

## **Ethical Norms as the Foundation of Torah**

*By Rabbi Ethan Tucker*

### **I. Introduction**

The Torah and ethical norms are not supposed to be in conflict. One of the most difficult and wrenching experiences one can have is to feel that they are. We have all felt it at one point or another, if only for a fleeting moment: Our understanding of what God wants of us and our understanding of what is demanded of the average, decent person sometimes feel irreconcilable. Even more deeply, the Torah often speaks in very different terms and with very different assumptions than does any given contemporary discourse of ethics and morality. Should these two different discourses and frames remain separate or ought they to be integrated in some meaningful way? Is the parochial covenantal discourse of the Jewish covenant meant to be walled off from a more general human discourse about what is right? Or does the Torah intend for these conversations to be unified, even if a great deal of learning and searching is required in order to bridge the apparent gaps between them?

This week, we will explore these questions by looking in depth at a lengthy passage from one modern rabbi who tackled this issue. Unlike in other essays, where we aim to look at a broad range of texts, this essay will look at this single source as a potential model for our own answers to these questions today. Like all texts, it is the product of a specific time and place and is deeply colored by its context. Nonetheless, I have found it to be a powerful articulation of the basic questions and values that ought to undergird our engagement with our overlapping obligations as Jews and human beings.

### **II. Ancient and medieval background**

In a way, the Torah addresses this question explicitly. In **Devarim 4:6** the Torah says the following:

ושמרתם ועשיתם כי הוא חכמתכם ובינתכם לעיני העמים אשר ישמעון את כל החקים האלה ואמרו רק עם  
חכם ונבון הגוי הגדול הזה

You shall guard and perform [the *mitzvot*], for doing so is your wisdom and understanding in the eyes of the nations. When they hear all of these rules, they will say, “What a wise and understanding people is this great nation!”

We can read this verse through its surface meaning: The *mitzvot* are obviously good, attractive, and compelling, such that doing them will quite evidently evoke appreciation—and even envy—from outsiders who encounter a life based on them. Moshe here is exhorting the people to recognize what a good thing they have. But one need not dig too much deeper to hear that the text here is not necessarily making just a descriptive claim here, but a prescriptive one as well. The Torah and its *mitzvot* are *supposed* to evoke this sort of admiration from outsiders. If it does not, something is wrong. It is not a far leap from here to suggest that interpretations and applications of the Torah that evoke revulsion from external observers are potentially suspect and in need of deeper thought and reevaluation.

In the middle ages, Rambam makes this point explicitly, rejecting the notion that it brings honor to the Torah to claim it is beyond human comprehension. Rambam was particularly irked by contemporaries who cited various strange statements of our Sages at face value, even if they contradicted widely accepted theories of medicine and science. He lashes out at them as follows:

**פירוש המשנה לרמב"ם מסכת סנהדרין פרק י**

...מבינים אותם [דברי חז"ל] כפשטם ואינם מסבירים אותם כלל... חושבים הם שאין כונת חכמים בכל מאמריהם המחוכמים אלא מה שהבינו הם מהם, ושהם כפשוטם, ואף על פי שיש בפשטי מקצת דבריהם מן הזרות עד כדי שאם תספרנו כפשטו להמון העם כל שכן ליחידיהם היו נדהמים בכך ואומרים היאך אפשר שיהא בעולם אדם שמדמה דברים אלו וחושב שהם דברים נכונים, וכל שכן שימצאו חן בעיניו. והכת הזו המסכנה רחמנות על סכלותם לפי שהם רוממו את החכמים לפי מחשבתם ואינם אלא משפילים אותם בתכלית השפלות ואינם מרגישים בכך, וחי' ה' כי הכת הזו מאבדים הדר התורה ומחשיכים זהרה, ועושים תורת השם בהפך המכוון בה, לפי שה' אמר על חכמת תורתו אשר ישמעון את כל החוקים האלה וכו', והכת הזו דורשין מפשטי דברי חכמים דברים אשר אם ישמעום העמים יאמרו רק עם סכל ונבל הגוי הקטן הזה.

### **Rambam’s Commentary on Mishnah Sanhedrin 10**

...They understand [*Hazal*’s statements] on a surface level and do not explain them in any way... they think that the wise sayings of the Sages carry no meaning other than that which they have understood... and even if the surface meaning of some of their sayings are strange, such that if one were to explain its surface meaning to your average person, they would be astonished and say, “How could anyone ever say a thing like that?”... This group imagines themselves to hold the Sages in high esteem, but in fact, they utterly humiliate them without knowing it. By God, this group destroys the glory of the Torah and darkens its sheen. They make the Torah the opposite of what it ought to be, because God said about the wisdom of the Torah, “When people hear all of these laws, they will say, ‘What a wise and discerning nation!’” But this group expounds the plain sense of the Sages’ words such that if Gentiles would hear it, they would say, “How foolish and disgusting is this small people!”

Appealing to the verse from Devarim above, Rambam sees the external observer is an important barometer for judging if Torah is being read correctly. In Rambam’s reading, the Torah itself authorizes a kind of teleological preference for interpretations that will be broadly admired and respected.<sup>1</sup>

This line of thinking can be applied not only to our intellectual interpretations of Torah and its Sages, but to its vision of covenantal life through *mitzvot* as well. In other words, one of the very basic things the Torah tells us about itself is that it is intended to be a blueprint for life that telegraphs the soundness of its structure and beauty of its architecture. This is the departure point for our central text, which we turn to now.

### **III. Dor Revi’i: R. Shmuel Glasner**

We will now turn to a passage from the *Dor Revi’i*, a commentary on Tractate *Hullin* of the Babylonian Talmud composed by R. Moshe Shmuel Glasner.

---

<sup>1</sup> See also Rambam’s *Guide for the Perplexed* III:31, where he uses this verse as proof for the notion that all commandments must have reasons that will ultimately be evident to those who consider them.

First, a bit about Rav Glasner. The work is called the *Dor Revi'i*—the fourth generation—as a tribute to R. Glasner's relation to his great-grandfather, the Hatam Sofer. The Hatam Sofer was the leader of Hungarian Orthodoxy at the turn of the nineteenth century and a passionate defender of traditional Jewish forms and practices against the efforts of European religious reform. By naming his work *Dor Revi'i*, R. Glasner telegraphs that he sees himself as an heir to the tradition, as sustaining its vision in continuity with the past.

