

*Norman Frimer*

Dr. Frimer, a member of *TRADITION's* Editorial Board, is the National Hillel Coordinator in the New York area of the B'nai B'rith Hillel Foundation.

## A MIDRASH ON MORALITY OR WHEN IS A LIE PERMISSIBLE

The student of rabbinic lore soon learns not to be amazed at the sparkling, at times breath-taking, insights which the Sages had into the humanity of man, individually and corporately. Over and over again their incredible gift of seeing the human personality in the full mystery of its complex makeup comes through, often in seemingly casual and even playful vignettes or parables. In such a case the style itself serves at first to conceal the profundity of their observation, only to have it explode with even greater intellectual force upon its sudden realization and illumination.

Their *dramatis personae* were basically drawn from the heroes and anti-heroes of the Bible which they then enriched with the life experiences of their own times. These were their live data. But the lessons and teachings which the events afforded remained unfettered by time or space. For the modes and models were human, sharing in the endless and recurrent experiences which confront everyman throughout all ages in the predicament of his human condition.

This facet of Jewish learning constitutes one of the sheer delights of Torah study. There is such excitement in the intellectual and spiritual uplift which accompanies the insight and discovery of "that's really what life's all about"! This primal understanding bursts forth repeatedly as one peruses the writings of ancient Midrashic lore.

This is particularly true in the moral realm, where their daring, at times, catches the reader so off-guard that he reels under the hammer-blow of their radicalism. Upon recovery, when he regains his second wind and tries with measured so-

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briety to examine anew the rabbinic text and context, he may then find himself in confrontation with a challenge and dilemma that will spare him little sleep or equanimity.

Such an actual experience occurred to me when I began reviewing the Midrash on the first section of *Vayetze*. The initial setting of the 29th chapter of Genesis was surprisingly and strikingly pastoral and idyllic — an unexpectedly romantic respite in the restive life of Father Jacob. The quiet scene of grazing flocks gathering lazily with their shepherds around the central well contrasts tragically with Jacob's own desperate state of flight. Moreover it painfully recalls his early youth, when he had seemed destined to be an "*ish tam, yoshev ohalim* — a man of innocence and a resident of tents" (Gen. 25:27). His was to be a life of simplicity and saintliness, of devotion to Torah and commitment to Truth. As Rashi comments exegetically on this text "Jacob had no expertise in all of these (Esau's) ways (of deceit). He was one in heart and lips. And whoever is not a 'sharp' in the art of deception is designated a '*tam*'."

How sharply this portrait of Jacob's *t'mimut* clashes with the picture generally drawn of brother Esau! The latter emerges as the raw epitomization of the natural man — naive Rousseauism notwithstanding — primitive, cunning, brutal and lustful. In fact, in the eyes of the Rabbis he stands as the eternal antagonist of Jacob — Israel, as the paradigm of the amoral man, touched only rarely by any human sentiment.

Life, however, is unpredictable and inscrutable. No one is total master of his fate or future and one deviation from the tested path may prove irreversible. For Jacob this occurred when in the face of sibling rivalry he consented to collaborate with Mother Rebekkah and illegitimately expropriated the blessing intended for his brother, the natural first-born. The motivation was high-minded and patently noble. By both character and career, Esau had demonstrated little worth or merit to be confirmed as the spiritual heir and chieftain of his tribe. On legal grounds, too, he had forfeited his claim to the rights of primogeniture, for he had sold them in a fit of passion for a mere mess of pottage. At the same time there was no question that the strategy of appropriation had been less than honest. "Thy brother came with guile

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and took away your blessing” (Gen. 27:35), was Father Isaac’s own verdict. Moreover, *Genesis Rabbah* (70:17) attributes to Mother Leah a similar, cutting rebuke of Jacob’s deceit when the Patriarch levels against her the charge of nuptial fraud.

From that fateful moment of blessing on, Jacob’s life never remained the same. Serenity fled and was replaced by fear and wandering. Esau had vowed to murder him and according to the Rabbis, had sent his son in ruthless pursuit. For reasons of both safety and expediency Jacob has made his way to his maternal uncle, Laban, where he hopes to find some refuge and residence. While enroute he unexpectedly comes upon the pastoral scene mentioned above and providentially finds there his cousin, Rachel, who has been pointed out to him by the shepherds.

