

## Harm Reduction as a Tora Objective

R. Yaakov Bieler

Parashat Ki Tetze, 5773

R. Jonathan Sacks recounts the following story regarding the first time he met Sir Isaiah Berlin, one of the most profound scholars of the twentieth century:

(Berlin) said, "Chief Rabbi, whatever you do, don't talk to me about religion. When it comes to God, I am tone deaf!" He added, "What I don't understand about you is how, after studying philosophy at Cambridge and Oxford, you can still believe!"

"If it helps," I replied, "think of me as a *lapsed heretic*."<sup>1</sup>

"Quite understand, dear boy, quite understand."<sup>2</sup>

One of Berlin's iconic works is entitled, The Crooked Timber of Humanity: Chapters in the History of Ideas, in which the author discussed the origins of fascism and totalitarianism. The title was taken from a comment by the famous German philosopher, Immanuel Kant:

*Aus so krummem Holze, als woraus der Mensch gemacht ist, kann nichts ganz Gerades gezimmert werden.*<sup>3</sup>

(Out of the crooked timber of humanity, no straight thing was ever made.)

What Kant and Berlin were both alluding to, is the observation that humans are inherently flawed, and any human arrangement is bound to reflect those flaws. Even if Judaism refuses to assume that we have all been tainted by some sort of Original Sin<sup>4</sup> dating back to the Garden of Eden, nevertheless Jewish primary and secondary sources speak at length of man's powerful temptations and his capacity for doing the wrong thing. Such an observation is articulated by God Himself to Kayin, following the older brother's sacrifice being rejected in favor of that brought by his younger sibling:<sup>5</sup>

---

<sup>1</sup> R. Sacks' idea appears to be the converse of the classic "Apikorus", who once was very knowledgeable religiously, and then rejects his beliefs. In order to be able to reject, one has to first know what there is to reject. Similarly, becoming a Ba'al Teshuva after one is quite knowledgeable about the ideas of philosophy and atheism carries with it a particular badge of honor.

<sup>2</sup> The Great Partnership, Schocken Books, New York, 2011, p. 14.

<sup>3</sup> Idea for a Universal History with a Cosmopolitan Purpose. (1784), Proposition 6.

<sup>4</sup> **Original sin**, also called **ancestral sin**, is, according to a Christian theological doctrine, humanity's state of sin resulting from the fall of man, stemming from Adam's rebellion in Eden. This condition has been characterized in many ways, ranging from something as insignificant as a slight deficiency, or a tendency toward sin yet without collective guilt, referred to as a "sin nature", to something as drastic as total depravity or automatic guilt of all humans through collective guilt...

[http://en.wikipedia.org/wiki/Original\\_sin](http://en.wikipedia.org/wiki/Original_sin)

<sup>5</sup> Beraishit 4:4-5

Beraishit 4:7

If thou doest well, shall you not be lifted up? and if thou doest not well, sin coucheth at the door; and unto thee is its desire, but thou mayest rule over it.'

One of the major assumptions of Jewish tradition is that Tora—its study and its observance—serves as both a prophylactic and an antidote to the temptations and influence of the Yetzer HaRa, the evil inclination, that crouches at each of our respective doors. Consider the following Talmudic parable:

Kiddushin 30b

Our Rabbis taught: “Ve-samtem”<sup>6</sup> [reads] “sam tam” [a perfect remedy].<sup>7</sup>

This may be compared to a man who struck his son a strong blow, and then put a plaster on his wound, saying to him, “My son! As long as this plaster is on your wound you can eat and drink at will, and bathe in hot or cold water, without fear. But if you remove it, it will break out into sores.”

Even so did the Holy One, blessed be He, Speak unto Israel: “My children! I Created the Evil Desire, but I [also] Created the Torah, as its antidote; if you occupy yourselves with the Torah, you will not be delivered into his (the Evil Inclination’s) hand, for it is said: ‘If thou doest well, shalt thou not be exalted?’ But if ye do not occupy yourselves with the Torah, ye shall be delivered into his hand, for it is written, ‘Sin coucheth at the door’. Moreover, he is altogether preoccupied with thee [to make thee sin], for it is said, ‘And unto thee shall be his desire’. Yet if thou wilt, thou canst rule over him, for it is said, ‘And thou shalt rule over him’.

In a similar spirit, I have always been moved by RaMBaM’s terse statement regarding the purpose of the Mitzvot of the Tora:

Mishneh Tora, Hilchot Temura 4:13

...most of the Torah's laws are nothing other than "counsels given from distance" from "He Who is of Great Counsel" to improve one's character and make one's conduct upright....

