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"Taking Responsibility for Torah"

WHY THE TORAH MUST FORBID SLAVERY

By Rabbi Aryeh Klapper

The Talmud presents the fundamental principle of Torah ethics in the form of a sarcastic question: "What have you seen that makes your blood redder (than anyone else's)?"

Rava gives this answer on Sanhedrin 74a in response to a real-time real-life question: "The lord of my manor said to me: 'Go kill so-and-so; if you don't, I will kill you'". Rava responds: "Let him kill you, but you must not kill. What have you seen etc.?"

The reason I take Rava's answer as expressing the fundamental principle of Torah ethics is its literary context.

The Talmudic discussion begins from a statement of Rabbi Yochanan in the name of Rabbi Shimon ben Yehotzedek:

They voted and concluded in the loft of Nitzah in Lod: All transgressions of the Torah, if a person was told: "Transgress rather than be killed" – he should transgress, except for *avodah zarah*, *giluy arayot*, and *shefikhut damim* (very roughly: idolatry, adultery, and homicide.)

The loft of Nitzah in Lod was most likely a hideout during a deadly Roman religious persecution. In other words, this question, like Rava's, was addressed in an immediately practical situation. The sugya is built to get us from the opening question to Rava's answer. Everything in between is hypothetical and abstract.

The Talmud challenges Rabbi Yochanan's statement.

Is it really true that one must not violate *avodah zarah* to save one's life?! But we learned a beraita:

"Said Rabbi Yishmael:

From what Biblical verse do we know that if a person was told: "Do *avodah zarah* rather than be killed"?

Scripture says: *and live by them* – and not die by them.

(Is this true even in public?

Scripture says: You must not desecrate My Name, and I will be sanctified.)

Rabbi Yishmael's argument-from-proof-text applies to all three of Rabbi Yochanan's exceptions. The Talmud therefore sets out to find proof-texts for each of them.

Avodah Zarah famously is derived from *you must love Hashem your G-d with all your heart and all your nefesh* – even to the point of surrendering one's nefesh.

Giluy arayot is derived from because *just as when a man arises against his fellow and murders him – so too is this case* (of adulterous rape); in other words, *giluy arayot* is derived by analogy from *shefikhut damim*.

But what is the source for *shefikhut damim*? Here the Talmud admits that it has no proof-text, rather only a *sevara*, a rational argument. Cue Rava ("What have you seen etc.?).

The structure of the abstract interlude emphasizes that Rava's argument is the Archimedean point of Judaism, the ultimate fixed point. Rava doesn't just teach a halakhah – the Torah is written on the presumption that we will make and accept his argument. Without Rava, the Torah's analogy between *giluy arayot* and *shefikhut damim* has no content, or would be assigned the wrong content.

That's why I refer to Rava's question as expressing the fundamental principle of Torah ethics. One cannot interpret Torah properly without it, and one cannot derive it from any specific Torah phrase.

The Talmud presents this *sevara* in homespun sarcasm rather than rigorous formulation to emphasize that it must precede textual study, that it must be taken as an assumption rather than as subject to debate. One can legitimately dispute whether a Jew should die rather than commit *avodah zarah*, and *giluy arayot* can be left up for textual interpretation.

But the prohibition against committing *shefikhut damim* to save a life must be the premise of such disputes and interpretations.

However, I have argued in many contexts that Rava's sarcastic question is best understood as embodying Kant's categorical imperative, specifically the formulation which declares that all human beings must always be treated as ends-in-themselves rather than as means.

Understanding Rava that way prevents any suggestion that he intends only to equate Jewish lives, not all human lives. It also has implications far beyond the specific issue of homicide. For example, it forbids sexual harassment (treating human beings as means to one's own gratification regardless of their desires). However, it also opens me to the charge of introducing alien categories and intellectual methods into Torah in the pursuit of an externally motivated moral agenda.

As a younger man, I was deeply worried by that charge substantively as well as politically. For reasons good or bad, I've grown more confident over the years in the authenticity of my positions. But I know that presenting a Torah position as grounded in Kant is often not persuasive within Orthodoxy, and "more confident" is not the same as "unconcerned".

Therefore, I was cheered this week to discover Drashah #2 in the back of Yoreh Deah section of Responsa Beit Yitzchak, authored by Rabbi Yitzchak Schmelkes, recognized as among the greatest of late 19th century halakhic decisors. Here is the relevant section, preceded by my translation:

When a person examines the two parts of the human being,
the body and the soul –

It becomes evident to him that the body is a means or an
instrument, while the soul is an end,

Because a means is determined, as the *chakhamim* said;
and whatever is not determined – is not a means;

like a horse and carriage, which are means for travel – they
are compelled to do the will of the traveler, and he will turn
them to where he wills,

while the traveler who is free in his mind – he is the end
willy nilly, the one possessed of choice is not a means,

because he is free in his choice, and he is the end,

while the body, because it is compelled to do the will of the
soul – is a means and instrument for the soul, while the soul that
rules the body is the end.

Therefore, a person may not work his fellow as a slave, and
make him a cause to fulfill his desires and wishes –

because he has no right to subordinate a person created in His
image and to make him a means for his own purposes, when the
fellow is an end just like him.

והנה בהשקף על ב' חלקי האדם, על הגוף והנפש –

יראה לעיניו כי הגוף הוא האמצעי או הסבה, והנפש הוא התכלית,

כי האמצעי – מוכרח, כאשר אמרו החכמים; ומה שאינו מוכרח – אינו
אמצעי,

כמו הסוס והעגלה, אשר הם אמצעים לנסיעה – מוכרחים המה לעשות רצון
הנוסע, ולאשר יחפוץ יטם, והנוסע החפשי בדעתו – הוא התכלית;

וע"כ, בעל בחירה אינו אמצעי, יען כי הוא חפשי בבחירתו והוא תכליתו,
והגוף, לאשר מוכרח לעשות רצון הנפש – הוא אמצעי וסבה לנפש, והנפש

אשר תמשול בגוי היא התכלית,

ואשר ע"כ לא יוכל איש לעבוד ברעהו עבודת עבד, ולעשותו סבה למלא

ע"י מאויו וחפצו –

כי אין לו המשפט להשפיל אדם הנוצר בצלמו ולעשותו אמצעי לתועלתו,

והוא תכלית כמהו.

Rabbi Schmelkes clearly shared my fondness for Kant's principle. He too uses the principle as the basis for understanding a specific Torah command. "No right to subordinate a person created in His image" is my loose translation of לא יוכל איש לעבוד ברעהו עבודת עבד, which is based on Vayikra 25:39:

Should your brother descend among you and be sold to you –
you must not work him in the manner that a slave works.

וְכִי יֵמִיד אֶתִּיד עִמָּךְ וְנִמְכַר לָךְ
לֹא תַעֲבֹד בּוֹ עֲבֹדַת עֶבֶד

Rabbi Schmelkes thus concludes that actual slavery is simply forbidden. What the Torah calls slavery is a much attenuated version, and even that is at best a necessary evil. The Torah would never permit a situation of moral subordination, genuine slavery, in which one person must do what another commands regardless of right or wrong, with "wrong" specifically including actions intended to display, embody, or enforce subordination.

The obvious problem is that the verse applies only to the *eved ivri* and not to the *eved knaani*.

I don't know how Rabbi Schmelkes responded to that question. What I do know is that he would have seen the question as legitimate, because his opposition to slavery is framed in terms of Kant, and therefore applies to all free-willed beings.

Shabbat shalom!