Though daughter of the wily Laban, whose reputation for dishonesty was by no means localized, she by contrast seemed so soft-eyed and gentle, fond remembrance of the lost innocence of his past. He felt renewed stirrings of his youthful dreams and the purity of first love at-first-sight flowed speedily between them. After demonstrating his manly strength and prowess, he engaged her in conversation, identifying himself as kinsman to her family. “And Jacob told Rachel that he was the brother of her father and the son of Rebekkah and she hastened to relate this to her father” (Gen. 29:12).

The redundancy of the identification and especially its inaccuracy did not escape the critical eyes of the Rabbis. “*V’halo ben ahot aviha hu* — Behold he was the son of her father’s sister,” and not the brother of her father as he had claimed, asked the *Yalkut Shimoni* (Ad locum, Sect. 125)? The Midrash provides two separate answers, each of which is complementary to the other.

The first states simply that Jacob was trying to convey, through these words, the following idea:

If (he deals with me) in deceit, then I am her father’s brother, and if (he deals with me) in righteousness, then I am the son of Rebekkah.

The second explanation is more involved. According to this exegesis, the words of the Torah were in reality only a shorthand

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record of a rather extensive discussion between Jacob and Rachel. Among other subjects the topic of marriage had been broached and when Jacob proposed, she pledged herself to him. However, she quickly added, "I have a father who is a deceiver and you will not be equal to him." "Why would he deceive me?", asked Jacob. "Because I have an older sister," she replied, "and he will not permit me to marry before her." (In that case) "Jacob retorted, then I am his brother in deceit." (To this) Rachel remonstrated, "Is a *tzaddik* permitted to resort to trickery?" "Yes" (came Jacob's reply) "for it is written 'With the pure, You show Yourself pure, but with the perverse You show Yourself subtle' " (II Sam. 22:27). "He then gave her (secret signs)" (See also *Meg.* 13b and *B.B.* 123a).

As we reread the last part of this second Midrash, a spiritual shockwave flows from the bluntness, the brevity and stark assertiveness of the exchange. Rachel confronts Jacob with the moral contradiction of his stance, posing her question not in light of any practical wisdom (Does it pay?), nor social convention (Is it proper?) nor even of piety (Ought you to?). On the contrary! The rabbinic language is clearly normative, even halakhic. "*U mi shari l'hu l'tzaddiki l'saguyai b'ramaut?*" It is a question of "*mutar - v'asur*, permission and prohibition," unequivocally and straight-forwardly a moral-legal challenge.

And what is the answer? It comes with clipped and concerted power. "In'—yes, it is permitted!" There is absolutely no hesitation, no doubt, no equivocation; no reservation! The wonder grows when we remember that the question was asked not in terms of the average person of whom high and exacting moral demands cannot be made, but of the *tzaddik*, the righteous Jacob himself. Yet, the reply is an absolute affirmative. Yes, a righteous man can resort to trickery. In fact the warrant provided is drawn from Judaism's highest moral criterion, *Imitatio Dei*. (*Jer. Peah* 3a, *Shabbat* 133b and elsewhere). The prooftext is taken from David's hymn of praise and exultation to God Himself. It cannot therefore be taken lightly. It is integral to Jacob's (and the Rabbis') *p'sak din*.

Are we then to conclude that the Midrash is giving us a blanket *hekhsher* for fraud in the face of any defrauder? Some-

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how such a construction militates against the religious intuition. If so, the text merits more careful analysis.

Obviously the Sages of both the Midrash and the Talmud are coming to grips with a larger and more fateful problem than just Jacob's marriage. The latter is the case study, but the fundamental issue, to take literary license with the title of Reinhold Niebuhr's well-known book, is the dilemma of "moral man and the immoral situation." How ought he to act when entrapped in an immoral setting or, even worse, an immoral social order? Is he obligated to remain morally consistent and steadfast, refusing to compromise his standards of the right no matter what the cost? Must he allow himself to be outwitted, outmaneuvered and robbed as the price of ethical integrity? Or can two play the same game, repaying the compliment in kind and in fact first.

Such a moral challenge was probably not alien to the Jew in the ancient world and unfortunately lacks little contemporaneity for him in the modern one. He certainly faced it in the concentration camp, in the underground, and in the ghetto. There, however, the answer was relatively easy. The name of that game was survival. The enemy was pledged and committed to extermination. Consequently the Talmudic adage, "*Im ba l'hargkha, hashkem l'hargo* — if anyone comes to murder you, precede to kill him" (*Sanhedrin* 72a) was clearly operational. That kind of self defense is for the Jew a high moral fulfillment. To act otherwise is suicidal, and therefore immoral and sinful.

