YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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HALAKHA: A WEEKLY SHIUR IN HALAKHIC TOPICS

Kevod Ha-beriyot:

Human Dignity in Halakha

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AN ETHICAL PRINCIPLE

The Talmudic source of the concept of kevod ha-beriyot (concern for human dignity) is found in Berakhot (19b), where the Gemara establishes that "kevod ha-beriyot is great, in that it overrides a biblical prohibition." However, the basis of this statement is not necessarily of a halakhic nature. The principle that "kevod ha-beriyot is great" is a value assessment, and the fact that it "overrides a biblical prohibition" is a result of this, rather than a guideline for action.

Chazal comment in a similar vein,

"Great is peace, for the Almighty orders that the Divine Name, which is written in sanctity, shall be erased into water [during the sota ritual] in order to bring peace between husband and wife." (Bemidbar Rabba 11:16)

The Rambam likewise writes in the concluding chapter of Sefer Zemanim:

"If one has before him [the choice between] Chanuka candles and [Shabbat] light for his home, the light for his home takes preference in the interest of domestic peace - for the Divine Name is even erased in order to make peace between husband and wife. Great is peace, for the entire Torah was given in order to make peace in the world, as it says, 'Its ways are ways of pleasantness, and all its paths are peace.'" (Hilkhot Chanuka 4:14)

It is worth noting the Rambam's formulation of this halakha. He writes that, practically speaking, "the Divine Name is erased in order to make peace between husband and wife." He does not, however, conclude that one may violate any Torah prohibition because of the paramount importance of peace. Although a famous responsum of the Rema seemingly indicates that the interest of peace does, indeed, override any Biblical prohibition, the basic meaning of the maxim, "Kevod ha-beriyot is great," is, in essence, an ethical and philosophical principle.

THE SCOPE OF KEVOD HA-BERIYOT

What is kevod ha-beriyot? This concept is broad and general, as manifested in three ways:

1. In terms of scope, kevod ha-beriyot covers a very wide range. "Beriyot" ("creatures") refers here not only to Jews, but rather to all people. Indeed, this all-encompassing scope emerges from the Rambam's comments (Hilkhot Sanhedrin 24:9-10):

"Similarly, [a judge] has the right to bind one's hands and feet, imprison him in jail, push and drag on the ground… With regard to everything, his actions must be for the sake of Heaven. He may not take human dignity [kevod ha-beriyot] lightly, for it overrides rabbinic prohibitions, and certainly the dignity of the children of Avraham, Yitzchak and Yaakov who bear the true Torah…"

The Rambam begins with the general value of kevod ha-beriyot, and only thereafter addresses the specific issue regarding "the children of Avraham, Yitzchak and Yaakov." Clearly, then, "beriyot" includes all human beings.

B. At first glance, we could perhaps include under the category of kevod ha-beriyot a wide array of phenomena and circumstances. This depends, however, on how we define "kevod" in this context, an issue of crucial importance with regard to the relevant halakhot. What does the term "kavod" include?

On the one hand, it involves purely physical issues, such as bodily cleanliness. At the same time, we find in Tanakh and rabbinic literature many descriptions of "kavod" unrelated to any physical concerns, but rather in reference to self-respect and the like. For example, the Gemara (Bava Metzia 30a) exempts an elderly person from attending to a lost item because "eina lefi kevodo" - it is beneath his dignity. Once we establish that this halakha addresses not only basic, physical needs, but also sensitivity to a person's status, it becomes clear that this halakha spans an exceptionally broad spectrum of concerns.

C. Kevod ha-beriyot is a broad concept by virtue of its universal quality. Its universality expresses itself not only in its application to all people, but also by its acceptance by other cultures as well.

ITS DIFFERENCES FROM THE GENERAL CONCEPT OF HUMAN DIGNITY

Many societies, both ancient and modern, have accepted the value of "human dignity." However, specifically for this reason it is important for us to delineate its significance for us. Our specific perspective on this issue comes to expression on two levels. First, we must distinguish between the Jewish, halakhic concept of "kevod ha-beriyot" and universal, humanistic concept of "human dignity." Secondly, we must examine the specific roots of kevod ha-beriyot in our world, as it relates to Torah and mitzvot.

It is generally thought that the concept of kevod ha-beriyot parallels that of human dignity. Indeed, our understanding of kevod ha-beriyot does identify it with human dignity, man's unique stature within creation. Nevertheless, we must emphasize the specific aspect of kevod ha-beriyot - as implied from the syntax of the term itself. Unlike other cultures, we speak not of "the dignity of MAN," but rather of "beriyot," creatures, relating to the human being as a creature fashioned by the Almighty.

