Thou Shalt Strive to Be a Robot

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Hakham Isaac S. D. Sassoon is a rabbi and educator, and a founding faculty member of the Institute of Traditional Judaism. Born in England, his initial education was under the tutelage of his father, Rabbi Solomon Sassoon, Hakham Yosef Doury, and others. Later studies were at Gateshead Yeshiva and various yeshivot in Israel. He holds a Ph.D. in Literature from the University of Lisbon. He has published on topics ranging from Scriptural commentary and history, to issues of current concern to the Jewish community. This article appears in issue 6 of Conversations, the journal of the Institute for Jewish Ideas and Ideals.

One Shabbat, on which we read parashat toledot, I heard a talk-and was duly educated. "Don't be misled"-the speaker warned-"by your English translations that render the Hebrew word beMirmah (Genesis 27:35) as ‘guile' or ‘deceit.' Instead, to correctly convey the meaning of beMirmah one must paraphrase it as ‘not entirely in sync with halakha.'" He went on to explain that the Torah's words expressing disapproval or vilification, such as sheker, ra‘, resha‘, ‘avel, and so forth were basically synonymous-all denoting greater or lesser degrees of non-conformity to halakha. Conversely, the Torah's approbatory epithets-emet, tov, tsedek, and their like-denoted conformity; and were on no account to be confused with such non-halakhic notions as truth, goodness, and righteousness. He wrapped up with a general admonition to the effect that we must beware of projecting alien, subjective values onto Torah whose sole value is obedience to halakha.

At the time, and for many moons thereafter, I puzzled over that d'var torah. Because if biblical tov refers to halakhic adherence, how to understand its occurrence in Genesis 1:4 that says "God saw that the light was tov"? And as for its antonym ra‘, what to do about its verbal form leRa‘ot (Exodus 23:2)-especially as understood by the Oral Torah (Sanhedrin 2a and Rashi ad loc.)? Similarly with

emet; how should we construe its meaning in, say, Deuteronomy 13:15 or 17:4-or for that matter sheker's meaning at Deuteronomy19:18?

To be sure, here and there solutions to some of these perplexities would turn up. A book entitled Melakhim Omenayikh (Bene Beraq 1992) dropped a hint as to how tov's use in regard to light (and to other of God's creations, as in Genesis 1:10, 31) might connote conformity to halakha:

Perhaps, since as the Zohar teaches, God looked into the Torah and created the world it follows that the world was made to conform to Torah-not vice versa. Thus, it is not because people need food that birkat haMazon [grace after meals] was given; on the contrary, because one of the commandments is birkat haMazon therefore humans were created with a need to eat. Similarly, once it was said "A mother for the first thirty days after giving birth shall have her needs attended to by non-Jews" (Shabbat 129a)-the world being subservient to Torah-it became inevitable that non-Jews should be present in Jewish homes to tend mothers, their babes and other sick Jews.

Accordingly, the light will have been deemed tov inasmuch as it corresponded to its Torah blueprint. As to the Torah's commandment that courts of law seek diligently after emet, more than one disciple of the "obedience only" persuasion offered enlightenment. You see, they urged, you misunderstand the text because you approach it with prejudices such as the assumption that cross-examination of witnesses is merely a means to the end of getting at the facts of a case. That's erroneous; the Talmud categorically affirms the arbitrariness of the ‘ed zomem law (Deuteronomy19:16-19) in its famous dictum "‘Ed zomem [law] is an anomaly [hiddush]; for why otherwise do we [mechanically] rely on the second pair of witnesses and dismiss the first?" (Sanhedrin 27a). Surely that dictum proves that the halakhot of testimony, like all other halakhot, are to be followed to the letter without teleological considerations. Thus emet used by the Torah in connection with testimony, far from refuting the "halakhic-conformity" thesis, ratifies it-once you shed your biases and accept the inscrutability of the Torah's testimony laws as indicated at Sanhedrin 27a and confirmed by Rashi who defines hiddush as gezerat haKatub. This latter argument is of course specious. For in singling out ‘ed zomem as anomalous (hiddush), the dictum makes ‘ed zomem the exception that proves the rule. Yet whether sound or specious, one has to marvel at such special pleading whose only perceivable purpose is the elimination of concepts such as truth and falsehood from the Torah.
Some good folks suggested that these seemingly tortuous arguments should be viewed as mutations of the "jural" theory of moral law; or, alternatively, of Divine

