

Dan Baras offers a vigorous challenge to viewing the Torah as a source of absolute authority by cataloguing various Torah laws most people today would consider immoral. His list uses both the simple reading of Biblical texts (the *peshat*) plus rabbinic interpretations (*derash*) in an attempt to show that focusing on either one will not allow escape from this dilemma. Baras also outlines four potential reasons for treating someone as an authority and contends that his moral argument negates all of the four regarding the Torah.

1) Let us begin by noting that those Jews who do accept the Torah as an absolute authority do not seem to be led to carrying out the moral travesties that, according to Baras, should follow. As he himself notes, it is hard to find too many examples in Jewish history of the stoning of Shabbat violators. Few Orthodox Jews today express a desire to give homosexuals the death penalty or to annihilate Amalek. Now Baras can claim that religious Jews are inconsistent, that they do not really treat the Torah as an absolute authority, or that they have given in to modern Western values but such moves mean not allowing those Jews the autonomy of self-description. They do think that they accept the Torah's authority and yet they do not want to freely and frequently put sinners to death. Furthermore, extreme minimization of the death penalty begins in rabbinic texts from the classical period much more than a millennium before the Enlightenment. Perhaps the Jewish tradition has internal resources that prevent more violent expression.

2) Baras makes his job a bit easier by assuming the validity of our ethical intuitions while not granting force to our religious intuitions. Now let me clarify that I also accept the validity of our ethical intuitions and have argued in print that DCT is a tiny minority position in traditional Jewish thought.<sup>1</sup> That being said, millions of human beings over the course of history would argue on experiential grounds for the great worth of experiences of divinity, sanctity, reverence, and encounter and submission to a deity. Is

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<sup>1</sup> Yitzchak Blau, "Ivan Karamazov Revisited: the Moral Argument for Religious Belief," *The Torah u-Madda Journal* Volume 11 (2002-2003), p. 50-60.

it obvious that we must ignore this in our ethical calculations or say that human ethics always trumps other elements of value?

3) The essay sometimes presents the Jewish legal material inaccurately. Baras says that women are ineligible as witnesses but that is not true across the board. Women cannot testify in most court cases but they can testify about ritual prohibitions (Tosafot Gittin 2b s.v. *Eid*) and their testimony enables a woman to remarry (Yevamot 87b). He writes about Torah sanctioned cruelty to gentile slaves but fails to emphasize some important halakhic protection offered to gentile slaves. If a Jewish owner knocks out the tooth of a gentile slave, that slave goes free (Exodus 21:26-27). A Jewish owner is subject to the death penalty for killing a non - Jewish slave (Exodus 21:20). Surely, that sends a powerful message not commonly found in the sordid human history of slavery. These individual points obviously do not answer all of Baras' problematic cases but it is important for a critic to offer an accurate portrayal.

4) Baras discounts the possibility of something being moral in Biblical times but becoming immoral later. I agree that morality does not change but circumstances do, and they impact on moral judgments. For example, he criticizes halakha for allowing a father to marry off his daughter when she is a minor. Surveying the progression of halakhic history on this topic reveals that the moral issue is more complicated. Talmudic sages already prohibited a father from marrying off his young daughter because of their fear that she will not like a spouse selected by others (Kiddushin 41a). In the medieval period, Tosafot tried to justify returning to this practice by arguing that in difficult economic times, a father who temporarily has enough money for a dowry should jump at the opportunity to marry off his daughter (loc. cit. s.v. *asur*)

Note what has happened here. The Talmud is against marrying off minors and the twelfth/thirteenth century rabbis of France and Germany essentially felt moral pressure to allow it. A world of shorter life spans, limited mobility, and economic hardship generates very different thoughts about a father

selecting a spouse for his young daughter. What if this opportunity represents the daughter's last chance for marital bliss? Thus, we can assert the eternal value of adult women independently selecting their soul mate and still see how a given historical epoch would lead to a different moral calculus.

5) We have already explained Baras' reasons for combining Biblical and Talmudic sources; he wants to cut off a religious escape route that focuses on only one or the other. Unfortunately this generates unfairness because he presents the tradition as harsher than it is. At the end of the day, Jewish law does not ever allow cutting off hands as a punishment or promote the death penalty for premarital relations. One might say that Baras' approach enables him to depict halakha in the worst light possible, in effect, as the worst of two worlds.