Therefore, in practical terms, examples of how Mitzvot can assist us in becoming better human beings would include: a) Shabbat and Yom Tov observance as countering our tendencies

---

And Abel, he also brought of the firstlings of his flock and of the fat thereof. And the LORD had respect unto Abel and to his offering; but unto Cain and to his offering He had not respect. And Cain was very wroth, and his countenance fell.

<sup>6</sup> Devarim 11:18

Therefore “VeSamtem” (shall ye lay up) these My words in your heart and in your soul; and ye shall bind them for a sign upon your hand, and they shall be for frontlets between your eyes.

<sup>7</sup> The Rabbis are basing their homiletic interpretation upon a “pun”, reading a word containing a “ש” as if it was written with a “o”.

towards becoming work-a-holics, and thereby ignoring God, our spiritual dimensions, our families, our friends and our communities; b) Kashrut laws enabling us to develop self-discipline over our lusts and passions; and c) donating Tzedaka is, among other things, designed to force us to be less self-absorbed and to not only notice, but also to actively assist those who are less fortunate than ourselves.

Yet, I have long wondered about RaMBaM's qualifying word at the beginning of this line from the Mishneh Tora:

“...דיני התורה ורוב” — “Most of the laws of the Tora...”

What are the exceptions to this rule, I wondered? Preparing this morning's Dvar Tora, I think that I can now provide at least one possible answer to this question.

There is a concept in the Rabbinic tradition that some of the Mitzvot of the Tora are not means by which to combat and hopefully refine some of our more negative tendencies, but rather courses of action intended to somehow give in to less than admirable qualities, albeit in a controlled fashion. One of the paradigms of this category of Mitzvot is found at the beginning of Parashat Ki Tetze-- the case of the “Eishet Yefat Toar” (lit. the woman of beautiful appearance; a war captive bride):

Devarim 21:10-14

When thou goest forth to battle against thine enemies, and the LORD thy God Delivereth them into thy hands, and thou carriest them away captive, and seest among the captives a woman of goodly form, and thou hast a desire unto her, and wouldest take her to thee to wife; then thou shalt bring her home to thy house; and she shall shave her head, and pare her nails; and she shall put the raiment of her captivity from off her, and shall remain in thy house, and bewail her father and her mother a full month; and after that thou mayest go in unto her, and be her husband, and she shall be thy wife. And it shall be, if thou have no delight in her, then thou shalt let her go whither she will; but thou shalt not sell her at all for money, thou shalt not deal with her as a slave, because thou hast humbled her.

The idea that this type of marriage relationship would be allowed in any way begs credulity. What sort of reasonable expectation could there be that such a marriage will prove to be positive and full of love and respect? From the Tora's description, the relationship is motivated exclusively by physical attraction, and perhaps even the power dynamic of a victor, on the one hand, and someone he thinks of as “spoils of war” on the other, a literal “trophy wife”. No thought is given to the woman's Middot, her religious orientation, whether she is interested in becoming Jewish—the list goes on and on. The recognition that such a union is permitted, let

alone recorded in the Tora as a Mitzva,<sup>8</sup> would appear to justify a man's indulging his lusts and fantasies, rather than resisting and overcoming them. Furthermore, it would seem that "Eishet Yefat Toar" is a direct rejection of the reason given by the Tora for its adjuration against intermarriage:

Devarim 7:3-4

Neither shalt thou make marriages with them: thy daughter thou shalt not give unto his son, nor his daughter shalt thou take unto thy son. For he will turn away thy son from following Me, that they may serve other gods; so will the Anger of the LORD be Kindled against you, and He will Destroy thee quickly.

RaShI (21:11 d.h. VeLakachta Lecha LeIsha) seems to confirm our concern when he writes,

The Tora is responding to the Evil Inclination, since if the Holy One, Blessed Be He, Does not Allow (this relationship to be consummated), the soldier will consummate the relationship as a transgression (regardless of the Tora's prohibition)...

In other words, the Rabbis understood the leniency in the case of Eishet Yefat Toar as Recognition on the part of the Creator, that a complete prohibition would be honored by a soldier in the breach, i.e., would essentially be ignored, leading to even more terrible consequences for all involved. RaShI continues his commentary by noting that the Semichut HaParashiot (the sequence of topics) at the beginning of Ki Tetze, namely:

a) immediately following the Commandment of the female war captive is (Devarim 21:15-17)<sup>9</sup> the law that when there are two wives, the status of first born with all its special advantages cannot be conferred upon the first-born of the more beloved wife, if a child was born earlier to the wife for whom the husband has less-affection;<sup>10</sup>

---

<sup>8</sup> In RaMBaM's Sefer HaMitzvot, in which he categorizes 248 positive Commandments and 465 negative Mitzvot, "Eshet Yefat Toar" is positive Commandment #221. Sefer HaChinuch includes it as Mitzva #532 in his ordering the 613 Commandments according to the sequence in which they appear in the Tora.