Command Theory. Hastings' entry on the ancient debate between the teleological and jural schools was duly consulted:

[The teleological] was characteristic of Greek theories; the latter became dominant in Christian times. Their essential difference is this... [U]nder the teleological conception moral law is looked upon as a matter of self-expression ... and its laws are regarded as rules for the attainment of a good which every man [i.e. person] naturally seeks. In the jural system, on the other hand, it is not the natural value of an act that renders it moral, but its value as commanded by the law. It is not commanded because it is good, but it is good because commanded ... In the theological systems moral law is regarded as a rule of conduct which has its ground in the nature or will of God and not in the nature of man or in the consequences involved in obedience or disobedience to the law. The rule may be for the good of man, but it is for his good because it is the divine will, and not the divine will because it is for his good. (Encyclopoedia of Religion and Ethics, vol. 8 p. 833f.)

Obviously the jural shares with the anti-emet position its basic repudiation of the idea of right conduct being autonomously knowable. But beyond that point of convergence the two go their own sweet ways. For instance, the jural-even its theological version-does not preclude the possibility of a divine command recognizing human nature and working with it. Thus it would be quite feasible for a religious ‘juralist' to imagine God saying to human beings: "Behold I have created you with a capacity to distinguish life from death, truth from falsehood, good from evil, justice from injustice. Now unless I issue an explicit decree to the contrary, you are always to choose life over death, good over evil" and so on. On receiving such a divine command the religious "juralists" will diligently hone their God-given capabilities for distinguishing right from wrong. The scenario just described is not hypothetical, but rather the traditional Jewish understanding, from Abraham onwards, of what it means to accept Torah. Avraham avinu was so deeply convinced of God's demand for justice that he exclaimed "Will the Judge of all the earth not do justice!" Yet when equally convinced that the same God had told him explicitly, unequivocally and directly (not via another agent) to go and perform the out-of-character and seemingly unjust akeidah-he obeyed. In other words, there is no conflict in an Abrahamic-type faith between the belief in God's revealed "passion" for righteousness (see, for example, Deuteronomy16:20, Jeremiah 9:23, or Psalms 11:7) and a readiness to reverse course at God's specific and unmediated behest. Because for Judaism, God our Creator is also the Creator of Torah and its morality, all of which He can scrap or modify at will. Nevertheless, the suspension of Torah is not something even the most "jural" of Jews have to

watch for on a daily basis. Instead, their focus is directed to making just and life-enhancing choices resignedly and joyously in submission to the divine will as they find it manifest in Torah. Those who would contrive to expunge truth and righteousness from Torah must be driven by something other than a commitment to jural theory.

As for Divine Command Theory (hereafter DCT), like the religious version of jural theory, it has no use for autonomous morality. Robert Merrihew Adams may seem to be pushing it, but is in reality only drawing the logical conclusions of a robust DCT: "Suppose God should ask me to make it my chief end in life to inflict suffering on other human beings, for no other reason than that he commanded it [...] Will it seriously be claimed that in that case it would be wrong for me not to practice cruelty...?" (The Virtue of Faith, 1987 pp. 98-99, quoted by Paul Rooney in Divine Command Morality, 1996, p. 102).

DCT is thought to have been adumbrated by William of Ockham (d. 1347), the earliest known philosopher to explicitly reject an immutable natural law on the grounds of its incompatibility with revelation. This is how Frederick Copleston summarizes Ockham:

A created free will is subject to moral obligation ... [man] is morally obliged to will what God orders him to will and not to will what God orders him not to will ... "Evil is nothing else than to do something when one is under an obligation to do the opposite..." For St. Thomas [Aquinas] ... there are acts which are intrinsically evil and which are forbidden because they are evil; they are not evil simply because they are forbidden. For Ockham, however, the divine will is the ultimate norm of morality: the moral law is founded on the free divine choice rather than ultimately on the divine essence. Moreover, he did not hesitate to draw the logical consequences from this position ... "By the very fact that God wills something, it is right for it to be done ... Hatred of God, stealing, committing adultery, are forbidden by God. But they could be ordered by God; and if they were, they would be meritorious acts." (A History of Philosophy, vol. 3, pp. 103-105)

Rabbi Michael J. Harris's 2003 Divine Command Ethics also deals with Ockham, but Harris' main enterprise is to discover DCT in Jewish sources. The only unambiguous examples he is able to muster come from the writings of Yeshayahu Leibowitz (d. 1994).

