

Judaism, Humanism, and Halakhah

Class 11

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1. “To Cultivate and to Guard: The Universal Duties of Mankind,” *By His Light* (2003), pp. 1-26;

This question has been raised extensively within the Christian context, where it is referred to as the issue of “nature and grace.” Does the order of grace—which is the more specific relationship of a given community towards God—do away with the order of nature: natural values, natural morality and natural religion? Or is the order of nature fundamentally sound, significant and normative, but in addition to it comes the order of grace? Broadly speaking, within the Christian context, the more rationalistic and humanistic thinkers have stressed that the universal component remains in force. Those who espoused a more anti-humanistic and anti-rationalistic line generally felt that anything which human reason develops, anything which is universal, anything which is not part of the specific order of revelation, is absolutely meaningless and not binding. In fact, they felt it may even be injurious, because it leads a person to think that these kinds of universal values are significant, whereas in reality the order of nature was good for one phase of human history but has been totally replaced by the order of grace.

2. Shlomo Fischer, “The Religious Humanism of R. Aharon Lichtenstein,” *Tradition* 47:4 (2015), p. 22

Insofar as the Jew is a human being, he also shares in the universal human search for the transcendent and the divine. In fact, particularistic Jewish spiritual ends and achievements rest upon universalistic spiritual, cultural, and religious achievements: morality, rationality, perfection of character, respect and manners, human sensitivity and understanding, aesthetic sensibility, and the ability to express oneself with elegance and precision. To the extent that the Jew is more moral, more rational, and more sensitive to, and understanding of, universal human issues, to that extent, his piety and fear of heaven, his Torah study, his performance of the ethical commandments and his prayer will be richer, deeper, and bring him closer to God.²² Here lies R. Lichtenstein’s interest and affinity to Shakespeare, Milton, Matthew Arnold, Robert Frost, and others. Insofar as these authors’ works deepen our human sensitivity and understanding, our moral and aesthetic sensibilities, they broaden the foundation upon which we can build a second story of Torah and piety.

3. Haim Sabato and R. Aharon Lichtenstein “‘He Made Man in the Image of God’: Explaining Religious Humanism,” in *Seeking His Presence*, pp. 155-174

I wrote my doctoral dissertation about Henry More, a seventeenth century Cambridge Platonist who exemplified this sort of humanism. I did not invent this approach. My literary studies at Harvard focused upon religious humanists, men like Milton. This outlook waxed and waned in popularity in different periods, but such schools of thought existed in the Western world even before the Middle Ages...

Humanism is a certain assessment of the nature, character, and capabilities of man. It assumes that man is not inherently corrupt. It places man in the center of its worldview... In another sense, humanism does not merely take a certain perspective on man but it sets out to develop an ethos and philosophical perspective that pits the concern for man and his well-being as being very central... including the question of how to draw man closer to the Almighty...

I saw this approach [of religious humanism] in the Torah giants with whom I was in contact. Humanism was definitely a part of their worldview and their legacy. This was true of Rav Soloveitchik and of Rav Hutner, and, one could even say of Rabbi Shlomo Zalman Auerbach...

The central pillar of Western religious humanism is the verse, ‘For He made man in the image of God’ (Genesis 9:6)...

The essence of religious humanism is what one thinks about the relationship of man to the Almighty. How does he experience this bond? To what extent does he succeed in accepting the yoke of the Majesty of Heaven, as the true yoke of a real ruler while maintaining his sense of independence?

4. RAL, “Mah Enosh’: Reflections on the Relation between Judaism and Humanism,” *Torah u-Madda Journal* 14 (2006-07), pp. 1-61

What is the relation between humanism and Judaism? A question so central to a basic understanding of a Torah *Weltanschauung* bears examination in any age. And yet, it has, additionally, a special relevance to our own. The prevalence of humanistic winds currently blowing through general religious thought¹ makes it imperative that this partially neglected problem² be presently treated from a halakhic perspective.

It cannot be treated, of course, without answering a prior question, “‘What is Humanism?’ a question within whose murky depths,” according to a recent writer, “whole libraries might be sunk without affording a foothold.”³ Historically, humanism has indeed presented, even at its most self-conscious, a multifaceted appearance...

we can formulate a terse working definition: Humanism is a world-view which values man highly. If this be the case, however, it becomes immediately apparent that our initial question is not one but several. For in this formulation, “values” must be understood in two senses, both as “appraises” and as “cherishes.”...