<sup>9</sup> If a man have two wives, the one beloved, and the other hated, and they have borne him children, both the beloved and the hated; and if the first-born son be hers that was hated; then it shall be, in the day that he causeth his sons to inherit that which he hath, that he may not make the son of the beloved the first-born before the son of the hated, who is the first-born; but he shall acknowledge the first-born, the son of the hated, by giving him a double portion of all that he hath; for he is the first-fruits of his strength, the right of the first-born is his.

<sup>10</sup> It is assumed that before the Takana of Rabbeinu Gershom prohibiting polygamy for Ashkenazim, it could be expected that there would be more than one wife in a given family, and if one of those wives was married in a war-captive context, chances were that the husband would love the wife(s) that he married under more typical conditions than the one to whom he originally was attracted for physical reasons, but who was essentially an alien to his culture and lifestyle.

- b) the next case (Ibid. 18-21)<sup>11</sup> is a description of the the stubborn and rebellious son, who steals meat and wine from his parents repeatedly;<sup>12</sup>
- c) leading directly to the topic (Ibid. 22-23)<sup>13</sup> of the Tora dealing with how to treat the body of an individual who has been executed for committing a reprehensible crime.<sup>14</sup>

The Rabbis that RaShI is paraphrasing thereby suggest that when taken not as a series of discreet laws, but rather as a totality, this group of Mitzvot constitute a subtle cautionary tale, a domino affect, of what might happen as a result of performing the original Mitzva of Eishet Yefat Toar.

RaShI (con't.)

...but if he marries her (the war captive), in the end he will hate her, as it states afterwards, "If a man have two wives, the one beloved and the other hated..." , and then he will have borne to him through her a stubborn and rebellious son. For this reason the topics were juxtaposed next to one another.

It appears that the Tora is acknowledging by means of the Mitzva of Eishet Yefat Toar that there is such a thing as the Yetzer HaRa, and that at least at certain times and in particular contexts,<sup>15</sup> instead of fighting against it, trying to defeat and squelching it entirely, it needs to

---

<sup>11</sup> If a man have a stubborn and rebellious son, that will not hearken to the voice of his father, or the voice of his mother, and though they chasten him, will not hearken unto them; then shall his father and his mother lay hold on him, and bring him out unto the elders of his city, and unto the gate of his place; and they shall say unto the elders of his city: 'This our son is stubborn and rebellious, he doth not hearken to our voice; he is a glutton, and a drunkard.' And all the men of his city shall stone him with stones, that he die; so shalt thou put away the evil from the midst of thee; and all Israel shall hear, and fear.

<sup>12</sup> The connection between Ben Sorer U'Moreh and wives who are not loved equally, is that the tension between husband and wives will result in resentment harbored by the children, with an extreme example of such rebellion being the stubborn and rebellious son. It would appear that at least to some degree, the dynamics in Yaakov's household that arose due to him loving Rachel more than Leah, caused hatred and violence among the children in the family.

<sup>13</sup> And if a man have committed a sin worthy of death, and he be put to death, and thou hang him on a tree; his body shall not remain all night upon the tree, but thou shalt surely bury him the same day; for he that is hanged is a reproach unto God; that thou defile not thy land which the LORD thy God giveth thee for an inheritance.

<sup>14</sup> The Rabbis' assumption is that if for some reason the child does not qualify technically as a Ben Sorer U'Moreh, he nevertheless is likely to embark on a life of crime, culminating in his being executed and questions arise regarding how to treat the body of such a miscreant.

<sup>15</sup> In his essay, "VeNishmarta MiKol Davar Ra—Chayalim (Soldiers) BeMa'avak Im Yetzer Lev HaAdam" (Etnachta—Kriyot BeParashat HaShavua, Vol. 2, Yediot Acharonot, Sifrei Chemed, Tel Aviv, 2009, pp. 470-2) R. Binyamin Lau discusses the challenges faced by an individual in wartime, and how, as RaShI states on Devarim 23:10 re the phrase, "...And you must guard yourselves from every evil thing", "Satan accuses (tries to find fault) at a time of danger." In other words, inhibitions that normally govern an individual's life, are "down" and he therefore is at great risk for doing something untoward which he is likely to regret at a later point. Even though one could grant that Eishet Yefat Toar is a cautionary tale regarding specifically wartime, it could also be said to be indicative of temptations that present themselves outside the context of waging war.

be addressed, appeased, accommodated, even at the risk of possible, even probable, unfortunate consequences.