Leibowitz repeatedly emphasizes ... that human needs, interests and values have no legitimate place whatsoever in Judaism. Characteristic is the following statement: "Judaism is not a programme for the solution of the problems of

humanity but [a programme for] the service of God." And in one of Leibowitz's sharpest formulations: "The essence of religion as service of God is that it conflicts with the needs and nature of man"... [He] frequently stresses that ‘the needs and nature of man' includes human moral needs. The service of God is at odds with human ethical perceptions. (Divine Command Ethics, p. 118)

These quotations encapsulate Leibowitz's definition of the Jewish faith-a definition he concocted dogmatically, making scant appeal to classical Jewish sources. So how, in fact, did he get round those countless sources that others take to be the ethical teachings of Scripture and Talmud? Harris does record that Leibowitz was once asked where "Love your neighbor as yourself" (Leviticus 19:18) fit into his scheme. He quipped that the verse continues "I am the Lord," words that call for nothing more than servile compliance. Too bad he was not pressed on the emet and tsedek Scriptures that lack the phrase "I am the Lord"! In any case, there is no evidence that he invested them with the one-fits-all meaning of "halakhic compatibility."

With Leibowitz we have exhausted all the standard "suspects" at whose door might have been laid the severing of Torah from its moral moorings. Thus all eyes are turned to our last hope: the enigmatic, so-called Analytic System (also Method or Movement; hereafter AM). Originally developed by Rabbi Hayim Soloveitchik of Brisk (or Bresc, d. 1918), it is perpetuated, mutatis mutandis, in several American and Israeli yeshivot. The system's practical ramifications that relate to Talmud study are familiar enough and doubtless less recondite than its "metaphysics." But that too may be glimpsed thanks to the research of a number of scholars. Let us cite two of the most incisive studies. First, R. Norman Solomon's pioneering monograph The Analytic Movement: Hayyim Soloveitchik and his Circle (Atlanta, 1993):

The Analytic Movement is an important key for understanding contemporary Orthodoxy. The reification of halakha points directly to J. D. Soloveitchik's philosophy in which the world of halakha is seen as an a priori realm that confronts the worlds of science and religion. This underlies the absolutization of halakha and its sundering from its roots in social reality... (p. XI)

The basic requirement of this [the Analytic] approach is that the Law be upheld at all costs. If there is a contradiction between law and any other source of knowledge, the other source must yield. Thus we read of [R. Baruch Dov] Leibowitz that "he always said the Torah cannot be understood by the logic of human reason, but by the ways and principles of the Torah; therefore one should adapt one's understanding to the Torah, not the Torah to one's understanding."

This is indeed a far cry from the contention of the medieval philosophers that the Divine will was in conformity with reason ... This attitude has recently been referred to by the appropriate name of "Pan-Halakhism"... Pan-Halakhism must be distinguished from the traditional Jewish belief in the comprehensiveness of Torah. It differs in two ways. 1) The Analytic concept of Torah is a far narrower one than that of earlier rabbis, or of the Hassidim. It is law in its most restrictive sense, the "four ells of Halakhah," which constitute Torah for most of the analysts... 2) As we have seen, the traditional belief in the infallibility and comprehensiveness of Torah did not imply mistrust of reason... Analytical Pan-Halakhism, however... is associated with the denigration of unaided human reason and a conviction, or at least a fear, that Reason and Revelation are contradictory. (pp. 227-228)

The second is Be-Torato Yehgeh by the late Rabbi Shimon Gershon Rosenberg (ShaGaR), published in 5769 under the editorship of Zohar Maor. Roughly two chapters of the book are devoted to AM. The following excerpts seem signally germane and are therefore reproduced here in English translation.