But what about a less demanding situation where life is not at stake, only one's hard earned possessions (as in the Middle Age when Jews were fair and open game to laws which were deliberately repressive and to taxes which were ruthless and confiscatory)? What about one's freedom (as in the post World War II period when Jews were being forced to return to the hate-ridden lands of their birth and refused permission to proceed to the land of Promise)? Or what about one's inalienable right to marry the person of one's choice, as in Jacob's case? Is one permitted then to lie or to cheat or to breach the law, to act immorally in self defense? Can the end ever justify such means, even in the face of man's inhumanity to man?

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The overall answer which the Rabbis attribute to Jacob cannot be evaded. In the face of Laban, even a *tzaddik* like Father Jacob is permitted to be deceptive. (Whether there would be an obligation to protect oneself as in the case of attempted murder bears further investigation.) Nevertheless this can by no means constitute a limitless authorization or dispensation for immoral action in any immoral situation. On the very contrary! A holistic view of the Midrashic texts reveals several carefully stated guidelines to what conditions must be present before such action will be countenanced. To be sure they are only implicit in the particulars and development of the story but they are nonetheless part and parcel of the case and inextricable from the decision.

In the first place, it is important to note that Laban's reputation as a knave and cheat had been indisputably established. His daughter's testimony that "*abba ramaa hu*" is certainly *prima facie* evidence. Only her love for Jacob would allow her to make such a statement. She wanted to forewarn Jacob regarding the facts of his new life so that he would be forearmed. Let him not think he was dealing with an amateur. Laban was a real pro. Moreover according to other texts in the Midrash, the very name "*Laban Ha'Arami*" connoted that he was known to deal fraudulently even with the people of his own community. Similarly, tradition labelled him with the unenviable titles of "*Av Hara-maim—Chief of the cheats,*" as well as "*Laban Ha-Rasha—Laban the Wicked One.*" (*Tanhuma*, "Vayishlah", Sects. 1 and 10.) From all this we can deduce that one of the necessary conditions precedent which must prevail is that there be no doubt at all that the person one is dealing with is an individual of evil intent.

Secondly, it is interesting to note that Jacob, to whom Laban's social standing was probably not unfamiliar, nonetheless tries to understand why Rachel insisted that her father would outwit him. In fact she was sure he would succeed too. What possible reason could Laban have for this? What could he gain in this specific circumstance? Rachel furnishes a clear-cut and convincing motive. This probing by Jacob is, in our judgment, intended to convey that a mere suspicion or a presumptive conclusion is not enough, even if based on reliable data extracted

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from a rather careful appraisal of the opponent's character and case-history. The evidence of malevolent intent, purpose or design must not apply just in general. It must be applicable to the particular situation that is in the moral balance.

Thirdly, the first midrashic text cited previously has Jacob aver definitively that his own conduct will depend on his uncle's tactics, "*im Pramaut . . . im l'tzidkut* — if in trickery . . . if in integrity." No question that the likelihood was that Laban would act out his life-style with consistency. He had in the past always relied on his wits to gain his ends. Still, Jacob asserts that he will not act prejudicially but wait hopefully, giving his alleged antagonist every benefit of the doubt. This certainly appears to be saying that the moral man ought not to "do his thing" until and unless it is a matter of self-protection but not in anticipation of the result. In a case which does not involve life or death choices, the *din* of *hashkem*, of acting precedently, does not seem to be operational.

From this latter point flows a fourth condition which is subtly communicated by the very last sentence of the story that has been quoted. "He then gave her (secret) signs." This appears to be suggesting that Jacob was intent on avoiding deceit if at all possible. Protection might be gained just as well from other stratagem which might also be effective in forestalling Laban's plan. Why submit to sin? The same point may also have been intended by the syntactical form of "if . . . if" in which Jacob's reply is couched. It is as if the Rabbis were saying, ethical problems must be one of stark alternatives, the kind of live option which is inescapable. You do one or the other. There are no other possibilities of less serious moral consequence. For if there are, they must be attempted first. Lying, deceiving, trickery are a last resort, even if these ways of handling the problem are much easier or more advantageous. The moral path was not ever recommended because it was presumed to be free of hazards or obstacles. "Honesty is the best policy" as an adage of short-run, pragmatic wisdom has no religious sanction. In short, then, the immoral response is a strategy of a moral *cul de sac*. There is just no other viable way out.

