

CIVIL RIGHTS AND THE DIGNITY OF MAN-RAV AHRON SOLOVEICHIK

(From *Logic of the Heart, Logic of the Mind*, pages 61-68)

From the standpoint of the Torah, there can be no distinction between one human being and another on the basis of race or color. Any discrimination shown to a human being on account of the color of his or her skin constitutes loathsome barbarity. It must be conceded that the Torah recognizes a distinction between a Jew and a non-Jew. This distinction, however, is not based upon race, origin, or color, but rather upon *k'dushah*, the holiness endowed by having been given and having accepted the Torah. Furthermore, the distinction between Jew and non-Jew does not involve any concept of inferiority but is based primarily upon the unique and special burdens that are incumbent upon the Jews.

The concept of "*Atah v'chartanu –You, O God, have chosen us*" is implicit in the verse of "And you shall say to Pharaoh: Thus says God, "Israel is My son, My firstborn" (Exodus 4:22). All the people of the world, in view of the perfect future, are children of God inasmuch as in the end they will all recognize the sovereignty of God. Israel is and will always remain the eldest son of God simply because Israel is the pioneer in paving the road for the march of God through the avenues of the human race. Yet all people will equally dedicate themselves to the moral values that are inherent in the ethical attributes of God. The saying of Rebbe Akiva (*Avos 3:18*), "Beloved is Man, who was created in the image of God; it is by special distinction that he was created in the image of God," implies that every human being, regardless of religion, race, origin or creed is endowed with Divine dignity. Consequently, all people are to be treated with equal respect and dignity.

The Torah says in Genesis, "In the image of God He created Man" (1:27). This metaphysical idea leads to the *halachic* principle of *k'vod habriyos*, the dignity of Man. The guidelines of respect for all people are endowed with so much significance that the *halachah* states that any commandment in the Torah can be passively violated, *shev v'al taaseh*, to preserve the reputation and respectability of another human being. It should be noted that *k'vod habriyos* also supersedes every Rabbinic law, whether the subject be a Jew, a non-Jew or a pagan. This can be gathered from laws like *nivul hames*, indignity of the deceased, contained in the verse "You must surely bury him the same day" (*Deuteronomy 21:23*). This *halachah* stems from the concept of *k'vod habriyos*, and it applies to Jews and non-Jews, including pagans.

The concept of "dignity of Man" is not only a metaphysical concept but it also has a legal counterpart, whose scope is broad enough to include all human beings since all were created in the image of God. This idea is contained in the saying of ben Azai, "Despise not

any man" (Avos 4:3). The expression "any man" implies, as the commentaries say, that even pagans must be treated with respect, and it is a sin to despise them.

The commandment of "Despise not any man" does not represent a mere extra act of piety but it represents a Torah transgression that emanates from the verse of "Neither shall you go by steps onto My altar, that your nakedness not be exposed on it" (Exodus 20:23). Rashi says that here we have a logical *a fortiori*: If in regard to the stones of the altar we must beware not to show disrespect, then in the case of other human beings created in the image of the Creator, how much more certain is it that we should not treat them disgracefully. This saying of *Chazal* is the source for the obligation to mete out respect to everyone created in the image of God.

This key concept of *k'vod habriyos*, the dignity of all human beings, constitutes the basis of human rights. The maxim of "Man was endowed by his Creator with certain inalienable rights" was not an innovation of the founders of the American republic. These men were impressed with the doctrine of human rights which flows naturally from the concept of "the dignity of Man" and the "image of God in which He created Man," as they knew from their Biblical background.

The concept of *k'vod habriyos* is the basis of all civilized jurisprudence, as well of all the laws of justice in the Torah. Civil law and the *misphatim* (rational laws) of the Torah, on the whole, bear a remarkable correspondence for the simple reason that every law in modern jurisprudence is based exclusively upon the doctrine of human rights which the nations of the world adopted from the Scriptures. For example, it is a crime to commit homicide, to commit assault and battery, or to trespass upon another's property, because every human being has a fundamental right to be secure in person and property against any attack, assault or molestation. Everyone has such a right since everyone was created in the image of God and consequently deserves to be treated with dignity and respect.