For the Brisk method of study a healthy human reason is not a prerequisite. Neither is experience in the topic of study nor any particular concept of values. On the contrary, it totally negates any idea of the Torah giving vent to a moral message. Human evaluations of morality are irrelevant to Torah discourse. Taking as his starting point the midrashic-zoharic statement "God looked into the Torah and created the world," R. Hayim of Brisk commented: Behold, the Torah's laws appear to accord with a proper functioning of society. Thus, murder and theft ... that the Torah prohibits are destructive of society and one might assume the reason for this prohibition to be the preservation of society. However, that assumption would be wrong. The opposite is true: only because it is written in the Torah "Thou shalt not kill" did murder turn into a destructive act. (p. 86; cf. Melakhim Omenayikh cited earlier)

In the first place, he [R. Hayim of Brisk] purified halakha of everything external to itself. According to his method, all psychologizing and historicizing must be rejected totally ... halakhic thought travels on its own unique track. Its laws and principles are not psychological-existential but rather ideal and normative like logic and mathematics. (p.118)

The above characterization of halakha agrees entirely with the formalistic Brisk method of learning: it is not our duty to understand but to define because Torah is mind divine [and] super-human. Whoever studies the halakhic lectures (shiurim) of the GRY"D [Gaon R. Yoseph Dov Soloveitchik, grandson and intellectual heir of

R. Hayim] discovers that this approach describes also his halakhic discourse. This is what enables the GRY"D to continue with his Brisk method of learning and to ignore in his lectures all talmudic research as well as the historic aspect of halakha. The concept of the halakha as a norm without meaning-being derived from the supreme will and existing as an a priori, ideal entity-means that it is immune to all criticism whether value-based, historical or any other. This [concept of halakha] constitutes Orthodoxy's main line of defence against modern enlightenment and scholarship. (ibid.)

The penultimate sentence of this last quotation is among ShaGaR's most probing, inasmuch as it identifies the system's overarching objective which is to shield halakha-or rather its own model of halakha-from potential criticism "whether value-based, historical or any other." Of course, the greatest threat to the system is posed by Scripture and Talmud's ostensibly moral exhortations-which would explain the compulsion of so many AM apologists to neutralize those exhortations. Just imagine what would happen were Torah understood to have truth in mind when it demands emet; or to have injustice in mind when it proscribes every kind of avel. It would undermine the entire Analytic edifice.

At last the pieces were falling into place. It was indeed due to our preconceptions that the beMirmah homily had dismayed so many of us. Had we grown up on an AM diet, the homily might have seemed, at maximum, caricatural. But, for better or worse, our education left no room for the notion of a Torah ‘beyond good and evil'. We were not taught how to anesthetize scriptures such as Deuteronomy 4:8, let alone instructed so to do. Deuteronomy 4:8 reads "What great nation is there whose statutes and laws are righteous as is all this Torah which I am setting before you today?" The beMirmah homilist and his school, for whom the word righteousness denotes conformity to halakha, would presumably make this verse say, tautologously, that the Torah's laws and statutes are consonant with halakha-or else they would have to face the intolerable prospect of Torah recognizing, or worse still appealing to, righteousness as Rambam believed Deuteronomy 4:8 to be doing (see Guide 3:26).

But to be fair to AM, in its day theories challenging halakha (directly or indirectly) were on the march and had to be met. Even in innocent looking remarks there might lurk a latent threat. Take, for example, a famous passage from Benjamin Cardozo's essay Paradoxes of Legal Science. "When faced with a new situation," he wrote, "it is most tempting to maintain continuity merely by refusing to change the forms or formulas of the law. To think that is continuity is, however, sheer illusion. The similarity is verbal only; it no longer has the same relationship to