Philosophically and historically, it revolves around two foci. The first is the nature of man. Humanism affirms the dignity, the uniqueness—to a point, even the virtue—of man. Factually, it holds that man is endowed with a singular character; normatively, that he must realize his distinctive dimension, or rather, his distinctive potential. The basis for these affirmations may vary. In their medieval and Renaissance form—from John of Salisbury through Pico and Erasmus to Hooker and Milton—it was predominantly religious. In their modern form, as exemplified by, say, Babbitt, Camus, or Dewey, it is often secular...

Religious humanism... often makes the most sweeping cosmological claims. In one sense, of course, the religious position *per se*—especially that of revealed religion—assumes man’s special status as the one creature capable of relating intelligently to God. To this extent, religion is, by definition, more humanistic than secularism; in positing a transcendental dimension to his existence, it assumes a nobler view of man. Many religious humanists go much further, however. They regard not only their own systems but the objective universe itself as being anthropocentric. Among Renaissance writers, for instance, statements that man is the very focus of the creation, that the entire cosmos exists but to serve him, are almost clichés...

The second focus, related to and yet distinct from the first, concerns the destiny of man—insofar as he can affect it—rather than his nature. The issue here is not what man is, nor even what he can become, but the degree to which human life should be geared to the satisfaction of man’s needs and desires. Whatever his worth, to what extent should man be collectively concerned with his own mundane well-being? From a secular perspective, such a question makes very little sense. The answer is, obviously, as much as possible, provided, of course, in the spirit of John Stuart Mill, that these are not confined to the hedonistic or sybaritic but include spiritual desiderata as well. From a religious perspective, however, which regards mankind as having not only rights but responsibilities, it is not only relevant but crucial. Man’s relation to God entails obligations to Him, so that energies which might have been channeled toward the advancement of purely human welfare are expended in the service of God. In this sense, therefore, the religious point of view is, by definition, less humanistic than the secular;...

These are not matters of simple dogma, to be settled by reference to catechetical formulations; and, in actual fact, Jewish thought has certainly advanced a significant variety of attitudes and emphases concerning them. Maharal’s world-view was more anthropocentric than Rambam’s, and Rabbenu Bahya’s more ascetic than Rav Kook’s. Nevertheless, one can speak of a broad central position. Above all, one can look to a common objective element to help define the limits of discourse. This element is pre-eminently the Halakhah...

Judaism has regarded the nature of man in the light of a basic antinomy. On the one hand, man is a noble, even an exalted being. His spiritual potential and metaphysical worth are rooted in his *Zelem Elokim*, “the image of God” with which his Creator has invested him. The phrase is doubly significant. It describes man’s metaphysical essence, on the one hand, and it suggests a kinship on the other.⁶ “Beloved is man that he is created with an image. Particular love is manifested to him in that he is created in God’s image, as it is said, ‘For in the image of God He made man.’”⁷ Man was imbued with a transcendental spark—endowed with personality, intelligence, and freedom—because divine grace destined him for a special relation with itself. Individually and collectively, man is therefore the object of particular Providence, and, as a spiritual being, a

subject capable of engaging his personality in a dialectical community with God... As regards his relative cosmic position, however, the tradition has harbored conflicting views. Thus, Maharal placed man at the very apex of creation,⁸ while Rambam insisted the angels were ontologically superior.⁹ Similarly, Rambam¹⁰ strongly rejected the notion, often cherished by humanists, that the universe as a whole exists solely in order to serve man. Just as God willed the existence of man, so He willed that of other beings, each for its own sake. None, in Tennyson's phrase, "but subserves another's gain."¹¹ Yet numerous texts expound the very position the Rambam rejects. The Midrash, for instance, repeatedly discusses the creation in strikingly anthropocentric terms. After the fall, it depicts God as stating: "Did I not create animals and beasts solely for man? Now that man has sinned, what need have I of animals and beasts?"¹² Man is the culmination because the pinnacle of creation, "created after everything so as to rule over everything"...

Judaism has not assumed man's natural goodness... But Judaism has always insisted upon man's natural worth—upon the sanctity as well as the dignity of human personality. On the one hand, then, man is regarded as a majestic and exalted being. And yet, on the other, we are confronted by the radical pessimism of Kohelet: "For that which befalls the sons of men befalls beasts; even one thing befalls them; as the one dies, so dies the other; yea, they have all one breath; so that man's pre-eminence over the beast is naught, for all is vanity."... It is God who invests human life with meaning—first, by electing man in the act of creation proper, and then by maintaining community with him. Once established, however, the relation radically alters the very fiber of human personality and existence....