The term *Dor Revi'i* sends another message as well. In its original context in the Torah, the phrase דור רביעי is used when God addresses Avraham in the בְּרִית בֵּין הַבְּתָרִים / “The Covenant of the Pieces” in Bereishit 15. There, God tells Avraham that his descendants will be enslaved in a foreign land, but דֹּר רְבִיעִי יָשׁוּבוּ הֵנָּה / “the fourth generation will return here”, i.e. to the land of Israel. R. Glasner was also, unusually for his Hungarian rabbinic milieu, a passionate Zionist. He became deeply involved in the Mizrahi movement and one of its great defenders against attacks from much of the rabbinic establishment.

The larger point here is that he was a man who saw himself both as continuing traditional Judaism—he was not a reformer—and saw that changing circumstances in human history would need to evoke creative and bold interpretations of Torah.<sup>2</sup> He was also someone who saw Judaism as playing out on the stage of a broader humanity, and it is these syntheses that drives R. Glasner's analysis in the passage we will now analyze at length.

The *Dor Revi'i* is mainly a commentary on Tractate Hullin, but it begins with an introduction that engages broad theoretical issues around the dynamics of Torah, *halakhah*, and their interpretation. Our passage is one of the boldest in the introduction and responds not only to a theoretical question but a practical one.

The 19<sup>th</sup> century saw nationalism sweep Europe, but also the emergence of the modern, regulatory state. By the early 20<sup>th</sup> century, states were passing a slew of laws regulating aspects of life that had previously been largely untouched by government involvement. One particularly new and potentially intrusive area was the regulation of food. For reasons of both safety as well as animal cruelty, various foods and food practices began to be controlled and outlawed in certain European states.

One practice in particular drew some attention and highlighted a stark contrast between conventional Jewish practices and newly enshrined law. Sometimes, when a cow is slaughtered

---

<sup>2</sup> For more on R. Glasner, see his grandson's brief biography and assessment in D. Glasner, “Rabbi Moshe Shmuel Glasner, The *Dor Revi'i*”, *Tradition* 32:1 (1997): 40-56.

for meat, it is pregnant. Under Jewish law, the unborn fetus discovered after the death of the mother is known as a בן פקועה, literally “the child of one at has been torn open.” If the mother was properly slaughtered, this fetus that emerges is fully kosher meat and is not even subject to the normal rules of slaughter.<sup>3</sup> In keeping with that law, it was common practice for Jewish butchers to sell this perfectly acceptable meat to other Jews; indeed, the extremely tender nature of the meat ensured it was a delicacy and fetched a good price. But European governments viewed it differently, seeing the sale and consumption of such fetal meat as abominable, an affront to basic standards of decency. They outlawed the sale of such meat entirely and attached fines and imprisonment to the violation of this law. Nonetheless, many Jewish butchers continued to sell such meat on the black market, maintaining an internal Jewish practice that had existed for millennia. Implicitly, these observant Jewish butchers felt that the ethical impulses motivating such legislation were Gentile and external to Torah, and thus completely irrelevant to their own decision making process. Perhaps they were careful not to get caught, but they slept perfectly well at night, ignoring the ethical implications of such laws for Jews.

It is into this picture that R. Glasner enters as he forcefully argues against the practice of such butchers, but even more so against the theory of Torah and ethics that is motivating them. As we look closely at this passage, we will aim to understand his basic argument even as we analyze and critique it.

R. Glasner states his basic thesis up front:

דור רביעי, הקדמה, כו.-כו., ר' משה שמואל גלזנר, הונגריה, המאה הי"ט-כ'  
ועוד תדע דבכל דברים המאוסים שנפשו של אדם קצה בהם, אפילו לא היה התורה אסרתן, היה האדם העובר  
ואכלן יותר מתועב ממי שעובר על לאו מפורש בתורה כי כל מה שנתקבל בעיני בני אדם הנאורים לתועבה  
אפילו אינו מפורש בתורה לאיסור, העובר על זה גרע מן העובר על חוקי התורה.

**Dor Revi'i, R. Moshe Shmuel Glasner, Hungary, 19<sup>th</sup>-20<sup>th</sup> c.**

Moreover, understand that if one eats things that are disgusting and reviling, even if the Torah has not forbidden them, he is more abominable than one who violates an explicit biblical prohibition. If one violates anything agreed upon as abominable by enlightened

---

<sup>3</sup> See Mishnah Hullin 4:5 for the first articulation of this law. For a thorough collection of the detailed laws on this topic, see פקועה "בן פקועה ערך" in אנציקלופדיה תלמודית.

people—even if it is not explicitly forbidden by the Torah—he is worse than one who violates the laws of the Torah.

The Torah, says R. Glasner, forbids and requires many things. But it is also silent about many things as well. It never says, “Don’t eat a sandwich that has fallen into the gutter and is covered with polluted slime.”<sup>4</sup> Nonetheless, eating such a sandwich would be deemed revolting and disgusting by any reasonable person. Not only should we not mistake the Torah’s silence for neutrality on this front; rather, we should understand that committing such revolting acts is even *worse* than violating the Torah’s explicit prohibitions! In other words, eating such a filthy, disgusting piece of food is worse than eating pig!

What is the barometer for classifying something as reviling in this sort of foundational way? If an action is something that is “agreed upon as abominable by enlightened people,” then it is a more basic prohibition than anything the Torah singles out for us. Here we get a sense of the early 20<sup>th</sup> century context for this text. This text was composed during *La Belle Époque*, a time when it seemed to many Europeans that the Enlightenment was finally bearing its fullest and ripest fruit. A progressive spirit filled the air, a sense that both technology and morality were progressing to higher and higher levels, bringing humanity to an ever-improving future. For R. Glasner, the “enlightened people” he speaks of here represent his fellow non-Jewish Europeans whom he admires and feels to be decent people.<sup>5</sup> If such people understand something to be disgusting, the Torah cannot possibly be neutral on that point. Rather, that instinct must be incorporated into the Torah’s expectations of all people, including Jews.

