

Summary: Parashat Ki Teitzei

כִּי־יִהְיֶה לְאִישׁ בֶּן סוֹרֵר וּמוֹרֵה

Moral Revolution or Complex Application?

One of the most frightening aspects of an ancient religion is the specter that its texts and traditions will compel its followers to do unspeakable things in the present. Read from a modern perspective, many ancient texts seem unimaginably violent, expecting and sanctioning behaviors that, if put in place today, would be beyond the pale of contemporary civilization. Indeed, anyone honestly reflecting on various texts in the Torah must concede that, taken on face value, it is hard to imagine how their straightforward application to our contemporary world would look that different from forms of fundamentalist Islam that are currently viewed by Western civilization as barbaric. Why doesn't the Torah, in all its gory details, produce a contemporary Jewish ISIS? When a group of religiously motivated Muslims gun down cartoonists in France on the charge that they have blasphemed against God and his prophet, why are their actions anything more than an honest execution of the law of the blasphemer laid out in Vayikra 24? Doesn't our Torah also order one who curses and blasphemes God to be put to death by stoning?

It would seem that the answer lies in the concept and practice of *תורה שבעל פה*/"the Oral Law"—a tradition of interpretation that keeps faith with earlier texts even as it applies them to contemporary situations in ways that transcend the original surface meanings of those texts. Perhaps one of the most defining aspects of rabbinic interpretation—a feature that has more than occasionally subjected it to ridicule—is its ability to claim that texts don't say what they seem to say. The Bible says "eye for an eye"? That refers to monetary compensation. The Torah demands that the Jewish people exterminate every non-Jewish resident of the land of Israel? That only applies to the indigenous peoples of old before the Assyrian Empire destabilized most aspects of national identity in the Ancient Near East. Moreover, as long as said residents agree to make peace or are decent people not steeped in idolatry, the command does not apply. We could offer an extremely lengthy list of such examples, cases where the rabbinic application of biblical law looks dramatically different from what a surface reading would have surmised.

But the deeper question for us, one with dramatic implications for our own relationship to Torah writ large, is *how* we understand *תורה שבעל פה* to work in this regard. When we encounter

a law that seems at odds with the intuitively right way to behave, how do we proceed? Under what sort of mindset are the tools of the oral tradition deployed in order to arrive at new, perhaps unprecedented conclusions? I would like to argue that we have a basic choice between two models, which I will refer to as moral revolution or complex application.

Moral revolution begins with detecting a gap between my sense of what ought to be and what the text demands. The moral revolutionary then finds crafty or dramatic ways to circumvent the text and its meaning. The tools of the oral law are a kind of lip service to religious piety spoken by someone deeply alienated from the substance of the law. Perhaps serving God or a deeper narrative that transcends the details of the law, the moral revolutionary finds a way to trump the law's moral shortcomings by using uniquely iconoclastic tools of the rabbinic tradition. To the extent the moral revolutionary fails in this quest, she will either engage in a kind of religious civil disobedience or acknowledge the painful need to submit to the law's morally unacceptable (and perhaps unfathomable) demands. This mode thrives off of the moral gap between the reader and the text and sees the act of interpretation as a kind of almost Oedipal triumph of later generations over the moral limitations of their ancestors. In more pious versions of this mode, God smiles on this process and appreciates and encourages the Jewish people to win these sort of victories over the Torah in the name of a higher and deeper truth. Alternatively, in a submissive mode, the moral revolutionary revels in the angst generated by the gap between divine commands and human moral instincts.

