading. See The City and Man (Chicago: University of Chicago Press, 1964) p. 137. Indeed, the affinities between Strauss’ form of skepticism and Cohen’s reading of Plato would merit a more developed consideration here. Suffice it for the moment that both Strauss and Cohen filter Plato through the medieval Islamic lens, understanding the task of politics much more nuanced than conventional descriptions of
Thus we may term the idea of the good a sufficient hypothesis (ικανόν). Whereas the idea in geneal merits the predicate of ‘reliability’ (τὸ ἀσφαλὲς τῆς ὑποθέσεως), [the idea of good] may be defined as that hypothesis which constitutes the end or goal of reason, and thus plainly terminates the report of its accountability. 

The idea of the good becomes an idea that exceeds its own capacity to be an idea. That is, insofar as the idea of the good is an adequate hypothesis unto itself, unlike other scientific ideas that require a precondition, this idea empties itself of its cognitive content through the very kind of groundlaying for other ideas that it does. In this respect, Cohen interprets the Platonic idea of the good very much as he does the idea of the “world-whole” in Kant, as a regulative idea, which gives the practical use of reason its bridge to the world of experience. Hence, Cohen writes:

The ungrounding [Ungrundlegung] must be comprehended, moreover, as the most final and deepest ground [Grund] of all groundlaying [Grundlegung]...I may no longer ask why there can or must be given that there is an ethical world. It must be conceived as sufficient comprehension that the ethical must be thought and cognized, if cognition is to maintain its sense and value at all. Its idea [the idea of ethics] and its groundlaying are its own accounting. I cannot hope to find a ground above or beyond the ethical, in which the ethical finds its root. The good is the ground of the world.

For Cohen, the idea of the good is therefore a world unto itself, which provides the ground for action. Like the idea of God, who thinks humanity as He self-cognizes, the idea of the good is the groundlaying of this world of experience, since the idea of the good is an idea of the adequation of knowledge unto itself as a ground. It is the purest expression of idealism, where the idea lays the ground for the ideas about experience, although it itself is an idea that admits its own basis in a hypothesis and thereby undoes its own ground.

### 3.1 The Idea of the Good and the Temporality of Ethical Cognition

The self-reflexivity of the idea of good therefore contributes something wholly new to cognition, which metaphysical idealism could not grasp. The good substitutes the role of intuition in ethical

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experience, which in metaphysics would be where the ‘givenness’ of the object arises. With the idea of the good, an idea of reason rather than a sensible intuition is the ground of other ideas. For Cohen, ethics constitutes its own grounding of knowledge by remaining the most adequate form of knowledge about knowledge itself. It is the idea of ideas, the good, that therefore becomes the highest expression of cognition, and it is through the idea of the good that cognition pushes experience forward, seeking out the actualization of the good in time. Whereas metaphysical idealism seeks this grounding principle in a static principle of identity that logically conditions all subsequent cognitions, Cohen is demarcating precisely where logic and ethics are correlated and distinguished in the idea of the good. Hence, while “the idea connects logic and ethics; the idea of the good distinguishes ethics from logic,” just as the idea connects creation and prophecy, the idea of God distinguishes creation from prophecy. As a point of origin and departure, the idea of the good is the source and origin of all other ideas, and insofar as it is an origin that empties itself of any positively constituted content by receding and retrogressing into its origin as an un-grounding, other ideas of experience and cognition gain their forward movement toward the goal of actualization.

The idea of the good is the limit-condition of the pursuit of all knowledge. Through the retrograde motion of un-grounding its origin or of indicating how the content of the idea of the good explicitly indicates what ought to be, Cohen is able to discern the unique temporality of prophecy. All the more so the prophetic idea of the good, as opposed to the Hellenistic idea of the good, maintains a firm commitment to the idea of the future, to the idea of humanity, and the unity of all nature and knowledge in that future time. This future time reveals the dimension of messianism to which Cohen returns in his Religion of Reason, although already at the time of his Charakteristik essay, he maintains that messianism is a prophetic creation.

Cohen’s interpretation of the good as a temporal idea is therefore part of his interpretation of Maimonides’ attributes of action. As attributes that negate the impotencies in

88 ErW, p. 145; Fiorato, Geschichtliche Ewigkeit, pp. 72-3
89 CEM, p. 227
God, which in turn enable a theory of activity, Cohen interprets Maimonides in the conceptual terms that he developed *Infinitessimalmethode* and furthered in his *Logik*. He describes the attributes in terms of the judgment of temporality and origin, which Pierfrancesco Fiorato has located as the crux of Cohen’s messianic thought. So too, with his reading of Maimonides, Cohen returns to this logic while introducing the theme of prophecy into this discussion, since for Cohen, Maimonides’ God is “the God-idea [Gottesgedanken] as the origin of Israelite monotheism [Ursprung der israelitischen Monotheismus], set out therefore by the Prophets and not by the Talmud.”

This prophetic idea of God is the God of Israel, the God of humanity, whose self-knowledge is not limited to the logical principle of identity, as is Aristotle’s and even Hegel’s God. Rather, for Cohen’s Maimonides, the negative attributes demonstrate the infinitesimal generation of the content of thinking. Thus, according to Maimonides, we cannot even predicate “life” of God, insofar for God, “life is only identical in meaning with cognition. And cognition is self-cognition, self-consciousness.” Thinking and willing must be methodologically distinct, such that pure cognition and pure willing must not be conflated and annul the distinction between “is” and “ought.” But with God, the identity of thinking and willing is not that of the metaphysical definition of Aristotle, although Maimonides employs the formalism of Aristotle’s God, of thinking itself. Rather Maimonides transforms the ideality of God’s active intellect into a perpetual cognition or logic of origin:

> When, however, the intellect is realized in actu, the three notions [intellectus, intellegiens, intelligibile] become one. Accordingly you will never find in that case that intellect is one thing and the intellectually cognized object another thing, unless they are regarded as being in potentia.

Now when it is demonstrated that God, may He be held precious and magnified, is an intellect in actu and that there is absolutely no potentiality in Him—as is clear and shall be demonstrated—so that He is not by way of sometimes apprehending and sometimes not apprehending but is always an

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90 See Seeskin, *Jewish Messianic Thought*, pp. 198-200
92 CEM, p. 253
intellect in actu, it follows necessarily that He and the thing apprehended are one thing, which is His essence. Moreover, the act of apprehension owing to which He is said to be an intellectually cognizing subject is in itself the intellect which is His essence. Accordingly He is always the intellect as well as the intellectually cognizing subject and the intellectually cognized object.\(^{93}\)

Maimonides is explaining how God is an infinitely active intellection. That is, he is not claiming that God is a hypostatized intellectual principle. Rather, God is the perpetual origination of all thinking. As Cohen explains, by transferring all being into purposive generation, God becomes the action of cognition itself. What this means is that there is a fundamental temporality to thinking that cannot be isolated and located as the essence of God. The negative attribution of God leads to an insurmountable displacement of this kind of ontology. God’s actions are simply active. For Cohen, self-cognition of action means something for Maimonides distinct from what Aristotle meant by “thought thinking itself.” The temporal dimension transforms the act of cognition and thinking in God such that God’s thinking is perpetually generative of something other, such that when God thinks,

\[\text{in that he thinks himself, He is for Maimonides not only thinking thought itself. This self-sufficiency, from which the world of human beings is excluded, suits the God of Aristotle; it becomes nonsensical for the God of Judaism. The God of Judaism must think of mankind when He thinks of Himself; but certainly He must think of mankind from out of Himself, never out of the essence [Wesen] of mankind.} \]

Thus from here it becomes understandable that Maimonides posits an equivalence between will and cognition.\(^{94}\)

We see here how Cohen interprets the God of Maimonides as a God that generates the idea of man out of thinking Himself. That is, through an infinitesimal difference between God and man, the idea of man is generated from an origin that empties itself of its own content and ground to

\[^{93}\text{Guide I:68, p. 165}\
\[^{94}\text{CEM, JS III: 253. On this basis, Cohen’s claim that Maimonides “presents no docta ignorantia” can be better understood as a claim to ethical cognition becoming a unique kind of docta ignorantia about God in the natural world. That is, while Cohen believes that God’s actions can be known as the ethical norms of human behaviour, he does not believe that Maimonides assigns a logical cognitive doctrine to God’s essence. This would be tantamount to metaphysics. Hence, when Seeskin argues that this is part of Cohen’s misreading of Maimonidean attribution (Jewish Messianic Thoughts, p. 199) I would respond by indicating that Cohen is here signaling the unique value of ethical cognition as a theory of modality, where the ethical God-idea is premised upon his theory of correlation, which I will discuss further in the next chapter, as a hypothesis and a relative nothing to the idea of man. When discussed in the context of intellectual intuition, as I do in the next chapter, this argument may gain more plausibility. Suffice it to say, however, that Seeskin’s interpretation of Maimonides is not what I am challenging, merely the claim that Cohen misinterpreted the significance of a docta ignorantia.}\

give way to a something. God is the origin of man by being no-thing for man. This is the God of
the prophets: the God who thinks of humanity when He thinks Himself. Since humanity becomes
the action of God’s thinking, we can discern that God’s essence is this ethical idea of humanity.
This is the meaning of identifying will and cognition with the activity of God’s thinking, and it is
through this exemplarity of thinking and willing the other that God becomes the paradigm of
prophetic thinking. For Maimonides, God’s “action” consists in thinking other beings, as an
eternal overflow that is like “a gift that can never be returned,” 95 which means that “if God is the
God of ethics, then He must be the inhabitation of the relation to man,” 96 or as the Talmud seeks
to describe this correlation, God is the location, the place, (HaMaqom) of the world. 97 But the
equivalence of willing and cognizing does not mean that God is a logical principle of identity;
rather, it is because God generates the idea of mankind out of thinking Himself that will and
cognition become correlative functions within the activity of God as origin. Hence, for Cohen’s
Maimonides, God cannot be a first principle precisely because there is not a single principle within
God’s activity of thinking: the muskalot, the I and You of God’s revelation at Sinai, insinuates a
fundamentally dialogical moment into the origination: I am not You, which is to say, God thinks
Israel as the relative other to God’s no-thingness. This kind of action, for Cohen, is inherently
ethical, which breaks the mould of pantheism that lingers in this description. 98

95 Guide I:58
96 RoR, p. 257
97 cf. Bereishit Rabba, 68; Yakqat Shimoni, Vayetze, remez 117: s.v. “VaYifga’h Ya’akov haMaqom”; “And he arrived at the place.” Why
is God called Maqom? Because He is the place of the world and the world is not His place.” Cf. Ephraim Urbach, Hazal: Emanot ve-
De’ot, (Jerusalem: Magnes Press, 1969), pp. 53-68. Compare Amos Funkenstein’s description of “maqom” as a term that begins the
connotation of divine immanence, in Amos Funkenstein, Theology and the Scientific Imagination: from the middle ages to the seventeenth
supplements immanence is another significant trace of this medieval and even rabbinic logic at work. Indeed, in his Logik (LrW, 236)
Cohen maintains that in the place of immanence, he will use the term “correlation”. I will discuss this is much greater detail in the
following chapter.

After teasing out these Maimonidean elements, I will now try to revisit many of the arguments I have made in the dissertation, on Cohen’s behalf, and reinterpret them through the lens of what I would like to refer to as Cohen’s “prophetic idealism.” This term connotes the kind of emphasis upon temporality and futurity that is so essential to Cohen’s idealism, as well as insisting upon the ethical axis of epistemology and law in Cohen’s thought. Thus, the most important question with which I will treat in what follows, is Cohen’s revision of the *Typic*-problem, which asserts the connection between the noumenal world of ethics and morality, and the world of experience and action, or nature. In order to recall the insights of Maimonides, it might be helpful to note that when Cohen discusses ethics, history and law become equal representatives of the positive sciences of ethics. That is, when discussing the temporal dimension of ethics, history becomes a kind of history of the future, as Robert Gibbs has concisely phrased it. By contrast, logic describes the temporal order of causality, which does not enter into ethics. Rather, the model of time is purified through ethics, which relies upon history and law to give a sense of past and future. With this view of temporality in mind, prophecy and the prophetic model of time becomes filtered into ethics, law and history for Cohen. In reformulating the relationship between natural and ethical lawfulness, the *Typic*-problem, we find Cohen’s most succinct expression of how prophecy relates to the questions of law, ethics, and the state. Likewise, it is through his revision of the *Typic* that Cohen stakes out his distance from Kant concerning the harmonization of nature and morality, as well as beginning to sketch his opposition to all forms of pantheism as culminating in metaphysical idealism, or the logical identity of morality and nature grounded in the principle of the “I.”


100 ErW, pp. 87; 417ff.
By the time of Cohen’s *Religion of Reason*, the presupposition of a thoroughgoing commitment of the philosophical import of prophecy is already apparent. It is through the prophetic conception of time and history that Cohen is able to articulate the place of prophecy within his own system, albeit in an oblique manner. In relation to the systematic task of ethics, Cohen writes,

> However, history, because it is directed by ethics, is also directed by its method and therefore built upon the experience of economics, law, and state. Experience is indeed not the methodological basis but the factual, original material with which the method has to begin. This is the path which the prophet intuitively takes by virtue of the share of reason in religion; poverty is for him the objectification of human suffering and the poor ones, who already have been acknowledged as the pious ones, become the representatives of human suffering.\(^1\)

Experience is the realm of epistemo-critical logic and the judgments about nature.\(^2\) But experience is also the realm of action in ethics. While ethics builds upon the human sciences, and analytically speaking becomes the logic of the humanities, the positive sciences of economics, law, and state all demonstrate the methodological use of experience for articulating the ideal ends of the science at hand. The prophet takes this same methodological turn through the use of the categories of poverty and suffering, a vision of the social justice of God’s kingdom. For Cohen, these are ideal categories through which the individual is able to cognize the priority of the other who comes before me and claims me through an ideal mark of suffering, which is to say, of being my neighbour and potentially subject to my exclusive claims over her. In one sense, this is Cohen’s vision for political society as “prophetic socialism.”\(^3\) Such socialism understands the progress of the idea of humanity made possible only through the ideal and orienting idea of Justice announced by the prophets. Hence, the transcendent good, which Micah announces: “*He has shown you, O

\(^{101}\) RoR, p. 265

\(^{102}\) For an English language introduction to the problem of experience in neo-Kantianism generally, as well in Cohen’s thought in particular, see Alan W. Richardson, “Conceiving, Experiencing, and Conceiving Experiencing: Neo-Kantianism and the History of the Concept of Experience” in *Topoi*, 22; 55-67, 2003, pp. 55-68. Richardson’s focus, however, is solely upon the natural sciences as Cohen’s preoccupation in the first edition of KTE, and thus misses a number of themes that are essential to Cohen’s interpretation of Kant. For a deeper contextualization, see Geert Edel, *Von der Vernunftskritik zur Erkenntnistheorie*, (Freiburg/München: Alber, 1986).

man, what is good.”

Virtue becomes united with law—this is the prophetic combination that provides an ideal unity of idea and action—virtue is a schematization of action as it ought to be. But on the other hand, this is the truncated description of how the prophet treats the ideal categories of the “ought” of ethics for which the poor person becomes the representation. History—the science of history—becomes the vehicle for achieving the idealization of the past in light of the ethical ideal; making sense of what injustices have been in order to bring the good into being.

This concept of history could prove problematic if interpreted as Karl Löwith suggests. For Löwith, Cohen’s “prophetism” is a turn toward the kind of eschatological futurism that characterized both communism and fascism in the 20th century. Hence, turning solely toward the ideal-driven future would leave us stranded in a hopeless idealism for which the prophetic future can do no better to provide a normative context than arbitrary authority. However, Cohen’s conception of “prophetic time” is just that, a conception of time or temporality, and not solely a conception of history. As Myriam Bienenstock has argued, Cohen had no interest in what Löwith’s interpretation portrays, that is, of “perverting history—history as science, the history we

106 Gibbs observes this same logic in Cohen’s Logik, where the judgments of origin are prior to those of identity and representation. See Gibbs, Correlations in Rosenzweig and Levinas, (Princeton: Princeton University Press, 1992), p. 49.
108 By contrast, thinkers such as Yosef Hayim Yerushalmi interpreted Löwith as though his condemnations of Cohen were accurate interpretations of his historical thinking. See Zakhor: Jewish History and Jewish Memory (Seattle: University of Washington, 1996). In this respect, it may be possible that the kind of historicism that David N. Myers interprets Cohen to be participant to is consequent upon this misinterpretation of Cohen. See David N. Myers, Resisting History as well as idem, “The Problem of History in German-Jewish Thought: Observations on a Neglected Tradition (Cohen, Rosenzweig, Breuer)” Braun Lectures in the History of the Jews in Prussia, no. 8 (2002), pp. 5-31; Cohen’s understanding of the prophetic orientation of history and memory is consonant with the medieval biblical exegetical tradition (parashanut). See for example Rashi’s commentary at Deut. 32:7, s.v. “zekhor yenot ‘olam binu shenot dor wa-dor,” where Rashi simultaneously interprets the significance of “zekhor” as a remembrance of previous generations as well as a remembrance of the normative good that awaits Israel in the world to come and the messianic era. Consider Ramban’s disagreement concerning what is to be remembered (namely, the six days of creation), but nevertheless acknowledging the normative, and hence, futural purpose of memory.
write, historiography–into some kind of prophecy.\textsuperscript{109} Rather, Cohen understood both “prophecy” and the “future” to mean “action.” That is, what we ought to do in the world is precisely what prophecy indicates as a measure of time in relation to normativity, in relation to law. Hence, prophecy for Cohen is inherently legal and action-oriented. This is the meaning of the future.

In the \textit{Ethik}, this insistence upon the historico-futural method of the prophets is also abundantly present. For Cohen, the pure will of ethics strives for the meaning of futurity that is the mark of the ethics of the prophets:

The prophets project their Ethics [\textit{Sittlichkeit}] onto the future. The concept of the future distinguishes religion from myth. The prophets designate this future, in which man’s liberation from the war of nations, and in which the political longing for freedom of their own nation is bound up, with that term under which the one speech and one politics of the highest representative of the State is thought: as the Messiah.\textsuperscript{110}

This projection of God into the future is the Messianic modality of the God-idea and the scope of world-historical time. Unlike Kant, Cohen could not simply maintain an “infinite striving” toward moral harmonization with nature because such a projection is a claim to natural-causal eternity; this was Cohen’s identification of the Typic problem. Rather, Cohen’s infinitesimal messiah is unpredictable on the scale of world-history, as scientific developments continue to prove. All we have is law. Similarly, the role of religion, in the \textit{Ethik}, is to provide purified concepts and ideas that help orient the system of philosophy and help ethics and law in the state find historical data with which to better understand the constitution of the state. Ethics, as a science that has history and law as its branches, requires certain grounding concepts, but not the imposition of dogma. The figure of the messiah in the \textit{Ethik} therefore helps us understand the methodological role of the future in relating ethics and actions: the messiah is the figure of bringing ideality into actuality. The messiah presents the consummation of our inter-human longing for the idea of humanity. The meaning of Justice to the prophetic vision of the messiah thus grounds the ideal of humanity.


\textsuperscript{110} \textit{ErW}, p. 409
Similarly, the pure will that strives for the future must do so on the basis of the norms and laws that are generated by reason as the judgment of what ought to be. Hence, Cohen’s entire reformulation of the is/ought distinction comes about by virtue of this prophetic idealism, where the will generates its own kind of lawfulness distinct from that of nature. He writes:

The Ought signifies nothing other than the law-abiding will; the will according to the prescriptions, the law of ethics, which is what makes ethics ethics; and which therefore also makes possible and conditions the will itself. Without the ought, there would be no will, but only want. However, through the Ought, the will fulfills and achieves a true being.111

In order for the will to become the law-abiding will, the ought of ethics must become consonant with the idea of the pure will. But this argument concerning the necessary distinction between the “is” and the “ought” signifies the second step in Cohen’s reformulation of the Typic: insofar as a single law of identity cannot be the basis of logic and ethics both, so too, in the ethical realm, the law and the pure will can be united precisely because causal, empirical nature is nowhere to be found in determining the will.112 The kind of efficacy of the will is found in “bespeaking” the law, which is to say, that the very basis of the Kantian theory of right as a coercive self-determination is nowhere to be found.113 Coercion is precisely a consequence of this transposition of material causal nature into the noumenal world of ethics.114 Without a distinction between “is” and “ought” Kant’s Typic leaves us with the pantheism of the Idealists.115

While we saw earlier that this is Cohen’s reformulation of the transcendental deduction of the practical a priori, it is also an argument that spins out of the interpretation of law and virtue in Maimonides and Bahya Ibn Paquda.116 Both Maimonides and Bahya postulate a will that is

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111 ErW, p. 26
112 ErW, p. 435.
113 Ibid. See my argument concerning the relationship between coercion and intuition above in chapter 1, pp. 17-24.
114 ErW, p. 255.
115 Cf. Myriam Bienenstock, “Hermann Cohen sur la panthéisme” in Revue de metaphysique et de morale, p. 43. (see note 15, above, introduction)
potentially the ideal behind the revealed law (halakha). The entire theory of virtue is based upon the possible unity of this pure will of the halakhic man, as Joseph D. Soloveitchik (who wrote his own dissertation on Cohen) would later solidify as the lesson of Maimonides, being united with the individual will of the halakhic agent. Whereas for Cohen, the law-abiding will is the pure will that is grounded in the ethical ought, the norm, the law. Hence, as a transcendental deduction, Cohen argued that the law is coextensively deduced with the moral law, for the ought contains the presupposition of a noumenal reality where the will is the act of willing the law. Once again through a Kantian lens, this is the true meaning of freedom:

Freedom, to the extent that it forms the presupposition of this ethical subject of law, was determined according to their manifold rays. In the end, we raised the question of actuality for this problem of pure self-consciousness. It ought to be solved in the direction of the state—it ought to be. For it has not been solved—neither in an individual who bears this living spirit of the state in his heart, nor in a state-concept which has taken on a positive character (let alone in an actual state-entity). When will that state, the state of the ideal, appear in actuality?

We have claimed the term “ideal” for this kind of ethical being. While we renounce the claim of sensation for ethical being, we do not therefore doubt its [status as a kind of] being. This is precisely what we mark as ideal: a being which cannot be delineated by the determination of sensation, even if this could spread over all the lands of the earth—a being which must not be bound. It resists space; does it also oppose time?

Reassurance for purity seems to emerge from here. The will proceeds towards the future. It opens up infinity. And with this, security and a kind of actuality emerge for ethical self-consciousness. Eternity is mine. Here we may bring Lessing’s word to a principled meaning. Self-consciousness now possesses the actuality which is accessible to it, which is sufficient for it. Could space—to which sensation must refer back if it wishes to execute its claim—offer a better surety and means of securing than what is here achieved from time? Eternity is the being of the ideal of ethical self-consciousness, the eternity of ethical humanity.

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119 ErW, pp. 410-411
The futurity of the will being actually consistent with the law is what Maimonides tells us is the representation of the messianic kingdom. For Cohen, this is the kingdom of ends. It is the realm in which the end is actual, no longer a task. Hence, the pure will is the self-consciousness of the ethical state, the purity of the law as will. It is the messianic kingdom of ends itself. It is also the message, Cohen maintains, of the prophets.