As a normative system, [Halakhah] is grounded upon one cardinal premise: human freedom and creativity. And as an experienced reality, it trumpets forth, in turn, one central message: human freedom and creativity. It does not merely posit this doctrine as a metaphysical principle. It envisions freedom, at every level and in every sphere, as a pragmatic *modus operandi*.²⁴ It makes one persistent demand: Choose. Decide. As a pervasive legal system, Halakhah posits Jewish existence at the plane of maximal consciousness and decision. ²⁵ The Jew is insistently called upon to exercise intelligence and rational will—to act, that is, as an active subject rather than as a passive object...

As regards the first focus, then—the conception of the nature of man—Judaism is very much within the mainstream of religious humanism. Or rather, it constitutes one of its primary fountainheads. What we have seen as the traditional Jewish position closely resembles so much that was commonplace among, say, Renaissance humanists precisely because they drew so heavily upon it...

The doctrine of the incarnation enables a Christian to ground his humanism upon premises which a Jew must regard as nothing short of idolatrous. In this sense, it is perfectly true that Christian humanism resulted from the conjunction of Greek and Jewish thought; or perhaps indeed, as Toynbee would have it, that Christianity itself developed out of the injection of Hellenic "man-worship or Humanism" into Judaism....

Nevertheless, in its broad outlines, Jewish anthropology does have much in common with Christian humanism;³⁶ and sensitivity to important differences of tone and emphasis as well as substance should not blind us to this fact. Above all, they share the concurrent vision of man's complex dual nature: the grandeur of what Milton called "the human face divine" and the animality of the two-footed beast. Whatever be the Torah-halakhic view of the nature of man, our second focus—the degree of concern for human welfare—poses an entirely different question...

One could conceivably entertain the highest estimate of man's worth and yet be relatively unconcerned with "the amelioration of life in this world." And I would agree with Professor Bush that it is "very misleading" to assume "as an unquestionable fact that humanism and related words signify a turning from heaven to earth, from medieval theology and otherworldliness to this mundane world which the classics have taught men to enjoy."⁴¹ The crucial question turns on the conception of human welfare. Inasmuch as man consists of body and soul, his well-being must presumably be defined with reference to both. Or rather, if we are to speak from a religious perspective, it may be defined purely in terms of the latter, physical well-being becoming relevant only insofar as it contributes to spiritual development...

To take a recent Jewish example, R. Yosef Yosel Hurwitz, the founder of the Novardek school of *musar*, entertained the most exalted conceptions of man's intrinsic worth and yet counseled radical forms of asceticism

and renunciation... How much weight has Judaism assigned man's realization of temporal happiness? To what extent has it recognized the value of satisfying his physical and emotional needs? The answer to this question must rather primarily be sought—apart from explicit biblical or aggadic statements of attitude—in areas of Halakhah which either define or reflect a perspective upon man's relation to the mundane. Such an inquiry should concern itself, in turn, with two distinct elements. The first might be called the normal or fundamental Halakhah, the moral and religious demands imposed by the Torah as a program for human life under ordinary circumstances. The second concerns whatever provisions the Halakha has made for superseding its usual norms in emergency situations in which these conflict with essential human needs...

It becomes immediately apparent that any answer must be largely relative. It all depends on one's standard and expectations. As compared with medieval Christianity, Judaism is singularly mundane; as compared to most contemporary versions, it is rather other-worldly...

The humanistic strain is reflected in what the Halakhah both says and avoids saying. In a positive sense, it finds expression in the overriding emphasis upon *hesed*... "R. Simlai expounded: The Torah begins with an act of *hesed* and ends with an act of *hesed*, for it is written, 'And the Lord God made for Adam and for his wife coats of skin and clothed them;' and it ends with an act of *hesed*, for it is written, 'And He buried him in the valley.'"...

The drive to *hesed* has two motive springs. One is the obligation to imitate divine attributes and actions... The second spring is the obligation to love another. This commandment—singled out by R. Akiva as a "central principle in the Torah"—was cited by Rambam as the halakhic basis of the very acts of *hesed*...

This intersection of two orders of *mizvot*, duties to God and man respectively, is no accident. It reflects halakhic faith that religious self-fulfillment imposes social obligations, on the one hand, but that, on the other hand, social action cannot have ultimate meaning unless it draws upon and relates to a transcendental source... The humanistic strain is likewise evident in a major halakhic omission. As a moral and religious regimen, the Halakhah demands a great deal; but its discipline contains little which can be regarded as purposively ascetic. Of mortification it knows almost nothing, of monasticism even less. The emphasis is rather upon a discipline of choice and direction...

With respect to the social and economic order... man is commanded to lead a full and productive life—"as the Torah was granted through a covenant, so was labor granted through a covenant"⁶¹—but he is enjoined, even with respect to the economic sphere, from becoming *homo economicus*, an agent whose decisions are guided solely by secular considerations. The basic goal is *kedushah*, not the suppression but the sanctification of world and self, and the primary means is the organization of experience around a divinely ordained normative order...