While Jewish jurisprudence in one respect begets modern civil law, in another respect it is distinct and unique. Insofar as the idea of human rights emanating from our common "image of God" is at the core of all *mishpatim* of the Torah, the two codes of law are similar. However, Torah law is distinct and unique in that, whereas modern jurisprudence is completely and exclusively grounded in human rights, Torah jurisprudence is additionally founded upon the pillar of duties. In the Scriptures we find the term *tzedek* used together with *mishpat* (see Psalms 89:15). *Mishpat* and *tzedek* both emanate from the doctrine of human rights. In the realm of *mishpat* and *tzedek*, the notion of rights comes first and the notion of duties second. Person A is duty-bound to refrain from assaulting person B because B has a basic right to be secure. The right of B thus comes first; from this stems the duty of A. The Talmud says in *Maseches Sanhedrin* (58b), "Whoever

assaults or molests another person, even though he does not harm the other person, is considered wicked.”

Once again, these rights, as the Rambam says in *Hilchos Sanhedrin* (24: 8-10), apply even to pagans and derive from the ideal of *k'vod habriyos*. Besides the doctrine of rights, *mishpat*, Judaism emphasizes the concept of *tzedek*, righteousness and duty, as a primary motive. In modern society, assaulting a person is a crime but failure to save a human life is not. Civil law finds it inconceivable that a person should have a right to demand help and generosity from another. The Torah's concept of *tzedek*, however, gives the person the right to demand aid. The Torah's two pillars are succinctly described in *Toras Kohanim* (on Leviticus 19:18), which says, “Rebbe Akiva says, “You shall love your neighbor as yourself” [ibid] is a paramount and inclusive principle. Ben Azai says “This is the book of the generations of Man. On the day that God created Man, in the likeness of God He made him” [Genesis 5:1] implies a more universal concept.”

The commandment of “You shall love your neighbor as yourself” comprises all those laws that emanate from the concept of brotherly love, while the verse “In the image of God He created Man” is the basis of all those laws which are comprised within the realm of *mishpat* and *tzedek*. The commentary of the *Korban Ha'eidah* on the Talmud *Yerushalmi* (*N'darim*) explains why ben Azai called “the image of God” a more universal concept than brotherly love. While the trait of honoring others is to be practiced indiscriminately toward all human beings, Jews, non-Jews and pagans alike, the Torah does not demand and cannot expect that a Jew love a non-Jew or pagan just as one loves oneself—that would be contrary to human nature. The principle inherent in the verse “In the image of God He created Man,” and in the ideal of the “dignity of Man” establishes no distinction between Jews and non-Jews.

The Torah states, “*Tzedek, tzedek, you shall pursue*” (Deuteronomy 16:20). Why should the Torah repeat the term *tzedek*? Rabbenu Bachaye, the student of the Ramban, in his work *Kad Hakemach*, interprets that the Torah intimates how the same standard of justice and righteousness that is applied toward our Jewish brothers is also to be applied toward all Gentiles. When one delves into the *halachah*, one can readily see that the Torah does not make a distinction between Jews and non-Jews within the realm of *mishpat* and *tzedek*. A trespass committed against the property of a pagan is just as criminal as one committed against the property of a Jew. It is true that the *aveidah*, the lost object of a pagan that inadvertently comes into the possession of a Jew is permitted. However, this *halachah* is subject to two qualifications. One distinction is between an idol worshipper, whose lost object is permitted, and a non-pagan Gentile, whose lost goods are forbidden. Significantly, the *Meiri* (in the *Shitah M'kubetzes* on *Bava Kama* 113a) writes that based on this difference between the status of pagans and non-pagans, we assume that

today there are no pagans for religious worship. Hence, all lost property that comes into possession of a Jew must be returned to its proper owner. The second qualification of the *halachah* permitting lost goods of a Gentile is mentioned in the *Sefer Mitzvos Hagadol*: Lost items of a pagan are not really permitted. Rather, such objects do not fall into the category of *gezel*, stealing, but still involve a violation of “The remnant of Israel shall not do iniquity or speak lies” (Zephaniah 3:13). Taking and keeping the lost object of a pagan would still be considered an unjust and unfair act inasmuch as it runs counter to the principle of human rights and to the concept of *tzedek*, which must be shown to Jews and non-Jews alike.