5 The Messianic Kingdom of Ends

In Maimonides’ thought, there are the three basic components of rabbinic eschatology that he incorporates into his view of the teleology and eschatology of the law: resurrection of the dead (tehiyat ha-metim), the days of the messiah (yemot ha-mashiach) and the world to come (’olam ha-ba). But Maimonides’ innovation, which is my focus here, is to incorporate these eschata as temporal elements of the law itself. That is, rather than forming a break with the normative order, the eschata of the prophetic law orient knowledge of both nature and man—or nature and ethics—toward the future, giving the eschatology a prophetically mandated purpose. Hence, the kind of messianism in Maimonides’ thought is legislated by the prophetic, and thus, not an eschatological vision at all. Rather, messianism becomes a function of the law itself. For Cohen, Maimonides’

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120 The resurrection of the dead has been a debated point, given its lack of mention in the Guide, yet in his letter on the subject, Maimonides points to a consistent depiction of the resurrection as the concomitant feature of the world to come. See the English translation and introduction to Moses Maimonides’ Treatise on Resurrection, (New York: Aaronson, 1997). See Aryeh Botwinick, “Maimonides’ Messianic Age” in Judaism, vol. 33, no. 4, (1984), pp. 418-426.

121 According to Maimonides, the future coming of the Messiah is a legally normative event. Through law, Maimonides can connect the two poles of rabbinic eschatology, of the prophet and the messiah (cf. B.T. Baba Bathra 12a), and establish both as legally normative. Hence, the messiah is the index of the eschatology of the good beyond the law, but as index, is part of the law as a norm. For example, the Messiah signifies the future of the law, yet for Maimonides, the Messiah is a king who rules according to law. Hence, “nothing in this world will change but for Israel to have Sovereignty.” Mishneh Torah Hilkhot, Melakhim, 11:2; See also Sanherdrin 99a: “R. Hiyya b. Abba said in R. Johanan’s name: All the prophets prophesied [all the good things] only in respect of the Messianic era; but as for the world to come ‘the eye hath not seen, O Lord, beside thee, what he hath prepared for him that waiteth for him.’ Now, he disagrees with Samuel, who said: This world differs from [that of] the days of the Messiah only in respect of servitude to [foreign] powers.” That is, the messiah is not a miraculous event in the antinomian tradition. As Gershom Scholem has pointed out, Maimonides is somewhat anomalous in the Jewish tradition for positing a messianic era that obtains within the framework of legal order. But the rationale for this legal normativity of the messiah, I would like to argue, is due to Maimonides’ insistence upon the prophetic task of the law: to schematize the rational principles of God’s unity into determinate actions for the social polity, which is the purpose of the 13 attributes. In the messianic era, therefore, Maimonides’ conceives of a King whose role is to envelop the juristic enterprise, adhering in the main, but also deviating in necessity from the codified law. For the purpose of
anti-eschatological messianism brings the monotheistic ideal of God into full focus: God becomes the ideal of ethics, because God is the infinite origin of all ethical cognition. But God remains an ideal, which ethical cognition must seek out with the hope of actualizing. Hence, God represents two temporal horizons, one of messianic change in the world (ethics) and the other, of the synthesis of all ideals and actions, which is the ideal of pure unity (Truth in logic). Such a hope turns to the future, which the prophetic concept of history, Cohen tells us, has enabled: the messianic kingdom becomes a schema of how this world can be and ought to be better.

Returning to the Typic, Cohen now draws upon this aspect of Maimonidean prophetology. In Cohen’s revised version of the Typic, in order to schematize an ideal origin to action, a non-spatial figure is required. That is, nothing empirical can be relied upon for ethics. Thus, the idea of the messiah provides a new kind of schema. As Cohen writes,

The ideality of the messiah, its meaning as idea, is shown in the overcoming of the personal messiah and in the solution of this visible image in the pure thought of time, in the concept of the temporal age. Time becomes future and only future. Past and present sink into this time of the future. This return into time is the purest idealization. Every existing thing disappears before the standpoint of this idea. Human existence sublates itself in this being of the future.

The “purest idealization” of the future sees “every existing thing disappear” from the standpoint of this idea; it is a pure unity that dissolves all other things. Only time is left. What this means is that a non-spatialized, non-empirical meaning of ethics remains in focus. The idea of the messiah, as a pure idea of reason, is the pure idea of time, the idea of pure schema. Time is now figured as futurity, giving Cohen a clear opening to introduce the prophetic model of Maimonides into Kant’s Kingdom of Ends. Whereas Kant tried to idealize the “God-man” as the idea of an autonomous and “holy will,” for Cohen, the Kant’s Typic-problem begins with his reliance upon

the law is to bring about the era of politics habituated to the good of the law. But as the discussion in Sanhedrin 99a notes, it is only in the eyes of God that this good could be known. Hence, the messiah is on a continuum (as he is with the jurist-sage) with the prophet insofar as his role is legally bound, making the messianic a teleological view from the human perspective of the law. Maimonides therefore offers the following normative idealization of the messianic and how to recognize it. See Maimonides, Mishneh Torah, Laws of Kings and Their Wars, 11.3; cf. Maimonides’ statements on the temporal determinations of the law at Guide III:34.

This might be Cohen’s interpretation of Maimonides’ description of “the world to come” at H. Teshuvah, 8:7-8 Maimonides therefore follows the baraita in Berakhot which appears to distinguish the messiah from the word to come, see B.T. Berakhot, 34b.

RdV, pp. 291-292; RoR pp. 249-250.

See above, chapter 2, p. 54; Kant, Religion, Ak. 6:124ff.
natural causal lawfulness to model the moral law and has the consequence of the individuated and personal messiah, the empirical messiah, which betrays the ethical ideal. This model of ethical schematism, of bringing actions into being, focuses upon the eschatological dimension of history, meaning an empirical person and a spatially located being must be the cause of an ethical change in nature. Hence, for Kant, history became the schema of the kingdom of God. But for Cohen the Kingdom of Ends is not a historically projected naturalization of morality into the political state through the model of natural causality, as it is for Kant. Rather this moral and religious concept is now purified into a philosophical principle and has become the schema of lawfulness for the will; it is the very logic of ethical and legal judgment as such. The pure temporality of the future, which means the good can be brought about. The messiah represents pure temporality, which propels the ethical ideal forward. It is the moral idea of the good announced by the prophets that projects the kind of being the future ought to have. As Cohen claims in the *Ethik*:

“He has shown you, O Man, what the good is.” This expression shapes the motto of Prophecy. It is God, who is the herald. This is the boundary. Not human spirit; nor is scientific reason the source and the sovereign means. This boundary is what is designated by the mythological concept of “revelation”.

But revelation does not remain held at this mythological output. The boundary smashes through itself; the outside source suddenly overflows into a proper nexus (in ein eigne), into that of human reason, insofar as the concept of the reason of man is otherwise, yet reconciled with God.\(^\text{125}\)

The good smashes through this figure of futurity, breaking into the ideal norms of ethical cognition. “Revelation” no longer remains a mythical concept. Through prophecy, reason becomes the site of revelation and the good transforms the limit of human cognition into the outer layer of what is possible. Prophecy becomes a liminal form of reason, waiting for the good to shatter through and bring about the change of nature.

Cohen thus detects in Maimonides’ theory of prophecy a temporal principle of futurity that brings nature and God, and hence, logic and ethics, into infinitesimal approximation. That is, as we saw above, the methodological distinction between logic and ethics is based upon the

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necessary distinction of thinking and willing; but this is only from the perspective of humanity. From the perspective of God’s self-cognition and self-consciousness, willing becomes cognition, which makes God into the God of ethics. But as a practical supposition of ethics, this means that God becomes the ideal of cognition, wherein a future time can be asserted when nature and ethics will be united. This is the figure of messianism for Cohen, and it is a lesson he learns from Maimonides’ “anti-eschatological messianism” or Maimonides’ distinction between the components of messianism and the world to come.\textsuperscript{126} It is the source of anticipatory thinking, which Ernst Bloch solidified as the principle of hope.\textsuperscript{127} But insofar as the schema of the future is the pure idea of time, which is the scope of the pure will of ethics, Cohen must explain how the being of the ought, the being of the will, is constituted in action. Indeed, how is the “being of the future” constituted?

Cohen claims:

Messianism must be considered as a creation of ideas brought about by the prophetic concept of history. The concept of history is a creation of the prophetic idea. If one bear this in mind, then the religious one-sidedness of monotheism grows wider and turns into its opposite...

...the prophet is the seer, not the scholar. To see, however, is not to gaze. The Hebrew word הוהז correponds entirely to the Greek one for the formation of ideas. The prophets are the idealists of history. Their vision begot the concept of history, as the being of the future.\textsuperscript{128}

Time is the scope of being for the will. Hence, the prophetic principle of time constitutes history, which is to say, the positive sources of laws and states, which enable progress toward reaching humanity. History becomes the history of the ideal, the history of humanity. Prophecy no longer remains in the mythical realm; it is purified into the principle of the ethical will. Prophecy is the principle underlying Cohen’s revised Typic, namely, which sees the pure will enact the ethical ought.

Cohen maintains that infinite space and infinite time are the schemata of the pure will in its movement, and so too Cohen finds a religious purification as a correlate: the idea of death brings infinite space and infinite time into the context of the moral consciousness for whom historical time is directed toward a goal, whereby in messianism, there “originates the religious analogy to the moral concept of infinity demanded by the concepts of God and man. That monotheism has turned away from the myth [of the Blessed Isles] is further shown here inasmuch as the aspiration for infinity is for infinite time and not for space, which still remains the finite earth, created by God.”  

Hence, once again, whereas in Kant’s Typic of Practical Judgment the Kingdom of Ends becomes a schema, here Cohen demonstrates how religion finds its analogy to ethics in outlining the actualization of the ideal. As we saw above, in ethics this means the will is the opening unto the temporality of eternity. This is where Cohen introduced the Maimonidean strand of prophecy into his neo-Kantianism: the good of the world to come is a futurity as well as an eternity; that is, not a material future but a principle of distance and separation, and hence, not a materially parallel universe, but an inversion of space and time itself, an infinitude. Eternity helps us configure the infinitesimal approximation of the will to the law.

Cohen’s interpretation of Maimonides in concerning the temporal meaning of the messiah and the eschatological importance of the good, is best understood as what Martin Kavka has called the “me-ontological” significance of the world to come as always already established and accessible. For Cohen, the messianic future corresponds the logic of origin to the idea of the infinite in temporal terms. Thus, the goodness of God remains with God, but the idea of God’s moral good, accessible through correlation and what Cohen will later describe as Holy Spirit,  

129 RoR, p. 248/RdV, p. 290

130 Martin Kavka has made a significant case for Cohen’s reading of Maimonides on the basis of his interpretation of both negativity and infinity. See Martin Kavka, Jewish Messianism and the History of Philosophy, (New York: Cambridge University Press, 2004).

131 As Kavka writes, “Meontology speaks to the belonging-together of the infinite and the infinitesimal.” See Jewish Messianism and the History of Philosophy, p. 110.

132 This is the substantive argument of the next chapter; namely, that Cohen’s transforms prophecy into “correlation” and that the revealed law of the prophet becomes the “holy spirit” of moral reason.
becomes accessible through the law. The good is always accessible as is the world to come, the symbol of the futurity of this law. Knowledge, action, law and causality are oriented around this unknown and idea of excess, of the “to-come.” It is always to-come and so partakes of the promise of a future; but it is at the same distanced from every attempt to signify it in its continuous arrival.

Within the historical quantity of time in which it is possible for there to be politics and state-law, the task of ethical self-consciousness is to bring about the good. Hence, the positive state and positive law become the history of achieving ethical self-consciousness. This is the meaning of a history of the future, when the past is read as the goal of the future. But the prophetic time inserted into the Typic, which enables the infinitesimal approximation of the pure will to the moral law, becomes the new site of ethical duty. Hence, we must now consider what religion adds to Cohen’s conception of the prophetic principle of time. In the following chapter, I will explore the place of Cohen’s Religion of Reason in his system of philosophy and argue for its continuity with the system, but religion indeed further develops the conception of ethical individuation for Cohen. That is, while thus far we have learned the messianic logic of ethical judgment, we have yet to determine how the moral law relates to the moral consciousness of an individual. This is yet


134 This is the miraculous nature of the legal judgment. The prophetic miracle, therefore, promises the future in which the good of the prophets comes in the figure of the messiah. This Maimonides tells us from his reading of the baraita in both Sanhedrin 99a and Berakhot 34b. The world to come must be distinguished from the days of the messiah in order to maintain this anti-eschatological horizon of legal method and judgment: the good cannot be seen as materializing in the future. But this is only a methodological distinction from the perspective of the Right, the teleological perspective of the law. The being of that future good is its regulative idea for the purpose of the law (ta’amei mitsvot). Thus, the days of the messiah are codified as expressly legally mandated and regulated days. The messiah is given the figure of the King; but the world to come is desensibilized. Why might this distinction be so important for Maimonides? Without the distinction, it may appear as though the sole purpose of both the law and the messiah is to usher in an era of political sovereignty. However, the sovereignty of Israel is only a historical condition of the legal enactments that have already been made. That is, the law presupposes the conditions of both sovereignty and non-sovereignty. But even the days of the messiah cannot fully grasp the ideality of the good: this is the meaning of the world to come. The world to come signifies the temporal orientation of the good for the legal and political world in which we live. Only through a transformation of nature, ethics, man, and world, can this unification dissolve the eschatological historicism of antinomianism and in its place, abide by the possibility of the idealization of the miracle of law. This is what makes the figure of the Noahide both a condition of natural law, in this world, as well as in the messianic era. For a reading of the noahide in Maimonides and Spinoza that engages Cohen’s own interpretation thereof in “Spinoza über Religion und Staat” see Steven S. Schwarzschild, “Do Noachites Have to Believe in Revelation? (A Passage in Dispute between Maimonides, Spinoza, and H. Cohen) A Contribution to a Jewish View of Natural Law: The Textual Question” in The Jewish Quarterly Review, new series, vol. 52, no. 4 (1962), pp. 297-308.
another result of Cohen’s insistence of distinguishing his idealism from metaphysical idealism. The ethical subject must remain the goal of the system, not its presupposition. Hence, it is only once prophecy has been outlined and once God has been cast as the ideal I of perfect knowledge that religion can now contribute to ethics the additional consciousness of individual duty. That is, only now, after the ethical object, the pure will and its infinitesimal approximation to the moral law, has been outlined as an infinitely futural task of ethical action, can the idea of “worship” or “service” which religion brings to consciousness, be detailed as contributing a set of duties for the individual to act upon. These duties are the final derivation of the subject of the moral law such that the individual will, purified of its empirical trappings, can now be directed toward not just temporality of the future, but intentionally toward what Cohen refers to as the Kingdom of God:

I do not wait for the “Kingdom of God” to come and merely pray for its advent but bring it about through my own preparedness; through my own will I bring it about.

Thus the Kingdom of God is present to me and is a personal actualization for my consciousness of duty. Therefore it is more than just an object of hope and confidence. This realization and actualization of the messianic future was made possible through the above-mentioned distinction between the messianic future and the beyond...It is therefore the great merit of Maimonides to have distinguished sharply between “the future world” and the “future time”. This corresponds with his basic tendency to dissolve all dogmatism into ethical rationalism.\textsuperscript{135}

Whereas the messianic logic of ethical judgment is the schema for the pure will, this kingdom of God orients an individual will to enact the good. Hence, for Cohen, through purifying the religious concept of duty and deploying it according the logic of the transcendental method, the individualized moral consciousness of man finds itself on the path of the law and the path of virtue as the subject of ethical cognition. Duty is now toward the temporal ideal of action itself. Hence, there is no separation of legality and morality. Religion contributes the additional insight of this alignment of law and virtue. It is for Cohen the true deduction of the practical a priori: through the principle of prophecy, the messianic time of the future is deduced for human action. It now remains for us to explore the kind of subjectivity and its relation to the pure I of moral self-consciousness, which correlation consolidates in Cohen’s Religion of Reason.

\textsuperscript{135} RoR, pp. 310-11/RdV, p. 361
In conclusion, I have argued that Cohen’s ethics relies upon the prophetic principle to help schematize the pure will of ethics as a kind of lawful source of action. However, this argument took great pains to explore the way Maimonides first explored the idea of prophecy as a theory of intellect that leads to a kind of ethical idealism or ethical cognition. I argued that Cohen’s insistence upon the intimacy and methodological distinct between logic and ethics was consonant with Maimonides’ insistence upon the intimacy and distinction between creation and prophecy and I maintained that this distinction leads to the overcoming of pantheism or logicism. This reliance upon Maimonides, implicit as it is, has more than a mere heuristic value for Cohen. As Martin Kavka writes, it is fundamental to Cohen’s own attempt to answer the questions of his own time:

...it is not simply the case that Cohen uses Maimonides to explain how meontology works; rather, Cohen uses meontology to explain how Maimonides works. For without meontology, Maimonides would not work for Cohen; there would be no resolution between the transcendence of God’s nature and the immanence that is necessary for God to be imitated by humans. The relation Maimonides institutes between humankind and God in *imitatio Dei* is a correlation in the Cohenian sense. The understanding of meontology from Democritus and Leibniz is used in the “Charakteristik” essay to claim that relation is the central point of the *Guide*—the every privation is a necessarily predicated upon a nonfoundational ground that is its negation, a ground that is completely without lack and without potential.  

Cohen’s hermeneutic simultaneously elucidates the problems of his own time through his interpretation of the history of philosophy. For Cohen, pantheism is a specter of hubris and metaphysics a presumption to divinity. Ethics insists that human beings cannot simply achieve moral perfection; hence, Cohen does not struggle with such things as the persistence of evil. The world is a frail and fractured place, which is why its model of temporality will not suffice for the idealism of ethics. In an age of nationalism, anti-Semitism, and war, Cohen thus sought a kind of hope that humanity could achieve something more on the basis of systematic thinking and decisive ethical action. In the case of Maimonides, the very problems of pantheism and naturalism that Cohen so desperately sought to avoid become the problems of metaphysics and dogmatic theology.

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The God of ethics is the product of a theory of prophecy, and becomes the basis for a theory of the immanent value of the ethical relation in Cohen’s thought, which he describes as “correlation.” Cohen therefore diffuses a problem in German Idealist thinking while simultaneously recovering a kind of religious rationalism that was fitting for the German Empire.

In the next chapter, I will conclude by refocusing the discussion of Cohen’s *Religion of Reason* upon this new insight into the role of correlation and prophecy. If I am correct in claiming that Cohen’s idea of ethical monotheism is continuous with his polemic against pantheism, then it is only through the lens of this constellation of problems—neo-Kantianism, pantheism, positivism, prophetic time and messianism—that we can better understand the *Religion of Reason* as the final chapter of this attempt to overcome pantheism in the name of the God of ethics.
Chapter 4

From Pantheism to Monotheism: Correlation, Moral Law, and Intellectual Intuition in Cohen’s *Religion of Reason*

“If one tries intellectually to construe new religions without a new and genuine prophecy, then, in an inner sense, something similar will result, but with still worse effects. And academic prophecy, finally, will create only fanatical sects but never a genuine community.”

- Max Weber, “Science as Vocation” (1918)

1 Introduction

In his introduction to Cohen’s *Jüdische Schriften*, Franz Rosenzweig famously claimed that the *Religion of Reason* constitutes a break from the system of philosophy on account of Cohen’s introduction of “[t]he new basic concept..."correlation," and thus the mutual relation between man and God...” and that further, while “…this concept certainly also played a methodological role even in the Cohenian system, but nowhere [did it do so] as a grounding concept.” As a claim about the *de novo* character of Cohen’s *Religion of Reason*, the once-predominant interpretation set out in this introduction to the *Jüdische Schriften* is, by all accounts, now treated by scholars as a misinterpretation of Cohen’s work, telling us more about Rosenzweig than about Cohen. Since Alexander Altmann’s 1962 essay on the systematic role of “correlation” and the idealist continuity of the *Religion of Reason* with the system of philosophy, scholars such as Andrea Poma and Helmut

3 For a helpful overview of the scholarship, see the introduction to Daniel H. Weiss, *Prophecy and Paradox, Hermann Cohen and the Indirect Communication of Religion,* (New York: Oxford University Press, 2012). Interestingly, Weiss situates himself in the camp that seeks to draw lines of parallel between the system and the RoR, his argument focuses mainly upon Cohen’s hermeneutic voice in the RoR, which helps us better understand Cohen’s de-ontologized conception of religious concepts.
Holzhey have helped solidify the new interpretation of Cohen, finding more continuities between the system and the *Religion of Reason.* Indeed, Rosenzweig’s claims can be falsified by any thorough treatment of Cohen’s *Ethik*, and as I argued in the previous chapters, this is precisely because in ethics, Cohen develops a specifically legal meaning to the concept of correlation. It is a *grounding* concept of the juridical relationship between I and You in the contract.

But what is so profoundly interesting about Rosenzweig as a reader of philosophical texts is his ability to lose the trees for the forest—that is, while misinterpreting the significance of the concept of correlation, Rosenzweig nevertheless tells us something insightful and what I think is correct about Cohen’s system as a whole, as the Talmudic dictum would have it, *agab 'orhei,* upon the road toward his larger misinterpretation. Rosenzweig writes:

> The grounding concepts of the system were everywhere concepts of productivity and origination. Nature as an object of cognition, humanity as the task of the will, the love of the nature of man which is compressed into the work of art, which is the production of feeling: these three, in their more originating purity to be productive—therein is what the thinker saw as his task. Nature, Humanity, [and] Art came to account for reason as its productions,—indeed, thereby “reason” contained such depth and breadth as German Idealism had employed of this word. But nature and humanity would always be only productions, virtually only conceptually subsumable in a philosophical *status nascendi.*

Rosenzweig points out the two concepts most closely aligned in Cohen’s system, nature and humanity, as the representations of logic and ethics, respectively. He then notes how these grounding concepts are productive of the content of the systematic divisions of the system: nature as the object of cognition and humanity as the task of the will. By contrast, art as the production of feeling leads him toward the break from the system, in the discovery of love as a pure feeling that is radicalized in the *Religion.* Yet the significance of his short summary of the systematic division is that Rosenzweig thereby articulates the relationship between the system as a method and its thoroughly conception of time: all the grounding concepts are temporally projected into the future as “accounting” for reason (*logon didonai*, as Cohen would put it). It is through this nexus

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6 Rosenzweig, “Einleitung” pp. 334-5
that religion is taken to be missing for Rosenzweig, and that he interprets Cohen’s later considerations of art and feeling to lead him back to the sources of Judaism, as well as the existential break with the systematic task. While it is precisely this latter interpretation, which in following the scholars noted above I will argue against in this chapter, it should be noted that Rosenzweig’s intuitions are telling: insofar as he attests to how reason obtains the richness of the German Idealist tradition, in singling out nature and humanity as the two most prominent concepts for Cohen, Rosenzweig ignores the very insight he had earlier alerted us to in his reading of Cohen’s system. That is, Cohen’s system of philosophy is an intimation of Jewish concepts into the constellation of problems of “German Idealism”. Thus, while this is precisely the intuition contemporary scholars paint of Rosenzweig himself, it is rarely assigned its due place in treatments of Cohen. And yet, only a few pages earlier Rosenzweig more or less summed up this position in acknowledging that,

[w]hoever reads the brilliant chapter from the Ethics of Pure Will, which deals with the Ideal [Chapter 9], will find in the exposition of the concept of eternity the deepest expression laid out against any “bleak” concept [of the future], and will then see, how it here circumvents the latter as a most highly fruitful concept without which human life must be much more desolate. Eternity is namely for Cohen just a stage, not the sum of all temporality; he had precisely [grade] defined time [in these terms, such] that already in his Logic of Pure Cognition, he laid out no such summary [here]; the constituting of time is the future, and eternity is obtained through [a glimpse of] a moment, in its “nutshell” fulfilling push [fernst] into the future. This is not applied as a scholastic [schulmeisterliches] accounting for the progress of civilization, [rather] only a fervent pulling the momentum of will toward actualization [Verwirklichung]. [It is] toward actuality that Cohen sees all these considerations leading... As Maimonides...was his companion in probing how to enable the clearing of the representation of God into the idea, so that also here again, out of the this-worldly [diesseitigen] and merely political character of messianic prophesying, he prepared its strong distinction from the hope for immortality.8

Indeed, in seeking to controvert this evidence that Cohen admits both Maimonides’ and the Prophets’ model of time and of God into his Ethik, Rosenzweig reserves a special place for the Religion of Reason as the true location of any such engagement with Judaism, yet he nevertheless highlights the very point at which Cohen’s prophetic idealism in the Ethik reveals its systematic

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8 Rosenzweig, “Einleitung,” p. 321
relationship with the *Religion of Reason*. Cohen understands religion to achieve its fundamental role in the system through the temporal figure of futurity, modeled within the system on the basis of the prophets. This figure of temporality allows the application of a transcendental method, projecting objects and tasks as the goals of cognition and willing. Indeed, religion has no special place in the system because its particular role is not as a branch of the system, but the foundational mould that shapes time, task, and futurity in all the systematic components of the system. Rather than an “originative or productive” concept, religion becomes the shape of time; a history of the future. As the philosophical shape of time, religion replaces pure intuition in providing access to ideas that cannot be given, but only assembled at the end of the systematic task of philosophy.

