

CENTER FOR MODERN TORAH LEADERSHIP

Center for Modern Torah Leadership



חרות ואחריות

www.TorahLeadership.org

"Taking Responsibility for Torah"

WHEN TRADITIONAL INTERPRETATIONS SEEM WRONG AND EVEN IRRATIONAL By Rabbi Aryeh Klapper

How do we deal with a halakhic civil law that seem irrational and practically counterproductive, especially when it also seems to oppose the straightforward meaning of the Torah?

Rav Aharon Lichtenstein zt"l sometimes dealt with clashes between halakhah and morality syllogistically, as follows:

- Rav Chaim Brisker was the paragon of human and ethical concern.
- Rav Chaim Brisker was utterly committed to the observance of all mitzvot, including those I find ethically troubling.
- Therefore, commitment to the observance of all mitzvot does not prevent one from being a paragon of human and ethical concern, and: If Rav Chaim could deal with e.g. the mitzvah of destroying Amalek without undermining his character, so could Rav Aharon.

Whether Rav Chaim existed may have been less important to Rav Aharon than the possibility of his existence. This is recognizable as the worldview of Halakhic Man.

My/our generation may be less willing to accept the plausibility of realities that we have never experienced. We, possibly excepting the neoHasidim among us, assume – with sadly good reason, and in excellent Torah tradition – that all idols have clay feet, especially living human idols. We may also believe that the gulf between Rav Chaim's experience and our own is too great to draw the analogy. Values that seemed wholly compatible in pre-WW2 Europe may be irreconcilable in 21st century Israel and America.

Some of us instead use Rav Aharon himself as the paragon when making this argument to ourselves. We met Rav Aharon in person, whereas Rav Aharon knew Rav Chaim only through a presumably curated set of stories. But of course our meetings – like all human interactions – were shaped by our expectations and by other people's perceptions. And our vision of Rav Aharon may have less claim on our students' loyalties than Rav Aharon's vision of Rav Chaim did on ours, especially since Rav Aharon's vision was essentially the Rav's.

Therefore, in the realm of ethics, we need to provide our students with arguments and not just role models (although surely we need to be role models for them, perhaps most importantly by being hypercautious about using charisma to generate religious inspiration.)

Nonetheless, it remains validating to find a past giant who asked the same question we find so troubling and yet was not shipwrecked by it. Also, the past may retain more of its power when the issue is less a clash of understood values than complete incomprehension of one side of the question. So I was quite cheered this week to find that Shu"t Chavot Yair #223 shared my difficulty with the Rabbinic interpretation of Shemot 22:13-14:

When a man borrows from his fellow, and it is broken or dies – its owners not *imo* (=with him/it) – he must certainly pay; if its owners are *imo* – he need not pay . . .

וְכִי־יִשְׁאֵל אִישׁ מֵעַם רֵעֵהוּ וְנִשְׁבַּר אוֹ־מָת
בְּעֵלָיו אִין־עִמוֹ - שְׁלֵם יִשְׁלֵם;
אִם־בְּעֵלָיו עִמוֹ - לֹא יִשְׁלֵם . . .

Rav Hamnuna on Bava Metzia 95b understands this to mean that the borrower must pay unless the owner is actually present with the borrowed animal from the time of borrowing until the damage. The Talmud rejects his position. Instead, the halakhah is that the borrower is exempt if the lender was in his employ at the time of borrowing. In other words, *imo* refers to the lender being **hired** together with the lent object, and not being physically together with it. Alternatively, *imo* refers to the lender being together with (=working for) the borrower.

Here is Chavot Yair's comment, which follows a theoretical legal exposition of this halakhah:

About the law itself - I have wondered all my life:

Since *the decrees of Hashem are straight* and all present themselves as well-reasoned and straight to those who achieve sound intellectual judgement –

Rambam in Part 3 of the Guide discusses them extensively under fourteen categories, and all this successor are nurtured by and taking from him with regard to exoteric rationales for commandments –

but I would give much to know how to make this matter intellectually plausible.

This reminds me of what someone said: “Had I been there – I would have called this *One who returns evil for good (evil will not move from his house)*”

[cf. Ketubot 53a, (where Rav Chisda tells Ravin bar Chanina, who had just reported to him in the name of R. Eliezer that a woman who forgives her *ketubah* also forgoes support: “If you had not said this to me in the name of a great man, I would have said to you “*One who returns evil for good - evil will not move from his house*”. Subsequent halakhah rejects Ravin bar Chanina)] because if not for the words of Chazal – there would be no difficulty,

because we could have said that the meaning of Scripture writing *imo* is that the owner would be onsite with the thing he lent to his fellow, and (therefore) he should have watched over it.

