

In memory of Matt Eisenfeld, murdered in a bus bombing in Yerushalayim on 5 Adar 5756

It has been my usual practice for the past fifteen years to use Parashat Tetzaveh as an occasion for continuing a stimulating and challenging conversation I had with Matt about the nature of צווי, or commandedness. Matt was referred to me by a friend in the hope that I would talk him out of attending the Jewish Theological Seminary, and in general out of Conservative Judaism; in that I failed, and he was in Israel as a JTS semikhah student.

Perhaps it is unfair to continue the dialogue one-sidedly. However, recently I've been engaged in multiple conversations with Conservative-ordained rabbis who now seek to be part of an Orthodox halakhic community of practice, with the issue being whether, given their acceptance of the premise that observance of Jewish law is commanded for all Jews, the Orthodox community will welcome them in as Torah leaders. The time therefore seems ripe to clarify whether there is/ought to be a specifically Orthodox understanding, or specifically Orthodox implications, of commandedness.

In previous years I've focused on attempts to justify heteronomy, the idea that G-d issued binding commands on us, in light of my own and the general Western commitment to human autonomy as a central value, and even of Kant's argument that only autonomous behavior can be considered ethical (although not all autonomous behavior is ethical). Broadly, I've tended to argue, sometimes using discipleship as a model, that

"Legitimate commands are those whose argument for obedience is supported by something other than power, those whose claim on our obedience extends beyond the commander's capacity to punish disobedience. Illegitimate commands are those we would have no inclination to obey absent coercive power on the part of the commander. Bringing these definitions into the religious context suggests that for Divine commands to be legitimate they must be justified by appeal to a standard we recognize independently, that they deserve obedience only if we believe in the values they are intended to accomplish . . . Justifying obedience to religious commands on these grounds requires specification of the anticipated greater end. In other words, willingness to surrender autonomy of means does not imply a similar willingness with regard to ends.

I suggest, very tentatively, that the relationship between commander and commanded is, even in the religious context, related to means rather than ends. Accepting commandedness is at heart a willingness to subordinate one's judgment, not one's convictions. We obey G-d's commands because of a prior conviction that G-d's ends are worthwhile (I make no claims as to what those ends are, and on this issue much pluralism is possible). Indeed, it would plainly be circular to claim that we must obey G-d's commands because G-d told us to."

The last line of the above excerpt is rooted in Ramban's defense of Bahag's failure to list belief in G-d as a mitzvah, which can be read as noting the circularity of a command to believe in a commander. This week, however, I want to put my above conception of commandedness in dialogue with a different classically problematic text, Rambam's apparent assertion (Laws of Kings 8:11) that the category "pious of the nations of the world" applies only to those who accept the 7 Noachide mitzvot *because they were commanded by G-d in the Torah via Mosheh*, rather than doing them out of intellectual agreement.

רמב"ם הלכות מלכים פרק ח:יא

כל המקבל שבע מצוות ונזהר לעשותן הרי זה מחסידי אומות העולם, ויש לו חלק לעולם הבא. והוא שיקבל אותן ויעשה אותן מפני שצוה בהן הקב"ה בתורה והודיענו על ידי משה רבינו שבני נח מקודם נצטוו בהן,

אבל אם עשאן מפני הכרע הדעת - אין זה גר תושב, ואינו מחסידי אומות העולם, אלא מחכמיהם. Anyone who accepts the Seven Mitzvot and is scrupulous to do them – behold he is among the pious of the nations of the world, and he has a share in the World to Come. But this is only if he accepts them and does them because The Holy Blessed One commanded them in the Torah, and told us through Mosheh Rabbeinu that the Children of Noach has previously been commanded regarding them, but if he did them out of intellectual conclusion – this is not a *ger toshav*, and he is not among the pious of the nations of the world (or) [rather] among their righteous<sup>1</sup>.

On first reading, Rambam seems to deny all religious meaning to actions taken out of agreement with G-d/Torah, rather than out of subordination to G-d/Torah. While attempts have been made to distinguish between Jews and Gentiles in this regard – see for example Responsa Oneg Yom Tov 19 (attached), these generally provide either no explanation, or worse than no explanation, for the difference. But if Rambam would say the same regarding Jews, (which may be one understanding of the halakhic position מצוות<sup>2</sup> (צריכות כוונה<sup>2</sup>), my claim that “Accepting commandedness is at heart a willingness to subordinate one’s judgment, not one’s convictions” is in serious jeopardy.

At the same time, it seems to me that the position that sees agreement with Torah as a problematic Jewish motivation is self-defeating in a variety of interesting ways. Most straightforwardly, is a person intended to work on maintaining their disagreements with Torah, so as to avoid the risk of acting out of agreement rather than subordination? Is being influenced by one’s performance of mitzvot a spiritual risk? These seem absurd positions.