In particular, as I have been arguing in this dissertation, the relationship between nature and humanity is precisely where Cohen solidifies this logical glue of religion. In this chapter, I therefore argue that Cohen’s concept of correlation is the fullest expression of his interpretation of Maimonides and prophecy: it is the connecting link between nature and humanity that achieves the future synthesis of God and the I of knowledge. But it is not a new concept, rather a retrospective assignment of the cognitive, ethical, and aesthetic actualization of the schema of lawfulness for reason. Correlation becomes the next articulation of Cohen’s reformulated “typic of practical reason,” bringing a dialogic concept into the centre of the lawfulness of reason itself. In other words, I argue that with the *Religion of Reason*, Cohen’s polemic against pantheism in both nature and ethics is completed, and correlation jettisons any semblance of the idealist penchant for intellectual intuition once and for all. Correlation achieves what intuition could never do, nor could the understanding do without time: it points to the unification of the constitutive and

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9 Consider Peter Fenves’ understanding of how Benjamin inherited this very project of reshaping time through the messianic principle of history. See Peter Fenves, *The Messianic Reduction: Walter Benjamin and the Shape of Time*, (Stanford: Stanford University Press, 2010).

regulative functions of the idea of God. It points to the purpose of subjectivity as a conceptual element. Correlation is the key to the system, but only by recalling the earlier abandonment of the thing-in-itself in favour of the ideas of reason. And just as I tried to demonstrate that Cohen learned this move away from the thing-in-itself from Maimonides’ prophetic epistemology rather than from intellectual intuition, so too in this respect correlation is the final blow to any metaphysical pantheism of the “I”. It is the redemption of subjectivity in ethics and law, and the intimation of prophecy in philosophical idealism.

Whereas the previous chapters suggested that Cohen’s *Ethik* transforms the relationship between natural and positive law by introducing the idea of God without the trappings of what Cohen referred to as “religion”, in this chapter I will discuss Cohen’s turn to religion as a key to resolving the tensions of critical idealism, namely, relating nature and knowledge, ethics and logic, and the role of subjectivity in thought. I will begin by discussing the role of religion in relation to the system and demonstrate the lines of continuity with the latter. Then I will further explore the conceptual interlacing of Maimonides’s philosophy into Cohen’s, which I began in the previous chapter. In conclusion, I will turn to the relationship between temporality (prophecy) and correlation as the key to overcoming intellectual intuition in practical philosophy. This latter argument will focus largely on Cohen’s uses of “futurity” as the category of time in practical philosophy, but also upon the relationship between the I of subjectivity in religion and the model of the I of the God of monotheism, bearing further the thesis of Cohen’s idealism: that the God of ethics is not the God of metaphysics. But such a relationship between the I of God and the I of Man relies upon the figure of futurity discussed in the conclusion of the previous chapter: the messianic kingdom of ends.

This futurity, however, is based upon the principle of prophetic time, which is located at the nexus of logic and ethics: Cohen’s solution to the *Typic*-problem. But how does Cohen’s expressly anti-metaphysical interpretation of Kant also obviate the problems of pantheism that he ascribed to Fichte and Hegel, namely, of a theory that places subjectivity and freedom at the foundation of the system, as well as grounding all knowledge of nature and ethics in this principle
of intellectual intuition, the I? As we can see from the previous chapters, Cohen’s philosophy takes
the I of self-consciousness as a goal of judgment, not its beginning. In this respect, the task of
thinking and willing is to achieve actions in the world that give evidence of something like ethical
subjectivity being ascribed to those actions. In other words, through the normative goal of freedom
being placed in the future, as a task, the retrospective account of the stages of judgment in logic
and ethics, can be interpreted as justifying the future goal of autonomous agency. Through this
temporal reflection of the past for the sake of the future, we see how Cohen has insinuated this
temporal horizon into his interpretation of idealism.

2 Religion’s Methodological Share in Reason

Religion contributes something new to the content of the concept of ‘man’, which the Ethik took
as a starting point. Since the Ethik demonstrated how reason as an organ of law can generate the
pure will of action, which actualizes the norms that reason has positively produced, so too religion
must be seen as having a share in this lawfulness. As Cohen claims in his introduction,

[r]eason not only stands in opposition to all sensuality of the spirit and the heart; it means positively
an intrinsic rule of lawfulness (Gesetzlichkeit), the archetype of all lawfulness. Religion certainly
cannot be deprived of the origin (Ursprung) of its intrinsic rule of lawfulness and its
development...Reason is the organ of laws. The religion of reason, therefore, comes under the light of
lawfulness.\footnote{RoR, p. 10}

Religion is thus a lawful product of reason, which “presupposes the concept of religion that
develops itself in the history of religion in general but particularly in the sources of Judaism.”\footnote{RoR, p. 11} In
other words, religion presents a particular kind of lawfulness before the concept of man, to which
ethics had also laid claim. This concept of religion, as I argued in the previous chapters, is
temporality as such; it is the concept of time and futurity at the heart of ethics. Hence, religion
confronts ethics with the challenge that the latter, within the system of philosophy, seeks to
account for all that applies to the sphere of “man” sufficiently. But ethics, according to Cohen’s system, is a comprehensive method; can there be, therefore, two concepts of reason when ‘man’ is concerned? Clearly there cannot. The relationship is methodological and therefore, analytically distinct. This is the decisive characteristic that must be addressed in the relationship between ethics and religion.

Religion is therefore something more of a conceptual glue that is found only retrospectively in ethics and the concept of man. Religion, by extension, is necessarily interested in plurality. That is, when read through the systematic, philosophical category of plurality, the problem of religion is also the dual-concept of “man” that lay at the heart of ethics: man is both singular and plural, as well as total, in the state: “man arises as plurality, which in itself forms the unity of a group.”¹³ Man is a unit in a group, a unity within a unity. But this duality is what also brings the problem of the individual into greater focus: man is but a unit in a series: “one man next to other men, just the next man (Nebensmensch).”¹⁴ But in religion, we are concerned with ‘man’ mediated by plurality. That is, we return to the intermediate position of the concept of the human being among humans (man among men).¹⁵

Ethics and religion are intimately related through this relationship between plurality and the singular-total concept of the human and humanity. In religion, however, the sources from which the “concept of religion” is culled are found in the history of religions. Hence, Cohen identifies two Protestant colleagues as the explicit interlocutors of his *Religion of Reason*: Julius Wellhausen, the great scholar of Biblical Criticism, and Wilhelm Herrmann, the Kantian Protestant theologian, both of whom were colleagues of Cohen’s at Marburg. Both colleagues

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¹³ RoR, p. 113
¹⁴ RoR, p. 114
¹⁵ Cohen’s idealism maintains no gendering of the human subject produced from reason, which is to say, he or she should never be beholden to an essentializing gendering of the subject-position. Hence, when I translate “mensch” as “man” it is only for the sake of idiomatic rendering.
represented the fullest engagement of “science” (Geisteswissenschaft) and the study of religion, and were thus the prime candidates for Cohen’s comments.16

Wellhausen presents an overt target of Cohen’s use of the prophets as his springboard,17 and yet Cohen transforms the polemic about historical chronology into a more conceptual focus upon the role of cognition of the created world, the thrust of which the Logik had begun but could now be given greater coherence due to the Ethik’s presentation of the God-idea. Similarly, Wilhelm Herrmann’s critique of the first edition of the Ethik drew attention to the question of the individual in relation to God as the seeming lacuna of the work.18 That is, in terms of the “I” of the individual, Herrmann claimed that Cohen’s distinction between the theological correlation of man and God, and the ethical relation of the individual and humanity was a misstep. For Herrmann, the love of the fellowman, indeed, the affect of love, had to find its own voice within ethics. That is, as Herrmann understood it, only religion could truly provide the universality that the self requires through the personification of a God of action; in other words, through Christian

16 For a further elaboration of Cohen’s conception of science in relation to religion, which stems largely from his Logik and its theory of the “relative infinity of privation” (LrE, p. 67), see Gabriel Motzkin, “Hermann Cohen’s Integration of Science and Religion” in Archives de sciences sociales de religions, 30e Annee, no. 60.1 (1985), pp. 43-53. Motzkin ignores, however, Cohen’s crucial engagement of religion with another kind of science, namely, with biblical criticism and how this kind scientific study of the text increases the rationality at the base of the tradition itself. But a further engagement of this kind of “science” would await Yehezkel Kaufmann, whose work took over Cohen’s task in the study of biblical and rabbinic literature. See Yehezkel Kaufman, The Religion of Israel: From its Beginnings to the Babylonian Exile, (New York: Schocken Books, 1972).

17 Cf. Hermann Cohen, “Julius Wellhausen” in JS II: pp. 463-68. As the scion of modern biblical research, Wellhausen’s thesis was not in itself threatening to Cohen’s scientific sensibilities. For example, Wellhausen’s thesis concerning the critical historical method of studying the Bible placed certain strands of the Deuteronomic texts at around the same chronology as the prophetic texts, as well as claiming certain texts of Genesis to be of post-exilic origin. In regard to Ezekiel, he charged that certain Priestly strands (chps. 40-48) would appear to predate P sources within the Biblical text. It was precisely this charge that priestly and prophetic sources were in chronological synchrony that Cohen sought to counter with a philosophical argument. Indeed, the historical-positive method was not the target of his attack, since his teacher Zecharias Frankel has likewise argued for a historical-jurisprudential reading of the Mishnah [See his Darkhei HaMishnah, (Breslau, 1859)]. Rather, for Cohen the prophetic texts of the Bible represented a culmination of the moral insight of the Israelite faith. Indeed, even in the face of Wellhausen’s suggested proof in that Ezekiel 44 represents a regression to cultic sacrifice, Cohen maintained the insight of the prophetic message as a combination of the historical actuality and philosophical sophistication. Yehezkel Kaufmann saw Cohen’s insights as productive for the domain of biblical criticism, arguing that the P source is much earlier than Wellhausen originally acknowledged. Thanks to Job Jindo for conversations illuminating this point. On Kaufmann’s philosophical approach to the Bible, see Job Jindo, “Recontextualizing Kaufmann: His Empirical Conception of the Bible and its Significance in Jewish Intellectual History” in The Journal of Jewish Thought and Philosophy, vol. 19, no. 2 (2011).

faith. This faith is the will-to-good that love of the neighbour, as well as of the enemy, implies for the self of moral action. Hence, in the Christian tradition Herrmann found the means to achieve the good in ethics. This was the meaning of Christ. And insofar as his liberal protestant interpretation of religion signifies the Schleiermachian feeling of dependence that gives the self its sense of divinity, the incarnation of Christ becomes the embodiment of action in the ethical sphere. Hence, for Herrmann, this religious universalism was missing from Cohen’s conception of ethics.¹⁹

Cohen, by contrast, refused to grant the independence and autonomy to religion that Herrmann sought. Ethics and religion must be distinguished: “Ethics cannot be based upon religion itself, but must employ the method of philosophy – What is Sittlichkeit in religion must first be learned from ethics – theology must become ethico-theology.”²⁰ Hence, according to the Ethik, whatever is taken as ethical in religion is learned from the method of ethics—the a priori cognition of ethical experience and laws for actions.²¹ The reason for this distinction, as we will see, is that Cohen refused to grant the thesis of “Verkehr” (intermediation or communion) a metaphysical foothold.²² The subject cannot be united with the Other or with God as she is in correlation, for in correlation, each term is necessary for the actuality of the opposite term, which is to say, each remains what it is for the other. Whereas in the ethical relation that Herrmann sought, love would assume the hubris of attaining divinity in the human subject, the presence of Christ was precisely the kind of empirical reality with which Herrmann wanted to counter the idea of “eternity”: “God speaks clearly to us...[f]ar be it for us to deprecate that sense of possession by the idea of the eternal which ennobles scientific enquiry even in the case of men who are not conscious of the connection of their life with Christ.”²³ Rather than the abstract scientific

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¹⁹ Herrmann, Ethik, p. 50; idem., Die Verkehr, p. 269
²⁰ Herrmann Ethik, p. 21
²¹ “Ethics, as a system of concepts, may well be fully constructed. If its laws have effectual existence among men, peoples and in states, it is of no importance whether this be the case now or in the future: it can express no judgment on this. Being there or effectual existence posits this problem to it.” LrE, p. 459, cited in Andrea Poma, “The Existence of the Ideal in Hermann Cohen’s Ethik des reinen Willens” in Hermann Cohen’s Ethics ed. Gibbs, R. (Boston: Brill, 2006) pp. 65-84.
²² Cf. Herrmann, Die Verkehr, p. 50
²³ Die Verkehr, p. 49
representation, Herrmann claimed religion could only be founded on a “fact”: “God makes Himself known to us, so that we may recognize him, through a fact.”

It becomes clear from this discussion that Herrmann’s Kantian conception of a subject within the sphere of religious ethics intimated far too much empirical and metaphysical force for Cohen. Rather, Cohen saw religion as having shared elements with ethics, while according to him, Herrmann simply accepted the reduction of ethics to theology. Religion, rather, takes the individual—the task of self-consciousness—as well as the Other in a new light; the Other becomes a specific conceptual problem for the individual, which ethics had not been prepared for until it had attained the correlation of the I and You in the contract. Rather, in ethics the systematic opening unto the future and the “pure will” in the contract with the Other, and the alterity of the law, served to generate an objectivity of the I of the individual in the context of the State. For Cohen, religion is not an independent spiritual experience that reaches beyond reason. Reason is the source of the conditions of experience, and religion is just as much structured through its categories. Hence, in this respect, Cohen’s Ethik takes on a non-Protestant colouring to its conception of religion.

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24 ibid. p. 51.

25 Cf. David N. Myers “Hermann Cohen and the Quest for Protestant Judaism” in Leo Baeck Institute Yearbook 46, no. 1 (2001), pp. 195-214. Myers provides an interesting intellectual history of much of Cohen’s Jewish writings, but ignores the elements of the system of philosophy itself, which is precisely where the philosophical deployment of religion becomes significant. Granted, much of Cohen’s personal life and engagement with the Jewish community reveals a desire to recreate German Judaism in the light of liberal Protestantism, as is evident from his statement in “Deutschum und Judentum” JS, II, p. 244, that “Maimonides represents the seal attesting to Protestantism in medieval Judaism”. It is precisely not Cohen’s rhetorical flourishes, wherein “Protestantism” signifies what Almut Bruckstein has correctly observed as “Kantian cosmopolitanism, unity of God and mankind in ethical reasoning, freedom of the individual and his/her duty to act according to the moral law. Protestantism stands for the rejection of all external, heteronomous, institutional authority”. See Almut Sh. Bruchstein, “Hermann Cohen, “Ethics of Maimonides: Residues of Jewish Philosophy—Traumatized” in The Journal of Jewish Thought and Philosophy, vol. 13 (2006): 115-126. pp. 118-19. In other words, just as I am interpreting Judaism to be part of Cohen’s hermeneutic method of philosophizing, by making its way into the conceptual fabric of the system, so too, Protestantism is there as well. But the conceptual ramifications of Judaism and the concept of religion within Cohen’s thought bears more depth and significance for the critical study of religion than it does when subjected to a looming historicism of German-Jewry. For an argument that both Cohen and Rosenzweig understood “Judaism” in the kind of “methodological” sense to which I am referring see Gesine Palmer “Judaism as a “method” with Hermann Cohen and Franz Rosenzweig” in The Journal of Jewish Thought and Philosophy, vol. 13 (2006), pp. 37-64.
2.1 Religion and the Subject

The *Religion* therefore puts the individual into focus in a modally different way than in the ethics. Rather than focusing upon the objectivization of the subject through the law, Cohen now wants to consider the subjectivization of the object of ethics. In the introduction to the *Religion of Reason*, Cohen explains that it is the scientific method of induction that points to the systematic problem developed in ethics: to avoid formalism in the normative construction of laws and actions, we must be able to provide a clear account of the concrete individual. While Herrmann’s original complaint was of desiring the personification of the law in Christian love, Cohen seeks to respond in turn. For his own part, Cohen argues that the individuation of law, morality, and self-consciousness is the correlation of the I of the individual and the I of humanity that is actualized in the state, since the “state is the transitional organism from individual man to humanity.”

Religion thus begins with the individual in a plurality, not yet at the level of a state, and seeks to describe how consciousness of the moral sphere of action is objectivized; that is, how subjectivization is objectivized. As we have seen, Cohen’s method continuously points to the inability for self-objectivization, and religion is no different: “[t]he religion of reason turns religion into a general function of human consciousness; it makes consciousness human.” That is, the dialogical structure of Cohen’s idea of dialectic is such that the self, the “I” of individuality is produced through the idea of humanity, which is the futural horizon for the concept of the individual, but only becomes a moral self with the right to say “I” through the correlation with God. Thus, in religion there is no state to provide the relative totality necessary for the individual “I” of self-consciousness. In religion, the system of ideal construction is schematized with the particular conceptual unity that comes from the relationship between individual and other: that is, the relationship of “correlation”.

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26 RoR, p. 14
27 RoR, p. 7
Correlation is the logical relationship between two distinct components related to each other, while preserving their independent existence. That is, the relationship does not alter the course of existence of the individual existent. For example, the other is not reduced to a component of my own self-identity through the deduction of the “I” of self-consciousness. Rather, the other continues to persist as the origin of my “I”. The other, in religion, sparks a return to the duality of “man” as a concept that intimates both individual and other.

But correlation introduces yet another relationship that cannot be reduced to identity: the relationship between man and God. We find in religion a different modal relationship between the I and its content; that is, the “I” of God provides a different ideal for reason and for man to achieve his own moral “I”. In other words, correlation defines the place of “intuition” of what the subjectivization of the object of the I is to mean. Hence, religion and ethics both share this relation between God and man:

Is God characteristic of religion? Did not rather every ethics, modern and ancient, more or less openly make use of God for its foundation? And if even our own Ethics of Pure Will elevated the idea of God to its keystone, how is it still possible to think of God as the property of religion?

Let us remain with our own ethics, which, more definitely than any previous one, adopts the idea of God into the content of ethical teachings. Yet the meaning of the idea of God in this ethics wholly corresponds to the concept of man in general. Just as man there signifies humanity, so God permits the completion of the doctrine of humanity only. As man in ethics is merely an example of humanity, so God is only the guarantor of humanity. Humanity is the subject of universal morality. According to ethics, the individual man is able to fulfill the demands of morality only in the image of humanity and, therefore, only within ethics’ own competence, namely, in the autonomous law of its reason...

Ethics is a method that orients “man in general”. That is, the socio-historical role of man as an agent of legal and historical action and change. The method for man in general is thus to achieve the “I” of humanity objectivized in the state—ethical self-consciousness that mediates the I and Humanity. But this “I” of the individual citizen remains a political generality qua citizen and as an

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28 See Reinier Munk “Alterity in Hermann Cohen’s Critical Idealism” in *The Journal of Jewish Thought and Philosophy*, vol. 9, (2000), pp. 251-265. Munk attempts to trace the dialogic moments in Cohen’s philosophy, in both the system as well as in the later works on religion. Munk traces the logical characterization of judgment in Cohen *Logik* as a kind of originary separation and holding together, which bears out the German “Urteil,” see pp. 253-254.

29 RoR, pp. 20-1
“autonomous” individual enacting her civic virtue to be auto-nomos. Hence, the idea of God that was required as a coordinated ideal to that of humanity was related to this idea of man in general. God gave coherence to the “I” of humanity, but only as a guarantee that legality and morality were correlated through the form of lawfulness we call “reason”. In theoretical terms, the Ethik engages God merely at the level of the deduction of the “object in general” from the categories of the understanding. But, as Cohen continues, it is a different matter when we consider the role of this idea in religion:

The latter [the autonomous law of ethics’ reason] is not responsible for anything that happens beyond its borders and basically, therefore, is not interested in the outward success or failure of moral duty. Yet here, too, religion objects to this fiction of indifference.

It must not be a matter of indifference whether my morality and all men’s morality remains dutiful striving only, sufficient in itself, rather, I have to take an interest in the question of whether the ideal has life and actuality. Even though this identity can only be achieved in the approximation to the ideal, the inexorable goal of the approximation is the permeation of actuality with the ideal. However, this proper goal of ethics has to recede in face of the scientific rigor of ethics, because of which it has to maintain the separation of actuality from the ideal, and generally between idea and actuality. This rigor brings about the illusion that ethics deals only with law and rule, but never with human actuality.

Ethics is true idealism, which takes the task of actualizing the ideal over any actuality of the ideal. That is, ethics sets the task of the pure will to strive for unification of the I of individuality with the I of humanity. Only thus is self-consciousness achieved as a dialectical tension. But in religion, Cohen sees the life of the ideal. That is, the ideal is not a mystical netherworld, but the force of temporality. It is the future that pulls thinking, willing, and feeling forward. Hence, while ethical rigour “brings about the illusion” of being concerned only with positivism, the key of religion shows us that the I of ethical self-consciousness finds itself in the correlation with the I of God and that ethics had this as its rigourously derived methodological concern from the beginning. Religion now describes the shape of time that was already at the centre of ethics as a true idealism.

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30 For a consideration of how autonomy and lawfulness are reshaped from the Kantian frame and redeployed in Cohen’s concept of reason itself, see Andrea Poma, “Autonomy of Law” in Yearning for Form, pp. 261-272.
31 RoR, pp. 20-21
The goal of ethics and the goal of religion are therefore the same, but religion provides a concrete particularity that the methodological rigour of ethics had to generalize: the injustice that ought to be eliminated in “suffering” of human beings, to which I cannot be “indifferent”. Suffering is therefore an instance pointing to the duty of man to take responsibility for suffering, and is an action extending beyond ethics as a method of achieving pure affect. Suffering is the pure affect with which the individual discovers love and the feeling of duty. Hence, the idealist system is once again suffused with religion: the nature of natural science is cognized as the sphere in which the pure will seeks to attain its actions that actualize self-consciousness, and it is only through the pure affect of love, a desire to see the “nature of man” that the duty imposed by God is, not intuited, but actual. For nature, will, and feeling lead to the image of the messianic transformation of nature in the image of ethics and the ability to see this pure form in love, for the idea of God which enabled this pure affect is a messianic God and “messianism...means the dominion of the good on earth.”32 My concern for the ideal is therefore a concern for the actual in religion: a striving to eliminate the injustice of suffering in the action of virtue. This is a messianic striving, insofar as the dominion of the good is not merely a hope, but the horizon for the moral self and the humanity of the other. Thus, while in ethics prophecy is the principle of time, in religion, the messiah becomes the schema of time itself.

