



SERMON MISHPATIM:ⁱ BEYOND THE LETTER OF THE LAW

**Rabbi Gabriel Kanter-Webber, Saturday 10 February 2024
Brighton and Hove Progressive Synagogue**

1 I'm in a Facebook group for American Reform rabbis. There are more than 1,600 members, and many fascinating discussions. Sometimes they're of actual practical use. Other times, they simply leave me in awe of just what Jewish life is like in America: a conversation how best to manage a synagogue with 50 staff (story of my life...), an auction of promises where the top prize was to play a round of golf at the rabbi's country club, endless deliberation about the merits of armed security.

2 And then there's maternity leave. American Reform synagogues typically offer their employees a minimum of 12 weeks' paid parental leave.ⁱⁱ That's 12 weeks more than they're required to by US law.ⁱⁱⁱ Why do they do it?

3 Let me ask a different question which actually has the same answer. Why don't we eat human flesh? Perhaps surprisingly, the Torah doesn't tell us not to. You won't find a rule saying 'no cannibalism' anywhere in the biblical text.^{iv}

4 The same answer to both questions – why voluntarily offer paid maternity leave, and why voluntarily refrain from eating human flesh – isn't complicated. Quite simply, basic moral conduct often requires us to go beyond the letter of the law. Or, to put it slightly differently, the boundaries of the law are not precisely the same as the boundaries of right and wrong. That American law allows employers to

ⁱ Exodus 22:17-26

ⁱⁱ Central Conference of American Rabbis, "Resolution on requiring parental leave" (15 June 2021): <<https://www.ccar-net.org/ccar-resolutions/central-conference-of-american-rabbis-resolution-on-requiring-parental-leave/>>

ⁱⁱⁱ Miranda Bryant, "Maternity leave: US policy is worst on list of the world's richest countries", *The Guardian* (27 January 2020): <<https://www.theguardian.com/us-news/2020/jan/27/maternity-leave-us-policy-worst-worlds-richest-countries>>

^{iv} Sifra, Sh'mini perek 4:4 (Weiss edition p 48b)

offer zero paid maternity leave is to American law's discredit. And that Jewish law goes out of its way to ban shellfish, but never thinks to ban cannibalism, isn't exactly great either. To misquote Dickens, if the law says that, the law is an ass.^v

5 Unless the law isn't an ass. Unless there are overarching principles that compel us to act morally even when there are gaps in the law. That's what the 19th-century Hungarian rabbi Moshe Glasner argues:^{vi}

Anyone who does a thing that is considered abominable in the eyes of enlightened people, even if that thing is not explicitly prohibited by the Torah, they are worse than someone who violates explicit Torah law.

He goes on to use cannibalism as an illustrative example:^{vii}

You tell me: [a Jew] is about to starve to death, and in front of them is ... non-kosher meat and human flesh. Which one should they eat? Would we really say that they should eat the human flesh so as to avoid violating the Torah? Should we, a chosen people, wise and sensible, genuinely say that it is better to transgress a basic norm of human behaviour than to break a rule in the Torah?

So in Rabbi Glasner's understanding, the boundaries of Jewish law are precisely the same as the boundaries of what is right and wrong, but in looking for those boundaries we need to keep our minds open. Jewish law is not just found in the pages of Jewish law books (where there is no ban on cannibalism) but also in human experience itself (where there undoubtedly is).^{viii}

6 Today's Torah portion contains another illustration of this principle. God says:^{ix}

If you take your neighbour's garment in pledge, you must return it before the sun sets. It is their only available clothing: it is what covers the skin. In what else shall they sleep? Therefore, if that person cries out to Me, I will pay heed, for I am compassionate.

^v Charles Dickens, *The Adventures of Oliver Twist* (1838; London: Merrill and Baker, 1901): 486.

^{vi} Dor R'vi'i, petichah (Kolozsvár edition, p 26b)

^{vii} Ibid.

^{viii} Cf Ronald Dworkin, *Law's Empire* (Cambridge, Massachusetts: Belknap Press, 1986): 19-20, 351-352; Benjamin C M Gurin, "Halachah for hedgehogs: legal interpretivism and Reform philosophy of halachah", *CCAR Journal* (Spring 2020), 140-154: 143.

