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COMMENDABLE COMMANDABLES AND THE LIMITS OF HALAKHAH

2024 Matt Eisenfeld Memorial Essay on Commandedness

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True love generates contracts. That's why the ketubah and "The Prenup" are incredibly romantic documents. Because of course a person will give everything they have for love, in the moment, so long as the sacrifice lasts only as long as the love. True love is the willingness to make commitments that will survive against our will if love "alters when it alteration finds".

I suggest this as an explanation of Rabbi Chanina's famous statement that

Greater is the one who is commanded and acts than the one
who is not commanded and acts
גדול המצווה ועושה ממי שאינו מצווה ועושה

It plainly does not mean that fulfilling mitzvot out of rote obligation is preferable to doing so with fresh spiritual motivation. The ideal isn't to find mitzvot intrinsically meaningless while doing them anyway because Hashem commands us to. Rather, Rabbi Chanina valorizes fulfilling commitments *in the acknowledgement that they will remain binding* regardless of how you feel about them. In the moment, of course it is better to find them infinitely meaningful.

Yeshiva/Midrasha-centered Orthodoxy sometimes treats *gadol hametzaveh v'oseh* as a statement about religion rather than about a particular advantage of religious law. Yet would anyone say that in the ideal halakhic marriage, husbands and wives do things for and with each other only because of their past commitments? Is the ideal relationship one in which hyperdetailed postscripts are regularly appended to their ketubah?

Overcentering Rabbi Chanina can lead to dividing the world into the realms of *chiyuv*/obligation/meaning and *reshut*/permission/self-indulgence. The boundary between these realms is unilaterally determined by Halakhah. Moreover, the religious impulse pushes the boundary inexorably forward into *reshut*'s territory.

The guiding syllogism is:

- A. The purpose of a human being is to be an *oved Hashem*;
- B. To be an *oved Hashem* means to fulfill the tasks set by the Taskmaster;
- C. Therefore, the ideal is to maximize the commandedness in our lives. *Reshut* is at best the religious vacation that enables us to "recharge our spiritual batteries" and return to our Taskmaster's mild yoke. Blessed is the nation that has laws even for lavatorial behavior.

This powerful worldview has much truth to it. Halakhah at its best makes every human choice meaningful, and thus profoundly enriches our lives. But as a totalizing ideology, it distorts Torah and constrains and reduces the *tzelem Elokim*.

Ultimately, it disserves halakhah and Hashem to equate commandedness with obedience to law. Is law the only form of religious command? If G-d wills something, why is putting it into legal form necessary for it to be obligatory? Halakhah is binding only because G-d wills that we obey it. Therefore, fulfilling G-d's will without a specific legal formulation should be obligatory just as halakhah is.

Rav Mordechai Feinstein, Rav Mosheh's older brother, contends (Igrot Mosheh 8:Teshuvot MeAchi Maran #1) that all free-willed beings owe obedience to G-d's Will should He choose to command them. On this basis, he argues that halakhic authorities can make legislation that binds even those whom Biblical law wholly exempts from all specific obligations, because G-d transfers His authority to command to those authorities.

In the absence of such legislation, the exempt can only stand and wait. But Milton famously wrote that "they also serve who only stand and wait". If that is so – and I think it must be – then the uncommanded can be *ondei Hashem* so long as they acknowledge themselves as commandable. Note that both Milton and Rav Feinstein are speaking of the blind.

Rav Moshe Feinstein (Igrot Mosheh YD1:6) develops a similar argument to his brother's. He contends that children could not become obligated as adults unless they were inherently obligated at birth. This requires a rather fine distinction between being exempt from obligation and being exempt from fulfilling obligations, typically fudged in yeshiva discourse by referring to those exempt from fulfillment as "in the parshah". But Rav Mosheh draws the radical implication that children are considered "commanded and doing" if they perform actions from whose fulfillment they are exempt.

