

## **Judaism and Human Rights**

**By David Rosen**

The argument that Judaism is a religion concerned only with human obligations and not with human rights, has been made both by detractors of Judaism as well as apologists on its behalf. Among the latter was the late Professor Yeshayahu Leibowitz for whom Judaism's grandeur lies precisely in its commanding theocentric character that transcends inconstant human subjectivity.

More often the allegation emanates from a view that perceives Judaism as an inadequate ethical system lacking a human centered compassionate core.

Regardless of the motives behind it, the claim is disingenuous at best. To begin with, the very concept of obligations in the Torah (i.e., the Pentateuch, the primary text of Divine Revelation for Judaism) presumes the rights of those who are the object of these obligations. Indeed one can only make sense for example of a prohibition against theft, if the owner has a recognized right to possession, which is violated by the thief.

Above all, all obligations towards our fellow human beings (and indeed towards ourselves) are rooted in the Biblical teaching that the human person is created in the Divine Image and thus with the sacred right to life, freedom and dignity. One of the most striking expressions of this in Jewish Jurisprudence is the text of the admonition recorded in the Mishnah (Sanhedrin 4:5) given by the court to witnesses in capital cases. "Know you" the judges would say to the witnesses "that capital cases are not like civil cases... for in civil cases (if false testimony is given intentionally or

unintentionally and the defendant is unjustly convicted) he may make financial restitution and thus atone (for his sin or error). While in capital cases, his blood and that of his descendants through all eternity are upon him. For that reason the human being was (originally) created singly; to teach you that he who destroys one person's life, it is considered as if he destroyed a whole world, and he who preserves one person's life, it is as if he has preserved a whole world... And to declare the greatness of the Holy One Blessed be He, for when a human person mints coins from the one mold they all appear identical, but the Holy One Blessed be He "minted" every person from the mold of the first human being, but not one is identical to another, therefore a person should say, the world was created for me."

The Mishnah powerfully articulates both the value of the individual person and the equality of all people, but also the human right to life and progeny. Precisely that sacred right to life resultant from being created in the image of God, is that which serves to make the concomitant demands on us to respect and protect the life of the other.

Murder is thus seen as a denial of the Divine element within the human person (Tosefta Yevamot Ch. 8) and thus rather than be party to such, one must be willing to suffer martyrdom and may not claim that "one's blood is redder than another's" (Sanhedrin 74a).

The infinite value of the individual life is furthermore evidenced in the teaching (Tosefta, Trumot, 7:20) that if oppressors threaten to kill a whole group of people

unless they deliver up one of them to be killed, they must all suffer martyrdom rather than be party to the killing of that one person.

Accordingly each person's right to life, obliges us to come to his or her aid when threatened (Leviticus 19 v. 17; Sanhedrin; Maimonides; Yad, Hilchot Rozeach 2:3).

As indicated, the right to life is not only the basis for making demands on our respect for the life of others, but also for preserving our own lives (Sanhedrin 72a, Bava Metzia 62a). (These parallel responsibilities may of course present us with moral dilemmas, e.g., in times of conflict and war. The Talmud teaches that when someone threatens the life of another and it is impossible for the latter's right to life to be protected other than by killing the former, such a course of action becomes obligatory (Maimonides Yad, Hilchot Rozeach 1:6)). Furthermore, Judaism teaches that the individual has the right not only to life, but to security from harm, to health, dignity and making a living - all specific factors involved in assessing costs in cases of damages (Bava Kama, Mishnah 2:6).

The concept of Dignity particularly embodies the foundational idea of the sacred and inalienable value of the individual. Especially prominent on this subject in the Mishnah (Bava Kama 8:6) is Rabbi Akiva, who emphasizes that even if a person does not show respect for her or his own dignity, that does permit less respect on our part towards that person's dignity. Indeed Rabbi Tanhuma dramatically emphasizes this idea by declaring that any act of disrespect towards another person is an act of disrespect to God Himself, precisely because "in the image of God He made (the human person)" (Sifra 4:12).

Accordingly, “among the foundations of Torah morality is the principle that in the eyes of the law all people are equal (Leviticus 19 v. 15) and that every person can demand his rights and that justice must be extended to all alike” (S. Belkin, *In His Image*, Abelard-Shuman, Congress Library Catalog, 60-72301, p.87). Moreover on this basis, the legal right of presumption of trustworthiness is given to every person including the privilege against self incrimination (Shavuot 47b and Bava Batra 31b). This even applies to one who has been punished as a result of having been found guilty of an offense (Mishnah Makkot 3:15; Maimonides, Yad, Hilchot Edut 12:4), i.e., conviction does not diminish his rights (cf. S. Mendelsohn, *The Criminal Jurisprudence of the Ancient Hebrews*, New York, 1968).

Inextricably bound up with the concept of the dignity of the individual is the value of freedom, which is of course at the heart of the historical orientating experience of the children of Israel – the Exodus. “The recognition of the right to freedom is not limited to personal liberty. It ensures all against any form of slavery and subjugation” (Belkin, loc. cit. p. 112). Indeed, the very fact that imprisonment as a penalty does not exist in the Bible and was only introduced as such by the Rabbis for the case of intentional bloodshed, reflects the principle “that the human person is endowed with inviolable rights, amongst them the right to liberty” (Belkin, p.111).