Let’s continue on to get a sense of how this would work and what sort of rhetoric, biblical interpretation, and ideology makes this stance coherent and compelling:

---

<sup>4</sup> Talmud Bavli Shabbat 90b tells a story that seems to affirm the notion that it is forbidden to eat live kosher fish and insects, despite the fact that they need not be slaughtered, under the rubric of *לא תשקצו את נפשתיכם*, a phrase found in Vayikra 11:43. However, that story is specifically about eating a live insect and the verse in question is being read to create additional rules around the consumption of *living beings*. R. Glasner’s point here is much broader, relating to all forms of disgusting behavior, as we shall see. Therefore, this text does not do the full work he would need it to do in order to support his point. Makkot 16b gets closer to the idea here, filing under this rubric actions like delaying going to the bathroom and drinking liquids out of a horn used for bloodletting. Even here, R. Glasner may have turned away from these as potential precedents because Rambam Ma’akhalot Asurot 17:29-31 seems to classify all of them as rabbinic, not biblical laws. R. Glasner aims to make a much stronger point than that here.

<sup>5</sup> It also seems clear to me that “enlightened” here is also implicitly a colonialist hedge. R. Glasner was aware that there were a number of human societies—many of them south of the equator—that did not display the same revulsions shared by Europeans. This strikes me as his effort to acknowledge that he does not need to point to universal human agreement on something in order for a more targeted consensus among people “like him” to be legally and philosophically meaningful.

למשל התורה אמרה לא ילבש גבר שמלת אשה, אבל שלא לילך ערום בשוק לא איפרש בתורה שהוא אסור, אבל הוא נימוס וחוק קבוע אצל כל בעלי דעה, ואדם וחיה מיד אחר החטא הרגישו בעצמם פחיתות גדול לילך ערום כחית השדה, ויתבששו ויתפרו עלי תאנה לעשות מהן חגורות לכסות בשר הערוה. ועתה אשאלך: מי שקץ משנתו ומושכב ערום במטתו, והבית בו ער באש עד שמוכרח להמלט על נפשו ולרוץ החוצה, ואין לפניו רק שמלת אשה לכסות ערומיו, מה יעשה? מוטב לצאת ערום בקרית חוצות שאין בזה לאו מפורש, מללבוש כסות אשה שיש בו לאו דלא ילבש? ועיין בי"ד סימן שע"ב בכהן ערום באוהל המת ועיין בפ"ת אית ס' בשם הנודע ביהודה דעכ"פ ילבש הכתונת והמכנסיים. ובעיני פשוט הדבר דלצאת ערום עבירה יותר גדולה מלהשהות מאהל מת, או לבישת שעטנז ובגד אשה, כי היא עבירה המוסכמת אצל כל בעלי דעה. והעובר עליה יצא מכלל אדם הנברא בצלם אלקים.

For example, the Torah says that it is forbidden for a man to wear women's clothing, whereas the act of walking naked in public is not explicitly forbidden anywhere in the Torah, rather it is a standard norm for all intelligent people. Adam and Hava, immediately after the sin, felt great humiliation walking around naked like wild animals and they were embarrassed and sewed fig leaves to make clothing out of them in order to cover up their private parts. Now let me ask you: Consider a man who wakes up in the middle of the night, lying naked in his bed, to find his house ablaze such that he needs to run out in order to save his life. If the only thing available to cover up his nudity is a woman's dress, what should he do? Is it better for him to go out naked in public, since there is no specific prohibition against this, rather than wear a woman's dress, which would violate a prohibition?... To me it is obvious that to go out naked is a much greater transgression... because this is a transgression that all intelligent people agree on. And one who violates it can no longer be classified among those created in the image of God.

The thought experiment here is vivid and speaks for itself. The choice is clear: violate the explicit biblical prohibition on cross-dressing, or go out naked in public, an action never explicitly prohibition by the Torah, but widely recognized in all human societies as a deviation from a basic norm.<sup>6</sup> R. Glasner gives a non-nuanced answer to this thought experiment: It is totally obvious that one must avoid nudity even at the cost of cross-dressing. This approach is

---

<sup>6</sup> Of course, the history of nudity is more complex than this, but it is indeed fair to say that all organic human cultures—as opposed to consciously nudist ones—all have some form of clothing that is meant to be worn in public, even if the areas expected to be covered differed widely, and even if certain contexts, such as athletics, bathing, and battle might also be treated as clothing-free zones. Nonetheless, R. Glasner is primarily speaking to his European audience where such public nudity devoid of any specific context would have been outrageous.

particularly striking because it even demands a slight delay in getting out of the burning house, such that we can't say that he softens his stance on cross-dressing in the context of a life-saving situation. No, his point is precisely that even when narrow textual and self-preservational theory might lead one to think that the Torah's ban on cross-dressing must be upheld even at the expense of one's dignity, this is not so. And this is not a concession by R. Glasner to human needs; it is instead a proper understanding of the Torah itself.

His use of two narrative elements in his argument can help us understand the implicit argument. He appeals to the story of Adam and Hava, noteworthy for two reasons: the characters' non-Jewish status and the story's location towards the beginning of the Torah, prior to any revelation of specific laws to the Jewish people. This reveals a very specific exegetical approach. One might be tempted to read the Torah as an initial (failed) story of God's attempt to build an enduring relationship with all of humanity, a story that is ultimately eclipsed and replaced by the story of God's covenant with the Jewish people. On this reading, the revelation at Sinai wipes our memories clean and starts over with a pristine set of *mitzvot* that now define the entirety of religious obligation. It is almost as if the Jew is a new kind of human being, endowed with a covenantal lexicon that cannot be compared to anything that came before. Stories about Adam and Hava—and even the pre-Sinai patriarchs and matriarchs—are nothing more than historical build-up to the enduring relationship between God and the Jewish people. R. Glasner rejects this reading entirely. Instead, he sees these early narratives as the *basis* for the Jewish people receiving the Torah. The Torah chooses to tell us the story of Adam and Hava's shame at being naked in order to emphasize that the Jewish people only receive their specific *mitzvot* against the background of their basic humanity. Norms shared by all intelligent people are more fundamental than the specific prohibitions found in the Torah because they are *prior* to them.

This is more dramatically borne out by his implicit citation of the very first chapter in the Torah and its claim that all human beings are created בצלם אלקים/in the image of God. When R. Glasner derides the person who would go out naked in public rather than cross dress as being unworthy of this lofty title, he is not merely using fighting words in order to make a point. He is asserting that a person who does so has essentially misunderstood and misread the entire Torah. Being created in the image of God—and self-understanding as such—is a *criterion* for receiving the unique Jewish revelation that is the Torah. One who understands Jewish *mitzvot* as unrelated

to more basic and general norms of human dignity and decency has essentially erased the first chapter of Bereishit has having any ongoing relevance for their life. How can such a person be regarded as having being created in the image of God? They deny the very relevance of that story to their life!