This distinction bears dual significance. Firstly, to a large extent, man's stature flows from his having been created by God, rendering him worthy of recognition as such. He deserves respect not only due to his characteristics, but also as a result of his origin - an origin which imprints upon him and nourishes in him certain qualities.

Secondly, in the uniquely Jewish sense, we regard man not just as one of God's many creatures, but rather as the being who was created in the "image of God." Thus, in our outlook on the human being two things merge: a manner of relating to man stemming from his having been created by the Almighty, and a recognition of those qualities that give rise to man's uniqueness and accomplishments, qualities before which both we and the secular world stand in awe.

For us, the full meaning of "human dignity" emerges from the combination of both these elements. Acknowledging human dignity and respecting this dignity thus take on a meaning that perhaps includes that which is found in general humanism, but that differs from it in two ways.

On the one hand, from a secular perspective, the concept of human dignity empowers man to a point far beyond that which we find in the religious world view. From a secular standpoint, man is autonomous, and he reserves the right to legislate laws for himself. It is man who establishes models of conduct and charts his own path. He determines ethical standards by himself and for himself. Clearly, empowerment of this sort has no place in our world, neither at the theoretical nor at the practical plane.

Moreover, viewing man as having been "created in the image of God" links man with the transcendent, a link that does not exist in secular humanism. This can both elevate and diminish him.

On the one hand, the religious perspective somewhat diminishes man and his world. The moment we think in transcendental terms, we no longer see the world as something exclusive, nor even - to an extent - as something central. On the other hand, man's link to the divine grants him unparalleled significance.

THE IMAGE OF THE KING

This dual perspective on man is beautifully expressed in a midrash (Vayikra Rabba 34) often cited by advocates of Jewish humanism:

"This is what is meant by the verse, 'A kindly man benefits himself' (Mishlei 11:17). This refers to Hillel the Elder. When he took leave of his students ... [they] said to him, 'Rabbi, where are you going?' He said to them, 'To perform a mitzva.' They said to him, 'Which mitzva is it?' He said to them, 'To wash in the bathhouse.' They said to him, 'Is this a mitzva?' He said to them, 'Yes. If the person in charge of the statues of kings posted in the theaters and circuses scrubs them and rinses them, and he receives payment, and what more, he is promoted among the royal dignitaries - then I, who am created in the image and form [of God], as it says, 'for He made man in the image of God' (Bereishit 9:6), all the more so!'

"A different approach: 'A kindly man benefits himself' - this refers to Hillel the Elder. When he took leave of his students ... [they] said to him, 'Rabbi, where are you going?' He said to them, 'To perform kindness with this guest in my home.' They said to him, 'Every day you have a guest?' He said to them, 'Is this pitiful soul not a guest inside the body? Today it is here, tomorrow it is not here.'"

We have here two approaches which, with regard to their humanistic content and the concept of man's glory, move in opposite directions.

The first direction involves mainly the emphasis on the "statues of kings," man's divine image and form. This results in the need for care and attention, basic cleanliness, all of which constitute a mitzva. This reflects human dignity practically applied in the sense of bodily cleanliness.

Immediately thereafter, however, we hear of the "pitiful soul" that resides within the body; and if the soul is pitiful, then the body - all the more so!

On the one hand, we find here a heightening of man's stature to an extent possible only from a religious perspective, which views man's connection to the Almighty as related to his having been created in His image, possessing a "statue of kings." If not for that "image of God," if we would speak of man strictly in his secular dimensions, Hillel would never have considered for a moment viewing bathing as a mitzva. He would have, in all likelihood, identified with the naturalistic approach regarding the lowliness of man.

But at the same time, the link to the transcendent realm that affords man his unique stature also places him in a perspective that dwarfs his image. It brings to light his "lower world," to the extent that even his soul is "pitiful." Today he is here, and tomorrow he is not.

Of course, it is not only religious outlooks that draw attention to the fact that man is here today and in the grave tomorrow. World literature contains many volumes devoted to this topic, and several formulations generate a degree of pessimism. Nevertheless, an added dimension of insult surfaces when viewing man by placing him opposite that which is far greater and more exalted than himself.

From a secular perspective, man's weakness emerges not from his relationship with the transcendent realm, but rather from his relationship with that which lies beneath him - the natural, physical forces that he cannot withstand. The midrash, by contrast, relates to the soul that appears wretched and pitiful when contrasted with the spark of the Divine, with the destiny that far exceeds its temporary residence within the human body.