If we were to say instead that minors are utterly excluded from obligation in mitzvot,

how would they become obligated when they become of age, since there is no new voluntary acceptance of obligation?!

Rather, certainly they are included in the obligation immediately upon birth, because the ancestral commitment bound them and their descendants.

However, even though they are included within the obligation, since they are not of sufficient mental capacity/maturity – they are exempt regarding active fulfillment even though essentially they are obligated.

It follows naturally that when they fulfill mitzvot – they are among the "commanded and doing".

So too the *cheresh* and the *shoteh*, as otherwise they would remain unobligated even after becoming hearing or fully competent.

דאל"כ, אלא נימא שליכא קטן בכלל התחייבות המצות,
במה יתחייב אח"כ כשהגדיל,

דהא לא קבל אז?

אלא ודאי דהוא בכלל החיוב תיכף כשנולד, דקבלת האבות היתה עליהם ועל זרעם,

אך שאף שיטנו בכלל חיוב המצות,
כיון שאינו בר דעת –

פטור לענין הקיום בפועל אף שיש עליו החיוב בעצם,
וממילא כשמקיים הוא עכ"פ מהמצוים ועושים.

וכן הוא בחרש ושוטה,

שאל"כ, לא היו מתחייבים גם כשנתפקח ונשתפה.

Rav Feinstein's logic will likely get very tangled in order to explain why the status of children as commanded is sufficient to validate their slaughtering but not to allow them, or women, to fulfill an adult male's obligation. But he shares his brother's underlying conviction that the state of being commanded is not a function of the existence of commands.

I want to take this one step further. Once we recognize that commandedness can exist outside of halakhah, is it obvious that "acting out of commandedness" can happen only within halakhah? Or can we instead see halakhah as a way of formalizing our acknowledgement of commandedness, which

can then spread to actions which fulfill Hashem's Will expressed in other ways?

This question may prove to be semantic. We can assert that any religious obligation is by definition halakhic, in the manner of Rav Aharon Lichtenstein zt"l's wrapup either/or in "Is There An Ethic Independent of Halakhah?". But it seems to me that there are types of obligation that don't cohere well with any useful definition of halakhah.

An authority-peg for my challenge is Rav Soloveitchik's essential "Halakhic Morality" (p. 185):

The halakhic law was addressed to the ideal eternal Jew, purged of historical evanescence and transience detached from continuous transition, immutable and enduring through the generations. The moral obligation, in contrast, was handed down to the concrete individual, to each Jew as a separate, autonomous, one-timely and singular being living in a changing history-making world. Each individual fulfills his moral commitment in his own private and unique fashion. There are no specific criteria by which he must be guided, no mathematical formulae as determinants of the performance. The latter is an intimate, subjective gesture in which each individual engages in response to his G-d-experience. To command an individual to act morally in the same fashion as did Bahya, R. Yonah he-Hasid, or Maimonides would be tantamount to suggesting that the individual shed his identity and live, think, and feel like someone else . . .

That is why there was no psak halakhah, no authoritative halakhic ruling, in matters of morality, and why no controversy on moral issues was resolved by the masorah in accordance with the rule of majority, in the same manner as all disagreements relating to halakhic law were terminated. **For pesak halakhah would imply standardization of practices, a thing which would contradict the very essence of morality.**

This spectacular passage itself makes sweeping assertions that are very open to challenge, and not only on the margins. But it certainly invites us to explore what other areas of human experience may be inhospitable to halakhic sovereignty. Consider for example whether questions of public policy are properly subject to halakhah, and whether law is the appropriate modality for regulating all aspects of human society, as played out in critiques of the transformation of *lashon hara* by the Chofetz Chayyim. Is it true that the only alternative to halakhah is *reshut*, and an accompanying reduction in meaning?

Let me leave no doubt: I remain a halakhocentrist. But I think we will do better halakhah if we avoid halakhic hubris. True love generates contracts, requires contracts, and is deepened by contracts. But it is not only about contracts.

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