The right metaphor for understanding this paragraph is that of a multiple story house. According to R. Glasner, the foundation and first story of this house are the standards of human dignity and decency that are basic elements of the human condition. Before the Torah ever came along, before the Jewish people came along, there were human beings, created by God in the divine image, possessed of certain moral and ethical instincts, and expected by God to rise to certain standards. Sinai represents the decision to build up, to add further stories above the ground floor that would bring the Jewish people to greater heights of religious and ethical achievement. But just as the removal of the foundation and the ground floor will cause even the best-built building to collapse, so too it is inconceivable to imagine the lofty Jewish covenant without the basic human foundation on which it is built. For R. Glasner, more general human imperatives are not alternatives to Torah, nor have they been retired by Torah. Instead, they are the unspoken foundation of Torah. Anyone who forgets this is not merely living a religiously impoverished life, but a false one, distorting the very story the Torah tells about itself.

R. Glasner now goes on to provide an even more vivid thought experiment:

עוד משל אחת, בשר אדם לדעת הרמב"ם אינו אלא באיסור עשה, ולדעת הרשב"א מותר לגמרי מה"ת, ועתה אמור נא בחולה שיש בו סכנה ולפניו בשר בהמה נחירה או טרפה של חיה טמאה ובשר אדם, איזה בשר יאכל? הכי נאמר שיאכל בשר אדם שאין בו איסור תורה אע"פ שמחוק הנימוס שמקובל מכלל האנושי—וכל האוכל או מאכיל בשר אדם מודה מלהיות נמנה בין האישים—ולא יאכל בשר שהתורה אסרו בלאו?! היעלה על הדעת שאנו עם הנבחר, עם חכם ונבון נעבור על חוק הנימוס כזה כדי להנצל מאיסור תורה? אתמהא!

Another example: According to the Rambam, the ban on consuming human flesh only violates a positive commandment [as opposed to a violation of a negative commandment, which is more serious], and according to the Rashba, it is biblically permitted to consume human flesh [and this is only forbidden on rabbinic authority]. Tell me: If a person deathly ill has a choice between eating non-kosher meat or human flesh, which should he eat? Would we possibly say that he should eat human flesh because it is not biblically forbidden despite the fact that it is forbidden by all basic norms of human

society—indeed, anyone who eats human flesh or feeds it to someone else is considered beyond the pale of civilization—rather than eat meat forbidden by the Torah?! Would anyone entertain for a moment the notion that we, the chosen people, a wise and understanding nation would violate such a basic norm in order to avoid a biblical prohibition? Impossible!...

Truth be told, this thought experiment lies less in the realm of the theoretical and has had played out any number of times in human history. The parameters are fairly straightforward. The Torah never says, “Don’t eat people.” This simple fact cannot be denied, as surprising as it may be when we first hear it.<sup>7</sup> Indeed, the traditional commentators were well aware of this and did not codify a prohibition on cannibalism as one of the Torah’s negative commandments. Rashba says this directly: Any effort to ban cannibalism in Jewish law cannot rely on the authority of a specific verse in the Torah; it must rest on rabbinic authority.<sup>8</sup> Rambam finds a way to at least see a ban on cannibalism as implied in the Torah’s affirmative authorization to eat only certain animals: If the Torah tells us we are allowed to eat cows, sheep and goats, doesn’t it thereby suggest that we should not be eating people?<sup>9</sup> But even this formulation lacks the force of an outright prohibition. As rabbinic sources say elsewhere, עשה, עשה, לאו/“A negative commandment that is only implied by a positive commandment, is treated as a positive

---

<sup>7</sup> Time and again when I convey this point to people, there are always some who resist and who try to find a way to read a ban on cannibalism into the Torah’s words. But there is no way to do it, at least not in terms of the words of specific commandments. The ban on not eating animals without a split hoof applies to the category of בהמה, which is distinct from, and gives no guidance as to, the wholly different category of אדם. Indeed, see Sifra Shemini Parashah 2 Perek 4 Halakhah 4, which specifically asks whether there is a negative biblical commandment against eating human flesh and concludes that there is not. As much as it may be obvious that the Torah abhors cannibalism, perhaps even more so than the consumption of forbidden animals, this conviction has to be argued for and proven in the fashion R. Glasner does so here. It cannot be derived by simply locating a verse that says so directly.

<sup>8</sup> The textual basis for the Rashba is likely Tosefta Keritot 2:18, which says that the blood of humans may not be consumed but one is not subject to lashes (or *kareit*) if one consumes it. It is a reasonable (though not entirely necessary) to extrapolate from the lower level prohibition here to human flesh. One might invoke this Rashba to challenge R. Glasner’s claim that cannibalism is ever *more* forbidden than any of the Torah’s specific prohibitions. Doesn’t Rashba here assert that cannibalism is of a lesser authority than any biblical law, such as the ban on eating pig? I think R. Glasner would respond that the Rashba is only talking about the formal jurisprudential authority of the Torah and its system of punishment. Indeed, the Torah only claims corporal and capital authority over its own laws, and it is thus not possible to give someone lashes for cannibalism under the Torah’s rules, since no explicit negative commandment can be pointed to in the text. But this has little to do with the moral issues at stake, which are larger and more fundamental than the Torah. As we have seen, for R. Glasner, the Torah assumes these prohibitions as pre-conditions for making its more parochial legislation make sense.

<sup>9</sup> See Rambam Hilkhos Ma’akhalot Asurot 2:3, where he refers to Vayikra 11:2 and Devarim 14:5 as the verses that imply that people should not be eaten.

commandment.”<sup>10</sup> And the consequences for failing to perform a positive commandment are never as weighty as the consequences for violating a negative one.

Therefore, how should one analyze a choice between eating swine flesh and human flesh? If we simply “do the math” of the internal system of Torah, as if it is a discourse isolated from any other moral considerations, it is difficult to get to a place where one could justify eating the swine flesh. After all, the Torah says, “Don’t eat pig,” but it does not say, “Don’t eat people!” It is precisely this sort of thinking that R. Glasner comes to combat here. But how to make the case? Yes, his conclusion seems intuitive to most of us, but is there any way to ground it in something more than an emotional, rhetorical argument?