The Halakhah does occupy, therefore, a middle ground between secular utilitarianism and Christian asceticism. On the one hand, it not only omits but positively decries excessive self-denial:...

Ordinarily, the Halakhah places the Jew very much within a worldly milieu. At the level of personal piety, it instinctively assumes a framework of participation rather than renunciation; at the level of public policy... Its attitude is one which "may at once accept and criticize, tolerate and amend, welcome the gross world of human appetites, as the squalid scaffolding from amid which the life of the spirit must rise, and insist that this also is the material of the Kingdom of God."

But no—it goes further. The Halakhah does not merely regard the mundane order as "squalid scaffolding" from which spiritual life may emerge. The mundane is itself one facet of the spiritual life—not just an arena within which spirituality may grow but, insofar as it is the subject of numerous commandments, the very fabric of halakhic living... if the Torah regards the world positively, on the one hand, it does not, on the other hand, simply leave the Jew free to mind his own store. It makes both general and specific demands, it formulates priorities, and it posits both a mode and a direction for man's exploitation of nature. Standing firmly upon its middle ground, it places pleasure within an eternal as well as a temporal framework... Avoiding either pole of James' familiar dichotomy, the world-rejection of the sick soul and the world-acceptance of the healthy-minded, the Halakhah has adhered to what C.E. Raven has justly described as "the more profound concept of world-redemption."⁸¹ "Halakhic man," writes its leading contemporary expositor, "... fights against life's evil and struggles relentlessly with the wicked kingdom and with all the hosts of

iniquity in the cosmos. His goal is not flight to another world that is wholly good, but rather bringing down that eternal world into the midst of our world.”⁸² Not content with the integration of the secular and the religious into a single harmonious scheme, the Halakhah demands their interpenetration. The sacred must not only relate to the profane but— even as the two remain distinct—impregnate it. Halakhah proclaims the central truth that while religion is, in one sense, an area of experience, in another sense it frames all experience, inasmuch as it concerns man’s relation to God, the ground and goal of life itself. It is not only a quantitative but also a qualitative aspect of existence, and, as such, impinges upon every area. “All human activity,” Rambam insisted, “is subsumed under *yir’at shamayim*, ‘the fear of Heaven.’” In one respect, therefore—its concern with man’s mundane welfare—the Halakhah is thoroughly humanistic. In others, however, it is not—at least, not in the sense in which secularists generally use the term. For one thing, its ritual aspect imposes demands which contribute little to man’s temporal well-being...

The oft-used phrase, “the yoke of *mizvot*,”⁸⁶ not to mention common experience, attests to this point readily. The *gemara* does occasionally refer to a principle that “the Torah has consideration for the money of Israel,” but always within a context of sacrifice and obligation... It requires, for instance, that a Jew abandon all his property rather than actively transgress a single injunction. It no doubt envisions ultimate human happiness even at the secular plane. The Bible is full of this theme and, in several places, the Talmud cites the verse, “Her [i.e., the Torah’s] ways are the ways of pleasantness” to establish a halakhic point.⁹⁰ But its attainment could well entail much

self-denial along the way. Secondly, far more than the particular sacrifices it requires, the very existence of Halakhah rejects one aspect of humanism. As an objective normative order, Halakhah shifts the center of authority from man to the law. To be sure, man plays a crucial role in interpreting and, to a point, even in shaping the law. But so long as he remains honestly committed to the system, he is no longer a final arbiter. The human element is thus diminished twofold. On the one hand, man is no longer vested with the power of ultimate decision. On the other hand, human comfort is discarded as the normal ground of decision...

Halakhah... with its comprehensive scope, impinges upon the minutiae of human activity. With respect to the ordinary Jew as well as the most spiritual, it is no mere general principle but a universal presence... To be a Jew means giving up something of one’s autonomy. Covenantal commitment, at Sinai or later, is not so much the acknowledgment of the moral law or the assumption of specific obligations. It is, first and foremost, an act of submission. The Jew accepts not just the law but the King, not only the *mizvah* but the *mezavveh*...

It is almost ludicrous to speak of Judaism as an anthropocentric religion. Judaism is humanistic in its vision of man’s worth, its concern for his well-being, and its positive approach to all aspects of his existence. But it harbors no illusions about man’s servile position, a position he occupies not as a punishment for some Original Sin but simply as his natural condition; or, at a higher level, as the result of his covenantal commitment...