The idea of the messiah is the idea of this future. Hence, the completion of the system in ethics, of God as the unification of nature and ethics, returns once again to this idea of humanity. God is now the creator of man, nature and the other.

The specific meaning of the monotheistic concept of creation concerns ethics. Therefore we shall be able to unfold this meaning only in connection with the creation of man, in connection with the creation of reason itself. The stumbling block in the entire problem of creation is that it is understood with regard to all creatures indiscriminately. Metaphysics gives this guidance to natural science and pantheism owes its distinguished reputation to the fact that it follows metaphysics. If, however, as we saw from the beginning, reason takes two main roads that diverge at a decisive point, then the question of creation cannot be posed with regard to all creatures indiscriminately but, rather, in accordance with these two main roads. One merely supposes that there is a dualism in this

approach. It is rather the unity of the method that, although based on the separation of the problems, seeks to bring about the unity of knowledge on the basis of this separation. The distinction of the methods leads to the unity of methods. However, the separation has to come first. Logic is the logic of science. Ethics can set up its own logic only by analogy to science.

Therefore, before we develop the ethical meaning of creation, we would like to point to the form Jewish monotheism took in regard to this question, taking our bearings from the standard established by Maimonides.

For Cohen, the individual pieces of the system are all brought together in this decisive move when creation becomes the key: the creation of man. Indeed, as we saw in chapter 3, this is precisely the point at which the theoretical and practical spheres of reason are joined: creation is a distinctly ethical concept that religion brings to full force. But the truly striking aspect of Cohen’s argument is that creation, the object of nature and cognition, is now transformed into reason itself. And the logic of ethics which brings the insight of religion into focus is that the creation of man points to the two paths of reason: one takes the road of nature (logic) while the other takes the path of man (ethics). The unity of method, however, requires that “separation come first” in order that knowledge of nature and knowledge of man be truly united in God. But insofar as Cohen continues his polemic against all metaphysics, and so against all forms of pantheism, he maintains that once again the path to true synthesis of reason can only come about in the future, through the “ethical meaning of creation” which points to the messianic God as its culmination.

And yet Cohen maintains that this insight is from the “standard established by Maimonides”. What exactly he means by this invocation of Maimonides remains to be further fleshed out. But I would like to venture the following claim in its support: it is precisely the vision of creation that I discussed in the previous chapter, which Maimonides outlined as the cognitive presumption of the prophetic law, while the idea of God is a cognitive presupposition of the idea of creation. Hence, within this seeming paradox, Cohen develops his theory of the infinitesimal difference between eternal time and eternal space; namely, developing the theory of futurity for ethical cognition. What is significant within Maimonides’ own arguments on behalf of the

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33 RoR, p. 67
epistemological significance of creation is that without creation there can be no “belief in the law”. That is, Maimonides maintains that the law is uprooted without the belief in creation, for both creation and the law share yet another component that binds them together, namely the idea of prophecy. Creation, the law, and prophecy are all placed upon a logical continuum for Maimonides. And it is precisely through the analogy to Cohen’s systematic division that we can see this influence: creation becomes the task of logic, the law becomes the task of ethics, and prophecy becomes the task of art when suffused with religion and thus, discerns the “nature of man”. But likewise, prophecy forms the backbone of the system itself, and so is the key to deciphering the link between ethics and religion as well.

3 Maimonides on Prophetic and Performative Knowledge

For Maimonides, the account of law centres upon the role of the prophet. Maimonides’ theory of the purpose of law, the ta’amei mitsvot, likewise begins here. Just as the basic condition of all knowledge, whether practical or theoretical, is God’s unity,\(^\text{35}\) the prophet’s intellectual capacity consists of employing the imagination to figure the principle of God’s unity. Hence, the prophet becomes a legislator through the regimen of the imagination affected by the Active Intellect, as with Farabi’s prophet.\(^\text{36}\) This work of translation of knowledge into legislation is thus a peculiar

\(^{35}\) Indeed the prophetic Kabbalah, such as that of Abraham ben Shmuel Abulafia, developed the Maimonidean theory of the condensation of the divine into linguistic moments as the basis for a kind of ecstatic conceptualization of theosophical union with the divine, stemming from the unification of the divine name. See Moshe Idel, Kabbalah: New Perspectives, (New Haven: Yale University Press, 1988).

\(^{36}\) Alfarabi, Enumeration of the Sciences in Alfarabi: The Political Writings, ed. Charles Butterworth (Ithaca: Cornell University Press, 2001), para. 4 p. 80: Jurisprudence is thus the art by which a human being, “is able to infer, from the things the lawgiver declared specifically and determinately, the determination of each of the things he did not specifically declare. And he is able to aspire to a verification of that on the basis of the purpose of the lawgiver in the religion he legislated with respect to the nation for which it was legislated.” Hence, the intellectual truth of natural knowledge is necessary for ethical and legal knowledge: “Since everything whose existence is willed cannot be made to exist unless it is first known, it follows that when one plans to bring any voluntary intelligible into actual existence outside the soul, he must first know the states that must accompany it when it exists.” Alfarabi, “The Attainment of Happiness” in Alfarabi: Philosophy of Plato and Aristotle, trans. Mushin Mahdi (Ithaca: Cornell University Press, 2001) pp. 26.
activity on the part of the prophet because it is an eminently practical use of his reason, which is perfected in the theoretical use.\(^{37}\)

As I discussed in the previous chapter, for Maimonides the law is grounded in the intellectual truth of God’s unity. If God’s unity is the rational principle of knowledge, then the next step is to examine the attribution of God with activity: the source of both creation and knowledge of the law, or prophecy. Hence, this is best exemplified through considering Maimonides’ theory of the attributes of God and their relation to the teleology of the law. For the attributes of God are the intellectually adduced actions of God, yet reflections of human actions. Maimonides claims that the thirteen attributes must be conceived as human rhetorical descriptions of what is interpreted as divine actions.\(^{38}\) He writes,

> the governor of a country, if he is a prophet, should conform to these attributes (13 midot). Acts [of punishment] must be performed by him moderately and in accordance with justice, not merely as an outlet of his passion. He must not let loose his anger, nor allow his passion to overcome him; for all passions are bad, and they must be guarded against as far as it lies in man’s power...\(^{39}\)

The attributes of God are first and foremost interpretable as actions for the prophet-statesman. The prophet is the one said to be in a position to mobilize the theoretical truths of the attributes for the sake of governance, a political craft or legislation. But as Maimonides has spent the entire chapter explaining how we cannot attribute God with any attribute, except to understand via

\(^{37}\) Maimonides thus concedes Farabi’s claim of the correlation that law establishes, namely, between theoretical and practical knowledge. But for Maimonides, the theory and praxis of this elaboration of the law takes place not only through the philosophical speculation of the kingly craft. The jurist, himself, embodies something of the prophetic craft as well. Indeed, the innovation of Maimonides’ thought is not that he considered himself a prophet, or even that he was so esoterically philosophical as to undermine the law. Rather, for Maimonides, *jurisprudence is a prophetic craft* – (it is poeisis). This argument, concerning the relationship between reason and prophecy in the realm of law is based in rabbinic conceptions of the sage. Hence, in B.T. Baba Bathra 12a-b, we find a comparison between the Sage [hakham] and the prophet [nabi] with the question concerning the relationship between a legal argument and the prophet wisdom to see the legal argument as a continuum rather than a distinction. Hence, the 13\(^{th}\) century commentator R. Yom Tov Ishbili points the reader directly to Maimonides’ theory of prophecy in both Yesodei Ha-Torah and the *Guide*, with the particular importance of noting the Sage and prophet’s moral character and knowledge. See *Hiddushei Ha-Ritva*, ad. Loc. Hakham Adif Me-Nabi, B.T. Baba Bathra 12a-b (above). Hence, it is on the scale of ethics and politics that the Sage and Prophet are akin. I will return to this in what follows. Suffice it to note that Louis Ginzberg has discussed the significance of the rabbinic understanding of legal and hermeneutic authority in the Geonic era being on a continuum with the prophetic leadership of the second temple period, but this ideal conception had very different political realities on the ground. See Louis Ginzberg, *Geonica*, 2 vols. (New York: The Jewish Theological Seminary of America, 1909), p. 6.


\(^{39}\) *Guide*, I:54, p. 77
negativa the privation of God’s inabilities – what Cohen would call the infinite judgment – we find Maimonides turning to human interpretation of action as the key to deciphering knowledge and opinion about God. It is here that we arrive at the divine, “Intellect in Action”. The knowledge of God that conditions the law must employ the imagination, which contains the representations of human action. In the process of cognizing these actions as “determinate” norms of action, the activity of intellection these actions and norms becomes the exemplification of the prophetic intellect: legislating law. The attribution of God’s activity thus becomes the prophetic performance of intellection. Therefore, the attributes are a retrospective “fictionalizing” of the actions that a prophet exemplifies, the prophet first, and then God. This is a performative attribution. And Maimonides continues:

...we have shown why it has been considered sufficient to mention only these (thirteen) out of all His acts; namely, because they are required for the good governance of a country; for the chief aim of man should be to make himself, as far as possible, similar to God: that is to say, to make his acts similar to the acts of God, or as our Sages expressed it in explaining the verse, “Ye shall be holy” (Lev. 21,2): He is gracious, so be you also gracious; He is merciful, so be you also merciful.”

The prophet is correlated to the statesman. God’s acts have a specifically hermeneutic purpose – they are interpreted as 13 because “[13] are required for the good governance of a country [almadan]”. The law becomes the embodiment of God’s normativity. But we now have a theory of action that has developed out of the exemplarity of a prophet. The prophet is to imitate the attributes, and in turn “the chief aim” of each and every man is to make himself “similar to God”. The performative attribution of the prophet’s leadership is the key to human imitation of God. Imatatio Dei is, therefore, political praxis. Maimonides’ theory of prophetic revelation requires both the theoretical and practical, as for Alfarabi. Attributes of God’s actions are attributed for the sake of human actions. But the prophet is the exemplar of the actions themselves, and thus, the scientific study of the law becomes the imitation of God’s actions as humanly represented. The relationship between theoretical truths and practical determination of actions involves the temporalizing function of the norm: grounded in a past that cannot be demonstrated except by

40 ibid. I:54, p. 78
appeal to its schematization in the law and at the same time points toward a future where the purpose of all knowledge and action will unite.

In short, I am arguing that Maimonides takes the prophetic law as the link between theoretical and practical knowledge, but that he does so with the peculiar conception of temporality that I discussed above in relation to the divine overflow. The natural causal order is the temporal sphere. The law, by contrast, is neither temporal nor causal, because it is an idea consequent to prophetic intellection and receiving divine overflow. The law, like ethical norms for Cohen, is the figure of eternity; that is the kind of temporality at work, not causal time. But the law enters into the natural causal order insofar as it conditions actions, and concomitantly, is united with action in the normative idea (mitsvah). Hence, the law is the link between idea and action, which suggests that the kind of eternity of the law is one that always displaces itself into the future, into the actualization of the norm. Once again, this kind of futurity can only unite the temporality of creation, which is causal, and the eternal-futural time of the law through the idea of God. For God represents the very unity of idea and action, or what Maimonides calls “perfection” and Cohen refers to as “synthesis.” In other words, I am describing Maimonides as a “prophetic idealist” whose view of the unity of law and action (perfection) can only be found in a future culmination of the good that unites all knowledge. The ultimate purpose of law (or what Cohen calls “ethics” and its science of law) conjoined with the purpose of the created order, and yet is presaged by the unity of the ideal law. What is at issue, therefore, is the status of nature and law. The prophet becomes the link between nature and morality, not the natural-causal order.

3.1 Creation, Prophecy, and the Dissolution of Intellectual Intuition

According to this reading of Maimonides and the one I offered in Chapter 3, we can better understand how and why Cohen interprets the unity of knowledge and action, of logic and ethics, as culminating in a future time wherein the God of ethics is at the same time the God of nature, while insisting upon the philosophical and methodological distinction between them. Cohen
philosophically inherist the systematic division of logic, ethics, and aesthetics from Maimonides' theory of creation, revelation, and insinuated in them both, prophecy. For Maimonides, it is only through the hypothetical correlation between creation and the Law, such that neither one can be admitted without the other, that the epistemology of prophecy shows the coherence of knowledge of either. Likewise, in the Religion of Reason, Cohen begins to explore these categories explicitly, all the while recalling the force of the conclusions of the system of philosophy:

Thus the question of creation, in the case of man, now concerns knowledge. And with regard to knowledge the question concerns the relation of man to God. The serpent calls it identity; our philosophical language calls it correlation, which is the term for all concepts of reciprocal relation. A reciprocal relation exists between man and God...

Cohen defines creation as the creation of reason, or an epistemological creation. Hence, the relationship between man and God is a rational relationship. But Cohen once again demonstrates the distinction between logic and ethics by pointing to the necessary denial of the lawfulness of logical identity as in any way corrupting the form of the ethical relationship between man and God. Only the “serpent” who intimates the pantheism of logicism calls it “identity”. Hence, the rational and reciprocal relationship between man and God is what Cohen refers to as correlation in its intimacy with creation. What this means is that Cohen, in adopting the idea of purpose as an epistemological stake in nature, infuses nature with the ethical dimension of time: creation has a meaning, which only ethics can assign to it through action. The idea of the I of God thus transforms a logical principle at the foundation of knowledge into an ethical task that must be actualized in human action. Hence, the I of God becomes a norm.

Cohen thus never yields the critical spirit to metaphysics, even in religion. Rather, religion contributes a new systematic branch, related as it is to both aesthetics and psychology, as the branches of the system that help articulate the unity of consciousness of knowledge itself to the ethical pinnacle of the system. In other words, at the culmination of the system there is now a concern with the consciousness of the foregoing systematic moments in the history of reason itself, which are now expressed most clearly through the concept of correlation: a theory of subjectivity

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41 RoR, p. 86
that is produced at the same moment as the objectification of the object. In other words, Cohen’s reading of Maimonides is that the only way to justify the epistemological project is by turning to the formal and meta-critical questions of how we know that knowing is knowledge of something, and what is more, this question is how we know why we ought to know this. Even further, aesthetics, psychology, and religion all share the common feature of inquiring into the correlation between the objectivity of the subject that knows an object, and the production of this relationship as a synthetic moment of creative consciousness. In aesthetics, this is called “genius” and in religion, this is called “correlation”. In ethics, neither of these terms has any sense without presupposing the cognitive norm of the sollen, the ought. The Maimonidean epistemology of this creative moment of legislation of the ought, which both genius and correlation describe, is what Maimonides calls the productive imagination coupled with intellect: prophecy.

To recall the earlier argument, Maimonides defines prophecy as the power of the imagination coupled with the active intellect to produce an intelligible, which cannot be otherwise communicated or grasped. It was this experience of “conjunction” of the active intellect and the hylic intellect, which then relied upon imagination to produce the images that became laws that Maimonides coined as the basis of the Mosaic legal prophecy. For Cohen’s part, he therefore reintroduces a medieval concept through the scope of the 19th century German debates about psychologism, which Herbart and Fries had already been discussing; true knowledge of the a priori, or transcendental psychology, which is to say knowledge of the conditions of knowing. Thus, Cohen adopts the ethical stakes of this Maimonidean pedigree and transforms the concepts of creation and revelation into logic and ethics, which are intimately linked to the concept of the productive imagination in aesthetics, or what becomes correlation in religion, and the prophetic revelation of reason itself.

Similarly, whereas in the wake of Kant’s division of legality and morality, the German Idealists had attempted to unify the theoretical and practical uses of reason upon the basis of logical lawfulness—the law of identity of the I of self-consciousness—Cohen refused to grant this systematic unity. Rather, as we saw in the previous chapters, at the level of logic Cohen took the
Maimonidean model of creation as the basis for his logic. That is, rather than attempt to extrapolate the infinite understanding of God as intimated into the finite understanding of human cognition, Cohen transformed the role of reason into a mathematical continuum akin to the model of continuity in infinitesimal calculus. Cohen indeed maintained the finitude of human reason, however he refused to grant a lesser degree of reality to the cognitions of nature than to the presupposition of a metaphysical first principle. Rather, Cohen understood logic as a logic of origin, a logic that accounts for its inability to begin de novo, but rather is always already a part of the mathematical infinite, and that our cognitive judgments are particular negations of the inactivity of thinking. That is, the infinite judgment is the origin of our judgments about nature and cognition as such.

Creation and revelation therefore become the basis of a logic of origin, purely produced from the hypothesis of a not-nothing (creation ex nihilo) and revelation as the pure will producing the legal actions that are based upon the norms of a pure law. Similarly, then, Cohen adopts Maimonides’ ethical idea of God: God is the God of ethics, not the God of metaphysics, which is to say that creation is an ethical concept. As an ethical concept creation is all the more so related to prophecy, which is the basis of the legal and moral core of man’s correlation with God. In Cohen’s own words, creation is the basis of knowledge, both theoretical and practical:

In the case of man, God’s being must be the presupposition for knowledge. And knowledge is concerned not only with the knowledge of nature, but it is also concerned with "the knowledge of good and evil". The essence of man is dependent on the knowledge of morality. Reason is not only theoretical, but also practical, ethical. The creation of man must mean the creation of his reason.

Just as knowledge of nature or logic, is directed toward the future fulfillment of its judgments, so too is ethics, the knowledge of morality, drawn toward the unity of knowledge of action. The rational creation of reason is thus the key to uniting the theoretical and practical dimensions of reason, which is the creation of God.

42 For a lucid explanation of how Cohen’s use of the infinitessimality of mathematical continuity takes the place of intuition in his reading of Kant, see Tyson Gofton, PhD dissertation, University of Toronto, Department of Philosophy; See also, Holzhey, “Hermann Cohen and the Marbug School in Historical Context”, p. 14; as well as Marco Giovanelli, Reality and Negation, p. 164.
43 RoR, p. 86
With the idea of God, the idea of an ethical God who unites logic and ethics in the future, Cohen overturns the insistence upon subjective idealism and consistently upholds his theory of the objectivity of cognition and its validity. But unlike the southwestern neo-Kantians, Cohen neither recedes into ontologism nor simple psychologism in order to give this theory of the validity of cognition its true support. Rather, through the nexus of aesthetics, psychology, and religion, Cohen introduces the subject, the true self of cognition as an action of thinking itself. Cohen therefore attempts to cohere the system of philosophy with aesthetics and religion without relapsing into metaphysics. However, the only way to sustain this claim is by distinguishing the true scope of metaphysical idealism—the reliance on intellectual intuition—from religion and aesthetics, properly understood; that is, critically understood.

4 Aesthetics, Psychology, and the Subject: the Question of Intuition

As we have seen, Cohen transforms the Maimonidean schema of creation-revelation into the framework of logic and ethics in the system, while the nexus of psychology, aesthetics and religion takes on the role of prophecy. This comparison is no longer simply an anachronism, on account of the extent to which Cohen introduces psychology and aesthetics as the means to grasping the true relationship between subjectivity and objectivity, which is to say, the relationship between legality and nature, which I will discuss in what follows. This latter point is bourn fully in the Religion of Reason where Cohen’s return to the problem of intellectual intuition is now fully eclipsed with his

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44 See Frederick C. Beiser, “Normativity in Neo-Kantianism: Its Rise and Fall” in International Journal of Philosophical Studies, vol. 17, no. 1 (2009), pp. 9-27; idem, “Emil Lask and Kantianism” in The Philosophical Forum, vol. 39, no. 2 (2008), pp. 283-295. Beiser’s argument largely supports the claim I made above in chapter 4, that Cohen’s neo-Kantianism, like its southwestern counterpart, bears a significant resemblance to the kind of normative interpretation of German Idealism that is in vogue today. However, Beiser believes that neo-Kantianism, as opposed to contemporary scholarship, was more historically conscious, making it more comprehensive in its theoretical outlines. However, Beiser ignores the Marburg school, largely on account of his attempt to draw greater resemblances between neo-Kantianism and Hegelianism, which would be a fruitful comparison with Cohen’s philosophy as well. In the conclusion of this dissertation, I hope to gesture towards such a reading.
theory of correlation. But before turning to a full out consideration of correlation, I will first discuss Cohen’s engagements with intuition in his reading of Kant.

If we briefly recall Kant’s definition of intellectual intuition, we find that in the first Critique, Kant wrote that the problem of relating the faculty of sense and that of understanding rests with the nature of representations, which is a product of imagination as well as sense; it is fully articulated in the schematism. But the real problem is for apperception, the theory of the self or inner sense, giving a sense of unity to the plurality of representations. For Kant,

Everything that is represented through a sense is to that extent always appearance,\textsuperscript{45} and an inner sense must therefore either not be admitted at all or else the subject, which is the object of this sense, can only be represented by its means as appearance, not as it would judge of itself if its intuition were mere self-activity, i.e., intellectual. Any difficulty in this depends merely on the question how a subject can internally intuit itself; yet this difficulty is common to every theory. Consciousness of itself (apperception) is the simple representation of the I, and if all of the manifold in the subject were given self-actively through that alone, then the inner intuition would be intellectual. In human beings this consciousness requires inner perception of the manifold that is antecedently given in the subject, and the manner in which this is given in the mind without spontaneity must be called sensibility on account of this difference. If the faculty for becoming conscious of oneself is to seek out (apprehend) that which lies in the mind, it must affect the latter, and it can only produce an intuition of itself in such a way, whose form, however, which antecedently grounds it in the mind, determines the way in which the manifold is together in the mind in the representation of time; there it then intuits itself not as it would immediately self-actively represent itself, but in accordance with the way in which it is affected from within, consequently as it appears to itself, not as it is.\textsuperscript{46}

Kant’s distinction between sense and understanding necessitates the division of inner and outer sense, that is, the representation of an object of cognition, or what he alternatively calls its “appearance”. Knowledge of the self as an object of this sense can never be knowledge of the “self

\textsuperscript{45} Here Kant is referring to both inner as well as outer sense. In the B edition, Kant’s discussion of outer sense would appear to anticipate some aspects of G.E. Schulze’s argument against the veracity of these relations, and yet, we can also see why both Reinhold and Schulze were unsatisfied with this description Kant offers: “For confirmation of this theory of the ideality of outer as well as inner sense, thus of all objects of the sense, as mere appearances, this comment is especially useful: that everything in our cognition that belongs to intuition (with the exception, therefore, of the feeling of pleasure and displeasure and the will, which are not cognitions at all) contains nothing but mere relations, of places in one intuition (extension), alteration of places (motion), and laws in accordance with which this alteration is determined (moving forces). But what is present in the place, or what it produces in the things themselves besides the alteration of place, is not given through these relations. Now through mere relations no thing in itself is cognized; it is therefore right to judge that since nothing is given to us through outer sense except mere representations of relation, outer sense can also contain in its representation only the relation of an object to the subject, and not that which is internal to the object in itself” (B 68).

