

# CENTER FOR MODERN TORAH LEADERSHIP



## WALKING BETWEEN THE HALAKHIC RAINDROPS; WHY HALAKHAH (SOMETIMES) MAKES SUCH FINE DIFFERENCES BETWEEN THE PERMITTED AND THE FORBIDDEN

By Rabbi Aryeh Klapper

Why does the Torah permit some things and forbid others that seem pretty much the same?

One possibility is that some or all mitzvot are arbitrary. They are meaningful only because G-d commanded us to observe them. The experience and effect of the mitzvot would be substantively the same had G-d banned beef while permitting pork.

A second possibility is that the mitzvot reflect G-d's benevolence, but in ways that human beings cannot fathom. This changes our image of G-d, but not our relationship to any particular mitzvah.

A third possibility is that God commands most or all mitzvot for benevolent reasons that some, most, or all human beings can comprehend.

Rambam adopts a version of the third approach. Here is his language in Guide 3:26 (translation edited from Friedlander):

All of us, the common people as well as the scholars, believe that there is a reason for every precept, although there are commandments the reason of which is unknown to us, and in which the ways of God's wisdom are incomprehensible. This view is distinctly expressed in Scripture: *righteous chukim and mishpatim* (Deut. 4:8); *the mishpatim of Hashem are true, and righteous altogether* (Ps. 19:10)...

Those commandments whose object is generally evident are called *mishpatim*; those whose object is not generally clear are called *chukim*. Thus they say "for it is not an empty thing from you - if it is empty, that (emptiness) comes from you"...

However, Rambam insists that this presumption of meaningfulness applies only to mitzvot taken as wholes. The legal details of any mitzvah may be arbitrary.

I have, however, found one utterance made by them in Bereshit Rabbah (sect. xlv) which might at first sight appear to imply that some commandments have no other

reason but the fact that they are commanded, that no other object is intended by them, and that they do not serve any useful object. I mean the following passage: "What difference does it make to God whether a beast is killed by cutting the neck in front or in the back? Surely the commandments are only intended as a means of refining people (via obedience)" ...

Although this passage is very strange, and has no parallel in the writings of our Sages, I explain it...

I will now tell you what intelligent people ought to believe in this respect; namely, that each commandment has necessarily a cause, as far as its general character is concerned, and serves a certain object; but as regards its details, we hold that it has no ulterior object.

Thus killing animals for the purpose of obtaining good food is certainly useful, as we intend to show; that,

however, the killing should not be performed by *nechirah*, but rather by *shechitah*, and by dividing the oesophagus and the windpipe in a certain place - these regulations and the like are nothing but ways of refining people.

Ironically, however, the midrash chose a poor illustration to make this point. In fact, the details of *shechitah* are meaningful.

This is the sense you must give to the example quoted by our Sages [that there is no difference] between killing the animal by cutting its neck in front and cutting it in the back. I give this instance only because it has been mentioned by our Sages; but in reality, as it has become necessary to eat the flesh of animals, it was intended by the above regulations to ensure an easy death...

Rambam nonetheless doubles down on the position that details need not be meaningful.

A more suitable instance can be cited from the detailed commandments concerning sacrifices. The law that sacrifices should be brought is evidently of great use, as will be shown by us; but we cannot say why one offering should be a lamb, whilst another is a ram; and why a fixed number of them should be brought.

Those who trouble themselves to find a cause for any of these detailed rules, are in my eyes void of sense: they do not remove any difficulties, but rather increase them. Those who believe that these detailed rules originate in a certain cause, are as far from the truth as those who assume that the whole law is useless...

Despite Rambam's strong language, but perhaps emboldened by Rambam's admission regarding *shechitah*, Ramban (Devarim 22:6) sees no reason to concede that the details of mitzvot may be arbitrary. He diverts the midrash Rambam cited into an entirely different channel. In Ramban's reading, the midrash is denying only that the mitzvot serve G-d's interests. Rather, they confer benefits on human beings; they are calibrated precisely so as to refine human characteristics. (My translation is slightly modified from the Chavel edition on Sefaria)

But those Aggadic statements presenting difficulty to the Rabbi are, in my opinion, intended to express a different thought, as follows:

The benefit from the commandments is not derived by the Holy One Himself, exalted be He. Rather, the advantage is to the human being... to prevent physical harm, or some evil belief, or unseemly trait of character, or to recall the miracles and wonders of the Creator, blessed be He, in order to know the Eternal. This is the meaning of "in order to refine people" - that they may become like "refined silver", for one who refines silver does not act without purpose, but rather to remove therefrom any impurity...

Now this very same Aggada is mentioned in the (Midrash) Yelamdeinu in the section of *These are the living things*: "And what difference does it make to the Holy One, blessed be He, whether one eats of an animal which is ritually slaughtered or if he just stabs it? Do you benefit Him or harm Him at all? ..."

How a modern reader feels about the dispute between Rambam and Ramban may depend on how convincing and/or compelling they find Rabbi Samson Raphael Hirsch, whose Biblical commentary brilliantly rationalizes the details of sacrifices in precisely the ways that Rambam thought misguided.

I would like to stake out a position midway between Rambam and Ramban, namely: the details of mitzvot are rarely arbitrary, but their rationales are often not independently sufficient. For example: G-d would not

have commanded us to slaughter-for-food from the front of the neck merely to keep us from slaughtering from the back. However, once G-d was standardizing the slaughter ritual, slaughtering from the front became the best way to standardize.

Choosing front over back *shechitah* was not arbitrary, but front-*shechitah* is not sufficiently meaningful to be commanded per se. This might justify strong resistance to expanding or altering the halakhic definition of *shechitah* even if the reason for choosing front over back would point in modernity to including or mandating a different way of killing the animal.

Furthermore: Rambam explained the choice of front over back as intended to reduce the animal's suffering. Ramban clarifies that it therefore prevents damage to human capacity for empathy. Both recognize that if this rationale were overriding, G-d would have forbidden human beings to be carnivorous. The requirement of a specific mode of slaughter expresses a value subordinated to the values expressed in the permission to eat meat.

This raises the question of what other methods halakhah can use to express the relationship among values it endorses. The simplest is rules of precedence, such as mandating that we violate Shabbat in order to preserve human life. But perhaps we can expand Rambam's notion of the details to say that which animals are kosher and which not may at core be arbitrary; the point is that Jews live in a world halfway between the vegetarianism of Eden and the unconstrained carnivorousness of Noah.

On this pattern – and I apologize for raising this issue so suddenly and briefly – perhaps we are misguided when we try to distinguish between the good of (permitted) commerce and the evil of (forbidden) usury. This distinction can be quite blurred even on the Biblical level, and I have not been able to find non-arbitrary grounds for what the Rabbis chose to forbid and what to permit. Perhaps the rabbis saw commerce as a sort of carnivorousness.

*Shabbat shalom!*

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