Nor do I think that one can have it both ways, i.e. agree with the mitzvot and nonetheless act out of subordination. To recognize the value of a mitzvah is to see it as the proper mode of action. Perhaps one can make the hypothetical claim “I would do it *even* if I disagreed with it”, but this seems to me a difficult operation to carry out in psychological practice. So I would much rather suggest that proper actions are meaningful whether they are motivated by agreement, subordination, or some amalgam of the two.

Accordingly, I suggest an alternative reading of Rambam. Perhaps he is not addressing religious meaningfulness directly. Rather, he is defining the category of גר תושב, and he understands that category, by analogy to גר צדק, the full convert to Judaism, as a type of conversion, rather than as a descriptor of value<sup>3</sup>. Being a גר תושב requires that one join the Torah religious community, not merely that one share its values, in the same way that a new U.S. citizen must swear loyalty to the Constitution rather than agreement with it. A nonJew who is unwilling to accept the Torah as binding

<sup>1</sup> (I will bracket for this week the question of whether those who act out of intellectual agreement are considered “the wise of the nations of the world” or not; I believe that the current scholarly consensus is happily in favor of the version that says they are.)

<sup>2</sup> Which position, however, Rambam does not seem to accept with regard to most mitzvot

<sup>3</sup> I am also bracketing here the association of “pious” rather than “wise” with having a share in the World to Come (assuming the text that says such Gentiles are among the wise).

independent of his agreement with its wisdom – who is unwilling to subordinate judgment - is a wise person, but not a partial convert.

I suggest further that this reading offers a powerful insight into the meaning of membership in a political community, or more powerfully, into citizenship, to wit: Being a citizen means that one shares the community's ends and is willing to subordinate to the community one's judgment as to means. Someone who shares the community's ends but is unwilling to subordinate their judgment – i.e., someone who obeys the laws, but only because they agree with them – may be considered wise by the community, but never as a citizen.

To be part of a community of religious commandedness, then – a community whose shared end is obedience to Divine command - is to subordinate one's judgment as to the content of that command to the community's process of decisionmaking.

Orthodoxy, as I understand it, is a community of religious commandedness. It follows that to be Orthodox – ideologically, if not sociologically – is to subordinate one's judgment to that of the Orthodox community as to the normative content of Torah, as to the content of commandedness<sup>4</sup>, whether or not one agrees with that judgment.

Now Orthodoxy may tread lightly on its citizenry, much as the US allows citizens to have widely varied opinions as to the welfare state, federalism, gun control, abortion, and the like. And Orthodoxy is generally willing to allow those who largely agree with its current policies, or at least with the current policies of an Orthodox-identified subcommunity, to affiliate sociologically. But Orthodoxy is not generally willing to extend fellow-travelers the privileges of citizenship, in particular the capacity to vote, i.e. to exercise influence to the degree that their scholarship, intelligence, and commitment would otherwise entitle them.

More sharply – the Orthodox definition of commandedness is that Jews are bound by the perceived-as-Orthodox past as well as the perceived-as-Orthodox present, meaning that the future direction of the community must emerge not only as an organic continuation of its current practice and belief, but as an organic continuation of its past as well. This means, for better or for worse, that even great past scholars who are identified as non-Orthodox cannot be cited as formal religious authorities, although of course truth should be accepted on its own merits.

None of this means that one cannot argue for a reappraisal of past figures, or for a more expansive conception of Orthodox community, or for the idea that Halakhic community is a more useful affiliation model than Orthodox community. But descriptively, I think the above is a correct understanding of the current Orthodox community's position on commandedness, such that subscribing to it is a precondition of citizenship.

Shabbat shalom

Aryeh Klapper

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<sup>4</sup> There may be room for a form of civil disobedience, in which subordination is defined as acceptance of authority rather than obedience, and distinguished from surrender, but this is not the occasion to treat it at length.

## רמב"ם הלכות מלכים פרק ח: יא

כל המקבל שבע מצוות ונזהר לעשותן הרי זה מחסידי אומות העולם, ויש לו חלק לעולם הבא. והוא שיקבל אותן ויעשה אותן מפני שצוה בהן הקב"ה בתורה והודיענו על ידי משה רבינו שבני נח מקודם נצטוו בהן, אבל אם עשאן מפני הכרע הדעת - אין זה גר תושב, ואינו מחסידי אומות העולם, אלא מחכמיהם.

### Rambam Laws of Kings 8:11

Anyone who accepts the Seven Noahides Mitzvot and is scrupulous to do them – behold he is among the pious of the nations of the world, and he has a share in the World to Come. But this is only if he accepts them and does them because The Holy Blessed One commanded them in the Torah, and told us through Mosheh Rabbeinu that the Children of Noach has previously been commanded regarding them, but if he did them out of intellectual conclusion – this is not a *ger toshav*, and he is not among the pious of the nations of the world (or) [rather] among their righteous<sup>5</sup>.

