

HALACHA AND INTERPRETATION

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By Paul Gilman

My first thought about Torah was that it is the greatest gift ever given to mankind. As I began to study, I realized that I was only half right, because our Torah is incomplete without the interpretive tradition which has accompanied the Torah from its beginning to this very day. Our congregation is currently involved in the writing of a sefer Torah. During this process, not one word, not one letter will be changed from the Torah which has been handed down to us through the ages. But the midrashic lore compiled by our sages for over 100 generations has elucidated and, in many cases, transformed the meaning of those words. This is true for the midrash aggadah, which enriches our understanding of Torah through its allegorical and metaphorical interpretations, as well as for the midrash halakhah, which attempts to translate the 613 Torah commandments into actual human behavior. Whether one believes that the Torah is the actual word of God or the work of mortal man, the Torah's pronouncements are often elliptical and cry out for interpretation. A good example is the commandment which establishes Shabbat as a weekly day of rest. The commandment simply says you shall not do any work. It was left to the ancient interpreters, whose work was later codified by the rabbis, to define what tasks an observant person could or could not perform. They came up with 39 categories of work which are prohibited. Many of these Shabbat rules are counterintuitive. Thus it is forbidden to light a match or sign your name, but moving furniture inside your house is okay. The commandment which tells us not to boil a kid in

its mother's milk is a case where the original meaning has been transformed. I am not certain what the original intent of this injunction was, but it is unlikely that it had anything to do with the separation of meat and dairy products. If that was the intent, it would have said so. But, because I have great respect for traditions which have stood the test of time, in this case at least 2000 years, I have two sets of dishes in my house.

For over 2,000 years, our halakhic interpreters have had to deal with endless changes in society and technology. We have inherited from them a Torah-based halakhic tradition which is humane and accessible and which serves as a timely and timeless guidebook to leading a good life. The adaptive nature of our tradition is, I submit, the genius of Judaism. Halakhic interpretation has always accommodated a diversity of views, best exemplified by the Talmud, which is the foundation stone of the halakhic tradition. One of the most significant halakhic controversies of the Talmud concerns the famous story of Aknai's oven. Rabbi Eliezer, the leading halakhic authority of his time, is on one side of the argument. He is opposed by three other distinguished Talmudic rabbis. At the end of the story, a heavenly voice (bat kol) addresses the group and says that Rabbi Eliezer's opinion is the correct one. The other rabbis rebuke the divine voice, saying that halakhic decisions are made not in heaven but here on earth, by a majority opinion of the rabbis. It is this voice of the majority which holds sway in the argument. This story is a good example of diversity of opinion in the Talmud, but more importantly, it teaches us that absolute truth plays no role in halakhic discourse. This explains why fundamentalism is so alien to Judaism.

I would now like to focus on two verses in today's parashah to see how their meaning has evolved as a result of halakhic interpretation. The first is verse 5, p.689: "You shall keep my laws and my rules, by the pursuit of which man shall live; I am the Lord." I believe this is the most important verse in the entire Torah. The pshat, the literal meaning of these words, is not at all clear. The rabbis of the Talmud interpreted this statement to be an affirmation of the sanctity of human life. A few weeks ago R. Shai Held presented the famous teaching from the Mishnah that, because God created the world for the benefit of one man, the destruction of a human life is equivalent to the destruction of a whole world, and the saving of a human life is equivalent to the saving of an entire world. For me, the sanctity of human life is the most important principle of the Torah. Having enunciated this principle, it is not surprising that our Talmudic sages abolished capital punishment, de facto, not de jure, because the Torah calls for capital punishment in many cases, and the rabbis would never change a word of the Torah. Instead they adopted sufficient constraints that the enforcement of capital punishment became virtually impossible.

The ambiguous words of our verse elicited different interpretations, but the prevailing opinion is found in the Talmud, which states succinctly: "One should observe the commandments provided they do not endanger life." This came to be known as the principle of pikuach nefesh, the principle to which all 613 mitzvot are subordinated. In the words of Maimonides: "Preservation of life overrides the Sabbath and all the commandments. The laws of the Torah are designed not to bring hardships but compassion, loving-kindness and peace into the world." When some Jews of his time converted to Islam in order to save their lives, they were condemned as heretics by some

of his contemporaries. But Maimonides came to their defense in his famous letter on martyrdom, *Iggeret Hashmad*, saying that the first obligation of the Jew is to survive in the hope that one day he might be able to return to the path of Torah.

