

CENTER FOR MODERN TORAH LEADERSHIP



WHEN THE LAW AND THE GOOD DIVERGE

By Rabbi Aryeh Klapper

“Sir”, the policewoman said, “Do you know how fast you were driving?”

“Officer”, Aharon gasped. “My wife is about to give birth!”

“Follow me!” the policeman immediately replied. Running back to her car, she turned on its blue lights and siren and sped off. Aharon followed her through a red light and . . .

The laws of Aharon’s state prescribe a fine of \$250 for violations of the law against driving through a red light. The question next day in Aharon’s debate midrash class is whether he was liable for the fine.

Everyone agrees that Aharon acted properly in going through the light; the question is only whether he nonetheless owed the fine.

What does the issue depend on?

Whether the fee is intended as an atonement or rather as a deterrent.

If as an atonement – he did the correct thing;

if as a deterrent – he must pay, so he won’t do it again.

But we want him to do it again, if the same circumstances arise!

As Rav Huna said (cf. Yoma 86b): Once a person has broken a law twice, even if they were right in doing so, it becomes to them as if it were permitted.

With regard to secular law, everyone understands that there is a gap between what is good and what is legal, because the law is made by fallible human beings. What the above vignette tries to show is that legislator fallibility is not the only reason for gaps between the law and the good – sometimes the good requires outlawing the good.

With this idea in mind, we can approach the Talmud’s fascinating discussion of Aharon’s behavior in the Golden Calf episode. The sugya (Sanhedrin 6a-7a) begins from a beraita on the subject of judicially encouraged or imposed compromise verdicts in monetary cases.

A beraita:

Once a verdict has been reached – you (judges) are forbidden to compromise.

Rabbi Eliezer son of Rabbi Yosay the Galilean says:

It is forbidden (for judges) to compromise;

any (judge) who compromises – is a sinner;

and anyone who blesses the compromiser – is a despiser;

and regarding this it is said:

*who blessed a compromiser despises Hashem;
rather,*

*let the law pierce the mountain,
as Scripture says:
for the justice-of-law is for Elo’im.*

The anonymous first position encourages compromise until it’s clear what the legal verdict would be. Rabbi Eliezer son of Rabbi Yosay the Galilean, however, sees compromise as a distortion of justice. The beraita then seemingly analogizes the two positions to those of Mosheh and his brother Aharon.

So too, Mosheh would say:

*‘Let the law pierce the mountain!’,
but Aharon –*

*he loved peace and pursued peace, and established peace
among people,
as Scripture says:*

*The Torah of truth was in his mouth, and no crookedness was
found on his lips;
he walked in peace straightforwardly, and returned many
from sin.*

Rabbi Eliezer aligns well with Mosheh, while the anonymous position presumably follows in the footsteps of Aharon (although the fit with the first part of the verse is awkward, especially if one plugs in narratives about Aharon’s good-natured but somewhat deceptive tactics for reconciling estranged friends).

The next section asserts that one or both of the positions in the beraita used a verse in a way that disagrees with another text.

*This disagrees with Rabbi Tanchum son of Chanilai,
for Rabbi Tanchum son of Chanilai said:*

*This verse was said specifically about the episode of the Calf,
as Scripture says:*

*Aharon saw, and vayiven mizbeach lefanav = he built an altar
in front of it –*

What did he see?

*Said Rabbi Binyamin bar Yefet said Rabbi Elazar:
He saw Chur slaughtered-like-a-sacrifice in front of it.*

He said:

If I don’t heed them –

they will do to me as they did to Chur,

*and there will be fulfilled through me if there be killed in the
sanctuary of the L-rd a priest and prophet, for which they could
never make reparation;*

Better that they make the Calf,

for which they can make reparation via repentance.

Which precious position disagrees with Rabbi Tanchum son of Chanilai's interpretation of which verse?

Rashi comments:

“This verse”

= who blesses the compromiser;

“was said specifically about the episode of the Calf”

= that Aharon made a compromise with himself,

and ruled permissively for himself to make the Calf for them;

“vayiven mizevach” –

He understood from the one slaughtered-like-a-sacrifice in front of it,

(meaning that) they had killed Chur for not making (the Calf or an equivalent) for them.