A Halakhah that intones “‘And thou shalt love the Lord with all thy heart, and with all thy soul’—even if He takes away thy soul,”¹⁰² can be nothing but theocentric. As if profound religion could be anything else... It is perfectly true, as R. Kook has noted,¹⁰⁷ that the Bible—and the Halakhah as well—does not place exclusive or even direct primary stress upon individualistic striving for personal salvation. The Torah is equally concerned with forging a sacral society. “The ideal of halakhic man,” as R. Soloveitchik has written, “is the redemption of the world not via a higher world but via the world itself, via the adaptation of empirical reality to the ideal patterns of Halakhah.”...

Precisely, however, because his religion impels him normatively to establish an ideal “secular” order, the Jew need not—indeed, cannot—abandon it so that he may improve the world. In Professor Twersky’s words, he acts “for the sake of humanity *because* of religious conviction and obligation.”...

Judaism does not consider activism as a possible substitute for religion. It regards it as a part—but only a part—of religion. It does not suggest that we abandon our conscious and even formal

quest for God in the hope that we may find Him all the better as we strive to improve the temporal human condition. Instead, it demands that we commit ourselves to Him and then consecrate the mundane by imposing God-given categories upon it...

The halakhic life is not a neat two-step affair: commitment and acceptance followed by mechanical implementation. It is a dialectical process... The ethical life—of which social involvement is an essential ingredient—does indeed both enrich man and bring him closer to God. All the more so, however, to the extent that he acts, in Milton's words, "as ever in my great Task-master's eye."¹¹⁵ Activism and religious commitment, far from being opposed, reinforce and sustain each other. "I have set the Lord always before me."¹¹⁶ This verse, cited and glossed by Rama in the very opening codicil of the *Shulh. an Arukh*,¹¹⁷ epitomizes the whole of Judaism...

Yet, there is a point beyond which he cannot take the vicissitudes of human life as seriously as the professional humanist. There is a level at which, in attitude although not in practice, he transcends the world after all... The very fact that the world derives its significance precisely from its transitional character, from being a "vestibule" rather than a "palace,"¹²¹ must alter the Jew's perspective. In the religious life, perspective is all-important. The scope and limits of Judaism's concern for man's secular welfare are best seen through an analysis of the basic framework of what might be called the normal or fundamental Halakhah. They may also be seen, however, by a study of the extent to which the Halakhah has sanctioned exceptional deviations from its ordinary norms... "The Catholic Church," wrote Newman,

holds it better for the sun and moon to drop from heaven, for the earth to fail, and for all the many millions who are upon it to die of starvation in extremest agony, as far as temporal affliction goes, than that one soul, I will not say, should be lost, but should commit one venial sin, should tell one wilful untruth, though it harmed no one, or should steal one poor farthing without excuse...

The very harshness of the dictum serves... to point up the dimensions of the problem to which, in context, it addresses itself. The difference between temporal and eternal bliss is one of kind rather than duration... Given its premises, Newman's position, paradoxically harsh as it may seem, is grounded upon an inexorable logic... first, that specific normative absolutes exist; and second, that the moral law itself does not provide for their abrogation under emergency conditions... The second premise is... from a halakhic perspective—thoroughly inadmissible. The Halakhah has recognized several grounds which justify—at times, even require—the violation of its normal standards. These may be subsumed under two broad categories: one consists of specific elements that, in accordance with fairly rigorous formulae, may override certain norms; the other consists of more general extenuating factors, perhaps a bit amorphous in character, which allow for dispensations due to extraordinary circumstances...

Of the elements subsumed under the first category, *pikkuah nefesh*, "the preservation of life," is both the most obvious and the most comprehensive. With but several significant exceptions, all halakhic injunctions, positive or negative, are set aside when they entail a possible loss of life...

The precedence of *pikkuah nefesh* over other duties rests on one of two grounds. One is the biblical verse cited in the passage I have quoted from Rambam. The second is a rational, almost actuarial, consideration of the net long-term effects of saving a life in danger: " 'And the children of Israel shall keep the Sabbath.' The Torah said: Profane for his sake one Sabbath, so that he may keep many Sabbaths."¹³⁰ While either source ordinarily constitutes a sufficient rationale, the two are conceptually poles apart. The first affirms the primacy of one value over another—of preserving human life over observing ritual laws. Hence, it reflects, to however limited an extent, a humanistic concern. The second merely calculates that, even in the interest of ritual observance proper, its temporary abrogation is in order....

The preservation of life constitutes the most obvious ground for abrogating halakhic norms, but it is by no means the only one. Preserving something of its quality—the maintenance of personal dignity or domestic peace, specifically—constitutes another. Logically enough, the dispensation provided by these factors is far narrower than that deriving from *pikkuah nefesh*. While mortal danger suspends all but a handful of laws, the pre-emptive power of *kevod ha-beriyot* or *shalom* is more limited in scope...