^{ix} Exodus 22:25-26



Those final words – “for I am compassionate” – are understood^x as indicating that this is a different sort of commandment. The strict fundamentals of the law dictate, reasonably enough, that a pledge is a pledge: the debtor doesn’t get it back until they’ve paid their debt. But when dealing with a vulnerable person who has literally pawned the shirt off their back, we are expected to go לפנים משורת הדין: beyond the letter of the law.

7 In fact, acting לפנים משורת הדין isn’t just expected. It isn’t a form of optional virtue, a way of getting “*extra credit*”.^{xi} It’s mandatory.^{xii} It’s a gateway through which broad ethical values are compulsorily imported into Jewish law.

8 I keep using the phrase ‘Jewish law’, as the normal English translation of the term הלכה. But it might not be the best translation. Professor Rabbi Rachel Adler defines הלכה as “a communal [way of being] grounded in Jewish stories”.^{xiii} That means it is the totality of our Jewish experience. Not just technical legal debates around kashrut, but everything that makes us who we are as Jews. Rabbi Adler insists that:^{xiv}

[W]e [should] experience making love, making kiddush, recycling paper ... cooking a pot of soup for a person with AIDS, dancing at a wedding, and making medical treatment decisions for a dying loved one as integrated parts of the same project: the holy transformation of our everyday reality. [Then] we would experience ourselves less as fragmented enactors of divergent roles in disparate spheres – public/ private, ritual/ ethical, religious/ secular, duty/ pleasure – and more as coherent Jewish personalities.

9 Her plea for coherence is important. If we understood our Divine law according to its surface interpretation, such that it lets us oppress vulnerable debtors and eat human flesh, what would be Divine about it? Nothing. It would, in fact, be utterly incoherent, an ass, and it

^x See eg Rabbi Chayyim Paltiel to Exodus 22:26

^{xi} Aharon Lichtenstein, “Does Jewish tradition recognise an ethic independent of halakha?” in Marvin Fox (ed), *Modern Jewish Ethics: theory and practice* (Columbus, Ohio: Ohio State University Press, 1975), 62-88: 75.

^{xii} *Ibid*: 74ff.

^{xiii} Rachel Adler, *Engendering Judaism: an inclusive theology and ethics* (Skokie, Illinois: Varda Books, 2001): 25. I have amended out her word “*praxis*” solely to make the seron more accessible for a lay audience.

^{xiv} *Ibid*: 26.



would bring those who lived by it look ridiculous (in the same way that America's cruel approach to maternity leave brings America – the fêted land of life, liberty and the pursuit of happiness^{xv} – look ridiculous). Rabbi Glasner put it well:^{xvi}

The [other] nations are supposed to [look at us and] say: “*What a great people, with such righteous laws!*” But [without an expansive approach by which moral considerations are imported into the law] they will say of us: “*What a vacuous and pathetic people!*”

But concern for what other nations think of us isn't the main source of our obligation to act in accordance with human morality. The main source is our fundamental duty to “*be holy*”.^{xvii}

10 Being holy means being coherent, and being coherent means using our whole selves to identify right and wrong. If we point to the meticulous letter of the law to justify behaviour that is obviously wrongful, we are ignoring the pervasive, God-given voice in our head which tells us that it is obviously wrongful.^{xviii}

11 And, in fact, today's Torah portion gives us a very clear hint in that direction. When observing that we should give a debtor back their duvet at night, even if not strictly required to do so, God rhetorically asks: בַּמָּה יִשְׁכָּב – where will he sleep? But also... where, or rather how, will we sleep? Could any of us sleep soundly, knowing that – law or no law – we were leaving a vulnerable person to shiver all night?

12 Of course not. And that wakefulness – or, perhaps, the quality of being woke – is the best lesson possible in our need to be sensitive to our own moral intuition. בן יהי רצון, may this be God's will.

^{xv} Cf the US Declaration of Independence: <<https://www.archives.gov/founding-docs/declaration-transcript>>

^{xvi} Dor R'vi'i, *ibid.*

^{xvii} Leviticus 19:2

^{xviii} Cf Hirsch's *Horeb* at para 325