\textsuperscript{46} B 68
in itself” but only the self “as it appears”. With regard to inner sense, which is the specific character of associating the manifold or plurality of possible representations of objects in a continuous subject, of giving a kind of mineness to these representations such that they do not lose their coherence, Kant here maintains that the subject of this inner sense can only be an appearance to itself as an object. It cannot judge itself as though it were pure self-activity or intellectual, which is to say the self cannot judge itself as an isolated activity, since it is always embroiled in representations of other appearances. The self as object is precisely what Fichte and Hegel had sought to redeem by claiming that the idea of the self-in-itself (the self as a Ding an sich) is not barred from cognition; rather, the self-in-itself is the first principle of cognition. Thus, they violated the basic principle of transcendental idealism.

With Cohen, the shift toward an explicit treatment of intellectual intuition is therefore part of his plan for a fourth part of the system of philosophy: a pure psychology. Such a psychology could only conclude the system, which relies so heavily upon the process of objectification and like the southwestern neo-Kantians Rickert and Windelband, upon the validity of the epistemological edifice. But for Cohen, the turn to aesthetics ignites the turn toward the subject. Thus, in the third piece of the system, the Ästhetik der reinen Gefühls (1887/1908), it was becoming evident that Cohen was taking the idea of intuition back into consideration in a way that he had not done in either the Logik or the Ethik. Likewise, the 2nd edition of Kant’s Theorie der Erfahrung (1885) had also given new priority to intuition in the scope of apperception. Both texts deserve consideration.

In the Ästhetik, Cohen began to describe how consciousness of the form brings a kind of evidentiary form to the object. Cohen struggled to account for the “object” of the work of art based upon the critical system’s insistence upon the objectification of the object of cognition based upon the laws of reason. Hence, in aesthetics, this becomes a difficulty insofar as the method of purity requires Cohen to “theorize aesthetic objectification, without which it would not even be

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48 See Gianna Gigliotti “Beweis and Aufweis: Transcendental a priori and metaphysical a priori in Cohen’s neo-Kantianism” in Hermann Cohen’s Critical Idealism, ed. Munk, p. 102
possible to posit the purity of the aesthetic principle, since the concept of “purity” cannot be distinguished from that of “production” and thus from that of “objectification”.”

Here we see that the problem of aesthetics, as it was for Kant, is a problem of objectivity in judgments. And it is precisely the problem of Kant’s aesthetics, that “no objective principle of taste is possible” that becomes Cohen’s challenge. What is striking here is that Cohen acknowledges, unlike in his ethics, that aesthetics must first account for the subject of the aesthetic judgment, and the “determination of the object is constituted by its resolution in the specific process of aesthetic objectification as the realization of the subject itself.”

The subject thus becomes the concomitant production of aesthetic consciousness along with the objectification of the object of the work of art. But what Cohen offers here, is a systematic component: the content of the object produced in the realization of the subject is pure feeling. Hence, the active consciousness of production in logic, ethics, and even the “genius” of the work of art, is ultimately found in the feeling of thinking, the feeling of willing. Whereas perception is a passive experience of consciousness, feeling is the active component that directs consciousness to the feeling of an inner unity of the parts of reason. While there is a methodological distinction between nature and man, between logic and ethics, aesthetics brings the pure feeling of eros, the desire for producing a new content in each systematic division, as though in an inwardly fulfilled unity: feeling achieves the criterion of fulfillment which the regulative ideas of reason had only

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52 ArG, I, pp. 189ff.
been able to offer practical reason as the idea of ‘a whole as such’. We therefore achieve a different
level of synthesis through the imagination.

But what has Cohen introduced into the system of critical idealism with this concept of
pure feeling? How is it that the objectification of the subject is the pure activity of unifying the
methodologically distinct branches of the system?

It is here that we can see Cohen’s attempt at resolving the systematic problem facing the
German Idealists; what is the unity of the system based upon and is it a task or a first principle?
We see that, as elsewhere, Cohen is answering this question with reference to the temporal future,
since pure feeling only indicates the activity of thinking and willing as being driven toward
something more, which eros, as longing for the sublime, beautiful and the good, draws it toward.53
But what Cohen’s concept of pure feeling introduces when taken up by the Religion of Reason in
express terms, is a new role for the subject; the subject that is discovered in the objectification of
the object. In other words, whereas the pantheism of the Idealists insinuates a divinity of the
logical self, Cohen seeks the religious and ethical grounding of the self, which is to say, a self that
is developing itself on the model of an ethical God.

In systematic terms, whereas logic and ethics focused upon the systematic production of
the object of both cognition and willing, Cohen now seeks the subject of this judgment. Whereas
logic represents “man in nature” and ethics represents “the nature of man” the pure feeling of
aesthetics, which is love, unifies the nature of man and the man in nature, “here the sought for
ego becomes an actual event. Here the first real production of the self takes place, not as self-
consciousness, but as self-feeling.”54 The self is achieved within consciousness through this self-
feeling which unifies logic and ethics, but only within the immanence of the subject. In other
words, this unity is not the completion of the system as a whole. Rather, it intimates the systematic
progression toward the actualization of the unity, which can only remain a task. Hence, “aesthetic

53 ArG, I, pp. 173-80
54 ArG, I, pp. 198-99
consciousness aims at a self, which is not posited as a content, the solution only in the task, but makes the individual its task, par excellence.”

In the Ästhetik therefore, Cohen links the problem of the self in aesthetics, logic, and ethics to the self in transcendental psychology insofar as the subject is now fully in our focus. Psychology will therefore have to account for the objectification of the object which is realized in the subject, and so too, provide a counterpoint to the theory of intuition which marks metaphysical idealism over and against critical idealism. According to Andrea Poma, Cohen’s idea of self-consciousness in Psychology cannot become a first principle of ontology, but is rather a critical principle of verification; hence, he returns to Kant’s conception of the self as final product of the system rather than its foundation. The principle of consciousness as Cohen understands it seeks to verify the various systematic directions of consciousness. In this light, Cohen therefore reclaims the system as fundamentally en route toward something yet more unitary:

The three preceding systematic disciplines build, each for itself, a unity of consciousness, and aesthetics, particularly, contains moral and logical unity. And yet it is also nothing more than a degree on the way to unity, not in itself already the unity of consciousness. The unity of consciousness, as a problem of psychology, presupposes those three unities.

Unlike metaphysical idealism, for Cohen the subject can never be absolute, because it is always correlated to the object. Thus, there is never a consummated unity of actuality or ontological unity; rather there is a correlation between subject and object, which indicates the ideal unity is yet to come. And just as aesthetic unity relies upon its containing moral and logical unity, so too the unity of the whole system relies upon the future unity to come. Hence, aesthetics is closely linked to the regulative function of the ideas of reason. As such, for Cohen the key to developing the psychological function of aesthetics and religion in the system of philosophy hinges precisely upon the “productive imagination” or what Kant had defined as the capacity to present,

...aesthetic ideas...that representation of the imagination that occasions much thinking though without it being possible for any determinate thought, i.e., concept, to be adequate to it...One readily

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55 ArG, I, p. 198
sees that it is the counterpart (pendant) of an idea of reason, which is conversely, a concept to which no intuition (representation of the imagination) can be adequate.

The imagination (as a productive cognitive faculty) is, namely, very powerful in creating, as it were, another nature, out of the material which the real one gives it.\footnote{KrU Ak. 5:314}

The productive imagination also takes on the role of producing the ideas for which concepts are inadequate. But such a production of a representation that is taken up by thinking (the understanding) is not identical with intellectual intuition. For the latter, as Cohen notes, presupposes the logical unity of the nature produced by this representation and the spiritual laws that govern reason itself. Such a unity is what Cohen calls pantheism, time and again.\footnote{ArG, I, p. 24} For Kant, the kind of nature created by the productive imagination recalls the duality between the natura archetypa and the natura ectypa of the moral and legal philosophy: what kind of nature is created by imagination? Does it have any real content? This is the question that intellectual intuition addresses itself too: the content is the self. But since the imagination is precisely the capacity to create a nature distinct from that within natural science, it is also not far-reaching to suggest that Cohen de-metaphysicalizes the Maimonidean conception of imagination as the backbone of prophecy to introduce this very meaning of pure psychology. Insofar as it is systematically represented as a branch, then, psychology equally subjects itself to the temporal principle of ethical idealism, or prophetic time. This is the key to achieving the subject: the subject originating out of the laws of reason and the imaginative genius of self-feeling within cognition. A prophet is not a prophet until s/he cognizes prophecy.

Thus, the subject is a problem that Cohen needs to account for in terms otherwise than those of intuition, since as we saw already, the edifice of critical idealism is built upon the pure lawful production of the objects of cognition from reason, rather than from the division of intuition and concept. Therefore, logical unity of the “I of self-consciousness” cannot be obtained as a presupposition of consciousness and thus, a representation to itself as it is. Rather, the I must be produced in yet another relationship seeking actualization: correlation between God and man.
And it is precisely through the systematic link between aesthetics, psychology, and religion that Cohen finds the force of idealism to combat the kind of metaphysical logicism of the German idealists.  

For Cohen, the inability to surpass the logical law of identity is what gave way to the idealists, namely, Fichte, Schelling, and Hegel, falling prey to the lure of “intellectual intuition”. In the Ästhetik, Cohen therefore takes great pains to distinguish between productive imagination and intellectual intuition, for it is in the former that he can begin to outline the purity of the subject’s production of objectivity, which will explicitly become “correlation” in religion. Already in the first edition of KTE, Cohen had criticized the notion of “intellectual intuition” as a contradiction in terms. In an attempt to salvage some meaning to Kant’s idea of “inner sense” Cohen invoked the psychological coherence that this concept is designed to provide. Namely, Cohen maintains that intellectual intuition could not be sufficient to render the “thing in itself” intelligible in the manner it believes itself to do. Since Cohen transforms the “thing in itself” into a regulative idea of reason, which means it gains a systematic coherence as a task of thinking, so too intuition is dissolved into the mathematical continuum, which varies infinitely upon the scale of realia, which is too small to be represented by intuition; but this does not imply the understanding alone provides the manifoldness for this cognition. Rather, Cohen believes that intuition should not be

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60 ArG, pp. 10; 23-4. In many ways, Cohen understands ‘religion’ as a 19th century “Protestant” category applied to Judaism. And it is precisely through this Protestant lens that Rosenzweig’s original interpretation viewed Cohen’s philosophy: “All modern Jews, and especially German Jews are Protestants,” See Rosenzweig, Einleitung, p. xxviii. Cohen’s own intimacy with Medieval Jewish Philosophical texts gave a different significance to religion in the system. It is for this latter reason that Cohen often includes religion within the sphere of “cultural consciousness” for which logic, ethics, and aesthetics become the philosophical members of the system. And indeed, through this medieval insinuation of religion into all facets of cultural consciousness and life, religion does lose its autonomy. But the question that I would like to address herein is whether Cohen’s hermeneutic use of religion, of the principles of prophetic time, law, and idealism that I have begun to tease out in the previous chapter, and will continue to do explicitly in what follows, is not in many ways a consistently “Jewish” conception of religion (or at least, a medieval Judaeo-Arabic one). For if Rosenzweig’s protestantization of Cohen’s conception of religion was the whole story, there would be no coherent way to explain the role of prophecy, creation, the infinite, as well as of the apex of the system, the idea of Truth, which are all the grounding concept of the system. Similarly, in the Ästhetik, Cohen notes how the Romanics and the Idealists prioritized aesthetics over religion, making the latter derivative, whereas Cohen’s goal is to realign religion with ethics and to thereby give religion a different place in the scope of culture...How this affects the role of religion within the system is a significant consideration. ArG, I, pp. 10-11.

61 KTE, p. 427/fr. 351
62 KTE, p. 643-4/fr. 501
rendered as a static faculty, but rather as an intellectual action of intuitability,\(^6^3\) which is not the same as intellectual intuition.\(^6^4\) The distinction rests upon the claim that Cohen makes in his *Infinitesimalmethode* (1881) that the duality between intuition and understanding in Kant must be read as an abstraction, for which the schematism provides proof of there being a prior, actual unity between these capacities. Thus, intuition renders the action of representing the object of thought possible, but more so, it provides the key to rendering subjectivity as the synthesis of these representations a real place in the structure of consciousness. And insofar as the thing in itself is but a regulative idea, Cohen actually replaces the content of the self that intellectual intuition seeks to provide in logic, with a practical and ethical solution: the content of the self comes only through the temporal relationship to the future, to the unity of feeling that love of man leads towards being a desire for the *actualization* of the future.

By contrast, Cohen returns to the problem of the imagination in the second edition of *Kants Theorie der Erfahrung*, and begins to outline how the imagination is the key to the kind of pure psychology, which is the knowing of the conditions of knowing itself, that transcendental apperception represented for Kant. With regard to intellectual intuition, Cohen writes, “it must be kept strictly in sight that this productivity relates itself only to the understanding and its unities, the categories, and in no way to the manifold of intuition.”\(^6^5\) By contrast, Cohen maintains that the rightful place accorded to intuition by Kant was in attempting to highlight the role of apperception in relation to the imagination:

...there is undeniably an image [Bild] that is established in these unities [of the categories]. Synthesis is therefore an action of the faculty of imagination. This image only relates itself to the unity of apperception, and not to a particular intuition. The categories themselves form the unity of apperception in each synthesis—it is in them that apperception, in their recognition, forms [bilden]

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\(^6^3\) Cohen, *Infinitesimalmethode und seine Geschichte*, para. 24

\(^6^4\) Interestingly, Bahya Ibn Paquda’s *Hovavot Ha-Levavot* provides Cohen with a model for his conception of this infinitesimal origin as a kind of consciousness. Bahya maintains that one must enact a kind of self-accounting of his being, which begins precisely by pondering one’s own emergence out of nothingness into being. This relative nothing of an individual man’s being thus provides the model for the kind of cognition of the ethical and religious subject as well as providing the ethical-cognitive task of virtue: to know one’s self as a conceptually continuous consciousness of his being as infinitesimally proximate to God’s I. (8:3, ha-rishon). When man sees this emergence from nothingness into being, he must also acknowledge that it is only from God’s hesed that he has emerged, and he thus pushes himself upon a madregah further.

\(^6^5\) KTE, p. 310
the identity of the representations formed [gebildeten] by all the forms of synthesis that we have just enumerated and based upon the identity of these representations, forms the identity of the proper Self [sic].

For Cohen, the I of apperception is thus produced by the laws of synthetic principles of the understanding, which in turn, is the process by which the “imagination produces the concept.” Cohen sees the imagination as drawing the link to the production of the kind of unity between logic, ethics, and aesthetics that can only be reserved for a realm beyond the proper production of the concepts of cognition; that is, there is always a hangover of sorts reserved for the future unity of the branches of the system. Thus, this future unity is precisely what the imagination contributes to the idea of religion, and correlation becomes the name of this relationship between temporality and the unity of subject and object.

The ethically inflected principle of time, or what I have been referring to as prophecy, now becomes prominently displayed: logicism alone cannot unite the system; nor can aesthetics alone. Rather, the systematic division of logic, ethics, and aesthetics, which invariably leads to psychology as the expression of the action of cognition in its attempt to reflect on itself, all reveal the foundational slippage at work in the task of cognition. Thinking, willing, and feeling cannot think, will or feel itself as though an object. The dynamic of the infinitesimal generation of a discrete something out of a nothing becomes the basis for each systematic branch’s own insufficiency. Hence, religion becomes a temporal fabric overlaying the moments of the system through its unique use of history, time, and origination as the terms that overlook the system as a whole. But insofar as Cohen maintains that time and normativity are inseparable and thus overcome the pretension to intuition by critically purifying our own description of the action of cognition, we also now better grasp how Cohen is expressing the intimacy of the Jewish ideas of prophecy and messianism in the fluidity of the system. This is what I mean by religion becoming the philosophical shape of time.

66 KTE, 2nd (1885) p. 311
67 ibid. p. 311
4.1 Infinitesimal Monotheism

In Cohen’s systematic philosophy, this temporalized and ethicized logic also finds expression when he describes the logic of the infinite judgment, which is the basis of his theory of cognition. In the Logik, Cohen claims that Kant struggled to give an account of how intuition provides the given object of cognition. Yet in the system of principles in the first Critique, Kant details how the understanding can anticipate perception and produce the object of knowledge on the basis of pure a priori principles. These principles also provide the objectivity of the categories, and Cohen maintains that the system of principles, where the mathematical continuum of quantity and quality can be produced a priori, is a more coherent understanding of how we represent and cognize the world of experience. Thus, rather than seeking the given object in intuition, Cohen prefers characterizing its cognition through the pure production from principles. Hence, Cohen reads the system of principles in the first Critique through the lens of mathematical infinity. This infinite generation of the object could be interpreted as Cohen’s introduction of Leibniz into Kant’s system and the infinitesimal could be interpreted in terms of Leibnizian “continuity”. This interpretation would make the mathematical infinite a kind of continuous link between pure intuition and phenomenal reality. Such a reading, which Salomon Maimon preferred, sees infinity as a continuity as Kant attempted to describe in the anticipations of perception - that between reality and negation there can be represented an infinite number of intermediate “sensations” in empirical intuition. Thus, I can represent a priori the infinite number of sensation all the way down to the diminution of sensation to =0. As Kant claims, in turn the difference between these infinite intermediate sensations is “always smaller than the difference between one and zero, or complete negation.” However, Cohen takes this a step further and claims that this infinite continuum of sensations all the way to =0, yet implicitly greater than 0, means that a principle a

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69 Cohen, PIM, §. 16; 26
70 Kant, KrV, A168/B209-210
priori is responsible for the form through which we can conceive of the object given in intuition. But rather that allowing this capacity to become a static faculty, on account of the mathematical continuum itself, Cohen interprets this kind of intuition as a process of thinking, and as such, a kind of production of the concept of magnitude (quantity) from this qualitative difference in perception. Thus, as Andrea Poma writes,

A non-extensive principle should thus be sought as the ground of extensive magnitude, which can account for the reality of the being given in intuition. This principle, not in the simple negative nonextensive definition, but rather in the positive intensive one, which Leibniz took over from Galileo, is precisely the infinitesimal, which cannot be the object of sensible imagination, but rather is a pure concept of thought, which is, however, valid as a productive principle of extended reality: [to quote Cohen] “Thought from now onwards can no longer be equal to evidence, to sensible intuitability (Anschaulichkeit).”71

Cohen seeks to overcome the idea of the extensive substance being part of the given – rather, it is to be sought in thought. Intensive magnitude grounds extension in thought itself.

It could appear that Cohen has relied upon Leibniz for his understanding of the infinite, and thus a kind of hermeneutical polemic against the German Idealist penchant for Spinoza’s infinite as a kind of inherent causality. And yet, while interpreting Leibniz’s idea of the infinite, Cohen also criticizes Leibniz for overestimating the role of logic and for not heeding the reality of natural science as the limit for logic: there is no distinction in Leibniz, as there would be in Kant, between Idea and Category – between *Prinzip und Grundsatz*.72 For Cohen, infinity must be considered on the one hand as the simple, and hence, as an idea; yet also as continuity on the other hand, as a principle of reality and thus, of experience. And while Leibniz’s idea of the infinite provides Cohen with the formal mathematical terms with which to sketch his idea of the infinitesimal, it is Maimonides’ idea of the infinite that enables Cohen to push his idealism forward into the primacy of the practical. Cohen is thus trying to find a correspondence between what he sees as the meaning of the moral law, which gives ethics its independence from the natural sciences and its laws, without assuaging the overwhelming force of the Mosaic law, which

72 ImG, §. 17
Maimonides maintains as the basis for his ethics. It is through the idea, and in particular the idea of the good as a limit to experience and its natural scientific cognition, that Cohen is able to not only transform the antinomies into regulative ideas of reason, but also to see the practical use of reason as the fulfillment of cognition itself. It is in this respect that Cohen claims metaphysical idealism meets its own undoing.

By contrast, Kant’s moral theology concerns the claims that follow from any presumption of intellectual intuition. Whereas in his pre-critical writings, where Kant was still committed to a Leibnizian God, whose understanding corresponded with ours through its monadic substratum, in the Kritik, and especially in light of the Pantheism Controversy, Kant was adamant that intellectual intuition presumed far too much for the finite human understanding. And indeed, we see that Fichte carries these fears to their logical conclusion. For Fichte’s claim that the moral law commands the striving to unite intellectual intuition and intelligible concept, amounts to a postulation of God as the very definition of this intelligibility of the I of consciousness:

That union, an ego which by means of its self-determination would at the same time determine every non-ego (the idea of Deity), is the final goal of this striving. When the goal of this striving is represented outside the self by the intelligent ego, it is a faith (faith in God). This striving cannot cease except with the attainment of the goal, i.e., the intelligence can assume no moment of its being as final in which this goal has not yet been attained (faith in eternal continuance).

It is precisely this pretension to identify the divine within cognition that leads Cohen to reject intuition. In its place, Cohen extends his own reading of the prophetic conception of time and eternity into the logical and ethical domain: Cohen invokes the kind of infinitesimality that exists in Maimonides’ own conception of the infinite act of intellection on the part of God. If we recall my earlier argument concerning Cohen’s interpretation of I:68 of the Guide where Maimonides discusses the intellect, the intelligens, and the intelligibile, we see that Cohen here again intimates the same polemic against pantheism and intellectual intuition, which we can now assess. Even with God, intellectual intuition is excluded. Hence, as I quoted above, Cohen wrote,

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73 Fichte, Review of Aenesidemus, ibid.
74 see above Chapter 5
in that he thinks himself, He is for Maimonides not only thinking thought itself. This self-sufficiency, from which the world of human beings is excluded, suits the God of Aristotle; it becomes nonsensical for the God of Judaism. The God of Judaism must think of mankind when He thinks of Himself; but certainly He must think of mankind from out of Himself, never out of the essence [Wesen] of mankind.

Thus from here it becomes understandable that Maimonides posits an equivalence between will and cognition.\textsuperscript{75}

We can now better understand what the distinction between thinking and willing achieves: the purity of the will is the figure of the ethically distinct understanding of time. The will is the figure of change in the world; it is the symbolic content of the idea of creation. Hence, even when God is cognizing Himself, according to Cohen’s Maimonides, such an infinite act is an act of generating something wholly other than identity. And this is now the internal logic and dynamic of ethical cognition itself: the other is the origin of the I just as in religion; God is the origin of the individual. It is through this link of the infinitesimal that temporality sustains the system of philosophy. And we can now better understand the practical stakes of Cohen’s turn to Maimonides.

4.2 Correlation as the Differential between God and Man

What Maimonides called prophecy Cohen calls correlation. That is, the ethical relationship between man and God. While such a reading has its numerous problems for a traditional rabbinic sensibility, it is the manner in which Cohen focuses upon the role of cognition in ethics that is of importance, because it is through cognition that monotheism, he believes, sets itself apart from

\textsuperscript{75} CEM, JS III: 253. Cf. Guide I:54 and I:58 where Maimonides intimates the overflow of God as a gift that cannot be returned. On this basis, Cohen’s claims that Maimonides “presents no docta ignorantia” can be better understood as a claim to ethical cognition becoming a unique kind of docta ignorantia about God in the natural world. That is, while Cohen believes that God’s actions can be known as the ethical norms of human behaviour, he does not believe that Maimonides assigns a logical cognitive doctrine to God’s essence. This would be tantamount to metaphysics. Hence, when Seeskin argues that this is part of Cohen’s misreading of Maimonidean attribution (Jewish Messianic Thoughts, p. 199) I would respond by indicating that Cohen is here signaling the unique value of ethical cognition as a theory of modality, where the ethical God-idea is premised upon his theory of correlation, which I will discuss further in the next chapter, as a hypothesis and a relative nothing to the idea of man. When discussed in the context of intellectual intuition, as I do in the next chapter, this argument may gain more plausibility. Suffice it to say, however, that Seeskin’s interpretation of Maimonides is not what I am challenging, merely the claim that Cohen misinterpreted the significance of a docta ignorantia.
pantheism. While monotheism maintains that knowledge of God is the highest form of knowledge and thus a task in which ethics must culminate, pantheism wants God to be a logical expression of self-knowledge and thus, already achieved. But the God of the prophets is not a God of logic or reason. He is a God of justice, mercy, and the good. God’s infinitesimal generation of the idea of man becomes the paradigm for the ability to generate the moral law from the ethical cognition of the good: that is, Cohen transforms the logic of the infinite judgment into the basis for the judgment in ethics. What this means is that the noumenal reality of the moral law gains the credence of being both a generation of the infinitesimal difference between God and Man, as the basis for the legal norms that govern human actions. For God’s ways become the norms of human action, just as the moral law becomes the basis for the deduction of freedom of the will.