As regards *shalom*, the situation is, if anything, even more murky. There is no full-blown talmudic discussion suggesting guidelines for its dispensation. There is no doubt, however, that this very fact, plus the limited nature of the specific applications we do encounter, clearly indicates that this principle's range is also relatively restricted....

These are marginal instances, however, and provide little insight concerning when, if ever, the threat to domestic or communal peace warrants the direct violation of halakhic norms. Such violation is apparently sanctioned by numerous texts stating that one may lie—or, as another version has it, should lie—in the interests of peace... Nevertheless, one may question whether the principle implied here will apply equally to other transgressions. If popular morality be any guide, certain forms of lying are regularly granted a license we should hardly accord other legal or moral violations...

Injunctions narrowly defined in purely physical terms are not as amenable to being stretched, however; and with respect to them, one may validly raise a question as to whether they may indeed be overridden in the interest of *shalom*. Rama thought they certainly could. Partly on the basis of the *gemara* concerning white lies but primarily on the strength of an aggadic text, he states unequivocally that even *de-Oraita* injunctions may be violated in order to attain social or domestic harmony... However, the failure of other *posekim* to develop this principle suggests, *de silentio*, that Rama's perspective may be a minority view. The limits of the dispensation provided by *shalom* therefore remain shrouded in uncertainty.

Whatever the precise limits, however, it is clear that, in one sense, the scope of *kevod ha-beriyot* and *shalom* is much more restricted than that of *pikkuah nefesh*. And yet, in another sense, it is far broader. Concern for dignity or tranquility may not be as decisive a consideration but it applies to an immeasurably greater number of situations... the problem posed by *kevod haberiyot* and *shalom*... is, quite simply, the problem of definition. Whatever the difficulties attendant upon defining the nature and scope of *pikkuah nefesh*¹⁵⁸—and they are formidable—they seem almost elementary when compared to the challenge presented by concepts so broad and so amorphous as “personal dignity” and “peace.”...

The legal underpinnings of the license of *kevod ha-beriyot* are nowhere clearly formulated in the Talmud. It is ordinarily assumed that it is grounded upon the Rabbis' legislative authority with respect to their own injunctions...

Rambam likewise extends the bounds of this license... In another context—while urging a judge to be restrained in disciplining recalcitrant defendants or offenders—Rambam appears to be thinking in fairly broad terms: “Whatever [he does], let all his actions be for the sake of Heaven. And let him not regard *kevod haberiyot* lightly; for it overrides rabbinic prohibitions.”¹⁶⁹ The context clearly suggests that Rambam is cautioning against all forms of unnecessary abuse; and this seems, in turn, to suggest a fairly broad conception of the license rooted in *kevod ha-beriyot*.

Just how far we should go remains in question, however. Several tentative guidelines come to mind readily. First, personal dignity must be significantly, albeit briefly, fractured, rather than merely ruffled. Secondly, genuine dignity must be involved, not superficial vanity... Finally, a third possible criterion may be suggested. Perhaps some distinction should be made between situations involving others and those confined to oneself... The Jew, however, would rather agree with Henry More, the seventeenth-century Cambridge Platonist, that “political society . . . by no means is the adequate measure of sound morality, but there is a moral perfection of human nature, antecedent to all society.”¹⁷¹ The maximal realization of the dignity and sanctity potentially inherent in a human personality is itself an ethical imperative of the highest order. Nevertheless, actions impinging upon another impose a special obligation...

As with *kevod ha-beriyot*, I'm afraid we are driven back upon ambiguities... Without necessarily requiring quite this much, one must nevertheless presume—if, for no other reason, simply *de silentio*, because this factor is not cited by Rama more frequently—that injunctions can be overridden only when the threat to peace, on the one hand, and the impact of the violation, on the other, are both measurably significant...

One major qualification does suggest itself, however. The quest for amity can justify overriding norms only when the source of friction is not itself a halakhic issue... When friction is rooted in a direct challenge to the

validity of Halakhah, it is inconceivable that its proponents should always back down in the interests of irenicism... In effect, it entails knuckling under to the threat of force or blackmail—allowing the Halakhah's desire for peace to be exploited to the point of eroding its very foundations. As such, concessions become clearly unconscionable...

Our attempt to define *kevod ha-beriyot* and *shalom* has not arrived at a truly precise formulation... Precisely because these concepts are so amorphous and their application so potentially sweeping, *posekim* have generally been reluctant to resort to them as grounds for overriding halakhic norms... No doubt, in the modern period particularly, as organized attempts at the irresponsible manipulation of Halakhah have actually materialized, the urge to tone down elements that, in reckless hands, could undermine its entire structure has become almost irrepressible. One suspects that, in some instances, even where the primary basis for a decision has been *kevod ha-beriyot* or *shalom*, a *posek* has preferred, wherever possible, to advance narrower formal or technical grounds rather than encourage the use and potential abuse of general dispensations.

