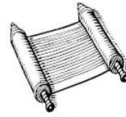


# CENTER FOR MODERN TORAH LEADERSHIP

Center for Modern Torah Leadership



חרות ואחריות

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## WHY DOES BEING COMMANDED MATTER? ANNUAL ESSAY IN MEMORY OF MATT EISENFELD Z"l

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Why does being commanded matter?

Some Jewish theologians are comfortable with the idea that some ritual *mitzvot* are purely arbitrary and given meaning solely by the fact of being commanded. My question would not apply to such *mitzvot*.

More Jewish theologians follow Maimonides in believing that some *mitzvot* are arbitrary in form but not content; for example, it may be vital to ritualize the killing of animals for meat, but G-d could have commanded us to slaughter from the back of the neck rather than the front without changing the meaning of the mitzvah. Here commandedness serves to make a national language of ritual possible. But I am looking for a deeper answer.

So let me sharpen the question. There are *mitzvot* which many Jewish theologians describe as "fit to be commanded even had they not been," implying that G-d would will us to perform them if He had not commanded us to perform them. Is there a difference between acting in accordance with G-d's will, and acting in obedience to His commands?

Put differently: When the result is the same, (why) should we care whether the motive for action is an expression of autonomous ethical intuition, or rather acknowledgement of legitimate heteronomy?

One more formulation: Is it coherent to speak of uncommanded moral or ethical obligations, or are all human obligations by definition Divinely commanded?

In purely halakhic terms, I believe the legal consensus is that even those who understand the position "*mitzvot tzerikhot kavvab*" in its most radical and fundamental sense—namely

that *mitzvah*-acts are legally and spiritually inert unless performed for the sake of fulfilling a Divine command—do not apply that position to interpersonal *mitzvot*, such as charity. And yet, I think commandedness makes a difference in those *mitzvot* as well.

For many years, I tried to explain that difference to my high school students at Gann Academy via a very technical Talmudic passage (*Kiddushin* 31b). It never worked, and the truth is that I never succeeded in clearly expressing the difference. Nevertheless, I continue to think that passage is potentially a powerful demonstration that *Halakhab* itself recognizes the difference and considers it important, and so I will try to lay it out clearly here in the hope that it will inspire productive thought on your parts. I welcome your subsequent critiques and formulations.

The *sugya* reports an Amoraic dispute as to whether costs associated with the mitzvah of honoring parents (*kibbud av va'im*) are borne by children (*mishel ben*) or rather parents (*mishel av*). The second *beraita* brought as evidence regarding that dispute goes as follows:

*Two brothers, two partners, a father and his son, a teacher and his disciple – they may redeem maaser sheni for each other, and they may feed each other maaser ani (=poor tithe).*

Our interest is in the last clause, for which some halakhic background is necessary. *Maaser Ani* is a Biblical tax that, in the third and sixth years of the seven year *shemittah* cycle, obligates Jewish landowners in Israel to give approximately 8.82% of their produce to the poor. (Nowadays biblical agricultural taxes are generally evaded via rabbinically

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approved loopholes, for reasons beyond the scope of this *dvar Torah*.) That percentage of the produce is understood to be held in trust for the poor as a class, although the landowner may distribute it to whichever poor person(s) he chooses.

Now the *beraita* cannot mean that all children can feed their parents *maaser ani*; rich people can never eat *maaser ani*. Rather, it must mean that children can feed their parents who are poor *maaser ani*. But even so, the Talmud initially argues, this *beraita* demonstrates that children do not bear responsibility for the costs of *kibbud av va'eim*. The argument is that otherwise the children would be using the same money to satisfy both their obligation to the poor and their obligation to their parents. This would be illegitimate double-dipping, as they would be satisfying their *kibbud av va'eim* obligation out of money that already belonged to the poor. The *beraita* therefore demonstrates the correctness of the *mishel av* position.

The Talmud rejects this proof by asserting that, at least according to the position *mishel ben*, the obligation to feed parents generated by *kibbud av va'eim* is measured objectively; one must provide parents with the amount of food consumed by an average person. Therefore, the obligation can terminate while parents are both poor and hungry, if they have large appetites. Under such circumstances, a child can provide the parents with additional food drawn from *maaser ani* without double-dipping, since they have already fulfilled their *kibbud av va'eim* obligation,

But, the Talmud goes on to say, this assertion seems not to fit the next line of the *beraita*. In that line, Rabbi Yehudah asserts that any child who feeds their parents *maaser ani* deserves to be cursed. Why should they deserve cursing, if they have already fulfilled their legal obligation of *kibbud*?

The Talmud answers that they deserve cursing because it degrades their parents to be fed from charity, so long as the children have other resources.

Here is what emerges:

1) According to the position *mishel ben*, the Torah sets a clear limit to the obligation of *kibbud*. This is in principle a legal but unenforced obligation, since the rule is that *mitzvat* for which

the Torah explicitly promises an explicit reward for are not humanly enforced, and the Ten Commandments promise long life (which the Rabbis understand as referring to the Coming World) as a reward for *kibbud*.

2) However, Rabbi Yehudah declares that anyone who takes advantage of those limits is curseworthy! Rabbi Yehudah does not mean that it would be better to leave your parents hungry, but rather that one should feed one's parents out of food that is not charity even after the obligation of *kibbud* has been exhausted. But why not simply extend the obligation?

In other words, Rabbi Yehudah believes that there are obligations that are law, and humanly enforced; obligations that are law, but not humanly enforced; and obligations that are not law, and not humanly enforced. (We will leave for some other time the question of obligations that are not law, but humanly enforced.)

My students generally had serious difficulty with the notion of humanly unenforced law. What makes it law, rather than ethics? They could resolve this by saying that Judaism formulates all obligations as *Halakhab*, which is not law in the ordinary-language sense. But this *sugya* eliminates that resolution, as it creates an obligation that is sharply distinguished from the halakhic obligation it supplements! (We know that it is an obligation because one is cursed, i.e. Divinely punished, for not fulfilling it.)

My suggestion is that the Rabbis saw value in preserving both motives for ethical behavior, the heteronomous and the autonomous. They tried to establish a system in which human beings recognized and responded to legitimate authority, but never defined their value and purpose solely through obedience, and never abdicated their responsibility to independently perceive value, and to act in accordance with that perception.

Modern orthodoxy is philosophically hostile to heteronomy, and modern Orthodoxy is often philosophically hostile to autonomy. Creating a religious and intellectual space that is genuinely hospitable to both autonomy and heteronomy is the central philosophic task of Modern Orthodoxy. May we succeed in doing so. *Shabbat Shalom!*

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