The next passage attempts to do this:

ואני אומר דכל שמתועב בעיני האומות הנאורים אסורה לנו בלא חילול השם, מטעם המצוה דקדושים תהיו. וכל שאסור לכלל מין האנושי הנאורה בחוק הנימוס אי אפשר להיות מותר לנו עם קדוש, שמי איכא מידי דלדידהו אסור ולדידן שרי? והתורה אמרה שהגויים יאמרו: "כי מי גוי גדול אשר לו חקים ומשפטים צדיקים, ואם המה יעמדו על המדרגה יותר גבוה בחוקים ונימוסים, הרי יאמרו עלינו, "עם סכל ונבל" ולא חכם.

I say that anything that is revolting to enlightened Gentiles is forbidden to us, not just because of *hīlul ha-shem*, but because of the command to be holy. Anything that violates the norms of enlightened human beings cannot be permitted to us, a holy nation; can there be anything forbidden for them but permitted to us? The Torah says that the nations are supposed to say: “What a great nation, with such just laws and statutes!” But if they are on a higher level than we in their laws and norms, they will say about us: “What a foolish and disgusting nation!”

First, R. Glasner clarifies what he is *not* talking about. One way of getting Jews to be in line with Gentile-approved norms is to invoke the doctrine of חילול השם/“the desecration of God’s name.” This refers specifically to the notion that something might be technically permitted under the letter of the law, but actually putting that law into practice would be embarrassing for the Jewish people and lower their estimation in Gentile eyes. Such concerns can indeed be effective motivators for behaving in certain ways, and this concept has a solid history in Jewish

---

<sup>10</sup> See Talmud Bavli Pesahim 41b for one example.

law as well.<sup>11</sup> But, at the end of the day, when something is forbidden under the rubric of חילול השם, it means that when the lights are off and the camera stops running, when the Gentile gaze has been averted, there is no reason to behave in accordance with external Gentile norms. The entire category is essentially about public relations. It is a serious concern, to be sure, but an externally imposed one that would not be operative in the isolated Jewish world of Torah and *mitzvot*.

R. Glasner is here talking about something totally different. Yes, when human opinion has squarely and resolutely lined up against the morality of a given activity, that is a religiously significant fact, but not because of the public relations concerns. Rather, a universally-shared revulsion at something is a *barometer* of that thing being beyond the bounds of basic human decency. And that, in turn, should make us realize that the thing in question is regulated by the *internal* Torah command of קדשים תהיו, the demand to be holy.<sup>12</sup> This means that, even on a desert island populated entirely by Jews, the awareness of the human consensus on this issue pushes those Jews to adopt that universally accepted standard from within, as they tap into their own basic humanity. But the strongest proof for this exegesis comes from the Torah's self-description with which we began this essay. Building on Rambam's use of Devarim 4:6 in the intellectual realm, R. Glasner now applies it to the realm of ethics, morality and human decency. The story the Torah tells us about itself is that the way of life it prescribes for the Jewish people is meant to be the envy of the world. People are meant to encounter an observant Jew and to say, "This seems like the most fantastic and wise way of living one's life that I can imagine." The moment that a person's interpretation of Torah would evoke the deep disgust of the average civilized person is the moment when the Torah's intended story about itself has been

---

<sup>11</sup> The earliest rabbinic reference to this notion that certain things are forbidden because of the impression it will give Gentiles of the Torah and Jews is Tosefta Bava Kama 10:15. R. Glasner also cites Responsa Hakhm Tzvi #74 as an example of this sort of jurisprudence. The responsum deals with a case of an animal that has been involved in a sexual act with a person. Such an animal may not be offered as a sacrifice, but may it be eaten if properly slaughtered? Hakhm Tzvi concludes that it may, but with one exception: If the surrounding Gentiles would never eat such an animal because they consider it repulsive, then it is forbidden for Jews to do so under the rubric of חילול השם.

<sup>12</sup> Here, R. Glasner is channeling Ramban's interpretation of Vayikra 20:1, which, he writes, is intended to combat the problem of being a נבל ברשות התורה "a scoundrel within the boundaries of the Torah." One can observe all of the dietary laws and nonetheless be a glutton; hyper-legalism always beckons evasion of the spirit of the law by all too faithfully observing its letter. R. Glasner takes this notion, pioneered in the Ramban to combat certain libertine behaviors, and applies it to a broader notion of basic human morality that is meant to undergird the entire system of Torah.

lost. For R. Glasner, it is a bedrock principle of the Torah, a core internal principle of Jewish law, that Jews can never be perceived to be on a lower level than their Gentile neighbors.

It should be clear that our metaphor of a static building set on a foundation is insufficient to capture the force of this paragraph. Instead, here we are better served by the image of a boat floating above the water. The waterline represents the basic human standards of decency and morality that we expect of all people. The Torah is a boat that floats above that level, meant to give its passengers an even greater sense of responsibility. The parochial covenant rests on top of the universal mandate from which it sprung. But if the waterline rises, clearly so too must the boat. If the boat is anchored to a fixed point, it will be submerged by the rising sea levels and soon be entirely underwater. This, says R. Glasner, is impossible and unimaginable. Even if certain universal human norms are not *historically* prior to the Torah, they are surely *philosophically* prior to it. It doesn't matter if humanity considered a certain action to be neutral from most of its history. If all enlightened, decent, intelligent people come to abhor that action, then the Torah implicitly tells us, through Vayikra 20 and Devarim 4, that Jews must abhor it as well. In fact, it is even more basic that that: Jews are also human beings, and the Torah never wants us to forget that. Instead of seeing an emerging human consensus around a given practice's morality as a challenge external to Torah that must be grappled with, we should instead see the human part of ourselves and of the Torah calling to us to reckon with this aspect of God's word as well.

This then leads fairly neatly to the following practical conclusion:

ומהאי טעמא לפי עניות דעתי יש למחות ביד השוחטים שיש מהם שאוכלים בן פקועה הנמצא מת בבטן הבהמה גם מוכרים לאחרים בתורת בשר עגל רך, דבר המתועב ומאיס בעיני כל, ואסור על פי חוקי כל מדינה ומדינה בעונש תפיסה... ולפי דעתי דכל זאת יש לאסור מדינא, מפני שמדרגתנו צריכה להיות תמיד גבוה ממדרגת שאר האומות בנימוס ובמוסר, ולא נמוך מהם.