Here again, Cohen takes his cue from medieval philosophy in drawing the methodological distinction between logic and ethics toward a common goal of revelation, for “if man is to be God’s creation and if revelation is to be possible with regard to him, it can only be through reason; consequently, revelation itself can only be thought of as the revelation to reason.”76 By transforming the meaning of creation into rational terms, and by maintaining reason as the vehicle of revelation, Cohen submits the medieval rationalist thesis that reason is the basis upon which knowledge of God and knowledge of nature are built, and that any theory of God or God’s laws must be based upon the rationally demonstrable. Hence, Cohen follows Maimonides’ interpretation of the first principles of all rationality as such (muskalot rishonot) and thereby solves the problem of intellectual intuition once and for all: theoretical and practical reason, logic and ethics, are united in the correlation of man and God which makes of reason a dependent, yet productive principle of striving.

For Maimonides, according to Cohen, volition is unified with the intellect and thus occupies no independent sphere.77 The significance is that Maimonides is able to thereby assert the knowledge of God in ethical terms, which takes the shape of Maimonides’ argument concerning

76 RoR, p. 82.
77 Seeskin, Jewish Messianic Thoughts, pp. 198-200
the attributes of God. As we saw above, the attributes of God can only be known in terms of what they claim are **ethical** attributes. That is, as Maimonides noted, the prophetic revelation of the attributes of God were for the sake of ethical conduct on the part of the prophet himself. In turn, Cohen maintains that insofar as the divine substance is not the object of cognition but rather the attributes of action (to'arei ha-ma'asei) Maimonides subverts Aristotelian metaphysics and replaces it with the ethical attributes, which according to Cohen,

...are "attributes of action" ([Attribute der Handlung] (to'arei ma'asch); and not attributes of "essence", as [though] of substance. His actions [Handlungen] however, are only attributed insofar as they serve as figurations [Vorbilder] of human actions. The cognition of God signifies therefore the cognition of the figurations, as the norms [Vorschriften], as the laws for human actions, by means of which these become ethical actions.79

The difference between Aristotle and Maimonides rests with Maimonides' refusal to attribute "substance" to God.80 Hence, as a knowledge of universal and particulars, Aristotle’s categories are precisely what Maimonides is attempting to avoid assigning to God. Rather than essence or substance, therefore, these attributes are of "His ways", which points to actions as norms. Furthermore, whereas Cohen describes the “figuration” of the attributes as norms for human action above, Maimonides described the explicit relationship between the prophet as a leader of a city and the attributes as those that he should imitate. Thus, Cohen attempts to integrate the prophetic quality of Maimonides’ theory of attributes into a general theory of the intellect, which may be both the greatest deviation from Maimonides’ own text as well as Cohen’s greatest insight into the philosophical problem of ethics.

Cohen thus anticipates the objection that such a theory of the prophetic “imitation” of the attributes would entail a kind of heteronomous ethics. This is simply not the case, according to

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78 Cohen, “Liebe und Gerechtigkeit”, JS III: 46; CEM, JS III: 246
79 CEM, JS III: 246-7
Cohen’s interpretation of Maimonides. For in order to reach the theory of attributes, Cohen is ready to maintain that cognition of God must be “demanded” as an act of cognition conditioning the cognition of ethics, which performs the deduction of the idea itself. Thus, for Cohen, Maimonides’ God is not a God of substance, hence, not the God of Aristotle, but a God of ethics, which he believes to be the God of Abraham, Isaac, and Jacob, since Maimonides’ God is a God of ethics “who demands the good”. It is therefore the cognitive value of the idea of the good, which Maimonides also explained, that Cohen treats as the principle of ethical cognition.

The *Religion* therefore focuses upon a specific moment in the objectivization of the individual, or in the isolation of the “I” of ethical responsibility in its moment of ascription, in its moment of being recognized for the action in question; recognized as a subject by itself as a correlate of the I of God. This objectivization of the ‘I’ becomes the key to understanding how God, time, and law all inform the theory of freedom, agency, and ethical responsibility in the *Religion*. In Cohenian terms, it is an attempt to isolate the concept of “man” at the level of plurality (rather than at the level of either singularity or totality, either as absolute individuality or humanity) and determine whether religion can yield positive content to the idealist system, without basing itself upon the intellectual intuition of the post-Kantians. Thus, what Rosenzweig missed in Cohen’s polemic against his Protestant colleagues, is that it is not a break with the system but entirely consistent with his former polemic against the pantheism of the German Idealists. It is only that in religion, Cohen has achieved the systematic retrospection necessary for reinterpreting the prophetic temporality of lawfulness: through correlation rather than intellectual intuition, Cohen locates a key moment in his attempt to refute pantheism and at the same time uphold monotheism as a true idealism, or a truly scientific philosophical contribution of Judaism. Correlation describes the subjectivization of the subject through the lens of objectivization of the law. It is only on the heels of law and ethics that this contribution of religion can be reached. Hence, by contrast to the liberal Protestant theology of the time, influenced by Schleiermacher,

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81 CEM, JS, III: 247. Similar to the deduction of the transcendental practical a priori in the KBE and ErW.
82 CEM, JS, III: 239
83 *ibid.*
Albrecht Ritschl, Adolf Von Harnack, Wellhausen, and Herrmann\(^84\) that placed an over-emphasis on the individual, according to Cohen and in light of the post-Kantian and Hegelian philosophies of that century, such an “intermediation” of ethics and religion can only lead to the pantheism of autonomy: the ‘I’ becoming the principle determining the individual, the state, and all forms of human association. As I’ve argued in this dissertation, this is precisely the consequence of the over-emphasis upon intellectual intuition: freedom becomes immanently determinant.

Thus, in the *Begriff der Religion* and the *Religion der Vernunft*, Cohen takes up the challenge of his earlier intimations of intuition and its pertinence to the individual. In the latter work in particular, the idea of intuition is replaced by the concept of “correlation”. Indeed, this concept becomes the mainstay of the *Religion* in a way that Rosenzweig had initially assumed to be the very breach with the system. Contrary to the conception of religion as the feeling of complete dependence of man upon Christ offered by his contemporary Protestant colleague at Marburg, Wilhelm Herrmann, or the theory of intermediation which was suggested by his other colleague Julius Wellhausen, Cohen uses “correlation” to explain the uniqueness of God as a would-be transcendent idea which appears to man only in the form of an ideal; but an ethical ideal, hence, immanent as well. As an ideal, this idea persists as an infinite task for consciousness, an ideal of reason itself, which orients man in his task of achieving the “I” of his individual moral self. Hence, God is correlated to man as the immanent ideal of man’s own I, however, the I of God retains the kind of “ungrounding” of its own ground as the figure of transcendence, or as Cohen would have it, the figure of the infinite. Thus, man and God are at no point identical, nor dependent per se. God is the idea of a unity of nature and ethics in the realm of the ideal. Hence, God is an idea.\(^85\)


To summarize what has been said thus far, for Maimonides prophecy is a theory of intellectual apprehension specific to the correlation of divine and human intellects. In Cohen’s terms, this is the highest correlation of man and God: the creation of reason. For Maimonides, as we saw, this is precisely the link between prophecy and creation.

And yet, characteristic of all philosophy of religion, for Cohen, is that a trace of pantheism lingers in monotheism. Hence, his insistence upon a methodological distinction between the “is” and the “ought” is based upon this overwhelming temptation to ground knowledge in a demonstrable and certain principle. Rather, for Cohen, and indeed even for Maimonides, God—even the God of ethics—cannot be known. Rather, the God-idea is a hypothesis, as in the logic of origin. Therefore, through the intimacy of logic and ethics in their respective methodologies, the trace of the pantheistic element is purified into monotheism.86

For Cohen, Maimonides is committed to the prophetic God.87 The God of the Prophets is precisely the God of the future. Thus, Cohen interprets Maimonides’ theory of prophecy as more than a unique kind of knowledge, and it becomes a prefiguration of ethical cognition. Hence, prophetic knowledge is part of the ethical cognition of eternity that Cohen aspires to identify in the ethical motive of pantheism [which] has not even escaped Maimonides, as fundamental as is his aversion to all mysticism and divination. To the unity of reason between God and man he took no exception; upon it he based his theory of prophecy. Thereby he could not be lead astray with the independence of human reason [as is pantheism], when he explained ethicality as the service of God, and as the only service of God.88

Hence, for Cohen, the unity of reason, shared between man and God becomes the basis of Maimonides’ prophetology, yet it is not the self-assertion of logical reason as the identity of man and God. For were the latter the case, Cohen could not maintain the dependence of human reason

87 J S III: 249
upon that of God. As we will see in what follows, it is precisely through this permutation of prophecy that Cohen discovers his solution to all pantheism in practical philosophy derived from intellectual intuition: namely, the idea of correlation between man and God. But here, at the level of Maimonides’ theory, Cohen sees in prophecy a precursor to a theory of ethical correlation. And as he continues to explain what this kind of prophetic ethics resembles, he turns to the law.

As we saw in Chapter 2, Cohen’s ethics understands the science of experience as a science of law. That is, norms ground the actions that ought to obtain in the world. Indeed, as Cohen maintained in his system of philosophy, the distinction between is and ought is the basis of the monotheistic conception of God, who is distinct from nature. According to Cohen’s interpretation, Maimonides follows the tradition from Sa’adya to Ibn Daud, making axiological distinctions between the parts of the Torah. Whereas Sa’adya distinguished between rational and divine commandments (mitswot sikhliyot u-mitswot shimiyot) and Ibn Daud between rational and conventional (sikhliyot u-mefursamot), Cohen maintains that Maimonides demonstrates a similar line of reasoning in two ways: he makes cognition of God the highest religious pursuit without fusing creatio ex nihilo as a dogma, and secondly, he maintains a hierarchy of rational explanation of the commandments (ta’amei mitswot). While Cohen acknowledges that Maimonides classifies ethics as falling under the commandments that are “conventional” (mefursamot) he nevertheless interprets Maimonides’ terminology as implying universal recognition, as Maimonides claims in

89 ErW, p. 370; cf. LsE, pp. 356-7; Bruckstein’s commentary at p. 86 in EM.
90 It is significant that Ibn Daud, where Cohen quotes him, is in the midst of discussing how the mitsvot that we often attribute with the significance of being mukalot, the ethical maxims such as birkot holim and keret metim, represent “active philosophy”. Next in importance (at least according to Cohen’s reading of the hierarchy) Ibn Daud claims are conventional laws; such laws can be found approximated any city. Ibn Daud specifies nimuseihem mediniyim. (Emanah Ramah, Frankfurt am Main edition, p. 102). But the rational mitsvot are of a higher order than the others for they confirm the one basic principle of the Torah – Faith. It is faith of this sort that enables the distinction between the laws of cities that make even the norms of a band of robbers a normative contract between them (convention) (Daud’s own example). Ibn Daud gives extensive arguments as to why the principles of sin-offerings, which can be commutated into monetary compensation, elicit a rational deduction of the principle that lay behind the sacrificial laws – they are heuristic to ethical imperatives. Cohen wants to stress that Ibn Daud makes an equivalence between Mekalot and Mefursamot. It seems that Ibn Daud is stating a universal propensity to establish conventional laws – that the nimusim are necessary for the sake of political association (See EM, p. 45 and Bruckstein’s commentary thereon). The question is whether Cohen is reading Ibn Daud as an Aristotelian, a Platonist or both. See Heinemann, The Reasons for the Commandments, pp. 85-94. For a discussion of the philosophical parallels and differences between Ibn Daud and Maimonides, see Resianne Fontaine, “For the Dossier of Abraham Ibn Daud. Some Observations on an Anonymous Commentary on Ha-Emunah Ha-Ramah,” 2ztot: Perspectives on Jewish Culture 7, no. 1.4 (2011), pp. 35-40.
91 EM, p. 58
his Treatise on Logic, where “conventional” is classified under one of the four propositions of self-evidence. Whether this is a correct interpretation of Maimonides’ classification or not, Cohen is interested in the “cognitive value” of ethics insofar as it begins with God as its source. Indeed, it is through Maimonides’ theory of the negative attributes of God, which is to say, the negation of the attributes with which the mutakallimum (Islamic dialectical theologians) would prefer to assign to God, that Cohen detects Maimonides’ theory of cognition, but the risk of the theory of negative attributes is that it posits what we cannot know about God as the ground to what we can know. In other words, Cohen interprets the attributes as the ungrounding of the ground of all knowledge, which Cohen sees as the Platonic element of Maimonides’ philosophy. While Cohen maintains

92 Note how Maimonides does distinguish between sikhlyot and mefarsamat but Cohen is trying to bridge the gap between self-evidence and rationality.

93 Indeed, together with Cohen’s interpretation of the “attributes of action” as ethical norms of morality, which he argues as early as his 1900 “Liebe und Gerechtigkeit in den Begriffen Gott und Mensch” in JS III, p. 45, Cohen offers a unique interpretation of Maimonides as a Platonist. By contrast, twentieth century scholarship prefers to interpret Maimonides’ theory of attributes in a more Aristotelian naturalist frame. See for example Pines’ comments in Shlomo Pines, “The Limits of Human Knowledge according to al-Farabi, Ibn Bajjja, and Maimonides” in Maimonides: A Collection of Critical Essays, ed. Joseph A. Buijs, (Notre Dame, Ind.: University of Notre Dame Press, 1988). However, Pines would also be one of the first contemporary scholars of Maimonides to push the line of Platonism in Maimonides’ thought. See note 55. Similarly, Pines later made the comparison between Maimonides and Kant that Cohen had been first to champion. For an overview of this question, see Warren Zev Harvey, “Shlomo Pines on Maimonides, Spinoza, and Kant” in The Journal of Jewish Thought and Philosophy, vol. 20, no. 2 (2012), pp. 173-182. However, Kenneth Seeskin is willing to admit a portion of Cohen’s interpretation of Maimonides, albeit not in terms of the predication of God as a moral agent since he interprets Maimonides to have a full-out docta ignorantia (200). Hence, Seeskin writes, “Although Maimonides allows us to make God the subject of an attribute of action and speaks of “His ways,” we are barred from thinking of God as a moral agent in the normal sense of the term. Thus the analogy is not between God and us, but between the consequences of our activity and the consequences of God’s...so although we have ethical qualities that can be inferred from the natural order, we do not have unqualified support for Cohen’s God of ethics.” See Kenneth Seeskin, Jewish Messianic Thoughts in an Age of Despair, (New York: Cambridge University Press, 2012), pp. 201-2. While I agree with Seeskin on the score than Maimonides’ God is a product of his defense of divine volition rather than ontological existence, I disagree that Cohen’s “God of Ethics” is not at the same time supported herein, since Cohen’s theory of correlation, through its hypothetical normativity, suggests a completely different model of time and space as the condition of cognition (a version of docta ignorantia), hence, a messianic epistemological rupture that cannot be generated from reason alone.

94 Hence, Cohen interprets Maimonides as bringing conventional truths and rational truths into proximity and is part of Cohen’s attempt to reinterpret the Platonic and Aristotelian influences upon Maimonides. If Cohen can demonstrate that God is a principle of ethical knowledge, then he claims he can distance Maimonides from the kind of moral anthropology that characterizes Aristotelian ethics, which begins with either a community of political beings, or a constitution, or the fact of society. Whereas Cohen acknowledges that Aristotelian influence is predominant in Arabic and Jewish philosophy, Cohen’s argument concerns the status of Aristotelianism as either an epistemological dogmatism or whether it is only a terminological inheritance at work for Maimonides. (EM, 58-9). Consequently, Cohen poses an interesting philological question, which in contemporary scholarship on Maimonides has become more common even without acknowledging Cohen as its progenitor. Shlomo Pines and Leo Strauss were the first to explicitly entertain the thesis that Maimonides is more Platonic than Aristotelian, but not in the Cohenian fashion of reinterpreting Metaphysics as ethics. Similarly, Warren Zev Harvey and Howard Kreisel, whether explicitly stated or not, have done much research to uncovering the neo-Platonic nexus of terms and ideas in Islamic philosophy, with which Maimonides was in conversation. And even in the realm of neo-Platonic scholarship, Richard Sorabji’s compendium of the philosophy of the
that Maimonides is committed to a kind of Aristotelian methodological dualism where anthropological and metaphysical sciences are given their share,\textsuperscript{95} this is nevertheless subverted with the insistence upon God as the cognitive pinnacle, which we saw above in Maimonides’ prophetology and theory of creation. That is, both the theory of prophecy and the theory of creation are intellectual concerns.

4.3 Correlation as Positivized Prophecy

If we consider Cohen’s idea of correlation, both man and God are taken as objects for the other’s cognition insofar as reason is the basic link between them. Hence, the creation of reason means that man’s ability to cognize the idea of God is the very \textit{ens creatum} which God creates in order to know man. In this respect, the relationship between man and God is also to the exclusion of the thing in itself: rather, man and God are pure ideas for each other’s sake. Hence, Cohen introduces the ethical logic of correlation into what was originally a logical or metaphysical problem: rather than intuition, the I of man cognizes its object as a purpose: the I of God. Hence, Cohen writes,

> By now the relation between God and man proves itself to be a \textit{correlation}. The uniqueness of God determines his relation to man’s reason. And man’s reason, as God’s creation, determines man’s relation to God as a rational relation, and therefore determines also the consummation of this rational relation in revelation, which together with the creation establishes the correlation of man and God.\textsuperscript{96}

The link between man and God is the correlation of the I of man with I of God; man’s self-consciousness is grounded in the ethical God. Hence, creation and revelation are specifically ethical problems as well as logical problems. They announce themselves as the fundamental

\textsuperscript{95} See Guide I: 64-5
\textsuperscript{96} RoR, p. 82
principles of rationality when they are brought to focus upon the idea of God’s attributes of action, which are not pure self-activity (as Kant had defined intellectual or original intuition) but they are rather actions for the sake of prophetic emulation, as Maimonides had earlier pointed out. And so too for Cohen, this medieval prophetological conception of the first principles of reason shapes the foundation of his argument for correlation:

The attempt of the Jewish philosophers of the Middle Ages to establish a rational compatibility [Vernunftsklang] for, and thereby even more or less determined the origin of revelation in reason, may be justifiably considered the legitimate continuation of monotheism. This is already proved in their presupposing that nearly all the groundlaying of principles [Grundlagen von Prinzipien] as such [are] of reason. Although the expression for the principle is changeable—sometimes called “root” (shoresh), sometimes “foundation” (yesod), sometimes “essential” (‘iqar), and so on—yet there remains throughout in general the pregnant expression of: “first principles of reason” (muskalot rishonot). Hence, certain propositions [Sätze] of revelation are not determined into becoming principles [werden zu Prinzipien gemacht], but they themselves, as even that of the unity of God and of creation, become propositions of reason [Vernunftsätze] taken to be grounded as principles [werden Vernunftsätze als Prinzipien zugrunde gelegt]. And no counter-claim [Anstoss] can be assumed, because the correlation of God and man makes this correlation of divine spirit to human spirit into an inevitable consequence, as a kind of identity of logical reason.97

In other words, Cohen admits the Maimonidean prophetology as the basis of knowledge: the muskalot are the foundations of both ethical and logical knowledge. But the correlation of God and man also explicitly expresses itself in the logical form of reason; that is, since logic is but one systematic division of reason, the correlation of God and man must be expressed there as well. Hence, in logic, the identity of reason as the vehicle through which cognition of God and man is made creates the anachronistic link to prophecy. Logic and ethics both take their cue from the correlation of God and man.

But the specific lesson we learn from correlation is that the relationship between man and God is not a first metaphysical principle of logic. That is, unlike the German idealists, Cohen refuses to presuppose self-consciousness and the form and content of the understanding which intuits itself as the foundation of all unity of knowledge. If we were, for example, to contrast this with Fichte’s idea of the self-positing I, we see that whereas the I encounters itself through the

97 RdV, p. 96/ RoR, p. 82 [translation heavily modified]
determination of the not-I and then recognizes the infinite self-positing as producing the concept of divine understanding as the content of this assertion. Cohen claims that there is no subjectivized moment of recognition without first acknowledging the anterior object of cognition. In his consistent critical idealist manner, Cohen maintains the subject as the last point of the systematic task of cognition. Hence, he is much closer to Kant’s first Critique.

But this logical principle of reason is but one expression based upon the correlation of God and man. That is, correlation is always primary because the first principle cannot be a presupposition; rather, it is a product. Reason produces the principle on the basis of the correlation which gives the proper form of all logical relationships: they are mutual dependencies of the terms in relation. Hence, prophecy is akin to correlation because the first principle of reason is discovered as a dialogical relationship between origin and end, between the ideal I that is cognized at the end of judgment as the subject that strives for unification therewith.

If we also recall Cohen’s earlier argument offered in response to Herrmann, we see that the individuation of the ethical a priori is now the focal point of religion. Despite Herrmann’s accusation that Cohen had neglected this consideration, Cohen’ dialectical understanding of the role of ethics and religion proves otherwise. This systematic description, however, is modified in religion with the further development of the other as the origin to the phenomenalization—appearance as experience—of the object of ethical and religious knowledge: the other as my neighbour and fellowman, and God as the creator. Thus, the idea of God and of Humanity are the specific ideas with which ethics can deduce the social and political scope of man’s obligations. Reason is therefore the origin of the relation between man and God, an origin that is infinitesimally distinct from its continuity as this correlation.

Reason, for religion, is the vehicle of all lawfulness, but it is also the expression of creation. As Cohen claims, this is the meaning of revelation: “revelation is the continuation of creation insofar as it sets up the problem of the creation of man as a rational being.”98 Cohen seeks to eliminate the miraculous element of revelation, insofar as it is not an anomaly, but the wellspring

98 RoR, p. 71
of human existence: “Revelation is the creation of reason.”

Reason is therefore an ens creatum, not to be interpreted causally, as though God caused reason to be. Rather, the revelation of reason is a rational precondition of all causality. It is the achievement of understanding. Just as Maimonides had interpreted the revelation at Sinai as a “hearing” within intelligibility, so too Cohen claims, “all materiality was to be kept away from revelation. This consideration extends to Mount Sinai itself.”

Creation and Revelation both occur in reason, which is what Cohen understands as the source of the correlation between man and God. It is a relationship wherein God is the ground of reason, the basis upon which man can claim knowledge of anything. Indeed, as Cohen writes, “it is as if God’s being were actual in man’s knowledge only, so tremendous is the effect of the correlation. Man is no longer merely God’s creature, but his reason, by virtue of his knowledge and also for the sake of it, makes him at least subjectively, as it were, the discoverer of God.”

Reason is the creation of God and therefore the source of man. But insofar as man is concerned, he sees God as an idea which has been discovered, but only on account of the infinitely continual reality that has generated reason itself: the true wellspring of origins, heilige Geist.

