

CENTER FOR MODERN TORAH LEADERSHIP



IS “RISK OF ENMITY” AN ETHICAL BAND-AID TO THE ORGANISM OF TORAH?

By Rabbi Aryeh Klapper

“In recent times, we have heard to our deep sorrow words that undercut the ethical values of Torah Judaism, and are specifically against the Torah perspective about Gentiles and human beings, as-if the halakhah has no appropriate relationship to nonJews. When these critics were shown that their words were without substance, and that the critique was shattered at its root by explicit halakhot that command us to relate with care-and-esteem (*chibah*) to every human being created in the Image and to assist them in the ways of charity and lovingkindness, the mudslingers held onto one argument. They said that these halakhot were established because of “the ways of peace (*darkhei shalom*)” alone and are not of “the line of the law (*shurat hadin*)”. There is accordingly a need to explain the true meaning of the concept “ways of peace”, which is not in the category of supererogatory character-building (*midat chasidut*) nor a means of self-protection, but rather emanates from the essential ethic of our holy Torah” (*Ashkenazic Chief Rabbi Isser Yehudah Unterman, originally published in 5726, now available as Chapter 70 of Shevet Mi’Yehudah, volume 3.*)

Rav Unterman makes three arguments to establish his thesis that “the ways of peace” are organic to Torah rather than ethical Band-Aids or deceptively ethical veils. First, the Talmud uses “ways of peace” to justify proactive legislation in intra-Jewish contexts. Second, Rambam Hilkhos Melakhim 10:12 roots “ways of peace” legislation in the verses “Hashem is good to all, and His mercies extend over all He made” (Tehillim 145:9) and “Her ways are ways of pleasantness, and all her paths (are) peace” (Mishlei 3:17). This indicates that such legislation is a fulfillment of the obligation to strive to imitate G-d and of definitional Torah principles. Third, the Talmud uses “Her ways are ways of pleasantness” as a basis for choosing among interpretations of Torah, so it seems likely that “ways of peace” plays the same role.

These arguments seem sufficient as far as they go. The question is whether they go far enough.

A possible gap is that Rav Unterman assumes that the legal concept “*mishum eivah*/risk of enmity” is equivalent to “ways of peace” rather than an independent principle. He makes no effort to separately root “risk of enmity” in core Torah principles. The critique of halakhah resurfaces if “risk of enmity” is a Band-Aid or a veil. In fact, Rav Unterman was responding to a critique based

on halakhah permitting Jews to violate Shabbat to save nonJews only *mishum eivah*.

It is true that “ways of peace” and “risk of enmity” are sometimes used interchangeably by post-Talmudic commentators and halakhists, and that “risk of enmity” is also used to justify intra-Jewish legislation. But unlike “ways of peace”, “risk of enmity” seems purely reactive. Reasonable people can disagree about whether to accept Rav Unterman’s assumption that the two principles are really one. So he has not demonstrated that “risk of enmity” is more than a means of self-protection.

A deeper critique is articulated by Dr. Norman Solomon (<https://www.thetorah.com/article/relating-truthfully-to-morally-problematic-torah-texts>).

He argues that the existence of ethical over-rules only intensifies the question of why the original laws existed and remain on the books. In the hands of ethical poskim, the halakhah as it stands may be adequate to generate ethical outcomes; but this does not mean that the system is ethical, or that poskim who generate or tolerate unethical outcomes are being untrue to Torah.

Let’s return to the question of violating Shabbat to save a nonJew. On Talmud Avodah Zarah 26a, Abbayay apparently contends that nonJews will accept without enmity the explanation that “we are only permitted to violate Shabbat only for those who observe Shabbat”. If all nonJews came to accept this explanation without enmity, would the halakhah ironically tell us that we need not save these exemplars of religious tolerance on Shabbat? What about cases where there is no risk on enmity because “no one will ever know”?

Only someone with criminally deranged judgment would consider the latter hypothetical as realistic. We live with omnipresent technological “eyes that see and ears that hear”, and the risk of exposure has always far exceeded the *pikuach nefesh* threshold, especially as the resultant threat extended to the entire Jewish people. But the ethical question was and remains valid. Why does it take *mishum eivah* to justify violating halakhah to save a human life?

Rav Unterman argues that this formulation is overbroad and therefore misleading. He contends that saving a human life per se justifies violating almost all Biblical/*deoraita* halakhot. The question on Avodah Zarah 26a is whether that is also true of Shabbat. Note that Rav Aharon Lichtenstein zt"l takes the same position in an essay written around the same time as Rav Unterman's, but first published this year (*Values in Halakhah: Six Case Studies*, p.74).

This approach potentially flips the challenge, as follows.

Rav Unterman and Rav Lichtenstein assume that just as a Jew must not violate the prohibitions against idolatry, adultery, or homicide to save his or her own life, so too a Jew must not violate those prohibitions to save another Jewish or non-Jewish human life. Since violating Shabbat is considered tantamount to idolatry, it follows that violating Shabbat should not be permitted to save any human life.

This was initially the position of the Hasmoneans in their rebellion. Military disasters convinced them that it could not possibly be correct. But that was only a practical argument; what is the internal, legal halakhic justification for violating Shabbat to save a Jewish life?!

One rationale the Rabbis developed was "desecrate one Shabbat for him so that he will observe many Shabbatot" (Yoma 85b). This cost-benefit rationale retains the formal axiological claim that Shabbat is worth observing at the cost of human life.

I don't think this rationale would have any halakhic standing if that formal claim were meant literally. To my knowledge, no halakhist has ever considered the parallel claim that one may worship an idol to save a life so that the (rescued person) will worship G-d many times. It is a gesture toward the significance of Shabbat.

That gesture has a cost. It apparently creates the ethically intolerable outcome of permitting saving Jewish but not non-Jewish lives. The practical solution to that was *mishum eivah*, which should be understood as an irrebuttable presumption that every threat to non-Jewish life on Shabbat is a threat to Jewish life as well. Thus one must in practice violate Shabbat to save any human life, but one can do so without making the claim that Shabbat is not worth a human life.

One may find the idea that Shabbat is more valuable than human life offensive per se. But the ethical issue then is no longer discrimination among human lives, but rather whether religion has the right to put any of its demands above an individual human life.

Halakhah puts three of its demands in that position. Murder one can explain ethically; in the Talmud's framing, one must not decide that X's blood is redder than Y's. But ought one be permitted, let alone obligated, to refuse to commit adultery, or bow to an idol, when the consequence is someone else's death?

This question flips the challenge. The question is no longer whether religion can be compatible with ethics, but rather whether ethics can make space for religion as an equal, autonomous partner in the construction of meaning.

I am not committed to Rav Unterman's approach to *mishum eivah* – see this companion audio shiur <https://spotifyanchor-web.app.link/e/vlcDKRr3EAb> that lays out an alternative, based on the Alter of Slobodka's explanation of why the Jews rescued Rachav's family in Yericho despite their halakhic obligation to leave no Canaanite soul alive. But I eagerly welcome discussion of the flipped challenge, namely whether contemporary ethical critiques of halakhah do and should allow religion to be more than the handmaiden of ethics.

Shabbat shalom!

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