היוצא לנו מכל האמור, דכל המתועב בעיני אדם כלל האנושי אף על פי שאין על הדבר אזהרה מפורשת בתורה, אסור עלינו יותר מאיסורי התורה, ולא מצד חילול השם לבד... אלא משום דמה שנאסר לבני נח אי אפשר להיות שרי לנו... וכל המתעקש בזה הוא משפיל כבוד התורה, יגרום שיאמרו עלינו עם טפש ונבל תמורת עם חכם ונבון, ודו"ק היטב.

Therefore, in my opinion, we must try to stop those butchers who eat and sell the fetuses found in the wombs of slaughtered animals [which are permissible according to rabbinic

law], for this sort of meat is universally reviled and is forbidden on pain of imprisonment in every country... In my view, this is all forbidden under the letter of the law, for we must always be on a higher level than the other nations in our norms and our ethics, never lower... What emerges from this is that anything reviled by human society in general, even if it is not explicitly forbidden by the Torah, is forbidden to us even more than explicit biblical prohibitions. And not just because of concerns of *hilul hashem* alone... but because that which is forbidden to Gentiles cannot be permitted to us... Anyone resistant to this point denigrates the honor of the Torah and leads others to say that we are a stupid and disgusting people instead of a wise and understanding one.

Concluding with the thesis statement with which he began, R. Glasner emphasizes: The Torah is not neutral about things that are repulsive to humanity. Even if its text is silent about a specific action—such as eating fetal meat—the moment such an action becomes a litmus test of basic morality from a human perspective, one can no longer claim the Torah’s agnosticism as justification. This vision of Torah and *mitzvot* asserts that the Jewish and human stories are not separate and competing frames. Rather, the Torah tells a story of a Jewishness that emerges from humanity and a particular revelation that emerges from, is built on, and remains interdependent with a more universal human ethics. Asserting this does not downgrade the Torah. In fact, it is the only way to truly honor it.

#### **IV. How far do we take this?**

This model potentially has far-reaching implications, and may feel as if it could destabilize all recognizable structures of Torah and *mitzvot* in the face of significant shifts in human opinion. Even if we have a high bar for what counts as something considered “reviling by all enlightened people”—and I think R. Glasner’s bar was indeed high in this regard—is it really true that any time a human consensus emerges that something is repulsive that one always prefers to avoid that thing over obeying a biblical commandment? Obviously, in the vast majority of cases, there is no need to choose between general human norms and specifically Jewish ones. One can be faithful to both simultaneously. But is it really the case that whenever the two are in conflict, the general human norm wins? What happens when human norms on sexuality shift drastically and

conflict with the Torah's laws? What happens if circumcision is regarded as a barbarity? Doesn't R. Glasner's model just lead to the self-liquidation of Judaism in the face of external norms?

Hopefully I have conveyed enough about R. Glasner to establish that he clearly did not have a goal of such a self-liquidating view of Torah. Nonetheless, sketching out what his theory would look like as a practical guide beyond its rhetoric requires some further work. I would suggest that it is important to separate out three cases that might behave quite differently from one another:

- 1) Cases where the Torah is silent about something broadly viewed as repulsive;
- 2) Cases where the Torah affirmatively commands an action that the world has come to view as repulsive;
- 3) Cases where the consequences of enforcing one of the Torah's prohibitions has come to be viewed as repulsive.

### *1. Filling a vacuum*

The first category here is in some ways the “easiest,” and is the direct subject of R. Glasner's argument. If nothing in the Torah explicitly cuts one way or the other on a given topic, and human morality falls out squarely on one side of the issue, then it is relatively uncontroversial to assert that one should be “strict” for the aspect of general human morality, and even to assert that this is the Torah's intention. The fetal meat at issue in this passage may have been consumed for generations, but if doing so has become a barbarity in general society, then it indeed becomes more unimaginable to eat it. And one can imagine extending this logic to other cases as well. If we indeed got to a point where it was deemed barbaric to eat meat, I feel confident saying that R. Glasner would indeed require us to be vegetarians. The Torah is ultimately agnostic about the consumption of meat, allowing but not requiring it outside of the Temple service, which is inoperative today. If this vacuum is filled with a human revulsion to eating animals, then our basic human decency would demand that we comply. This might seem onerous, but such is the life of someone committed to following God's word and to representing the best of humanity.<sup>13</sup>

---

<sup>13</sup> One could, of course, tweak this example a bit and make it more complicated. What if human society became revolted not by the killing of animals for food, but by slaughtering animals in the way that Jewish tradition requires

## 2. Critiquing a mitzvah

The second category is considerably more contentious. Would R. Glasner possibly say that if the world came to view infant circumcision as totally barbaric that Jews would have to abandon the practice *en masse*? We can certainly imagine what the halakhic argument would look like for this: Traditional sources forbid circumcising a child who would be thereby placed in physical danger (like a hemophiliac). One could argue that today, our evidence of the mortality rate due to infant circumcision is non-negligible such that we cannot allow any child to be subjected to this procedure. So it is not actually impossible to envision what it might look like for circumcision to become inapplicable even in a world that embrace the binding force of *mitzvot*. Sometimes a social critique of a given *mitzvah* might lead us to examine carefully whether the *mitzvah* was in fact being properly applied in contemporary circumstances.<sup>14</sup> One might indeed say that if the entire world has come to view a certain action as abominable, then it cannot be that the Torah would demand its continued practice and it must be that our assumption that the Torah means for us to continue to implement it is misguided. The job of *poskim* would then be to translate the basic moral insight of humanity back into the indigenous language of *halakhah* in the sort of way I suggested above.

But I wouldn't buy the specific argument and I feel confident saying R. Glasner would not buy it either, nor would he (or I) likely buy *any* argument that claimed that this *mitzvah* in the Torah was fundamentally immoral. But why not? Can we defend this ground while embracing R. Glasner's overall analysis?

I believe we can. First of all, the fact that the Torah is *not* silent in this case—nor in any case where it has affirmatively commanded a specific action—can and should be taken as a fundamental statement of the practice's morality. To the extent that the Torah cannot be in

---

in order for the meat to be kosher? Here, one might rightly be skeptical of the moral claim as a dressed-up form of anti-Semitism, particularly if Jewish slaughter alone were specifically singled out. I will turn to this sort of case in my discussion of circumcision below. But even here, I think it is quite plausible that, provided R. Glasner felt the moral objections to *shehitah* were genuinely held and neutrally applied, he would also argue that Jews alone would need to become vegetarians. Their parochial covenant forbids them from eating meat not slaughtered in accordance with *shehitah* laws, but their universal morality forbids meat slaughtered in accordance with them. They would thus be boxed in and, as is often the case, would hold themselves to a higher and more ascetic standard when it comes to food.