## שו"ת מהר"ם אלשקר סימן קיז

השגות שהשגתי על ספר האמונו' שחבר החכם ר' שם טוב נ' שם טוב הדובר על הרב הגדול צדיק יסוד עולם הרמב"ם ז"ל עתק בגאווה ובו

...

עוד כתב שם ז"ל ומה שאמר הרב הזה בחסידי אומות העולם שיש להם חלק לע"ה רמז לזה כי בתקון המדות יתישר העיון וכאשר קנה הידיעות הרי הוא כאחד משלמי ישראל אם קנה דעת כמוהו כי אין לזה יתרון מזה וכו' ע"כ.

אמר הכותב כבר פירש לנו רבינו הרב בסוף פ"ח מהלכות מלכים מה הכוונה בחסידי אומות העולם בבירור שלא יוכל שום סכל ולא מתעקש להכחיש . . .

### Responsa Maharam Alshakar 117

These are my challenges to Sefer HaEmunah, authored by the Sage R. Shem Tov ibn Shem Tov, who speaks of the great rabbi, righteous and foundation of the world, the Rambam of blessed memory, with powerful arrogance and denigration . . .

He wrote further: "That which this Rav (Rambam) said about the pious of the nations of the world, that they have a share in the World to Come – he intends by this that perfection of character will straighten out the intellect, and if one has acquired proper knowledge one becomes like the complete of Israel, if one had acquired a comparable intellect, because one (the Jew) has no advantage over the other (Gentile)."

I, the author write: Our teacher (Rambam) already explained to us in Laws of Kings, at the end of Chapter 8, what the meaning is of "pious of the nations of the world", with a clarity that no idiot or stubborn person could contradict"

<sup>5</sup> (I will bracket for this week the question of whether those who act out of intellectual agreement are considered "the wise of the nations of the world" or not; I believe that the current scholarly consensus is happily in favor of the version that says they are.

### שו"ת עונג יו"ט סימן יט

[ועיין ברמב"ם ז"ל שכ' (בהלכות מלכים) גבי ב"נ שקיים שבע מצות מפני שדעתו נוטה לזה ולא לשם מצות בוראו אינו מחסידי אוה"ע אלא מחכמיהם דמשמע שכל העושה שלא לשם מצוה אין בזה סרך מצוה. ואפשר לומר דדוקא בב"נ אמרינן הכי ולא בישראל. וכה"ג מפלגינן (בפ"ק דר"ה) לענין סלע זו לצדקה בשביל שיחי' בני דמהני בישראל ולא בב"נ. וכן אפשר לומר במכוון שלא לצאת דבישראל מקרי מצוה ולא בב"נ, ועוד יש לחלק בין מצוה שבקום עשה לשב ואל תעשה, דבשוא"ת לא הוי מצוה אלא כשמכוון לשם מצוה, כדאמרינן בקידושין פ"ק גבי ר' צדוק וחביריו שישבו ולא עברו עברה מחמת מצות בוראן מעלה עליו הכתוב כאלו עשה מצוה, אבל אם לא עבר אלא מחמת משפט שכלו, לא חשיב כאילו עשה מצוה. ולהכי בב"נ שאין בשבע מצות דידהו קום עשה רק שוא"ת, שפיר כתב הרמב"ם ז"ל שאם קיימן מחמת נטיית דעתו לא מחשב מצוה, אבל בקום עשה שעושה מעשה, מחשב מצוה בכל גווני:]

### Responsa Oneg Yom Tov 19

See Rambam, who wrote regarding a Gentile who fulfilled the Seven Mitzvot because they seemed intellectually agreeable, rather than to fulfill the command of his Creator, that he is not of the pious of the nations of the world but rather of their wise men, which implies that doing an action other than for the sake of a mitzvah is not even a scrap of mitzvah.

But it is possible to say that we say this only about Gentiles, and not about Jews, in the manner that we distinguish in the case of "This coin to charity so that my son live", where the transfer of the coin is legally effective for Jews but not for Gentiles.

We can also distinguish between DOs and DON'Ts,

That regarding a DON'T there is only a mitzvah when the intent is for mitzvah, as we say in the first chapter of Kiddushin regarding R. Tzadok and his colleagues that if they sit still and do not transgress because of their Creator's command, Scripture treats them as if they have performed a mitzvah,

whereas if he fails to transgress only because of a rational judgment, it is not considered as if he has done a mitzvah,

and therefore regarding Gentiles, whose Seven Mitzvot are not Dos but rather DONTs, Rambam writes properly that if they fulfill them out of intellectual agreement these are not considered mitzvot,

but with regard to a DO, where he does a deed, it is considered a mitzvah regardless.