I believe that the principle of *pekuach nefesh*, which declares the sanctity of human life to be the central motif of Torah and which emphasizes the life-enhancing purpose of the commandments, provides an appropriate rebuttal to those who denigrate the halakhic tradition as mere cold mechanical legalism, which is not relevant in the modern world. They fail to appreciate the spiritual, ethical values embedded in the mitzvot, values which have been enunciated by Maimonides and the other great teachers with whom we have been blessed throughout our long history. At the other end of the spectrum, are well-meaning, observant Jews who advocate halakhic stringencies which represent a departure from tradition. In their zeal to safeguard the tradition, I think they sometimes lose touch with the ethical/moral teleology of the commandments, what our rabbis called “*taamei hamitzvot*.” In so doing, they distance themselves from the rabbinical teaching that the commandments are not ends in themselves. Our ancient sages were aware of the pitfalls of excessive stringency and warned us almost 2,000 years ago in *Midrash Rabbah*: “If you make a fence too high, it may fall and destroy what it was meant to protect.”

The second verse I wish to discuss is probably the most frequently quoted Torah verse of the past year. It is verse 22 in chapter 18 of our parashah, the prohibition against homosexuality. In contrast to the ambiguous phrase which gave rise to the principle of *pekuach nefesh*, the prohibition set forth here is very stark and explicit. Don't do it; it is

an abomination, which is punishable by death. But this is a commandment which has been rendered null and void by the rabbis, reflecting Rabbi Harold Kushner's dictum that Torah is the first word, not the last. The result is that we don't kill homosexuals; we warmly welcome them as members of our Conservative and Reform shuls. Homosexuals are also members of Orthodox shuls under the rule of don't ask, don't tell. While there has been no definitive ruling by the Conservative movement on the issue of same-sex marriage or commitment ceremonies, there has been much recent discussion of this matter by both Conservative and Reform rabbis. Last year, Rabbi Arnold Goodman spoke to us on this issue and said that as a result of personal encounters with several same-sex couples, he had become much more sympathetic to the idea of civil unions. And at least one Reform rabbi in our community last year performed a same-sex marriage. One of the forces driving the change in the Jewish attitude toward same-sex unions is a reinterpretation of Torah. The cultural milieu of the ancient Middle East, where our Torah developed, was not familiar with homosexuality in the sense of a defined sexual orientation or lifestyle. Rather it was associated with acts of rape expressing humiliation and subjection. This is best exemplified by Lot's encounter with the men of Sodom, who wished to assault his guests. Current Torah interpreters believe that it was this type of activity, along with the homosexual practices which were part of pagan cults which the Torah proscribed as "to'evah", abomination, and not the homosexuality that is expressed in committed, loving relationships. These new insights into an ancient text are certainly influencing attitudes on this sensitive subject. It is still too early to say what their impact will be on our halakhic tradition.

I want to conclude with an excerpt from an article by Yochanan Muffs*, professor of Bible at JTS. First, he describes the Jew as one who is not a slave who nourishes his master, but a creative partner in the translation of the divine intuition into a concrete moral order. He goes on to present a poetic metaphor which, for me, beautifully expresses the nature of the interpretive process. He imagines the Almighty as a cosmic playwright who creates a work that is an expression of His innermost being. He then sets out to find the gifted actors who possess the sensitivity to translate the divine intuition into reality. He holds many auditions before finding a group of actors whom he loves. The troop of actors He chooses is young and inexperienced, used to performing improvisational drama. The playwright decides not to spell things out, but rather he gives the actors chapter headings and allows them to improvise, to interpret the ambiguous and translate the hints into sentences and chapters. He promises them that He will always be there in the wings, and if they depart too radically from His intent, He will set them on the right path with hints delivered by His agents. The play has begun, the actors have appeared, and the dramatist still haunts the wings of the theater, desperately worried about the fate of His play.

*Yochanan Muffs, " Love & Joy, Law, Language and Religion in Ancient Israel", 'Chapter 1--Who Will Stand in the Breach: A Study of Prophetic Intercession', The Jewish Theological Seminary of America, New York and Jerusalem, Harvard University Press, Cambridge, Massachusetts and London