reality-and cannot have the same function in society" (published in Selected Writings, p. 257). Cardozo obviously treats "the forms or formulas of the law" as subservient to a higher goal. Thus he declares himself a proponent of the teleological theory that allows one to view legal procedures as means to an end. And in the case of law the end is, presumably, the attainment of justice. Transferred into a Jewish context, what would Cardozo say about a procedure such as migo (to pick a random example)? Would he retire it? Now migo literally means "since"; but in its technical sense denotes the rationale for believing someone who makes a modest claim before the court when a bigger claim could have been made without loss of credibility. The court figures "since" the claimant did not go great guns, chances are he/she is telling the truth. Hence migo is usually understood as a tool available to the courts in their pursuit of justice (for more on migo see Menachem Elon's Jewish Law, Vol. 2 p. 995). The problem arises when the general public learns of the migo. Because once that happens unscrupulous claimants, banking on judges believing a lesser claim, could be tempted to make that claim falsely. Such potential for manipulation must surely render the migo ineffective and therefore questionable for indiscriminate use, as noted by Asher Gulak (see Yesode haMishpat haIvri, Vol. 4, pp. 108-109). Needless to say, an extreme anti-teleological position would not allow considerations of migo's loss of efficacy to enter the picture, because migo is no more a means to an end than testimony itself. And remember, where there is no "end" or telos there is no "means" either; or put Jewishly, everything ordained by halakha is an end in itself. Only those who continue to esteem equity and justice as cornerstones of the Torah Revelation, as did our ancient sages, agonize over the robotic use of tactics such as migo-devised originally to further justice not to hinder it (cf. R. Samuel Uceda's Midrash Shemuel to Avoth 1:1).

But then our sages of old did not disdain lidrosh ta‘ama dikra [to seek out the reason underlying, or implicit in, Scripture]. Admittedly, ta‘ama dikra is associated primarily with the tanna R. Shim‘on, but that is not to say other tannaim negated it. Indeed the Talmud (Sanhedrin 21a) shows R. Yehudah to have applied ta‘ama to the law prohibiting the king to multiply wives. R. Shim‘on merely carries it to greater lengths as demonstrated by R. Mordecai ben Hillel Ha-kohen (d. 1298): "How come Rabbah interprets the Torah's reason for imposing an oath upon the defendant who concedes part of the claim against him (B.Q. 107a) if nobody but R. Shim‘on seeks out the reasons underlying Scripture? The answer is that anything surprising, such as the oath taken on a partial confession, elicits ta‘ama on all sides. Another example may be seen in tractate Sotah (3a), where the reason proposed for a single witness sufficing in the case of sotah is universally adopted; likewise the reason given at Sanhedrin 76b for the omission of the word

yad in connection with metal" (Mordecai to B. Q. para. 138. See also Melo ha-Ro‘im by R. Jacob Sebi Jolles, Zolkiew 1838 part 2, folios 9b-10b; Warsaw ed. 1911 [reprint NY 1962] pp. 298-301).

AM, on the other hand, abjures ta‘ama as a dynamic for accessing Torah. Of course, its teleological character must render ta‘ama anathema to any full-fledged DCT. However, Jewish constructs of DCT cannot ignore the Talmud's invocation of ta‘ama. But AM, undaunted, explains away ta‘ama's talmudic presence no less deftly that it does other teleological indicators that rear their menacing heads in our canonical sources. Ta‘ama in the Talmud belongs to the original fabric of Torah itself and, as such, is inimitable and certainly unavailable for use by mere mortals.

The question ‘why' leads to the search for meaning-something that the lamdan [one who applies lomdus, i.e. Lithuanian-stlyle methodology, to sacred texts] avoids like fire. Any attempt to look for meaning is doubly insidious. For one thing, such attempts would eliminate the infinite chasm that exists between Torah and ourselves. (When asked how come the gemara does not hold back from inquiring into ta‘ama dikra, R. Hayim replied that the gemara is itself Torah. But for us such inquiry is entirely precluded.) Secondly, looking for meaning is an attack on halakha's status as a system hermetically sealed against everything extrinsic to it. The dread of infringing on this absoluteness is what impelled R. Hayim to say that it is not for us to solve kushiot [difficulties arising from apparent contradictions within the Talmud etc.] but rather to demonstrate that there are no kushiot to begin with. For there must never be a situation, even momentary, when the Torah's impeccability is in doubt. (Be-Torato Yehgeh, p. 84)

Once on the eve of Succoth a guest returned to his hotel with a large and beautiful etrog. He asked the management for the safest spot to keep it, explaining that an etrog is a delicate fruit and its steeple-like protruberance or style (pittom) even more so. Indeed, so vital is the style, he continued, that were it to get damaged all would be lost. Some conscientious personnel began to worry lest the maintenance or cleaning crew knock it when they go into the etrog owner's room. So they nipped off the pittom from the etrog, wrapped it carefully and locked it away in the safe.

Insofar as it drives a wedge between halakha and the rest of Torah, one has to wonder whether Brisk's well-intentioned and ambitious apologetic has been worth the prodigious cost.