6) Now you might ask why does this point matter since moral conundrums exist at both the Biblical and Talmudic levels? The answer has to do with Baras' second model of authority, the epistemic model, which thinks of God as a doctor dispensing the best medical advice. Baras contends that if we come to distrust a doctor due to repeated bad advice, we would have to look elsewhere for direction. Yet evaluating a doctor depends on the entire body of work, not on a few hard cases. Should I size up a great surgeon's outstanding forty year career based on the three patients who did not make it? From that vantage point, it is unfair to use rabbinic interpretation when it hurts and not when it helps since it creates a skewed perspective on the larger portrait.

For that matter, the overall evaluation should take note of the frequent moral brilliance of Torah law. The repeated commands to not oppress and to love the stranger or convert ("*ger*") are emphasized in the Pentateuch much more (Exodus 22:20, Leviticus 19:33-34, Deuteronomy 10: 18-19) than the directive to wage war. Concern for the widow and orphan appears far more frequently (Exodus 22:21-23, Deuteronomy 10:18, 14:29), than the need to fight Amalek. The Torah commands the courts to not leave a criminal body hanging overnight to protect the dignity of the deceased (Deuteronomy 21:22-

23).<sup>2</sup> Jewish law demands that a creditor not enter the home of the person in debt in order to preserve the honor of the latter (Deuteronomy 24:10-11). Furthermore, it requires a creditor to return a cloak taken as a security each night if the poor debtor needs it (Deuteronomy 24:12-13).

The comprehensive evaluation must also include scenarios in which the doctor's advice saved patients from the erroneous counsel of others. Jewish tradition and law promotes the immense value of bearing children when Western liberalism downplays its significance, thereby preserving for many modern Jews one of the most precious aspects of human existence. The tradition's harsh treatment of adultery serves as a bulwark against a culture of sexual liberation that fails to understand the immense worth of spousal loyalty. The value Judaism places on modesty (something I grant has often grown out of proportion) fights against a pornographic culture that demeans women. The content of the last two paragraphs leads the doctor metaphor in a novel direction. When encountering a doctor with such a good track record, I might react differently to advice he gives which seems totally erroneous.

7) How would I react? At times, I might say that, given the doctor's outstanding record, I will take the advice even against my own better judgment. In other instances, I might assume that I did not fully understand the doctor and reinterpret his words in a way that coheres more with his usual advice. Moving back from the doctor to God, if God usually tells me not to punish children for their parent's sins, that ideal should impact on how I interpret versus touching on that subject.

In this context, Baras did not do enough research regarding the positions of R. Aharon Lichtenstein, a rabbinic leader whose views he cites. R. Lichtenstein discusses conflicts between religion and morality on several occasions.

This is not to say that in such a context there is no room for moral sensibility. Surely, in relating to Halakha, including those areas which one may find morally difficult, there is

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<sup>2</sup> I am assuming Rashi and Seforno's interpretation of that verse rather than those of Ibn Ezra and Rashbam.

some role for conscience, some role for the goodness in us, particularly in an interpretive capacity. Conscience does and legitimately can have a role in helping us to understand the content and substance of the *tzav*. In the *Midrash*, Chazal depict Avraham's thoughts during his three-day journey to the *akeida*. He tried to understand God's command: perhaps God meant something else. Surely, one can, and presumably should, walk the last mile in order to try in every way to avoid a conflict. But even when one has walked the last mile, at times the conflict may remain, and—as in the *akeida*—the decisive element is clear. It was only a *tzav* of God, or of the angel sent by God, which was able to countermand the command to sacrifice Yitzchak.<sup>3</sup>

Granted, R. Lichtenstein does include cases where we subject our moral notions to the will of God. However, before we get to that point, we investigate if our moral assumptions about God's benevolence allow for a different reading of the command. How far we can push interpretive ingenuity based on moral considerations is a valid and important question that I am not addressing here but we cannot begin to analyze these issues without acknowledging this category.

8) Baras writes that a command that depends upon interpretation is automatically undermined as a command. This ignores a vast literature about the oral law, the human role in interpretation, and the boundaries of interpretive pluralism. Scholars offer many arguments for the need for an oral tradition and the importance of a human component in the development of halakha. Baras has every right to find these arguments unconvincing but he cannot analyze the nature of divine command in Judaism without some discussion of them.

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<sup>3</sup> Aharon Lichtenstein, *By His Light: Character and Values in the Service of God*, (KTAV Publishing House: Jersey City, 2003) p. 123.

Admittedly, I have not addressed all of Baras' examples or performed a total evaluation of the Torah's moral message. Nonetheless, I hope this brief response has shown how the argument against the Torah as an absolute authority is not as simple as it seems.