Additional examples that are associated with this principle include:

- a) The Mitzva to appoint a king (Devarim 17:14-20).<sup>16</sup> Although eventually HaShem instructs Shmuel to allow the people to have a king, Sephorno contends that ideally, Jews should not have engaged in creating this institution:

Sephorno on Devarim 17:14

Certainly when he (the king) will be like the kings of the nations, holding onto rulership, he and his descendants will be viewed as abominable by God, may He Be Blessed, but He Commanded that when they become stubborn and insist on establishing a king in this manner, at least they should choose someone who is worthy, that HaShem would Choose, and that he not cause Israel to transgress their religion, and that he not be a foreigner even if he prove worthy, and despite his being a mighty warrior. And when they sinned by requesting a king to rule over them like all of the nations (I Shmuel 8:5), their punishment consisted of the difficult treatment that the general population usually receives due to a king, as he (Shmuel) warns, (I Shmuel 8:18) "And ye shall cry out in that day because of your king whom ye shall have chosen you; and the LORD will not Answer you in that day."

- b) The Mitzva of the blood avenger (BaMidbar 35:19, 21, 24, 25, 27; Devarim 19:6, 12). Although the Tora states that getting revenge is prohibited—VaYikra 19:18—and the case where the murderer is banished to a city of refuge in order to escape the blood avenger is where the slaying was inadvertent, i.e., manslaughter, as opposed to being premeditated, nevertheless, a blood avenger is appointed by the court<sup>17</sup> to assure

---

<sup>16</sup> When thou art come unto the land which the LORD thy God Giveth thee, and shalt possess it, and shalt dwell therein; and shalt say: 'I will set a king over me, like all the nations that are round about me'; thou shalt in any wise set him king over thee, whom the LORD thy God shall Choose; one from among thy brethren shalt thou set king over thee; thou mayest not put a foreigner over thee, who is not thy brother. Only he shall not multiply horses to himself, nor cause the people to return to Egypt, to the end that he should multiply horses; forasmuch as the LORD hath Said unto you: 'Ye shall henceforth return no more that way.' Neither shall he multiply wives to himself, that his heart turn not away; neither shall he greatly multiply to himself silver and gold. And it shall be, when he sitteth upon the throne of his kingdom, that he shall write him a copy of this law in a book, out of that which is before the priests the Levites. And it shall be with him, and he shall read therein all the days of his life; that he may learn to fear the LORD his God, to keep all the words of this Law and these Statutes, to do Them; that his heart be not lifted up above his brethren, and that he turn not aside from the commandment, to the right hand, or to the left; to the end that he may prolong his days in his kingdom, he and his children, in the midst of Israel.

<sup>17</sup> RaMBaM, Mishneh Tora, Hilchot Rotzeach U'Shemirat HaNefesh, Chapt. 1, Halacha 2.

It is a mitzvah for the blood redeemer to kill the murderer, as Numbers 35:19 states: "The blood redeemer shall put the murderer to death." Whoever is fit to inherit the victim's estate becomes the redeemer of his blood...

that the perpetrator will be pressured to accept upon himself exile for as long as the reigning Kohen Gadol is alive.

- c) Sacrifices according to RaMBaM in The Guide for the Perplexed (Part III Chapter 32). Maimonides maintains that the sacrificial system was a concession on the part of God to man's ancient tendencies to think of Divine Worship in terms of concrete offerings of animals, plants and liquids. (It is important to point out that RaMBaM takes sharp issue with what RaMBaM stated in this regard—see RaMBaM's commentary on Beraishit 4:3; VaYikra 1:9), and it is also possible as per the title of the book in which this hypothesis appears, that specifically for those who were "Perplexed", RaMBaM was engaging in apologetics, but that he himself thought otherwise about Korbanot.)
- d) Hillel HaZaken's institution of Pruzbul (Mishna Gittin 4:3).<sup>18</sup> The Tora's absolute standard of forgiving all loans upon the arrival of the Shemita year (Devarim15:1-2),<sup>19</sup> led to increasing problems for the poor to obtain loans as the seventh year of the Sabbatical cycle approached. Lenders worried that their debts would go unrepaid and consequently simply didn't lend. This caused Hillel HaZaken to legislate Pruzbul, a legal fiction whereby the IOU's for loans would be transferred to the Beit Din, since Shemita rescinded the loans held by people, but not those held by corporate entities. In this manner, Hillel attempted to restore a proper balance between the haves and have nots within Jewish society.
- e) Halachic Pre-nuptial agreements. In order to try to avoid situations where some form of Get-refusal would result in a spouse becoming an Aguna or Igun, a civil agreement was relatively recently devised that could be upheld in a secular court, requiring the recalcitrant party to pay heavy fines should they not comply with the giving or receiving of a Jewish divorce.