Complex application is entirely different. While the law in question may initially present troubling moral data that conflicts with my instincts, the journey is not away from or around the text (nor about blindly submitting to it) but directly into it. I endeavor to identify with the text and its values, justifying the plausibility and validity of its approach in its original context. I nonetheless may be adamant that a surface application of the text to my own context would be wrong, not just because of my moral intuitions, but because of my understanding of what the text cares about in the first place. My energy is invested in being a faithful and pious servant of the text, recognizing that even (or perhaps especially) eternal messages must be filtered through the changing realities of a dynamic world. Proper application of the text is my focus, with the awareness that even the most moral texts can become immoral if improperly applied outside of the context that generated their initial formulation. This mode sees the moral gap between the reader and the text as an invitation for deeper understanding, both of the purpose of the law and

of the details of my own experience that make that law seem more problematic than it was understood to be in the past. In the end, the goal is not to find a way for moral instincts to trump the text, but rather for the gap between reader and text to self-liquidate, as the surface meaning of the text becomes more intelligible and palatable and the need to apply it differently in my own context is understood not as an evasion, but as a mandate flowing from the text itself.

There are a host of textual contexts that evoke moral revolution, but perhaps none is as prominent and popular as the case of the *בן סורר ומורה*, the wayward and rebellious son, in this week's Torah reading. In the longer essay, my goal is to explore our options for understanding this *mitzvah*, which troubles many contemporary Jews, and its rabbinic application in particular. I engage at some length the reading of Moshe Halbertal, who sees the rabbinic interpretation of this *mitzvah* as a *tour de force* of rabbinic moral revolution. Faced with a law they could not morally abide, the Rabbis, according to Halbertal, used all their creative powers to neutralize and redirect it so that it would not conflict with their ethical instincts. There, I offer a systematic response to this approach, suggesting that this is an incorrect reading of the Rabbinic record on this topic and that our Sages can equally (and more accurately) be read as complex applicators. They were not, I will argue, alienated from this law, but rather sensitive to the ways in which it was highly dependent on a number of key social factors. Change those factors and the law's application must perforce change as well. My aim in engaging Halbertal is not to set up a straw man in opposition to my own view. Rather, I think his is the most artful and compelling articulation of the moral revolution model and I feel any critique of that model more generally must respond to and account for his reading of this *mitzvah*. If I am successfully persuasive, my arguments there will not only illuminate this particular *mitzvah* but will suggest a method for thinking through all cases of morally troubling *mitzvot*. They will also, I hope, help us to follow *Hazal's* lead in combining deep identification with the Torah's message with deep sensitivity to the conditions in which we live.

Halbertal focuses on three aspects of *Hazal's* interpretation of this law, as found in various rabbinic texts:

- 1) They imply that the law of the *בן סורר ומורה* features a morally disproportionate response to the seriousness of the crime, which is assumed to be some kind of drunkenness, addiction, and financing it by stealing from his parents. In response to this, they declare that the wayward and rebellious son is executed for crimes he has not

yet committed but will in the future. This, for Halbertal, reflects an effort to balance the moral ledger to make it more fair and palatable.

- 2) They refer to some details of the law that make little sense to them—such as the Torah’s focus on a rebellious son to the exclusion of a daughter—as a “decree of the King.” Halbertal understands this to be a Rabbinic declaration that all aspects of this law are inscrutable, thereby revealing the deep gap between their own contemporary morality and that of the Torah.
- 3) A few Rabbinic sources assert that there never was nor ever will be a case of a בן סורר ומורה. When the Talmud links these views with one view in particular that imposed many conditions on the law, Halbertal sees a deliberate attempt to interpret the law out of existence. Because of their moral issues with the law at large, Hazal stated that the only reason it was written down was so that one could study it and receive reward for doing so.

Briefly, in response one could say:

- 1) The text that Halbertal brings to prove this moral question offers an answer that raises as many, if not more, moral questions than it answers, that the son is being punished for his future deeds, that he will certainly turn into some kind of robber or murderer. Why would a text expressing moral outrage not actually solve the moral issues? Rather, it seems better to read the discussion there about trying to understand Torah’s criteria for such a fierce capital punishment of stoning to be consistent with capital cases elsewhere. The Rabbis are struggling with jurisprudential consistency, not morality.
- 2) The phrase “decree of the King” does not necessarily—and indeed, in some contexts cannot—express a sense that the law is inscrutable. Equally possible is that the “decree” is simply choosing a side on various details of the law which could morally and conceptually be argued both ways; at some point, someone has to make a call one way or the other or the law is inoperable, and this decree was made by God. This is also how the Rambam understands the phrase.
- 3) The simplest way to receive reward by studying a text is to learn something from it; thus, it is unlikely that those who claimed it was totally inoperative thought it was devoid of morality, rather the contrary. The many conditions imposed on the law, on closer reading, are not trying to eliminate it because of morally-generated animosity

towards it. They are actually trying to distill real truth and values behind the laws, recognizing that the law only makes sense and fulfills its purpose under the right conditions.