Thus, the religious viewpoint, particularly one which bases itself on the idea of "the image of God," sharpens man's stature to the point where the famous mishna (Avot 3:18) declares, "Beloved is man, for he was created in [God's] image." The term "chaviv" ("beloved") can have two meanings. Something can be objectively beloved, in and of itself, while "beloved" can also refer to the manner in which others relate to the given entity. It seems to me that the mishna in Avot refers to the former definition, the objective status of "chaviv," an inherent quality that we can attribute to man, which flows from his having been created in God's image.

On the other hand, however, we also have here a limitation on man's dimensions. He is always seen in light of the eternal, in the perspective of the Almighty, thus diminishing his stature.

Consequently, a clear distinction exists between the concept of human dignity from our viewpoint and its formulations in other belief systems.

DIGNITY AND SANCTITY

Rav Yosef Dov Soloveitchik z"tl would always emphasize that while the Western tradition customarily speaks of "the dignity of man," we speak of "the sanctity of man." The dimension of sanctity is the basis and foundation of our conception, and the "dignity" is integrally connected to it.

In this sense, our religious humanism differs from secular humanism on two planes. First, the obligation applies not only on an interpersonal level, but even with regard to oneself. While it can relate to issues governing man's conduct with his fellow (such as showing respect for the deceased), it also relates to the obligation to maintain bodily cleanliness. The issue of hygiene is a matter of preserving one's self-respect, not only one of maintaining social acceptance. One's responsibility in this regard is thus not directed only towards others; rather, its applications are at times directed towards himself.

Second, our concern for kevod ha-beriyot is not just an obligation towards others or ourselves, but also an obligation towards the Almighty. When man is viewed as a divine creature, then our perception of reality changes.

APPLYING KEVOD HA-BERIYOT TO OVERRIDE PROHIBITIONS

In general philosophy and literature, the issue of human dignity is unevenly stressed: some advocate the humanistic outlook, while others have a more negative view of man. We, obviously, assign this much more significance: "Kevod ha-beriyot is great." But, perhaps specifically because we speak of such a broad concept, both in terms of its application (to the entire world), and in terms of its inclusive content, we do not fully actualize the concept of "kevod ha-beriyot" in our application of Halakha. We must consider whether this stems from our assigning too little importance to this value. Kevod ha-beriyot is an independent factor, and is not just relevant when it comes into conflict with other values. It must be nurtured, studied and taught.

In the Talmud, of course, the proof of the "greatness" of kevod ha-beriyot is derived from its power to override other factors that stand in its way - "it overrides all prohibitions in the Torah." (This is the central axis of the sugya in Berakhot.) This contrasts with the concept of "Great is peace," which does not function to the same extent as a halakhic "mattir," allowing activities otherwise forbidden by the Torah.

Several decades ago, I wrote (though have yet to publish[[1]](#footnote-1)) of the sparse practical use of this principle by halakhic scholars. I speculated then that this in large measure results from the fact that we deal here with a very broad "mattir," and consequently, it carries the danger that those searching for "wholesale" halakhic loopholes will utilize this principle to allow whatever they so desire. "So-and-so will be insulted, this one will be hurt, and so kevod ha-beriyot overrides it." As a result, contemporary halakhic authorities shy away from applying this principle.

Contemporary poskim find themselves in glass houses, and this gives rise to their caution (at times subconscious) in applying this principle, out of the concern that their conclusions will be abused for needs other than those intended. They therefore ensure not to open new channels of "heter" (halakhic permission) that could be understood as granting wholesale license to do away with halakhic prohibitions. This yields the conservative and frugal approach with which the concept of kevod ha-beriyot is applied in halakhic decision-making. So strong is this concern that in modern-day responsa literature one hardly finds an instance in which a prohibition - even a rabbinic one - is overridden by kevod ha-beriyot.

As stated, in the past I speculated that herein lies the root of the phenomenon. In the meantime, Prof. Yaakov Blidstein has published an article dealing with the concept of kevod ha-beriyot and found that, indeed, the use made of this principle in halakhic decision-making is not widespread. With the exception of specific issues (such as the honor of the deceased, which is explicitly mentioned in the Gemara's discussion), halakhic authorities have not tended to make use of this principle.

THE DANGER OF OUR RELUCTANCE TO APPLY THIS PRINCIPLE

What are the results of the reluctance to apply this principle? As mentioned earlier, we can relate to kevod ha-beriyot on two levels: the concept in itself, and the concept as it conflicts with other mitzvot. We must ask ourselves: does the conservative inclination, which flows from concern not to infringe upon the observance of other mitzvot, not cause a diminishing of the value of kevod ha-beriyot in itself?