Nevertheless, this conservatism, however laudable in motive and intent, is not without its own dangers. Elements such as *kevod haberiyot* and *shalom* are central to a Torah *Weltanschauung*, a fact to which their legitimate and limited role in suspending certain halakhic norms clearly attests. Yet the reluctance to permit them to play that role tends to downgrade their position... Quite apart from possible specific errors, there exists a potentially graver danger. The axiological centrality of *kevod ha-beriyot* or *shalom* as the moral and religious basis of large tracts of Halakhah may be seriously undermined. The dispensation provided by them is not a mere technicality, nor is their application an exercise in legal mechanics. It is grounded in—and hence serves to sharpen and to heighten the awareness of—their position as fundamental Torah values...

The price we are paying for caution may be excessive; and, in any event, we need to ask whether we have the halakhic right to pay any price at all. The concepts of *kevod ha-beriyot* and *shalom* are not personal property... Broadly speaking, these may be subsumed under the umbrella rubric of “privation”—an omnibus term which I take to denote a wide range of deficiencies, maladies, and other assorted hardships or misfortunes, but not confined to the harsher associations of suffering, nor including mere nuisance or annoyance...

To be sure, some data can be marshaled, and, as to a term, we may ponder the rough equivalency of *za'ar*. The term denotes either pain or anguish, and is multifaceted with respect to the source and etiology of either. However, for our purposes, it is hardly adequate...

The basis of leniency is not an overarching mantra of *za'ar*, but, rather, specific local factors. A similar pattern emerges if we analyze the area of financial distress, reinforcing the impression we have noted... Even an act that is proscribed *mi-de-Oraita* may be performed in order to relieve pain if performed abnormally, in which case the prohibition is reduced to the level of a *de-rabbanan*, as *bi-mekom za'ar lo gazeru rabbanan*. But the very textual isolation of the license, as well as its being cited regarding a specific case, suggest that here, too, we confront a focused dispensation rather than an overall formulation...

To this point, we have gauged the Halakhah's humanism—as regards its concern with man's worldly welfare—on the basis of two criteria: the fabric of the fundamental halakhic order, the complex of rights and duties of which it is constituted; and the factors, at once humanistic and

halakhically normative, which suspend, in part or in whole, the usual demands of that order. It can also be measured, however, by a third criterion: the extent, if any, to which halakhic standards may be compromised as a concession to personal or even financial difficulty. This factor should

not, of course, be confused with the second. The recognition accorded *pikkuah nefesh* or similar elements entails neither compromise nor concession. These elements override certain injunctions simply because, even from a purely legal standpoint, they carry greater weight. Their power is grounded in the fact that, occasional confrontation between opposing norms being inevitable, the Halakhah had to formulate principles of priority. When these elements override an injunction, they do so as one halakhic norm pre-empting another, and not as a humanitarian factor transcending, as it were, the Halakhah. Hence, in cases of conflict, the precedence of these elements is mandatory and not merely optional...

By contrast, the principle to be explored presently—that normative standards may be compromised in straitened circumstances—does concern the clash of human and halakhic factors. It suggests that, within limits, extraneous factors may validly intrude upon halakhic judgments; that, for the *posek* or his respondent, non-normative

considerations may properly enter into normative decision. Clearly, however—as regards the respondent, certainly—the consideration of such factors must be, at best, a matter of license. If one may, as a concession to his condition, take certain liberties, these can hardly be elevated into duties. And even if one argues correctly that it is the Halakhah itself which has sanctioned these liberties—so that they be rightfully regarded as grounded in principle rather than convenience—it has sanctioned them only as such, as an option of which one may avail himself rather than as an imperative duty....

With respect to such a principle, one may ask three primary questions. First, does it exist? Secondly, if so, what is its basis? And, finally, what are its limits?...

with reference to many disputed issues cited in the *Shulh. an Arukh*, Rama's gloss accepts the more rigorous view but with the accompanying proviso that in cases of *hefsed merubbeh* ("substantial loss") it may be ignored... But what is the halakhic basis of such license? That the basis must indeed be halakhic is beyond question. No committed halakhist can seriously countenance the simplistic socio-economic interpretation that, under pressure, the Halakhah just periodically capitulates. For one thing, the image—or rather the reality—of Halakhah and its masters which he envisions simply does not correspond with this theory... Given the conception of an absolute religious law, no degree of purely temporal bliss or suffering can compensate for the slightest sin—except insofar as the legal system itself has provided for such compensation. In that case, the prospective "sin" is of course neutralized, perhaps even transmuted into a virtue. Barring this, however, utilitarian considerations count for nothing. Where the law has stood rigid, an individual can claim no inherent right to transcend it, simply because the cost is too great...

