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Center for Modern Torah Leadership



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"Taking Responsibility for Torah"

CAN WE JUDGE A PSAK BASED ON ITS CONSEQUENCES?

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What should Aharon have done? What could Aharon have done?

It is vital to recognize that these are not the same question. The first question can be asked even if none of the available choices would have stopped the making and worshipping of the Golden Calf. And there may have been things that Aharon could have done to stop the Calf that he was nonetheless correct to avoid doing.

The underlying difference is between **consequentialist** and nonconsequentialist ethics. Can the choice which yields the best overall result be wrong?

The same issue comes up regularly in the context of halakhic decisionmaking. To what extent are perceived negative consequences evidence of the rightness or wrongness of a psak?

To be sure, consideration of consequences is often part of the purely internal halakhic calculus. "The Torah has concern for the money of Israel", and so one can rely on minority positions when the standard psak would cause significant loss. (Almost) Nothing stands in the way of preserving life. Rabbinic prohibitions are vacated when the alternative is damage to human dignity. And so on and so forth.

However, the formal internal calculations of halakhah generally require that these consequences be clearcut. What if human dignity will suffer either way, but likely more severely one way than the other? What if this will cause a loss to some people, and a gain to others? How does one evaluate tradeoffs between quantity and quality of life?

One might say that in such cases one must simply fall back to the formalities of the law. "Let the law pierce the mountain", and let the ship of Judaism proceed without

regard for the presence of floating mines (a.k.a. torpedoes).

Rabbi Moshe Tendler argues (Kavod Horav p. 167-9) – to my mind convincingly despite minimal evidence – that psak for a community should consider consequences differently than psak for individuals. For example, communal psak can impose current hardships and risks in the interest of future generations, whereas individual psak must focus on those presently alive. Communities can also consider statistical consequences whose probable effects on any defined individual are trivial. In a real sense the formalities of law lose their formality in the context of communal decisionmaking, and consequentialism becomes a much larger factor.

To take one example: R. David Stav ruled that the town of Shoham could run round trip buses to Tel Aviv and its nightlife on Friday night, in order to prevent the deaths from drunk driving that would otherwise be statistically probable. I'm fairly confident that he would not permit individuals to offer a group of teenagers a lift if they missed the bus.

But life and death cases are low-hanging fruit. My question is whether on a communal level poskim may or must also consider much more amorphous consequences. I liked to tell my high school students that I judged my work as a teacher by the condition of their souls ten years after graduation – ought a shul posek to consider in advance how a given psak will affect the souls of congregants ten years on? Perhaps Rav Tendler's distinction applies only to concrete matters, but poskim need to consider the future condition of even specific individual souls.

Judging what will be best for other souls inevitably introduces an element of paternalism. How can I make decisions on the assumption that you will otherwise make poor decisions?

My suspicion is that in principle almost everyone thinks that psak should nonetheless take such consequences into account. We want poskim to be in relationship with sho'alim, not to be reference books. We want this not only so that they can understand the underlying situation, but also so that they can respond to it.

Nonetheless, there are at least two valid sources of resistance to this idea. For many laypeople, giving Rabbis discretion extends the sphere of influence in their lives of people whose values they don't fully share. For some senior halakhists, this discretion should be vested only in truly great halakhists with demonstrated capacity to resist the pressures of the moment, otherwise halakhah will lose all its formality and integrity. Which brings us full-circle, to Aharon HaKohen at Sinai.

Let us set the scene. Mosheh Rabbeinu has been gone for (a little or a lot) longer than everyone had anticipated. Rumors are spreading wildly, and a group of agitators are beginning to run riot. Chur, whom Mosheh had given interim judicial authority together with Aharon, stood up to the rioters and is killed. No attempt at all is made to censure his murderers. Aharon reasonably believes that he will be killed if he directly opposes the construction of a constructed image to replace Moshe. What should he do?

On a halakhic level, the answer may seem simple. One must give up one's life rather than commit idolatry or its **אִבְזָרָה**, violations falling within its penumbra.

But in truth it is not simple. Aharon surely did not intend the Calf to be an actual idol; from his perspective, he simply sculpted a statue. If no other Jew had worshiped it after he made it, there would be no reason to assume that the calf was *assur behanaab*, forbidden for Jews to derive benefit from, as are images constructed for the sake of worship.

Nor is there evidence that Aharon himself ever worshipped the calf. It is an anonymous plural that declares "These are your gods, O Israel". He builds an altar before it, but then declares that there will be a holiday for Hashem the next day. What Aharon violates is *lifnei iver*, the prohibition against placing obstacles in the path of the spiritually blind, and there is much debate in the tradition as to whether *lifnei iver* of idolatry is an *abizra* that one must die rather than commit.

Aharon reasonably believes that the Jews' souls will be even further damaged if he is killed. Moreover, if Moshe returns to find him dead, he will absolutely despair of the people, and abandon the whole project of shaping them into the People of Torah. Moreover, by sort-of participating in their sin, he creates a bond and sympathy and credibility that will be helpful in what will clearly be a long and painful process of spiritual recovery.

But Aharon spent months in Moshe's yeshiva researching the question of whether *lifnei iver* of idolatry is an *abizra*, and came out quite convinced that the weight of the mesorah favored the position that it is. Nothing about this admittedly traumatic experience has changed his reading of the texts, or the weight of the authorities involved. It's just that faced with an actual circumstance, it seems clear that his community would be better off if he paskened the other way, and he can't claim that the other way is demonstrably incorrect. So what should he do?

The Torah does not tell us explicitly whether Aharon's decisions were right or wrong. Moshe's first words to him are harsh, but Aharon responds, and then the issue seems to be dropped; in other cases, such as after the death of Nadav and Avihu, this seems to indicate a withdrawal of his initial criticism.

Aharon becomes High Priesthood. He goes on to save the Jews from Divine wrath when Moshe can't or won't, and he dies beloved by both the people and G-d. The evidence seems to be that from a consequentialist perspective, he made the right decision.

The problem is that a purely consequentialist perspective undermines law completely. If one should always choose the option that produces the best results, what is the purpose of rules?

The best halakhists understand that the most important consequence of all is the preservation of halakhah as law, in other words the ability to find meaning in and give authority to rules regardless of their consequences.

Embracing that paradox is the key to a vibrant halakhic future.

Shabbat shalom.

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