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## WICKED SAVANTS AND PIOUS FOOLS:

## THOUGHTS ON THE USE OF KAVOD HABERIYOT IN HALAKHIC DISCOURSE

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## Shulchan Arukh Choshen Mishpat 426:1

*One who sees his fellow drowning in the river, or under attack by bandits, or under attack by wild animals, and he was capable of saving the fellow himself, or of hiring others to save him, and yet he did not save . . . violates "do not stand idly by your peer's blood" (Vayikra 19:16)*

The inimitable Rabbi Shlomo Kluger, in his comments to this halakhah, points us to the Talmudic case in which human dignity most clearly overrides a law with Biblical authority. A *beraita* cited three times in the Talmud (Berakhot 19b, Bava Metzia 30a, and Sanhedrin 18b) states that the Torah itself recognizes circumstances in which one can "look away" from someone else's lost object, despite the explicit prohibition "You must not look away". One of those circumstances – the only one which has no independent textual source – is that an elder need not recover someone else's lost object if doing so would force him to act in a manner not befitting his dignity,

Why is this relevant? Because a *beraita* on Sanhedrin 73a derives the obligation to save people from drowning from the verse requiring the return of lost objects – if one must return money, all the more so life! The Talmud asks why, if this is the source, the Torah contains the additional prohibition against "standing idly by your peer's blood"? It responds that this second verse creates the obligation to pay for third-party rescuers if necessary.

Rabbi Kluger puts these two *beraitot* together and reaches the astonishing (tentative) conclusion that one is permitted to choose to preserve one's own dignity rather than saving another person's life.

R. Dan Plotzki ([Keli Chemdah Teitzei 6](#)) and Rabbi Y. H. Henkin (Responsa Benei Banim 1:43), put Rabbi Kluger's position in dialogue with Talmud Sotah 21b. Mishnah Sotah 20a cites Rabbi Yehoshua as calling out four religious

types as מבלי עולם, those who overturn the world: The pious fool, the wicked savant, the ascetic woman, and the self-flagellant. The Talmud comments:

*What is the case of a pious fool?*

*If for example a woman were drowning in the river, and he says: It would not be אורח ארעא/אורח ארץ/derekh erez/proper manners to gaze at her and save her.*

Rabbi Plotzki cites (and forcefully rejects) an argument that this text proves Rabbi Kluger is correct. Otherwise, why would this fellow be a **pious** fool? If lifesaving overrides *all* private interest, he would be a **wicked** fool! So it must be that he (mistakenly) believes that saving the woman would be a violation of his **dignity**; if it were, he would be within his rights not to save her. This is why the Talmud frames his objection in terms of manners, rather than in terms of law – of course the obligation to save life overrides the law!

Rabbis Plotzki and Henkin independently suggest a different explanation. Why, they ask, is the fool worried about **gazing at** the woman, rather than about **touching** her? Perhaps because the obligation to save must have some limits – we are not all required to intervene globally – and that limit is sight (just as it is for lost objects). The pious fool "looks away" from the woman so as to avoid **being obligated** to save her. Once he sees her, he must save her, even if this requires extensive physical contact. If he looked away *after having seen her*, says Rav Henkin, he would be a wicked rather than a pious fool.

This argument seems to me technically incorrect, for two reasons.

- The prime Talmudic example of a "wicked savant" is one who gives the poor exactly enough to make them ineligible to receive charity, and therefore deliberately keeps them in maximal poverty and dependence. The

- difference between pious and wicked foolishness cannot be observance of technical halakhah, as the wicked savant makes sure to punctiliously fulfill his halakhic obligation of charity.
- Berakhot 19a concludes that the exemption from lost objects cannot be generalized to ritual law, for example to allow wearing shatnez when the alternative is public nakedness, because it is a case of *mammona*, financial law. But if Rabbi Kluger is correct, the exemption must extend even to *nefashot* (capital cases)!?

On the other hand, there is ample precedent to argue that halakhah prioritizes dignity over life. Is it not “Better for a person to jump into a fiery furnace than to humiliate his fellow in public”?

But my interest here is not in technical evidence – surely Rabbi Plotzki z”l was, and yibadel lechayyim Rav Henkin unquestionably is, a much greater scholar than I, and presumably each had compelling answers to my objections. Rather, I want to consider the role that “human dignity” plays in the halakhic discourse here, namely that it overrides the obligation to save lives, and whether and how its role here should affect our eagerness to use it and similar principles creatively in other areas of halakhah.

In Rabbi Henkin’s reading, the pious fool is not overzealous for halakhah – he knows that he has the halakhic **right** to save the women. What drives him is an overzealousness for human dignity – perhaps his own, perhaps that of the woman in question, who (he believes) deserves better than to be exposed to his male gaze – even if that means she loses her life, and even if she explicitly asks to be saved.

This was presumably the argument made by the Saudi “religious police” when they prevented the rescue of women from a dormitory fire. *Kavod haberiyot* is not a liberal panacea.

Objections to the use of *kavod haberiyot* as an unmediated halakhic argument often take “slippery slope” forms. One day you permit women to have aliyot; next day you bless homosexual relationships; mixed dancing and elimination of the second *yekum purkan* can’t be too far behind. Many of these arguments are plainly obsolete. Slippery slope arguments work only when people agree which way is down.

Another type of objection remains relevant, however. One purpose of the discipline of halakhah is to force us to challenge the way we prioritize our values. Halakhah constantly insists that we consider what is lost, and not only what is gained, by specific religious acts. Even if everything is animated by “what is hateful to you, do not do to your fellow”, it is not enough to know that principle; one must spend one’s life studying how the tradition has played it out in practice. Otherwise Hillel’s ethic will inevitably become hegemonistic and totalitarian. Powerful pious fools, knowing how much they hate the possibility of imposed eroticism, will ban men and women from saving each other from drowning.

Wicked savants can reach the same conclusions in their own way, and the *kavod haberiyot* argument generally entails a claim, however modulated, that opponents are wicked savants, or at best wicked fools, using the law to impose their mistaken values on others. Sometimes this claim rings true for me.

And sometimes not. With regard to Israel internationally, and with regard to traditional religion domestically, my sense is that the rhetoric of human dignity has become increasingly totalitarian, and those using that rhetoric have become increasingly unable to even conceive of moral self-critique. (Nicholas Kristof’s NYTimes Op-ed is a noble recent exception.) A natural consequence is for their opponents to shut their ears as well.

It is very possible that I have the causal sequence backwards, and “they started it”.

One purpose of halakhic discourse at its best is to prevent this kind of polarization. It often fails, and plainly, it is failing in Orthodoxy today. But I hope that we can still find a middle ground between the pretense that ultimate issues can be handled without recourse to underlying values, and the illusion that nothing is lost when law is discarded in the name of underlying values. Otherwise our halakhic public square will soon be reserved exclusively for conversations between wicked savants and pious fools.

*This Dvar torah was originally published in 2016.*