For the Jew, therefore, it is Halakhah and Halakhah alone that determines what it can exact from him. Hence, if straitened circumstances can justify a degree of leniency, the rationale must be grounded in—must, in a sense, constitute—a halakhic principle. This rationale is based upon two premises. The first is the obvious desire and duty to employ every possible means to assist those in need. This obligation, rooted and expressed both in specific precepts and in the omnibus drive toward *imitatio viarum Dei*, is not confined to charity or social action. It impinges upon the process of *pesak* as well... It is, of course, easier to be cautious and to take refuge in presumed ignorance; hence, the Rabbis' statement that "the power of leniency is greater,"²⁰⁰ because, as Rashi explained, the lenient *posek* "relies upon his knowledge and is not afraid to permit while the power of those who forbid proves nothing as everyone can be rigorous even with respect to the licit."²⁰¹ But the first-rate *posek*, jealous as he is in guarding the tradition, is also driven by a sense of responsibility to his straitened respondent; and to the extent that he can employ scholarship to reconcile their respective interests, he feels duty-bound to do so. The obligation to compassionate leniency is imposed by *caritas*. The opportunity is provided by a pluralistic conception of Halakhah. So long as Halakhah is defined in purely monistic terms, every text being subject to only one correct interpretation and every problem amenable to only one solution, it is difficult to justify such leniency. However, the Rabbis interpreted Halakhah in somewhat more flexible terms... The scholar who acts upon his interpretation is not just charitably viewed as being, at worst, an unwitting and therefore innocent "sinner." He is regarded as being correct—objectively correct...

In straining after occasional leniency, the *posek* has recourse to various processes. He may strike out on his own—offering novel textual interpretations, redefining concepts, or introducing hitherto overlooked distinctions. Or he may draw sustenance from authorities whose views had not become the standard *pesak* but which had not been categorically demolished. Overruled but not moribund, these views can be brought into play under conditions of duress. No canon of decision is clearer than that of majority: "An individual versus a group—the Halakhah is like the group."²⁰⁷ And yet: "Worthy is R. Shimon"—or any other legitimate authority—"of being relied upon at a time of emergency." This procedure has—and clearly must have—certain limits. Not every minority opinion is cast into limbo. Some are rejected with utter finality. In the first place, some issues concern matters of fact and error rather than analytic interpretation; and of these, as Rashi pointed out, one can hardly say that a number of views are legitimate...

Whatever its limitations, however, the fundamental validity of this process is clear, and it reflects one dimension of halakhic humanism. The extent to which this dispensation is invoked will undoubtedly vary with the individual *posek*. As with *kevod ha-beriyot* and *shalom*, terms like *she'at ha-dehak* ("a moment of pressure") or *hefsed merubbeh* ("substantial loss") are somewhat ambiguous. Attempts have indeed been made

to define the latter in fixed quantitative terms; but one is inclined to agree with the conclusion of the author of *Har ha-Karmel* that “it has no fixed figure whatsoever. Everything depends upon the judgment of the *posek*, with respect to the time and the period, and the person who would incur the loss. If the loss would be substantial for him, it is considered *hefsed merubbeh*.”... Confronted by a situation in which the “normal” Halakhah comes into conflict with a genuine human need, two *posekim* both working within strictly halakhic limits, may produce diametrically opposed decisions... Such variation is not an indictment of halakhic objectivity; nor does it imply that the process can be extended *ad infinitum*. It merely attests to the presence of an element of flexibility within Halakhah and to the fact that, within certain limits, this flexibility—its definition proper being in occasional dispute—produces varied decisions...

In the final analysis, the Halakhah cannot satisfy the demands of the radical secular humanist. For its humanistic strain is, although not muted, nevertheless counterpoised; or rather, as the committed Jew prefers to think, counterpointed. Judaism holds with Plato that “God ought to be to us the measure of all things, and not man, as men commonly say.”... The Jew profoundly believes that God’s law was given for man’s good—and he acts and is bound to act upon that belief. But he does not flinch even when it induces pain. Obedience would mean little if it were purely selective...

Caught within this ethical and religious dilemma, the *posek* strains after every possible dispensation. But when ultimately confronted by the authority of the law, he submits—and, with honesty and commiseration, he asks others to submit. In his heart of hearts, he senses that it is here, in the consecration of man and society to God, that genuine humanism lies.