והנה בגוף הדין תמהתי כל ימי

אחר שפיקודי ה' ישרים וכלם נכוחים בטוב טעם וישרים למוצאי דעת, והאריר בהם הרמב"ם במ"נ חלק ג' בי"ד כללים, וממנו ינקו ולקחו כל הבאים אחריו בטעמי מצות בנגלה,

ומי יתן ואדע לקרב הדבר הזה אל השכל,

ודמיא למ"ש פלוני [ע"י מס' כתובות נג.] אלו הוינא התם - אמינא משיב רעה תחת טובה וגו',

וכי משום שהמשאיל במלאכתו של שואל ילקה באבדון ממונו ביד שואל?!
כי לולי דרז"ל - ל"ק,

דהיה י"ל פי הכתוב עמו ר"ל: אצל דבר ששאל לחבירו, והיה לו להשגיח עליו.

However, Rabbi Samson Raphael Hirsch challenges Chavot Yair:

According to halakhah, *imo* does not relate to the lent animal but rather to the borrower . . .

Among all the monetary laws in the Torah –

this law – with regard to its root and rationale – is the hardest to understand,

because if we understand our verse literally, there is nothing in the entire Torah that presents a greater contrast between what seems like the pshat meaning of the verse and what was transmitted to us by tradition as established law . . .

Responsa Chavot Yair also wondered at this law, which contradicts the pshat of scripture, and he wrote that he did not succeed in resolving the matter . . .

However, thinking rigorously about this matter reveals that the pshat method yields an outcome so unreasonable that it can't be the (true) meaning of Scripture.

According to pshat,

a borrower is liable for damages only if the owner of the animal was not in the place where the incident occurred.

But if the owner himself was there, and he was able to oversee his property, as Chavot Yair put it, the borrower is exempt.

But to begin with, when a person assigns his property to someone else to watch over it, by doing so he exempts himself from the responsibility to oversee it;

the responsibility to oversee it falls entirely on the shoulders of the *shomer*,

and there is no legal basis for (Chavot Yair's) assumption that the presence of the owner diminishes the *shomer's* responsibility.

Aside from this, we must remember that Scripture here speaks of an animal that is *broken or dead*, occurrences that human beings cannot prevent.

These are “pure *ones*”, regarding which the presence or absence of owners or anyone else is utterly immaterial . . .

Rav Hirsch argues that since the pshat is unreasonable, the most likely remaining interpretive option must be true. I don't know how he would have reacted religiously to reaching Chavot Yair's conclusion. Instead he triumphantly finds an explanation of the law that “is the hardest to understand”.

I'm not convinced by his explanation, which in any case uses process-of-elimination rather than positively defending the halakhah. But neither do I see this is “the hardest to understand”. Vilna Gaon in *Aderet Elyahu* sees it as just one among many cases in Parashat Mishpatim where the halakhah uproots the pshat of Torah, without necessarily yielding a legal outcome that makes more sense to human intuition.

I'm tempted to make a Tertullianesque argument – reinterpretations that make the law less apparently rational must be authentically halakhah l'Mosheh mis Sinai, otherwise why would a human culture adopt them? But a serious argument of that sort would require a great deal of comparative law research to verify that this isn't an outcome that human intellect would ever independently reach.

In the absence of such research, I am left with Chavot Yair as an impressive role model for accepting irrational laws without damage to faith, and for that matter without losing the presumption that financial halakhah ordinarily “makes sense” and “should work practically”, and interpreting it on that assumption in other cases.

But the truth is that Chavot Yair may have been too good at dealing with cognitive dissonance to be the best model for me; this week I also read through his sort-of live-tweeted recognition of the challenges posed to tradition by the Copernican revolution (# 219). This problem is even more severe when it comes to ethics; the more apparent dissonance a potential model can live with, the more likely it seems that we just disagree about the content of ethics or about the centrality of ethics in religion. So we need arguments to at least narrow the gap between our current understandings of Torah and the ethical intuitions of many our students and children.

Shabbat shalom!

The mission of the Center for Modern Torah Leadership is to foster a vision of fully committed halakhic Judaism that embraces the intellectual and moral challenges of modernity as spiritual opportunities to create authentic leaders. The Center carries out its mission through the Summer Beit Midrash program, the Rabbis and Educators Professional Development Institute, the Campus and Community Education Institutes, weekly Divrei Torah and our website, www.torahleadership.org, which houses hundreds of articles and audio lectures.