At the end of the day, I would argue, the *mitzvah* of the wayward and rebellious son is highly intelligible and meaningful, if we only have the curiosity and the courage to step out of our own context and truly take seriously the world in which this *mitzvah* was originally commanded. That world of the Iron Age was one in which there was no meaningful police force, little centralized power, no means of imprisonment, and virtually nothing comparable to either the penitentiary or punitive aspects of our criminal justice system. It was a given that threats to society would be executed, the only question was by whom, for what, and based on what evidence. Local elders were hugely important for keeping order, but even more so were parents. To disobey parents in the world of the Torah is fundamentally analogous to killing a law enforcement agent today. The wayward and rebellious son, by dint of his disobedience alone, would already have threatened the social order dramatically, in contrast to our own time, when this sort of disobedience is largely seen as a sign of family dysfunction lacking any real broader social ramifications. In a world in which police keep order, the state has a near monopoly on violence and there is a system of mass incarceration, it seems shocking to mete out any real punishment for filial disobedience.

Moreover, the Torah does not authorize execution for disobedience alone. As understood by *Hazal*, this case involves some aspect of addiction that threatens to get out of control, combined with a willingness to seize one's own parents' assets—following their disapproval—in order to feed this addiction. This is a deeply unstable and dangerous situation. Indeed, though we have many contemporary policy debates over how to deal with addiction, it is clear that addicts who commit violence against the state and will break all sorts of laws in order to get their fix elicit deeper fears and evoke a much harsher response from us than their isolated actions might warrant. We fear for what they will do in the future and try to act preemptively to fend off potential harm to others.

This sort of reading requires some patience and imagination. It also requires a willingness to expand our moral universe to address contexts that are radically different from our own. It also implicitly calls upon us to translate the underlying value to our own context, even if the application of the law in its original form is no longer plausible. But what most characterizes it

is its search for meaning in the Torah and its laws and a pursuit of identification with *mitzvot*, rather than a pursuit of pathways to avoid or overcome them.

We all have moments, or even lengthy periods in life, when we feel a moral gap between ourselves and the Torah. It is surely compelling in those moments, when we most want to overthrow what feels like the moral oppression of the law, to find role models for this sort of sacred moral revolution. When we are angry at the tradition, it can be extremely comforting to read *Hazal* in ways that reflect our own anger and alienation. They can then serve as a kind of role model to us, emboldening us to find our own morally revolutionary voice and to feel good about this being an authentic part of the tradition.

The problem is, that is not a *Hazal* that I recognize. I find it highly unlikely that we would expect to find much of anything in *Hazal* that would posit their moral alienation from the very corpus they are trying to interpret. I don't see it in their analysis of this *mitzvah*, as I argue at length in the longer essay, and I don't really see it elsewhere. *Hazal* identified deeply with the Torah and don't give off an air of feeling trapped by it and wishing they could somehow get around it. What they do masterfully and almost boundlessly is complex application of God's eternal will to the never-ending variety of contexts served up by our messy world. They apply laws and principles in incredibly creative ways to their contexts in order to make them appropriate fulfillments of Torah in their own time. This, I strongly suggest, is the role model we should be seeking. Instead of hoping to find in *Hazal* a mirror for our lowest and darkest moments of relationship with the Torah, let us quest after their true character and mastery: The ability to search for meaning and values in the Torah with which we can and should identify. Let us leave the revolution behind and instead, roll up our sleeves and do the hard work of applying the Torah from heaven to the complex realities of the world in which we live.