The Talmud *Yerushalmi* (*Bava M'tziya*) tells the story of Shimon ben Shetach, who worked in the flax business, struggling to make a living. His disciples advised him to give up the flax business and buy a donkey, which would provide a better source of income. Shimon ben Shetach agreed, and his students bought a donkey from an Arab pagan. After buying the animal, these disciples found a large diamond tied to it, and they brought both the animal and the jewel to their teacher. Upon seeing the acquisitions of his students, Shimon ben Shetach asked, “Did the Arab know that there was a diamond tied to the donkey?” The disciples said, “No.” At that point, Shimon ben Shetach said to his disciples, “Go immediately and return the diamond.” The disciples, however, were curious—is it not stated that all agree that the lost goods of a pagan are permitted to be retained? Shimon ben Shetach responded, “Do you think that I am such a barbarian? I am more interested in hearing the exclamation, “Blessed be the God of the Jews” from the mouths of pagans than I am in making a living.” Although perhaps the act of keeping the diamond might not have been stealing according to the law, it was still forbidden as an act of “barbarism” since “The remnant of Israel shall not do iniquity or speak lies.” It is inconsistent with *k'vod habriyos* and human rights.

In this story, Shimon ben Shetach gives a remarkable definition of the term “barbarian.” According to him, anyone who fails to apply a uniform standard of *mishpat*, justice, and *tzedek*, righteousness, to all human beings regardless of origin, color, or creed is deemed barbaric.

From this *Yerushalmi*, coupled with the concept of *k'vod habriyos*, one must assume that those people who refuse to grant any human being the same degree of respect that they offer to their own race or nationality are adopting a barbaric attitude.

At the beginning of Exodus, the Torah relates three episodes in Moshe's life before God designated him the deliverer of the Jews of Egypt. On the first day that Moshe went out to his people from the palace of Pharaoh, where he was raised, he saw an Egyptian striking a Hebrew. Here the outstanding quality of Moshe first reveals itself. With an overwhelming passion for justice and righteousness, the inability to tolerate a crime, Moshe hastily looked

around and rushed forward to defend the Hebrew against the Egyptian aggressor. This, the first act in Moshe's life as a grown-up, represents part of the *tzedek* that is to be realized in the realm of Gentile-Jew relationships. But then the Torah tells us that Moshe went out again and this time he saw one Jew smiting another. Moshe rushed to the aid of the victim, defending him against the aggressor. This second act of Moshe's represents his dedication to the cause of justice and righteousness in the realm of Jew-Jew relationships. As a result of this second act, however, Moshe was forced to flee Egypt. The once-pampered Egyptian prince of the royal household became a homeless, hunted refugee.

Moshe comes to a well where he witnesses another act of injustice. The local shepherds drive away the shepherd daughters of Yisro so that the shepherds can water their flocks first. Here Moshe encounters a dispute between non-Jews, a matter seemingly so unimportant to him that we might have understood had he stood idly by. Hadn't he learned his bitter lesson already? Did not discretion urge him to "mind his own business?"

Chazal say, "Moshe represents *tzedek*" (*Midrash Rabbah, Shmos*). The concept of *tzedek*, as we have begun to develop, is to be pursued in three different realms. Firstly, as Moshe taught us, a Jew must be on guard not to allow injustice in the relationship of a non-Jew with a Jew. Secondly, a Jew must be careful that justice be shown in relationships between Jews. Thirdly, the incident by the well in Midyan teaches us to enact justice between non-Jews when that is within our power. Moshe was bent upon emulating the ways of God, one of which is to defend a victim from an attacker, as the verse says, "God takes the side of the aggrieved and the victim" (Ecclesiastes 3:15). *Chazal* comment, "Even if a righteous person attacks a wicked person, God still sides with the victim" (*Yalkut Shimoni*). In Moshe's mind, the pursuit of righteousness and justice was paramount; no consideration could stand in its way—"And Moshe stood up and helped them and watered their flocks" (Exodus 2:17). A Jew should always identify with the cause of defending the aggrieved, whoever the aggrieved may be, just as the concept of *tzedek* is to be applied uniformly to all humans regardless of race or creed.

This attitude of our sages towards *k'vod habriyos*, the dignity of Man, is expressed clearly in the Talmud in *Maseches Brachos* (17a): "In the words of the rabbis of Yavneh: I am a creature of God, and my neighbor is also His creature. My work is in the city and his is in the field. I rise early to my work and he rises early to his. As he cannot excel in my work, so I cannot excel in his work. But perhaps you say, "I do great things and he small things." We have learned that it matters not whether he does much or little if he only directs his heart to Heaven."