It is nevertheless a fact that the institution of slavery is provided for in the Bible. However, Biblical and Rabbinic legislation transform it into a kind of restricted employment, which is either used to facilitate restitution (i.e., in the case of a thief) or to enable a destitute individual to find shelter and occupation. Indeed, the Biblical legislation makes it clear that the individual engaged into another’s employ in this

manner was required to go free after seven years and if he voluntarily refused, his ear was to be pierced (Exodus 21 v.6). Rabbi Yohanan Ben Zakkai explains (Kiddushin 22b) that the ear was to be pierced as “the ear heard God proclaim freedom from human subservience at Sinai”! Moreover, in the Jubilee year, the servant had to go free whether he wished to or not. The legislation laid down in Judaism to protect individual rights against the ownership of one’s person by another became so substantial that the Talmud (Kiddushin 20a) states that “he who acquires a servant, acquires a master”.

Naturally, this value of freedom is central to labor law in Judaism. In addition to the basic right to earn and protect one’s livelihood and the right to rest from labor enshrined in the Sabbath laws, the Talmud makes it clear that an employee always has the right to retract (his labor) even in the middle of the day (Bava Metzia 77, cf. S. Warhaftig, *Dinei Avodah baMishpat HaIvri*, Tel Aviv, 1969, p. 131).

While it is not in the scope of this article to cover the whole spectrum of human rights that Judaism addresses, the Talmud deals particularly extensively with property rights and inter alia, deals with the rights of privacy, space and light (regarding domicile), as well as the right to protection against property, injurious objects, cavities and pollution, etc. (Bava Bathra Mishnah 2:4, 9; Babylonian Talmud, 2b and 6b).

Arguably, the full grandeur of the Judaic concept of human rights is to be seen in its generality as applied to the stranger as well as the citizen (Numbers 15 v. 6; cf. Leviticus 19 v. 34 and 25 v. 35). This, as indicated, is grounded in the concept of the inalienable value of the life and dignity of every person, created in the Divine Image.

This is also the basis for the moral limitations on the power of the king who is obliged to respect the rights of his subjects (Deuteronomy 17 v. 16-20 and Maimonides, Yad, Hilchot Melachim).

Although Judaism has nothing analogous to the Greek and Roman concepts of “state” or “society”, it does have a strong legal sense of community. Thus it was the duty of the Sanhedrin in ancient Israel to appoint qualified courts (see Sifre, Deuteronomy, 144) and the Rabbis further instituted the establishment of schools throughout the land to guarantee full educational opportunity (Bava Bathra 21a). It also appears that municipal governance has also been instituted on a national scale by Talmudic times (Megillah, 26a). The Talmud clarifies the rights of the residents of a city to establish by mutual consent standards of measurement, market prices, wages, etc. as well as the right to apply sanctions against those who violate these (Bava Bathra, 8b).

Nevertheless, communal responsibility must be balanced against the inalienable rights of the individual. “The belief in the sacredness of the human personality not only governs the relations of one individual to another: it defines (the individual’s) relation to society as a whole.

...(While) each individual shares in the responsibilities of the social order, (nevertheless it) is guaranteed that just as no individual can acquire ownership (of another), so the group will never be given unlimited authority over his person” (Belkin p. 117).

Even those who do not accept the obligations of Jewish jurisprudence, are still to be treated with respect for their humanity and its concomitant rights. Maimonides rules

(Yad, Hilchot Melchim 10:12) on the basis of the Talmud (Jerusalem Talmud Gittin 5:9, Babylonian Talmud, Gittin 59b). “We are obliged to maintain the poor of idolaters, attend to their sick and bury their dead, as we do with those of our own community, for the sake of peace. (For the whole of Judaism is for the sake of Peace - Gittin 59b). Behold it is said “Her ways are pleasant ways and all her paths are Peace” (Proverbs Ch. 3). And it is written, “God is good to all and His mercy extends to all His creatures” (Psalms 145 v.9).”

In adding this reference, Maimonides is emphasizing the idea of *Imitatio Dei* (i.e., emulating the Divine Attributes) relating it to conduct towards “the other” (see I. Unterman, “Darkei Shalom Vehagderatam” published in *Kol Torah* Jerusalem, 1966) and in effect clarifies that respecting and protecting human rights is our Divine imperative.

The evident centrality of human rights in Judaism is not to minimize its concern with obligations and responsibilities. “Right and obligations are two sides of one coin and the same medal”, points out R. J. Z. Werblowsky (*On Religion and Human Rights – Comprendre, Revue de Politique de la Culture, Societe Europeenne de Culture, Venise, 1984*), warning against the dangers of exclusive emphasis on the one at the expense of the other.

Obviously, Judaism as a living and evolving tradition in its different social and cultural contexts, has had and has its limitations and failures in terms of its ultimate goal of preserving and promoting the human rights of all persons, so that the Divine Name may be thus sanctified in the world. Nevertheless in its fundamental

affirmation of universal sanctity of human life and dignity resultant from the concept of the Image of God in all persons, we find the very foundation for as well as transcendent value of universal human rights.