5 Heilige Geist vs. Absolute Geist: A neo-Hegelian Excursus

In many ways, Cohen’s idea of correlation is a challenge not only to Fichte, whose conception of the self-positing I encounters its own check in the not-I, which becomes a self-activity of intuiting the very content of thinking itself, but so too a critique of Hegel’s conception of the self-certainty of Absolute Spirit. The form of absolute knowing of Absolute Spirit, for Hegel, involves the reformulation of intuition as well. Hegel’s challenge to Fichte was that there was a vacuous positing of the form of the I insofar as Fichte’s dialectical method could not overcome the duality between nature and man. For Hegel, the truest form of Spirit is precisely when it empties itself of

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99 ibid. p. 72
100 ibid. p. 74
101 ibid. p. 88
its own inward form of being in relation to its object, which has not yet allowed the overcoming of this dual relation between subject and object. Indeed, for Hegel the highest form of knowing is mediated knowledge, whereby the Spirit empties itself of its relationality and intuits itself as outside itself, has having come to be outside its “pure self” as “time” and “likewise intuits its being as space.”\(^{102}\) In other words, Spirit becomes nature as a living thinking; Spirit “emptied of itself” is the movement that “produces the subject”. This is the pure activity of the “I=I” which posits its self-sameness or identity, despite emptying itself and positing being for itself, which returns the I back into its unity.\(^{103}\) Thus, for Hegel, this pure self-activity of emptying and return enables the “recollective” kind of Absolute Knowing, which discerns “the time of the self” as history, or the preservation of the moments of negativity on the way toward this self-certainty, becoming a kind of fulfillment of retrospection. It is precisely this model of time, of recollection and preservation, which is based upon the logical unity of the I that Cohen both took up and rebelled against. And it is precisely the idea of Spirit that Cohen had to reformulate in the idea of correlation as the “holy spirit” (ruah ha-kodesh).

For Cohen, in the correlation between man and God in reason there is a deeper unity idealized than what could be achieved by the “I” of self-consciousness. This unity is what Cohen calls “holy spirit”:

Man in his ultimate depth is to be established and founded by the holy spirit: man in his correlation with God, man in accordance with the uniqueness of God, man himself as unity, as individual.

Here again we cannot avoid an anticipation which points to the content of the problem of the individual. Here, too, the chasm that separates monotheism from pantheism widens. Man, as holy spirit, becomes an individual. The spirit does not make man into an individual; only the holy spirit does this. Nor does reason make the individual the neutral reason that aims at the true as well as at the good—this is the way in which, at its best, pantheism thinks.\(^ {104}\)

Unlike pantheism, reason and spirit are not static products identical with man. Identity is not a logical function predicable of either. To the contrary, the holy spirit is the purpositive orientation of man, calling man into correlation with God. The absolute spirit that Hegel had outlined in the

\(^{102}\) Hegel, Phaenomenologie, para. 807

\(^{103}\) ibid. para. 804

\(^{104}\) RoR, p. 107
concluding chapters of the *Phämenologie* culminated in Spirit’s self-emptying of itself and becoming nature, was the grounding science. But this is unicity of reason, this neutral reason of science alone, hence logic alone, is precisely what Cohen believes to be overturned by *heilige Geist*. And the *heilige Geist* is a limitation to the moral sphere alone, which is to say, prophecy and revelation speak to man in ethical terms, while presupposing the methodological distinction between the reason natural science. It is “monotheism, however, [that] following by its own dim impulse the trail of ethics, does not acquiesce to this kind of sameness of reason. Monotheism, although it surmises the peculiar world of human knowledge, does not grant that there are limits to moral knowledge.”

In other words, while “the holy spirit limits that area of the spirit that connects God and man to holiness” to morality, within morality itself, there is not limit to this holiness. Whereas pantheism seeks to attain the infinite as a totality uniting all of reason its comprehension of the infinite, Cohen understands holiness as surpassing limitation as such. Hence, it is in keeping with the infinite judgment, such that holiness is not limited, and “even God’s holiness cannot object to man’s own competence in holiness.”

It is identity-philosophy, pantheism and eudaemonism that Cohen is denying, both logically and ethico-politically.

But this fundamental, systematic point serves to ground his solution: the infinitesimal method—a temporal infinity to judgment—is what extends the promise of the future, and thus, refuses to turn reason in on itself and claim totality or sufficiency in the materialization of the unity of nature and law. It is thus Cohen’s insight into the infinite that solves a number of the epistemological problems we have traced thus far. Unlike Hegel, Cohen points to the future as the unification of these realms. Hence, the determinism that Jacobi sought to avoid through the immediacy of spirit, which Hegel took up as the summons for a dialectical account of spirit self-overcoming and becoming subject, Cohen evades all this precisely through a turn to the future which is represented by the infinitude of holiness. Holy spirit is the horizon of reason itself to be

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105 ibid.
106 *RoR*, p. 106
107 *RoR*, p. 107
open to a unification that has not already taken place. This is the temporal element of Cohen’s logic, quite different from Hegel’s.

For Cohen, correlation therefore provides the key to relating the infinitesimal approximation of the I of man to the I of God, while maintaining the strict distinction between the two. Hence, God’s I becomes an attribute worthy of emulation, as Maimonides taught us. God is thus the condition of a religion of reason: to act morally. Through the purposiveness of the idea of God, man accesses the normative ground of all ideas is reason; this is the meaning of holy spirit. Hence, at the level of the individual for whom the idea of God is a ground of his purposive existence, the unity of being an individual can only come through “holy spirit”. Holy spirit is, for Cohen, man’s recognition of reason as the unique creative consciousness of all knowledge and all action. Hence, action is the normative source that individualizes man in ethics and religion.

Action is the testimony, the criterion of holy spirit. Every distinction of creed, of nationality, of rank, disappears before this criterion of man: only before this criterion, and not before any other. That man has reason and spirit besides this, and with them produces science, does not prove him to be holy spirit; only his action has this power of proof. Only his moral action proves him as holy spirit and thus as man.

Whereas Hegel maintained that Science was the truest production of Spirit in the unity of nature and Geist, Cohen maintains that moral action is the proper domain of holy spirit. Action is the actualization of the ideal; it is the actualization of moral reason. The holy spirit is the condition of the actions that actualizes man as holy spirit. Holy spirit is expressed in moral action, wherein empirical difference is disintegrated, and where only the ontological relation between an idea as a norm and an idea as a generative origin remains. That is, the being of the idea and the being of the ought, hence, the “only criterion” for man is his moral action. Reason is fundamentally moral reason this recognition of moral action as the proof of holy spirit is what shows the idea of God as a normative meaning for reason. Indeed, whereas “pantheism simply uses the holy spirit for all

108 cf. Bahya Ibn Paquda’s commentary on Exodus 3:14, s.v. “ehyeh asher ehyeh” where he engages the question of attributes of God and the predication of “spirit” to God’s existence.
109 RoR, p. 107
kinds of cognition, Judaism, on the contrary, limits its significance to ethical culture [Sittlichkeit].” For Cohen it is precisely the priority of the holy spirit for morality and ethics than makes “it possible to recognize in it the nucleus of the thought that Kant expressed by “the Primary of Practical Reason” (ibid.). It therefore remains for the primacy of practical reason to be fully joined with temporal and epistemological horizon of this kind of holiness in religion: correlation understood through the lens of “prophecy”.

5.1 Holy Spirit II: Towards a Normative Interpretation of Religion

Holiness is likewise the basis for Cohen’s turn toward an “anti-eschatological messianism” or a messianic model of time that does not predicate itself of a metaphysical consummation of time; rather, a model of temporal anticipation of reality and the future. Just as Maimonides’ theory of prophecy was the basis upon which the projected origin of creation is postulated, so too, prophecy transforms the law into a forward march toward the messianic unity of knowledge and action (ta’amei mitsvot). Thus, for Cohen, this plays out in the form of prophecy taking the place of temporality, or becoming the basis of the infinitesimal, whose model of time is the anticipation of a future or the law of continuity. Such an anticipation of the future is necessary for ethical judgment, for without anticipating that what ought to be can be, we cannot judge what indeed ought to be done. Hence, for Cohen, just as for Maimonides, eternity is the locus of ethics and the ideal. For As Cohen claims, “Will and eternity are the analogs to thinking and nature.”

Thinking and willing are correlated through the ideal:

- Being is no less the being of the ideal than the being of nature; no less the being of the will than the being of thinking. The will is an equally powerful factor of idealism; the will of the ideal. The will does not phantasize, whereas thinking can fly into it...rather the will acts in the production of a true being. A promethean creation is its shape: humanity, as eternity, as the ideal of ethical self-consciousness.113

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111 LrE, p. 391. See Pierfrancesco Fiorato “Anti-Eschatological Messianism” as well as Andrea Poma “Anti-Eshcatological Suffering”
112 ErW, p. 408
113 ibid.
Cohen’s insistence on the purposive orientation of thinking and willing, on the temporal future, is precisely the form of his prophetic idealism. Indeed, prophetic messianism, as it turns out, is precisely this anti-eschatological futurity, which we have now see to be a possible basis for Maimonides’ theory of prophetic knowledge. Hence, for Cohen prophetic time comes in the form of Cohen’s description of “purpose” rather than “cause” as the activity of God. God becomes the pinnacle of the system of philosophy, providing the ideal of reason in its attainment of Truth. In the Ethik, God represents the culmination of judgment and action in the unity of Truth, but only in a projected future. Hence, God is an ideal of reason, which has both cognitive and legal value. God’s providential relationship with man is through the ideality of purpose, not the materiality of causality. Whereas the eschaton of history requires a miraculous event within nature, for Cohen the infinitesimal takes the place of the miraculous. The infinitesimal is both within reason and yet an origin that generates the limits of reason, and so exceeds reason as well. Following Maimonides, Cohen turns to the “actual Infinite” as the key to thought itself. The actuality of the infinite is not materiality. Just as the law cannot be material because it is miraculous and the attributes of God’s actions are not material, but they are actual in this active sense. They are regulative ideas for human action. The idea of God is this infinite actualization. It is nothing if not immateriality, but actual, precisely because it is not potentially infinite, but actually so.114

But in the Religion, this idea of God, as we saw above, also plays another role. God becomes the basis for the lawfulness of morality, of the moral law, of holiness. In this respect, not only does God become the figure of the messianic purpose of moral striving, but God also becomes the basis for cognizing the moral individual. And this must be understood as consonant with Cohen’s theory of the infinite; for just as Maimonides sought to account for prophetic knowledge through the divine attributes of action being assigned to God, so too Cohen introduces God as the basis for the lawfulness of action. Hence, this actual infinite takes the form of the action of the infinite. Hence, in his interpretation of the thirteen attributes of God, given in the Talmud and

reinterpreted by Maimonides, Cohen notes that unlike the metaphysical or Eleatic model of the unity of God, which is always a derivation of the unity of the cosmos and thus a consequence of pantheism, in the attributes of action,

unity is not even contained in them, not to mention that there is no reference to omnipotence and omniscience. The characteristics of being are therefore entirely omitted, and what is there left in the modifications of love and justice? The characteristics are thought through and ordered in an entirely new relation, namely, as “attributes of action” (to‘arei hama‘aseh), as Maimonides designates them. The place of being is taken by action. And the place of causality, therefore, is taken by purpose. 115

Unity is not designated in the attributes precisely because the infinite action of God is known only through the regulative project of unification: hence, as Maimonides’ would claim, the relation between nomos and torah, between the positive and ideal laws, is the conditioning of action that will unify the body and the intellect, or as Cohen would claim, ethics and nature. Cohen follows Maimonides’ performative definition of the attributes of action: the idea of an infinite purpose is thus a regulative idea of the normativity of God’s action. For as we saw above, the prophet’s knowledge of God’s unity is only the first principle that schematizes the active intellect as the continuous force of legislative imagination. In other words, God’s unity is a principle of infinite action, not a material certainty. Hence, revelation must also be reinterpreted as the regulative temporal horizon for man’s actions: in other words, law. Only law maintains both the ideality of the infinite actuality, holding out its promises and its threats, as well as being an introduction of actuality into the potential; hence, the ground of all constructed actions. And since Cohen maintains that revelation is the creation of reason in man, we can now see the unity of the system: the lawfulness of reason is revelation. Consequently, with this theory of reason, lawfulness and the attributes of action all lending themselves to the orientation around purpose rather than cause, the entire problem of causality, which the idealists saw in Jacobi and Maimonides in Ghazali, and became the watchword of pantheist determinations of the infinite, is avoided through the actual infinite. The idea of purpose is actual. And just as Maimonides understood God’s unity as the orientation of all knowledge, so too, Cohen sees the action of God as the performative source of

115 RoR, p. 94
normativity. That is, purpose replaces causality in the ideality of the law. Hence, this is the condition of the infinite:

The question of the purpose of being transcends being proper and relates itself to correlation. The same is the case with the problem of action, which as love and justice is distinguished from the causality of creation.

Action in the case of God is related to the possibility of action in becoming, namely, in man. And this possibility is related not to causality but comes under the viewpoint of purpose. Hence the attributes of action are not so much characteristics of God, but rather conceptually determined models for the action of man. The unity of the concepts of love and justice in the concept of action, and consequently in purpose, elevates [the] attributes to norms (13 *middot*).

The purpose of being transcends being. That is, the purposiveness of being signals the ethical turn. Being is normed with a purpose that requires ethical action. The term correlation is how Cohen describes the unique relationship between man and God insofar as reason is the vehicle for the ideal revelation of law and what Cohen elsewhere refers to as “holy spirit”. Correlation is the preservation of two distinct terms as they nevertheless persist in their unique activity. But the idea of God, as an ideal of reason, is still the projected unity between knowledge of nature and knowledge of ethics. In this respect, the problem of creation is the very problem of reason itself, wherein we see how nature and ethics are interrelated through the very idea of purpose. This product of the correlation between man and God in reason itself gives way to the specifically interpersonal relation between man and fellowman, the penultimate ethical relation. Purpose therefore becomes the normative future and creation becomes an ethical concept that unites ethics and nature with law.

The True and the good are infinite for the man that has been called as an individual. Moral reason knows no limit. For Cohen, the individualization of ethics can only occur in dialogic relation. We must therefore recall the role of the infinitesimal and the infinite judgment discussed earlier. Here Cohen writes,

monotheism, although it surmises the peculiar world of human knowledge, does not grant that there are limits to moral knowledge. Man, as holy spirit, has to know what holiness is. And even God’s holiness cannot object to man’s own competence in holiness.

116 *RoR*, p. 95, translation slightly modified.
This humility of recognizing the limits of human knowledge, which at the same time is the greatest human pride, is surmised by the Greek mind in the Idea of the good.¹¹⁷

The limited nature of knowledge, which the good represents, is turned into the messianic principle of anticipation of the future good. For the divinization of the good, of Logos, is not a limitation of reason, but an attempt to determine the limits of reason. Hence, pantheism takes the good as identical with the right, reason as the fulfillment of the good. But for Cohen, moral knowledge is not limited per se, which means, it is always incomplete. As in calculus, the “limit” is a fiction that helps orient method toward the idea of an “infinite”. Likewise, moral good becomes active and continuous through the idea of holiness, which through the particularly German conception of the unity between reason and purpose, Spirit, becomes a uniquely “Holy Spirit”.

We can therefore see the systematic link in Cohen’s conception of religion: it is part of the normative and regulative use of ideas. Yet religion also accounts for the “constitutive” role of the understanding: the categories and forms of thinking now have a source in the infinitesimal origin, which has taken on a religious inflection within the philosophical vocabulary of religion, it is holy spirit. The good is the normative limit, which signifies the methodological relationship between logic, ethics and religion. And the holy spirit, which man must prove in himself through action, is oriented toward the ideal of reason, the good. Religion therefore becomes a theory of normative praxis and the fullness of temporality in both knowledge and action. Religion, moral law or Holy Spirit, and the correlation of I and You, grounds the normative basis of culture itself.

¹¹⁷ Cohen continues, however: “But the latter, in the Greek mind, becomes a God, and thus there is no correlative link to the holy spirit of man. Because there is no unification, one has to look for a mediation. And it was the misfortune of monotheism that the Jew Philo, with his Logos, followed Plato, whom he thought he was only understanding logically, when at this point he should have maintained the independence of monotheism” p. 107.
Conclusion

Cohen’s Jewish Thought and The Normative Interpretation of Idealism

1 Summary

That German Idealism is permeated with lingering Christian influences in its most fundamental conceptual structure has been one of the implicit themes of this dissertation. And that Hermann Cohen is ceaselessly revising the meaning of systematic idealism in light of this problematic constellation of ideas vis-à-vis a philosophical reconstruction of Jewish sources has been a dominant argument. It should now be apparent that the very problematic concept with which Cohen’s philosophy is concerned is the same concept exhibited in one extreme form of liberal Protestant ideas to which Cohen is responding, namely, the idea of Pantheism.

Pantheism has now acquired multiple connotations throughout this dissertation: it is the symbol of a reductive monism, of an idealism based upon the principle of identity, and the conflation of nature and morality. Pantheism is therefore a problem of metaphysics. But I also argued that the conceptual mechanics of this monistic identity-philosophy could also be found in Cohen’s identification of the problems of materialism, positivism, and naturalism. Thus, Pantheism gives way to positivism as a kind of deracinated idealism, which has likewise conflated nature and ideality and so represents the reverse side of the same coin.

The problem of relating experience and ideality, nature and morality, law and action, has remained Cohen’s constant methodological guide. Hence, I argued that the distinction between logic and ethics required aesthetics and religion in order to retrospectively coordinate the problem of nature and ideality in the system in relation with a temporality of futurity. Legality became the primary site of my argument concerning Cohen’s turn to Jewish sources and also enabled the comparison with Maimonidean prophetology.
This first argument concerning the revision of Kant’s Typic-problem and the question of legality in morality led to my argument concerning Cohen’s hermeneutic incorporation of Maimonides into his thought, by insisting upon a methodological distinction between nature and ethics, where lawfulness was derived from an ideal construction. This new interpretation of lawfulness, I argued, stems from the prophetic dimension of ethics, or the eternal temporality represented by ethical norms, and consequently, Cohen’s argument concerning a science of law, or Wissenschaft. Rather than presenting Wissenschaft only in terms of natural science, which many have wrongly interpreted as Cohen’s proper understanding of the term,¹ I also argued that Cohen invokes this term to describe the method of purity through the lens of the Geisteswissenschaften, the human sciences, and the particular role of Wissenschaft des Judentums. This argument also helps elucidate how “Judaism” is introduced into the system of philosophy, by understanding methodologically that philosophy of religion means the Wissenschaft of any historical tradition by looking at “sources” and idealizing out of them. As a Wissenschaft, therefore, Cohen recovers textual sources in the Jewish tradition by idealizing them into his neo-Kantian context. This is precisely why I argued that Maimonidean rationalism permeates his entire system and can be philosophically reconstructed tying together his Kantian and Maimonidean threads, whether explicitly cited or not.

In this vein, Cohen’s method and turn to ethics allows him to recover the Maimonidean distinction between ethics and logic, between nature and morality, and to use the prophetic model of law, as a modal distinction between future and historical actualization. The critique of intellectual intuition, or the Pantheist deduction of content from form, thus comes to a head as an example of how Cohen’s recovery of Maimonides serves as a kind of idealization of Maimonides’ prophetology. Cohen purifies the theory of prophecy by enabling the model of lawfulness, of temporality and eternity of the law, as a kind of model for how history itself should be interpreted.

¹ For a presentation of Cohen’s conception of science as the only pertinent valence of the term, see Manfred Kuhn, “Interpreting Kant Correctly: On the Kant of the Neo-Kantians” and Jürgen Stölzenberg, “The Highest Principle and the Principle of Origin in Hermann Cohen’s Theoretical Philosophy,” in Neo-Kantianism in Contemporary Philosophy, eds. Rudolf A. Makkreel and Sebastian Luft, (Bloomington: Indiana University Press, 2010).
Thus, Cohen presents “correlation” as the example of how a medieval problem of God’s commanding existence can be introduced into the constellation of German Idealism’s secularization of the ens realissimum and thus critique the latter. But this critique is not offered on theological grounds. Rather, Cohen’s introduction of method, of Wissenschaft or science, into the nexus of religion and ethics, means that Cohen articulates an idealized interpretation of religion. God and the meaning of prophecy serve as normative structures that help mitigate the hubris of either Pantheist metaphysics or Positivism.

But the additional critique, which Cohen fosters with his concept of correlation, is that of the kind of eschatology and messianism that problematic idealism represents in its conception of autonomy. Cohen is weary of how Pantheist and Positivist autonomy humanizes metaphysics and positivizes religion into validating human self-assertion to the point of unlimited power. Thus, between these two poles of Pantheism and Positivism, Cohen therefore speaks in a kind of normative language, where prophecy is idealized as a kind of practical reason. Cohen does not insist on purity as a kind of eradication of the medieval or religious “sources” of this concept, but a kind of normativized language of religion. Rather than “secularize” the terminology, Cohen preserves the historically specific trappings of theology, but by placing these terms into direct confrontation with German Idealism and the language of positive law, Cohen’s hermeneutic forces a kind of linguistic and conceptual idealization of the traditions as they are philosophically analyzed.

In sum, I have argued that Cohen can and should be recovered in studies of the philosophy of law and State in the late 19th century, where his work demonstrates how Pantheism expresses philosophically what I would describe as the tensions of a looming secularization of liberal Protestantism and how this religious context is so important for debates in 19th century German philosophy. Cohen’s philosophy of law also demonstrates a middle-path between Positivism and natural law, which is should be of scholarly interest given the influence of late 19th century German constitutional interpretation.
But I want to conclude by asking what can be made of Cohen’s contemporary relevance. While I have been exploring the systematic logic of Cohen’s critique of Pantheism, culminating in his turn to correlation as an attempt at laying bare the Pantheistic problem of intellectual intuition and exposing it to a critique from the vantage of monotheism and its practical-legal correlate of prophecy, there is yet another layer to this dynamic of philosophical reconstruction of religious concepts and problems. I want to suggest that Cohen’s hermeneutic of interpreting Kant through a Maimonidean lens, his adoption of Protestant categories of “religion” and “law”, and his reconstruction of the concept of “prophecy” demonstrate a deeper resonance to his thought, which speaks to us in a contemporary idiom. For as I have been arguing, through Cohen’s method of idealization, whereby his engagement with German Idealism’s systematicity enables him to normativize his minority religion in the majority voice of the German academic elite, this hermeneutic reveals yet another dynamic at work in the narrative of modern Jewish thought; namely, its normative dimensions as a public philosophy of religion.

By explicitly reading Kant in a Jewish way, Cohen engages in what we might refer to today as a kind “normative” interpretation. In what follows, therefore, I want to conclude with a sphere of scholarship in which this reading of Cohen can be recovered, and in which, I believe Cohen’s critique of intellectual intuition, use of prophecy, and deployment of Jewish literary sources, culminates in a contemporary model of normative ethics.

2 The Normative Interpretation of German Idealism and Social Reason-Giving

The normative interpretation of Hegel and German Idealism, which involves re-reading purportedly metaphysical concepts in Hegel’s philosophy as social reasons and self-reflective social institutions, has become a more prominent school of thought. Largely due to its internal connection with American Pragmatism, this normative interpretation of the idealists is both fascinating because of its practical and social orientation, but in some ways possibly flawed in
ignoring many historically compelling alternative interpretations. I’d like to explore how this normative interpretation of Idealism should relate to Jewish thought.