<sup>14</sup> There is no shortage of *mitzvot* that, even if we declare them to be eternally true, are functionally defunct today for any number of reasons, such as the absence of a Temple or insufficient Jewish control of parts or all of the Land of Israel.

conflict with basic human morality for R. Glasner—indeed, this morality is philosophically prior to the whole project of *mitzvot*—it also has the right to *teach* us about what that morality ought to be. Yes, when the Torah is silent about something, human consensus around that issue may be the only lamp lighting our way. But when the Torah actively commands something, it is in part assuring that such an action *is* morally defensible. Just as many *mitzvot* are countercultural, pushing against social conventions in order to create better and holier realities, so too the Torah has a voice in shaping humanity’s moral sense when it affirms the basic holiness of certain actions like circumcision.

Second, and even more fundamental in my view, Jews are not just passive respondents to global surveys on morality. Yes, R. Glasner insists, rightly, that one cannot be a Jew without being a human being first, and one cannot be a human being created in the image of God while ignoring fundamental categories of human decency, ethics, and morality. But Jews are a part of that human fabric as well and they have the right and the obligation to be participants in the human conversation about morality and human dignity. Remember, R. Glasner’s formulation spoke about *כל מה שנתקבל בעיני בני אדם הנאורים לתועבה* / “anything **agreed** upon as abominable by enlightened people.” Jews are part of this set of enlightened people as well and they have the right to weigh in on a debate regarding what is and is not abominable. It is appropriate and necessary for Jews to bring their voice, influenced by the Torah, to that conversation. In the case of circumcision, part of my own argument, very much driven by the Torah’s embrace of this practice, would be that despite protests in many Gentile quarters, there is really nothing all that horrible about the practice. In other words, even if a moral consensus began to emerge in the rest of the world around the barbarity of that practice—we are nowhere near that point today in any case—I would argue that that consensus was *wrong*, a mistaken moral judgment on its own terms. If there is no real danger in performing the practice,<sup>15</sup> and if there are no real damaging effects on a person long-term (as I and other circumcised men can attest), and if we allow parents to make all sorts of decisions for their infant children that plausibly even put them in danger or expose them to various risks, then the moral critiques of the practice are not particularly

---

<sup>15</sup> This says nothing about whether one should be agnostic about particular *ways* of circumcising, such as the use of direct oral suction to draw blood out from the incision. To the extent these are not obviously non-negotiable from the perspective of Jewish law, it would indeed be abominable to continue to practice them in the face of consensus that it is disgusting to do so.

compelling when standing up against a millennia-old commandment that marks men as having a covenant with God sealed in their flesh.<sup>16</sup>

R. Glasner would, above all, insist that we must integrate our human/moral and Jewish/Torah conversations. It might be possible that, in some circumstances, our human/moral instincts would push us to discover internally articulated applications of Torah we had not previously considered and come to translate universal insights and critiques of *mitzvot* into the language of *halakhah*. More likely, our Jewish/Torah perspective on an affirmative commandment would lead us to argue vociferously for the morality of a *mitzvah* under attack. But here is the key: R. Glasner would insist that we defend the *mitzvah* in question *on human/moral terms*, pushing back against the apparent human consensus against it. What is required is an articulation of the defensibility of the *mitzvah* in a general forum, an effort to persuade the average, decent person that they ought not to be appalled by this practice. What is *unacceptable* is to hide behind a bifurcated discourse that says, “Circumcision does indeed seem barbaric, but what can I do, the Torah commands it?”<sup>17</sup> It is that sort of split between the human and Jewish realms that leads to a distortion of the Torah’s message about itself and prevents it from being great in the eyes of the nations. If an emerging moral consensus among humanity does not force one to reconsider the proper application of a *mitzvah*, then it virtually commands us to write opinion pieces to persuade our fellow human beings that that consensus is wrong. That obligation flows from being recipients of a Torah that is both human and Jewish at the same time.

---

<sup>16</sup> Here too, I am not suggesting that we would apply this logic to anything that was not life threatening. I fully concede that I would likely be in favor of outlawing a group of people that decided they wanted to start removing a small part of their infants’ earlobes. This would likely pose no real danger and would have no long-term effects on the person. And yet it would seem like a barbaric mutilation of the body for no good reason. There is no question that both the antiquity of the practice of circumcision, its widespread adoption by many cultures across the globe, and its specific religious, covenantal frame are part of what argue for its legitimacy, in addition to whatever empirical arguments can be marshalled for why it is not as bad as the critics say.

<sup>17</sup> In this sense, I imagine R. Glasner might have had more patience for butchers who continued to sell fetal meat if they made impassioned moral arguments for why this was the right thing to do and why the Gentile consensus around them was mistaken. I doubt he would have been convinced, but he might not have felt that these Jews suffered from a malady of moral-religious bifurcation.

### 3. Reviling the abominable

The third category is fundamentally different than the first two in its structure. The first two categories engage cases where a specific *action*, whether commanded by the Torah or not, violates the norms of enlightened people. What happens when the world comes to treat something the *Torah* views as abominable as virtually sacred and finds the traditional Jewish prohibition of something to be offensive, doing unacceptable harm to people? In other words, what if decent human beings mandate allowing something that the Torah forbids? This is the transition our broader society has been going through, with extreme rapidity, with respect to same sex relationships. A surface-level reading of the Torah certainly reveals strong opposition to male homosexual activity. And yet, those living in the United States now live in a society in which approval of same-sex relationships has the upper hand.<sup>18</sup> Indeed, the Supreme Court's ruling affirmed this as a basic right that the government could not deny, certainly pointing in the direction of society seeing the *protection* of same-sex relationships as a manifestation of our commitment to basic human dignity that no reasonable person ought to deny. Would R. Glasner, if living today, say that an emerging consensus that it is immoral to deny legitimacy to same-sex relationships forces observant Jews to abandon the Torah's apparently clear statements to the contrary?