Let us formulate this as a more simple question. If we accept the Rambam's comment in Hilkhot Sanhedrin that kevod ha-beriyot applies to all people, would we indeed allow for the violation of a rabbinically ordained prohibition in order to avoid insulting a gentile? Would not a ruling of this sort sharpen the concept of "human dignity"? Obviously, we say this regarding not only the insult of a gentile, but that of a Jew, as well. And I remain aware that the tendency to recoil from such a ruling is due to the concern that the opening the size of a pinhole will turn into an opening "like the entrance into the Sanctuary."

Here an additional problem arises, as well, with respect to the Almighty Himself. If indeed kevod ha-beriyot should, after proper consideration of all factors, halakhically overcome the prohibitions with which it conflicts, but due to fear (not of what people will say, but rather of the long-term ramifications of such a ruling) the posek does not adopt such a ruling, does this not constitute a distortion of Halakha?

ATTRIBUTING A RULING TO OTHER FACTORS

To some extent, we might think that this limitation of the principle's application, this conservatism, as it were, is but a delusion, an optical illusion of sorts. Rav Yosef Dov Soloveitchik z"tl once told me that in many instances when he was called upon to issue a ruling, the basic factor carrying the most weight that guided him was the consideration of kevod ha-beriyot. Yet, when it came to formulating his conclusion and putting it in print, he attributed his ruling mainly to other factors. I suspect that this is true not only of him, but of other halakhic authorities as well.

As an example, we may cite a famous ruling of the Rema (Responsa, 125). Contrary to common custom, he once married a couple on Shabbat itself, and wrote that "the reason that compelled me to do this was clear and obvious to everyone there." He also wrote that he was aware that this ruling would cause controversy, since it appears to violate the law codified in the Mishna (Beitza 5:2) that one may not betroth a woman on Shabbat. In his responsum, he based his lenient ruling on no fewer than seven different bases. He relied mainly on Rabbenu Tam's assertion that the Mishna's prohibition does not apply to one who has yet to fulfill the mitzva of procreation. This approach is in opposition to the view of Rashi and most Rishonim, and yet the Rema nevertheless relied upon it. We may perhaps speculate that what prompted this ruling at the time was "kevod ha-adam," human dignity, and, more specifically, the pitiful situation of the bride in question. Yet, when it came to supporting his ruling, the Rema based himself on other reasons.

Nevertheless, for an approach such as this - which, as stated earlier, is understandable in light of the concern for possible halakhic breaches - we pay a certain price. The fact that although the posek is, in actuality, guided by the principle of kevod ha-adam but nevertheless bases his halakhic conclusion on other factors, brings about a situation whereby the halakhic result is indeed achieved, but along the way the concept of kevod ha-adam is worn down, as a result of the fear of its explicit use.

This is the reality today, and I doubt it will change in the near future. If, over the course of the generations, authorities virtually refrained from explicitly invoking kevod ha-beriyot as grounds for a leniency out of concern that it would be abused by those lacking the appropriate loyalty to Halakha, then today, with the development of means of mass communication - which transmit in just a few minutes that which is said in "total secrecy" to all corners of the earth - this concern carries double the weight. We must, apparently, resign ourselves to this reality, but specifically because of this, in a situation in which the value of kevod ha-beriyot does not withstand the conflict against other halakhot, there is a compelling need to sharpen the concept's significance.

Even if, practically, we are not very anxious to apply the end of the sentence, that this concept "overrides a biblical prohibition," we are obliged, at very least, to stand guard against the loss of its opening clause, which establishes that "kevod ha-beriyot is great." When we do not confront a prohibition (whether of action or inaction), but rather all we have before us is the concern of infringing upon the honor of another, there exists the need for a spiritual, intellectual and ethical effort to bring this "great" principle to actualization. This is what we are called upon to do today.

The need to internalize the value of kevod ha-beriyot is the challenge that faces us. Let us not resort to the formulations of secular humanism. We must stand behind our Jewish conception of kevod ha-beriyot and all its ramifications.

1. This article was subsequently published as "'Mah Enosh’: Reflections on the Relation between Judaism and Humanism," in Torah u-Madda Journal 14, 2006-2007, pp. 1-61, and is available on the VBM at: <https://etzion.org.il/en/philosophy/great-thinkers/harav-aharon-lichtenstein/mah-enosh-reflections-relation-between> [↑](#footnote-ref-1)