None of these cases reflects a spiritual or humane ideal towards which we ought to strive; quite the contrary, each of the situations appear to constitute responses to something less than optimal within human nature, seeking ways to address the potential disruption that the unmitigated Yetzer HaRa is capable of.

In a thought-provoking essay entitled "HaHashlama Im Yetzer HaRa, Yefat Toar VeHimurim"<sup>20</sup> ("The Accommodation with the Yetzer HaRa, the Beautiful Woman and Gambling")

---

<sup>18</sup> ...Hillel instituted Pruzbul in order to "repair the world", (i.e., address a need that was causing society difficulty).

<sup>19</sup> At the end of every seven years thou shalt make a release. And this is the manner of the release: every creditor shall release that which he hath lent unto his neighbour; he shall not exact it of his neighbour and his brother; because the LORD'S Release hath been proclaimed.

<sup>20</sup> <http://www.daat.ac.il/mishpat-ivri/skirot/222-2.htm>

for Da'at, an on-line collection of essays, sponsored by Michlelet Herzog, the Israeli government's Department of Mishpat Ivri, and the Center for Education and Teaching of Mishpat Ivri, Dr. Avraham Tenenbaum, identified as a judge in the Beit Mishpat Shalom, (Small Claims Court) discusses modern civil manifestations of "the Tora Responds to the Evil Inclination" as part of the criminological conceptual idea of "**harm reduction**". The legal justification for such ostensibly problematic accommodations that Judge Tenenbaum evokes is the following:

The law is created when the absolute prohibition of something is liable to result in much greater harm than that which is engendered by the more permissive position.

He goes on to state that since rape has been so common within wartime situations right through contemporary times, the Tora's institution Eishet Yefat Toar was regarded as an improvement over typical sexual violence and assault that might otherwise have taken place.

By extension, regarding the other examples that I gave, we could say that if the people were bent upon having a king one way or the other, at least let him be a Jewish king with Mitzva limitations trying to curtail some of his otherwise absolute power and authority, If a victim's family is going to seek revenge, let's try to contain their anger and hostility by appointing a single individual to represent them, rather than entertaining the possibility of family fighting family, or a posse of vigilantes endlessly pursuing the perpetrator, As evidenced by the sin of the Golden Calf (Shemot 32), if people are naturally going to feel that their worship needs some sort of tangible form, let us control it and direct it in a Jewishly acceptable form. Perhaps the rich should have given gifts rather than insisted upon the recovery of their loans, but realistically speaking, the Yetzer HaRa that stresses keeping one's possessions had to be addressed in some way. And finally, no one gets married anticipating the need to protect themselves from hurtful actions of his or her spouse; but we have witnessed too many instances where this has occurred to be able to ignore the need for providing legal protections to the best of our abilities.

Tenenbaum adds that this type of legal thinking is evidenced in secular legislation regarding the following:

- a) the use and distribution of recreational drugs,
- b) making available sterile needles to drug users,
- c) gun laws,
- d) trying to encourage thieves to place wallets in mailboxes once they have removed the money contained within,
- and e) lotteries and various other forms of gambling and bookmaking.

Perhaps as a follow-up to this Dvar Tora, an interesting exercise would be to see if you can identify additional areas of Halacha where the principle of "harm reduction" can be seen at work, and contemplate whether these approaches have proven effective in decreasing

egregious social behavior. On the other hand, are there areas in Halacha which you think could use legislation that would allow for further “harm reduction” and make our religious experience safer and more meaningful?

And as for the RaMBaM’s principle:

...Most of the Torah's laws are nothing other than "counsels given from distance" from "He Who is of Great Counsel" to improve one's character and make one's conduct upright....

while at first one could claim that such Mitzvot, both Toraitic and Rabbinic, as we have been discussing are the exceptions to his rule, the one’s excluded by the word “רוב” since they don’t come under the positive, constructive rubric that Maimonides has delineated, on second thought, perhaps even Commandments like Eishet Yefat Toar and Goel HaDam do contribute to an individual’s positive development over the long run. if we are indeed all works in progress, at different points of spiritual development, even if for the majority, such provisions will not be necessary to keep them committed and in the fold, perhaps for others it is absolutely required to accommodate some of the less admirable human tendencies so that hearts and minds can be eventually won for the long-term, rather than having such individuals feel absolutely alienated and searching for alternative lifestyles and religious orientations

What do you think?