Some of R. Glasner's analysis might indeed lead us in this direction. R. Glasner's direct political target in his essay is our first category, a case like the butchers selling fetal meat where the Torah is silent and world is morally purposeful. But the thought experiments he engages are in fact one's that pit a biblical prohibition against a universal moral instinct. Public nudity squares off against the prohibition on cross-dressing and cannibalism competes with the Torah's ban on swine flesh. In those cases, where there is no alternative but to violate one of the two norms, the general, human one takes precedence. This indeed seems to affirm that, for R. Glasner, the Torah's prohibitions yield when they can only be fulfilled by violating a norm on which all intelligent people can agree on. And, in a certain sense, one can indeed imagine a milder version of this dynamic, where one feels obligated to look carefully at a *mitzvah* the

---

<sup>18</sup> I am not sure we can speak of a consensus in the way that R. Glasner uses it in his writing. The right to engage in intimacy with and to marry a partner irrespective of sex is, even in the United States, not agreed upon "by all intelligent people," even as it has been settled by the courts as a matter of law. Nonetheless, one can certainly imagine social realities getting to that point, and therefore I am playing out this example in that direction.

application of which is infringing on human dignity. In an earlier essay on left-handedness in *halakhah*,<sup>19</sup> I suggested that we might affirm the value and eternity of the Torah's ban on same-sex activity even as we claim that it is not meant to be uniformly applied across a diverse human population. This is ultimately an internal articulation of a *mitzvah* that is influenced by one's human sense of what basic human dignity might demand.

However, the case of something like same-sex marriage is different from R. Glasner's thought experiment in important ways. It is one thing to claim that the average person finds the *actions* of going out naked in public and eating human flesh to be abominable. It is harder to speak of reviling the *failure* to do something. There is no concrete moment of violation of any norm when a person refuses to engage in homosexual behavior. Or to take another example from the world of gender, there is nothing intrinsically offensive or abominable to those with egalitarian sensibilities about any given case of a man serving in a leadership role. To make the cases here parallel to R. Glasner's thought experiments, we would have to focus on the moment of *exclusion* as the reviling moment. It is not a person's personal disgust with same-sex activity that society finds abominable, it is the use of the power of the state, or possibly even the levers of religion, to *enforce* this view that is deemed unacceptable. It is not the counting of a man in a *minyan* that is problematic to an egalitarian partisan, or even the formation of a *minyan* of ten men, it is the refusal to count a woman who is present and eager to count. These moments of exclusion, however, are harder to nail down than simple actions like cannibalism. R. Glasner might plausibly claim that his analysis was never intended to extend to cases like this. Such challenges have to be addressed in other ways and with other potential precedents and arguments.

But the main point here, I believe, is in keeping with what I outlined above around circumcision. R. Glasner would still point us strongly in the direction of a holistic conversation that unites the human and Jewish perspectives. I suspect he would heavily frown on any articulation that said, "It is unbearably painful to watch the suffering of gays and lesbians, whose suffering is rightly regarded by many as a moral outrage, but the Torah unfathomably commands me to hold the line on this point." That, to him, would have been a heretical misunderstanding of the role of basic human morality in the Torah's ecosystem. A commitment to an integrated conversation means that one must either argue for the ongoing, countercultural, moral worth of

---

<sup>19</sup> For parashat Va-Yehi, "Uniformity and Diversity: Left-Handedness and *Halakhah*", available [here](#).

the Torah's prohibition on same-sex activity, or consider heretofore unexplored applications of that eternal prohibition to a complex and changing world such that it does not conflict with basic human morality.

## **V. Whom can we trust?**

As I noted at the outset, this is a text with a very specific context, and that context has not worn well the test of time. The progressive thrust of civilization, so profoundly felt at the turn of the 20<sup>th</sup> century, when R. Glasner is writing these words, has been cast into doubt in the past hundred years. After Auschwitz, after the use of the atom bomb, what is the state of our faith in the Enlightenment and enlightened people? As we confront violent and murderous ideologies at work in the world, how much can we trust the instincts of humanity to point us to a moral north star? For many, these questions lead not just to doubt, but to a kind of moral nihilism when it comes to trusting human instincts on what is right. For many, the Torah (and other religious systems) serve as a retreat and shelter from a morally chaotic world and provide the *only* stable definition of right and wrong. If you deny the very possibility of there being such a thing as an instinctive human morality that we would respect, then R. Glasner's elaborate argument will indeed collapse like a house of cards.

There is no question that we cannot simply pluck this text from *La Belle Époque* and plunk it down in the early 21<sup>st</sup> century. The language of Enlightenment and enlightened people cannot be so facilely used in our postcolonial world. And I agree that a generalized faith in all of humanity, marching in lockstep towards a better future and possessed of impeccable moral instincts, is somewhat naïve. But I think R. Glasner still speaks powerfully to us and, even if we must apply his insights thoughtfully, we must resist the temptation to see his words as an obsolete period piece. While the scope of who we consider “enlightened people” may have shrunk, I don't accept that it has reached or even approached the vanishing point. The bottom line is that we still go through the world depending on the moral judgment of others, and there is a whole set of people whose instincts we *do* trust in this way. Think of the people you would trust to watch your children for a week: R. Glasner minimally calls on us not to view the Torah as something that might be morally incomprehensible to them. While we might argue over the

precise cross-section of humanity we ought to be referencing, and while we might acknowledge that a stable, universal standard of morality is sometimes hard to attain, we still ought not to bifurcate our religious and moral worlds, whatever their scope.

But perhaps most important is where we began. At the end of the day, *the Torah itself* tells us that other peoples will admire it and find its teachings wise. This ought to challenge any desire we have to dismiss the opinions of other people as irrelevant or inherently untrustworthy. In this sense, the Torah may in fact be instructing a sunnier view of the human condition than we may experience at any given moment. If other nations not commanded by the Torah are meant to admire it, then they are clearly doing so based on their own instinctive human assessments. Jews are not obligated to go along with the consensus of any particular place or moment in time, but they are obligated to engage with it. If not persuaded by it, they must persuade in return. And if persuaded by it, they must find a way to integrate that perspective with Torah. Either human morality articulates something the Torah left unsaid, or it points us to a more thoughtful, more accurate application of the Torah to our world and to our lives. This is ultimately R. Glasner's legacy to us, a religious life in which there is one unified question: What does God want from me? We must never forget that we are meant to answer that as Jews and as human beings, all at the same time.