As I understand Rashi, Rabbi Tanchum ben Chanilai is in favor of Aharon's compromising ways in court, when trying to bring litigation to a peaceful settlement; but Aharon went too far when he “compromised” on the law and allowed himself to make the Calf. He may also intend that Aharon tried to find a way to satisfy both the community's perceived religious needs and G-d's law and “compromised” between them.

The supercommentaries on Rashi wonder: What was Aharon thinking? If the Calf was an idol, then making it was a prohibition of *avodah zarah* that he should have died rather than transgress! They give various technical answers to avoid making the Calf an actual idol, at least before it was worshiped.

But I wonder if Rashi isn't saying something simpler. Aharon was not trying to save his own life, but that of the entire nation. Talmud Nazir 23b understands Yael as a Jewess who committed adultery with Sisera in order to save the Jewish people, and praises her action as an *aveirov lishmoh* = a transgression for the sake of Heaven. Maybe one can commit idolatry for that purpose as well? Aharon thought so; Rabbi Tanchum bar Chanilai holds that Aharon was very wrong.

Tosafot, however, understands Rabbi Tanchum bar Chanilai to be referring to the verse from Malakhi:

The Torah of truth was in his mouth, and no crookedness was found on his lips;

he walked in peace straightforwardly, and returned many from sin.

Aharon's spiritual self-sacrifice in surrendering to the people's demands *returned many from sin* = enabled the Jewish nation to have the possibility of repentance. (Granting that Tosafot's reading is an even more awkward fit with the beginning of the verse than the *beraita's*. Whatever Aharon did, it seems unlikely to have involved a straightforward, honest public statement of the law about making and worshipping images.)

Ralbag in his Commentary on Chumash doubles down on a version of Tosafot's understanding of Aharon. Aharon hoped that Mosheh would return before the Calf was finished, or to have

endless preparations before any actual worship took place. But the Jews began worshipping it the moment it was completed.

When Aharon saw the evil in their hearts, he tried to delay them further, and began a new work, namely the building of an altar before it.

He entrenched in their hearts that it was appropriate for all this work to be done by him personally, because of its great and exalted nature.

Because he made himself a priest to idolatry for the honor of Hashem the exalted, so that Israel would not stray from after him – Hashem the exalted gave his reward and made him priest before Him, he and his descendants.

The word *גגל*, “(male) calf”, appears in Chumash only regarding the Golden Calf and the sacrifices of both Aharon and the people at his inauguration as High Priest (Vayikra 9:2-8). Ralbag there acknowledges that the sacrifices atone for the Calf. But why does Aharon need atonement if he did the right thing, and was in fact became High Priest in reward for his actions?

I suggest that there is a class of actions that are right but not replicable – they can only be right once. Those sorts of actions by definition cannot be halakhah/law. And when they happen, it's vital that we keep all the legal consequences the same as when they are wrong, to avoid creating the impression that they should be imitated. This is a possible understanding of “transgressions for the sake of Heaven”, and it is why Aharon had to sacrifice a calf at his inauguration. Conversely, it may be that Eliyahu's failure to ever publicly atone for sacrificing at Har Karmel, outside the Temple, is what made it impossible for future kings to eliminate the sacrificial *bamot*.

There may also be a category of replicable breaches of the law. This would include Rabbinic “horaot shaah”, such as the permission to write down Oral Torah, as opposed to Eliyahu's prophetic model. In such cases a deterrent would be counterproductive, and yet there remains a need to remember that the good has diverged from the law, unless the *horaat shaah* is a disguised admission that the law was wrongly decided to begin with, or too broadly formulated. I have my doubts whether in the Messianic Age scholars will memorize the contents of the Bar Ilan Responsa Project – perhaps instead we'll decide that electronic storage and display count as “oral”, and work something out for learning on Shabbat.

I'm interested in examples of Rabbinic *horaot shaah* in the modern world, and whether the communities that accepted them have tended to maintain the distinction between the immediate good and the eternal law. And as a thought experiment: In a halakhic state, how would you formulate the law about driving through red lights?

Shabbat shalom!

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