I ended the last chapter with a brief reflection on how Cohen’s work differs from Hegel, but I want to conclude this study as a whole by also reflecting on a possible intimacy of normative interpretations of either thinker. Or, at least the similarities between Cohen and the so-called “new Hegel.” It is not that Cohen’s thought provides either a direct parallel or challenge to these thinkers, but rather mitigates what may be a blind spot toward religion in these theories.

One of the great achievements of the “normative” reading of the German Idealists, and Hegel in particular, whereby the “sociality of reason” forces us to reconsider whether Hegel’s project was as thoroughly committed to a metaphysical and theological project as the conventional narrative presents him, is that it breathes new life into the Kantian Hegel. Robert Pippin and Terry Pinkard, who have led the return to Hegel in a social and epistemological light, have focused upon Hegel’s project as a correction to Kant. That is, the categories of self-certainty, Absolute Knowing, and Spirit become rational insights that we have about ourselves and about our social norms of knowledge. Pinkard in particular attempts to provide a historical narrative that fills in the blanks of Hegel’s phenomenology as representing the culmination of this sociality of reason. However, this reading of Hegel avoids grappling with another set of questions that have been the focus of this study: how can the normative interpretation avoid the charge of Pantheism if at the end of the day, the normative interpretation turns Hegel into a Positivist thinker? Such a claim would of course require greater argumentation than I can provide in this conclusion, but the problem focuses upon what Cohen detected as a Janus-faced problem of Pantheism and Positivism. If the Absolute is merely the self-reflection of social institution and communal reason-exchanging, how is this any different from the late 19th century Positivism and normative neo-Kantianism against which Cohen polemicized?

For example, while this reading began largely with interpreting Hegel in particular, Terry Pinkard has expanded this normative interpretation beyond Hegel to encompass Fichte as well. Hence, for Pinkard, German Idealism becomes a normative reaction to Kant. For example,
Pinkard interprets intellectual intuition, which he sees in Fichte and Hegel, as a kind of “rational insight” into the necessity of reality, which “does not imply that the proposition expressing cannot itself be a conclusion drawn from another set of premises; rather the necessary truth apprehended in an intellectual intuition does not require that it be derived from any other premises for us to grasp its necessity.” This interpretation, particularly in Fichte’s philosophy, enables a re-interpretation of the entire idealist project. It allows the “normative” interpretation of the cognitive project. Hence, by establishing that some truths can be inferred axiomatically, as in mathematics—for example that it is necessary that one and only one side must be given to form a triangle when two sides are already given—these rational “insights” become normative or axiomatic. This interpretation therefore enables a kind of “secularized” interpretation of German Idealism, whereby the most real thing adequate to such a “necessary truth” is no longer God, the ens realissimum, or a metaphysical principle at all, but rather,

Nothing other than our own spontaneity, our autonomy itself, could serve such a basis; and that very basic autonomy had to be itself construed non-metaphysically, not as expressing any ground-level metaphysical fact about some supersensible object, but as expressing some absolutely basic norm, which itself could only be grasped in its necessity through an act of rational insight, of intellectual intuition.

In one fell swoop, Pinkard re-narrates the story of German Idealism, not in terms of a metaphysical Pantheism, speculative idealism, or the like, but what is at best a normative Positivism. Indeed, Pinkard assumes a similar move as the legal positivists of the late 19th century, and indeed, as Frederick C. Beiser has argued, of the neo-Kantians as well. But Pinkard demonstrates the veracity of my own claim that Cohen detects a paradox in Kant’s concept of autonomy, primarily by demonstrating how it lumps together both positivist legislation and pantheist derivability.

But what does the normative interpretation of German Idealism tell us about the project of “giving reasons” for our actions, our institutions, and our practices? Without understanding the

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2 Ibid.
dynamic of religion and secularity within 19th-century Germany, I cannot endorse Pinkard’s reading, compelling as it is and as similar to Cohen’s own work, without first narrating the conceptual history within which these concepts are embedded. And it is primarily the story of Pantheism that helps me narrate this history.

3 Pantheism as Secular Metaphysics?

A corrective to the normative interpretations flirtations with what may be a Pantheist Positivism may lie in analyzing Cohen’s concern with Pantheism. In the 19th century, the problem of Pantheism was understood as the relationship between subjective autonomous human reason and the principles of cognition. It was a question of the facts of science and the objective understanding of the world. Without a theory of transcendent intellect, there seemed no need for skepticism about truth. Immanent harmony of all principles of knowledge, which Spinoza had suggested, could solve all methodological problems. Hence, the debate about the ground of all reality in the medieval period was now a debate about the first principle of knowledge. And this epistemological problem lingered in the human sciences, now focused upon the problem of historicism over and against positivism, as for example in the so-called Methodenstreit, or methodological dispute in economics.

In the 1880s and 90s, Carl Menger and Gustav von Schmoller exchanged a series of pamphlets attacking each other’s methodological assumptions. The debate concerned the methodological grounding of economics as a human and cultural science. While Schmoller, representing the German Historical School, focused upon the question of material history as the scientific and causal explanation for human phenomena and behaviour, Menger, representing the Austrian School, argued that only systematic and logical first principles could underlay a scientific study of human culture and economic activity. As I have noted throughout this dissertation, there

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were many other facets of debate surrounding the proper grounding of the human sciences such as: in legal thought, between the metaphysics of historicism in the Historical School of Law of the late Friedrich Karl von Savigny and Friedrich Julius Stahl, and the pseudo-scientific statute-positivism of Paul Laband and Rudolf Ihering; in political thought, between the Genossenschaft or cooperative based law school of Otto von Gierke and the historical materialism of Marx and Lasalle on the other; and in philosophy, between the pantheism of Hegel and the psychologism of neo-Friesians like Johann Friedrich Herbart and Wilhelm Wundt. But it is perhaps now possible to interpret Pantheism as a code word for secularism; albeit a uniquely German form of secularism, with its own independent metaphysics. And it was likewise the fact that Spinoza, the Jew, had introduced this problem that Cohen detected as a new threat of “metaphysical assimilationism.”

As I noted at the outset, Spinoza’s philosophy was symbolic for Cohen. Through the narrative Cohen sketches, Spinoza’s philosophy is synthesized with Christian incarnational messianism and presented as a seemingly neutral metaphysics and epistemology. Indeed, the influence of Cohen’s interpretation can thereby be detected in Julius Guttmann’s characterization of Hegelianism as representing a philosophical system of Christian concepts that have been diffused into philosophical Pantheism diametrically opposed to what was thought to be “abstract” Judaism. Hence, it is worth quoting Guttmann at length. In his *Philosophies of Judaism* (1933), he writes,

"The religious philosophy of idealism, was, in its most significant and influential achievements, a philosophic deduction from Christianity...

...The most radical representation of this thesis was given by Hegel, who found in the Christian doctrine of the Trinity the archetype of his own notion of the self-development of the spirit, and in the Christian idea of the incarnation, the immanence of the infinite spirit within the finite spirit. The philosophic structure of the history of religion was erected so as to lead up to Christianity as the final and most perfect form of religious truth, in which all previous religious aspirations were fulfilled. Judaism, with its “abstract” monotheism, was accorded a place in this developmental scheme, as one of the partial representations of truth, but it had been superseded by the universal truth of the absolute faith of Christianity. The relationship of Judaism to Christianity was, for Hegel, as the relationship of reflective thought, with its dichotomies between absolute and relative, finite and infinite, to speculative truth, which dialectically abolishes these distinctions."
From these formulations it is very apparent that the critique of Judaism in speculative philosophy was made from the viewpoint of a rational pantheism, which was taken as the proper content of Christian dogmas. According to this view, the one-sidedness of Judaism consisted in rigorously distinguishing between God and man, finite and infinite spirit, while in fact the infinite lives within the finite and is manifested by the latter.

Fichte’s ethical idealism maintains the spontaneity of the human consciousness with the pantheism of spirit. But the aesthetic pantheism of Schelling, which preceded his turning toward theosophy, and above all, the logical pantheism of Hegel, involves the finite spirit completely in the development of the infinite spirit. Reality is the unfolding of truth, and the finite spirit is a necessary element in this process. All spiritual life is under the necessary law of its dialectical self-unfolding...

...This opposition between Hegel’s philosophy of spirit, and Jewish religiosity, becomes even sharper if we consider that the sphere of ethical reason is subordinated to the sphere of logical understanding, where spirit returns from the activity of willing to a reflexive comprehension of its own essence. What was true of Aristotle and Spinoza is now reiterated in Hegel—thought becomes the essence of spirit; and the ultimate meaning of religion is that, in religion, spirit raises itself to consciousness of the eternal interconnection of truth, while conceiving of itself as a part of this greater whole.⁷

Hegelianism represented the neutralization of formerly Christian concepts with a logical elaboration of immanence, mediation, and absolute spirit. Whereas Judaism’s legalism is represented as “abstract”, incarnational reason as spirit is concrete and mediated. Despite Guttmann’s skewed interpretation of Hegel, and its many Cohenian intimations, I believe the same still holds of the normative “new” Hegel.

For example, if we accept the thesis that Hegel’s philosophy is an attempt at representing social institutions as they are self-reflectively interpreted, we nevertheless admit that even if we were to agree with Jeffrey Stout that a new cogito emerges, as the “I think, therefore I belong to a community of reason-exchangers,”⁸ the implicit assumption of communal recognition as the basis of justificatory claims exchanged is that a inter-mediating normativity is the basis of all human knowledge. In other words, an incarnational logic persists, whereby ideas and actuality are presumed to exist in tandem. Thus, the social immanence of these reason or norms is still determined by subjects legislating their individuality as the basis of normativity. In Cohen’s characterization, this means that the Pantheistic consequences of a liberal Christianity alienated

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from its own past becomes the very basis for this kind of reason-giving and exchanging since it is precisely that alienated past Christianity that becomes the projected source of communitarian reasons. As Terry Pinkard writes,

Absolute knowledge is thus the way in which absolute spirit articulates itself in modern life; it is the practice through which the modern community thinks about itself without attempting to posit any metaphysical “other” or set of “natural constraints” that would underwrite those practices. Absolute knowledge is the internal reflection on the social practices of a modern community that takes its authoritative standards to come only from within the structure of the practices it uses to legitimate and authenticate itself.

The development of the Christian religious account of humanity is essential for the possibility of such reflection, since in its reflection on the absolute principles of human life—on the divine—it has provided a way in which the European community has come to understand the absolute principles of its life not by something transcendent to human life itself but in terms of something close to the human “heart” (the person’s sense of his own finitude) and to the human “understanding” (the person’s rational, reflective capacities). The sociality of reason is itself predicated on the assumption that human beings are agents of belief, thinking, faith, and then action and institutions and that their value-relatedness, as Rickert put it over a century ago, is what makes historically meaningful normativity possible. Indeed, the implicit assumption of “heart” and “understanding”, even when they are overcome as mere “representational” forms of thinking and elevated to a more succinct “account of accounts,” presuppose the unity of thinking and acting in such a way that justification and determination become identical. Individuality becomes the source of reason-giving when the social dimension is merely refracted inwardly. In Cohen’s terms, this is another consequence of Positivism, since “society” simply replaces the Pantheistic indwelling of spirit.

From the perspective of Cohen’s philosophy of Judaism, the normativization of spirit does not escape the criticism that a fundamentally monistic philosophy of normativity is not a philosophy of norms at all. Rather, actions and norms become reduced to the kind of empirical lawfulness for which Cohen criticized Kant, the exception being that societal justification of knowledge-claims about nature become formally coherent with ethical normative claims. This still

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9 Terry Pinkard, Hegel’s Phenomenology: The Sociality of Reason, p. 263.

misses Cohen’s fundamental distinction between logic and ethics, which prophecy is precisely
aimed at highlighting. Only the prophetic emphasis upon futurity escapes this Pantheistic feedback
loop of social practice and enables the possibility of an otherness that simply cannot be anticipated
in categorical terms. Rather, time opens up philosophy unto religion and religion unto philosophy,
as a temporal displacement of society’s own self-justification.

David Biale, a historian of Early Modern Judaism, has recently argued in his Not in the
Heavens that there is a tradition of “secular” Jewish thought. These “secular” Jewish thinkers are
developing their own relationship to Judaism, despite, as he says, refusing any “essential thing
called Judaism.” For Biale, Pantheism becomes just the vehicle for his narrative of “secular”
Judaism and even credits Maimonides with being a catalyst for Spinoza. For Biale, “[b]y abstracting
God from the world, Maimonides cleared the way for an autonomous realm of nature.”11

According to Biale, Spinoza seized this autonomy of nature, collapsing God into the attributes that
can only be detected in nature and thus, “[o]ne might also say that once the transcendent God
became so abstract that he could not be grasped, he vanished from sight, leaving only the
universe.” Spinoza thereby inverts the Maimonidean God from being a “radical transcendence [to
that which] begat pure immanence.”12 What is correct in Biale’s assessment is his judgment that
“materialism thus defines the metaphysical philosophy of the secular, [while] humanism defines
the political theory of the secular” and that both of these theories are bound up with the legacy of
pantheism. Biale likewise concludes his study by asking whether we in fact live in a postsecular
world where “Jewish secularism” might not be so easily delimited. However, Biale’s
characterization of modern Judaism through the lens of Spinoza and pantheism indeed helps me
articulate my concluding point, despite what I believe to be a misstep in his characterization,
namely, that pantheism is a development of Maimonidean rationalism and prophecy and
radicalized by Spinoza. Quite to the contrary, I have argued that Maimonides’ anti-eschatological
messianism is completely at odds with Kantian and post-Kantian attempts at rendering autonomy

12 Ibid. p. 26
an incarnational messianism. Hence, when it comes to Cohen, the methodological distinction between nature and law, logic and ethics, pantheism and monotheism belies the distinction between the “Jewishness” and “secularity” of Cohen’s thought. Thus, Biale wrongly identifies Cohen’s systematic philosophy as a “secular theology,” which under the influence of the Rosenzweigian interpretation, Biale sees Cohen’s to later reject in his turn to the Religion of Reason. I believe that part of the problem with reading Cohen in such a narrative of secular thought stems from the fact that Cohen’s hermeneutic is concerned with at once refuting Protestant pejorative characterizations of Judaism as legalism, of Israelite prophecy as a mere condition of Christian messianism, and its emphasis upon transcendence as mere deism. For all these moves, and for the reason of Cohen’s reliance upon a pre-modern thinker like Maimonides, I believe it is false to characterize Cohen as a “secular” thinker.

Throughout this dissertation, I have been referring to Cohen as a “Jewish” thinker and perhaps this requires greater clarification. Cohen is attempting to critique the structural system of post-Kantian Idealism, not as a secular epistemology, per se, but rather, as the expression of a liberal Protestantism that, when carried to its logical conclusion, loses its sense of transcendence. But Cohen’s critique is not a recuperation of metaphysics; it is a critique of metaphysics itself. Cohen’s argument is precisely that by substituting the eschatological dimensions of messianism with autonomy, Pantheism does not actually “secularize” Christianity; rather, it empties it of its philosophical rationality. This is why “monotheism” becomes the crucial concept in re-narrating the history of ideas. Indeed, this is why “correlation” must be the term that articulates the difference between prophetic time and messianic time. “Prophecy” contains the implicit function of legality as the practical dimension of reason relating the past norm to the future action, while messianism focuses fully upon the future synthesis as an ideal. With the methodological distinction between logic and ethics, nature and ethical law, Cohen can thereby maintain the projection of a unity to theory and practice, albeit in the correlation of temporal origin and end.

13 Ibid., p. 33
14 See for example Cohen’s critique of Troeltsch in “Der Prophetismus und die Soziologie” in JS II: 398-401.
15 Compare with Karl Löwith’s original thesis in Meaning and History, pp. 156-9.
Cohen therefore reconstructs Judaism as a normative source of ethics, law, and action. Thus, Cohen’s engagement with Kant and German Idealism transpires in an attempt to reconstitute the meaning of Judaism as a philosophical resource to translate Protestant terminology that cannot be cut and past onto Jewish texts. This is not to deny Cohen’s insistence on “Protestantism” within Judaism, but rather to interrogate and reveal the idealization that lay beneath such invocation of anachronistic comparison. Indeed, it is the critical idealism latent with Maimonidean thought that Cohen cites as a point of comparison and by reconstructing Cohen’s thought as “prophetic idealism” I have been arguing that there is an implicit tension between Protestantism and Judaism that is revealed in Cohen’s idealization. I want to conclude only by referring to the implicit tensions between Protestantism and Judaism in Cohen’s thought as another facet of the problem of the spectre of secularization and its influence upon 19th century German-Jewish thought.

4 Protestantism and Jewish Thought

The Protestantism of modern Jewish thought is often discussed but rarely interrogated in terms of how Jewish Protestantism cannot be completely reduced to Protestantism. While David Myers characterizes Cohen’s many references to Judaism within the orbit of Protestantism, but Myers seems to be arguing that a stable category of Protestantism can be corresponded to some other

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16 Consider Cohen’s claim that “Maimonides is the milemarker of Protestantism in medieval Judaism,” whereby Cohen explicitly names Maimonides’ critical reconstruction of religion and his idealism as the basis for this comparison. See Deutschum und Judentum I, in JS II: p. 244.

17 Talal Asad and Jose Casanova have argued that modernity cannot be fully understood without making an important analytical distinction between secularity as an epistemological order and secularism as an ideological worldview, while the material history of institutions and their transformation in the era of constitutional law, Casanova adds, is what we mean by “secularization.” See Talal Asad, Formations of the Secular: Christianity, Islam, Modernity, (Stanford: Stanford University Press, 2003); Jose Casanova, “The Secular and Secularisms,” in Social Research, vol. 76, no. 4 (2009), pp. 1049-67. Similarly Dipesh Chakrabarty notes that the discussion surrounding “secularity” is privileged to the European context and does not help us elucidate the colonial minorities’ experience of modernization, with their beliefs and practices often characterized as simply archaic or superstitious and wishful thinking. See Dipesh Chakrabarty, Provincializing Europe: Postcolonial Thought and Historical Difference, (Princeton, NJ: Princeton University Press, 2000), especially chapter 3, “Translating Life-Worlds into Labor and History,” pp. 72-96.

18 See David N. Myers, “Herman Cohen and the Quest for Protestant Judaism”
stable content of Judaism and this is Cohen’s goal. In other words, Myers does not attempt to account for the way that Cohen’s philosophy of religion, ethics, and logic all mimic the moves of Protestantism as a figure of systematicity and a rational religion. But precisely for the reasons I have been discussing herein—because Cohen sees the failure of liberal Protestantism to be its falling away from prophetic religion, as Cohen writes in his critique of Troeltsch, and repeats in his memorial for Wellhausen—it is likewise the task of Judaism as an attempt at philosophizing monotheism into public discourse, namely in ethics and law, and in questions of religion in politics, that Cohen achieves a displacement of “Protestantism” as a kind of historicist individuality and idealizes it into its Jewish variety. Judaism is likewise idealized, and consequently, Cohen refers to the philosophically purified form of idealism at work, “ethical monotheism”.

By contrast, Leora Batnitzky argues that Cohen’s very critique of Kant and his distaste for legality, which I have argued to be precisely the key to understanding Cohen’s Jewish reading of Kant, demonstrates the Protestant categories within which Cohen must re-imagine Judaism. Indeed, Batnitzky observes that Cohen’s conception of Judaism as a religious rather than a political law is what enables him to re-imagine a Protestant Judaism whereby this particularity becomes a universality in disguise; where Jewish isolation in election becomes a vehicle for humanity at large. By endorsing the category of “religion,” which Tomoko Masuzawa has pointed out carries the mission of liberal Protestantism and universalism within the guise of comparative studies, Cohen endorses Judaism as a “religious” and thus, non-coercive law. While Batnitzky is certainly correct to observe this adoption of a protestant category, and her characterization of modern Jewish thought in terms of this categorical adoption is quite convincing, I nevertheless believe that with regard to Cohen, something quite different is at work.

It is precisely through Cohen’s use of the dialectic between Israel and Humanity, nature and ethics, Monotheism and Pantheism, that he unsettles the kind of causal law paradigm of

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morality which is at the centre of Kant’s category of “religion” and its implied schema of legality in the Typic. Political law is revealed as merely natural causal law for Kant, while “religious” law becomes an ethical idealism that suggests a reworking of the very Protestantism of the category of “religion” through the concept of “prophetic law.” In other words, politics and religion are both displaced by Cohen’s insistence upon prophecy as a model of ethical time. Neither politics nor religion can therefore be reified in its Protestant form, since nature and ethics can only be unified in a messianic horizon. Hence, by idealizing the very categories of “religion” and “law” in his philosophical critique, Cohen dislodges the Protestantism of these categories when they sit on Jewish shoulders; for the dialectic itself resolves into a third term that never emerges, namely, correlation, as the attempt to bring prophecy and messianism, origin and end, into dynamic relation, while the ideal of unity or synthesis remains a goal or ideal.

But this critique is only possible based upon Cohen’s rejection of intellectual intuition and the problem of the Typic. Correlation helps describe a kind of dependent rationality, which does not simply stop at sociality, as Habermas has tried to argue but incorporates temporality into the fundamental groundwork of cognition such that each and every cognition remain unbound and open to yet another. Thus, Hermann Cohen’s reading of Maimonides enhances this argument against Pantheism and Positivism by locating a Jewish source for a kind of dependent rationality, represented best by the normative idea of prophecy. Cohen’s hermeneutic of blending medieval and modern philosophy, of placing Maimonides and Kant on a spectrum of philosophical problems, is what makes Cohen’s entire philosophy part of his oeuvre as a modern “Jewish” thinker. And by simultaneously critiquing the limits of philosophy by engaging Jewish sources, Cohen traces the limits of theology by reading them philosophically. It is similarly a hermeneutic theory of social practice, which is best understood as Robert Gibbs has described: it is a kind of

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23 See Cohen’s 1871 essay on the Trendelenburg-Fischer dispute: “If an age allows itself to be dominated by the trend of history, it will soon find its full satisfaction in the fulfillment of this trend, and the longer this state of affairs lasts, the less will it be affected by the question: what will be?, and even less will it be affected by the question: what must be? But these levers of the future are, at the same time, the gages of the past. The historical link with the old must only be established with what in the old was also the new, and only in this regard will historical knowledge of the old come about. We are still closely tied to the new in this sense, and we must take its side as advocates of truth, if our result is to be real history”. (S 1:274:75)
hermeneutic where “the two realms of textuality are different and specific, but also finds me called not merely to tolerate difference but to translate, to attempt to say from one context into another, into here.” The relation between Judaism and philosophy is one of constructively idealizing different contexts, while maintaining that idealization is always a kind of reduction, which in turn leaves the specificity of the text or tradition in its historical place. It is the norm that is pursued, not the empirical experience.

This dissertation has tried to resituate discussions of Cohen’s Jewish thought around this problem of philosophizing “religion” and “religious concepts” by stressing the philosophical dimensions of methodology in his ethical idealism. With the methodological critique offered by Cohen, it is possible to see how a philosophy of religion, and of Judaism in particular, articulates a critique of the many secular and liberal categories that have been offered in contemporary returns to Kant and the Idealists. But the larger question that this interpretation of Cohen presents is of the value and orientation of Jewish thought in the 21st century. What can Jewish thought offer us today? This kind of methodological emphasis whereby the normative dimensions are brought into full focus, offers us at least the insight that Jewish thought is inherently modern (if not postmodern) in its commitment to stepping outside of categorical familiarity and being willing to idealize. As Cohen maintains, it is only this kind of idealization that can help us foster an ethics of the future, where the history of humanity can be navigated. It is the history of humanity, the history of the future, therefore, that I believe Cohen’s philosophy of Judaism enables.

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