Finally the nature of the case-story is also instructive. Jacob's

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love for Rachel is intense and their decision to marry has been affirmed. Parental consent—or better, its supposed absence—threatens to torpedo their shared dream. In life experience it is doubtful whether, apart from a matter of sheer survival or perhaps (for the man of high faith) an incident of *Kiddush ha-Shem*, there is for any person a human situation of greater significance than the sacred right and desire to consummate marriage with the partner of one's love. Classically at least it is regarded as an event of high ultimate seriousness. On a psychological-spiritual level, one's very life is on the line. Consequently only in such a context, or one of comparable earnestness involving personhood or property, can the response be so indubitable " 'In' — yes. It is permissible."

In summary, then, the tradition seems to be demanding the following five conditions before sanctioning unethical behavior (and then it becomes ethically acceptable).

1. The antagonist's record of general conduct is negative.
2. There is adequate motivation and testimony (or evidence) to justify one's anticipated concern in the immediate and specific situation.
3. The intended victim is acting only in self-defense and after the attack has been initiated.
4. There appears to be no alternative to one's present course of action. Other options have been tried or are judged not to be viable.
5. That which is at stake has tremendous seriousness to the intended victim involving a high investment of one's person or property.

These moral imperatives actually guided the rest of Jacob's life with Laban despite the great sacrifice, which certainly more than compensated for his one youthful error. Jacob reveals this facet of his biography in the pain-saturated words he addresses to Rachel and Leah when in great stealth he discloses to them his plan to leave their father's house. In great anguish, he says:

You know that I served your father with all my might. Still he mocked me and manipulated my wages ten times. Only the Almighty did not allow him to do me personal harm" (Gen. 31:6-7).

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Even more of the details of his hard experience come out when Laban finally overtakes his daughters and sharply attacks Jacob's integrity and ingratitude. Jacob's pent-up bitterness can no longer be restrained and in sharp recrimination explodes:

What's my transgression or my sin? . . . For these past twenty years I stayed with you . . . The rams of your flocks I did not eat. Whatever was attacked by the wild beasts I did not bring to you; I took that loss. You held me responsible for anything that was stolen whether by day or by night. By day I was consumed by the drought and by night by the cold frost. It was as if sleep fled from my eyes (*Ibid.* 31:36-40).

In short, Jacob tried in every way to give Laban a fair deal. He took all the losses and all the risks. Still Laban continued to cheat him countless times, a hundred times and more according to the Midrash. Not even a *tzaddik* could take more. Not to fight back would mean bankruptcy and total impoverishment. "If the God of my father . . . had not stood by my side," he accused Laban, "then you would have sent me away utterly penniless" (*Ibid.* 31:42). Only under such duress and injustice did Jacob resort to the stratagem of the "speckled and spotted sheep." No wonder then that Scripture relates — and even attributes — this very idea to an angelic vision.

Strong support for the essential validity of these extrapolations as prerequisites for normative conduct can be found in a piece of actual legislation recorded in the classical Code, the Shulkhan Arukh of R. Joseph Karo, the Blackstone of Jewish Law. The legal demands which cover the hard-headed, contractual relationships between persons cannot practically be as exacting as the moral requirements to which the individual is bidden to aspire. The spiritual thrust of Judaic practice is nevertheless quite in evidence. The case, involving the respective rights and responsibilities of labor-management relations, derives its root principles from the talmudic discussion recorded in the tractate *Baba Metziah* (75 b. ff) and cited as Halakhah, binding decision, in the *Mishneh Torah* of Maimonides (*Hil. Skhirut* 9:4). The M'haber, in his *Hoshen Mishpat* (333:3 ff), first reaffirms the fundamental and inalienable right of the worker to

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quit his job “even in the middle of the day.” (He is no peon. His subordination is only as a servant of the Lord). Nonetheless this right is attended by responsibility. Consequently the Code stipulates as follows:

When does this principle apply, only when the loss (incurred by the employee’s withdrawal) is not irreparable. In a case of irreparable loss (*davar ha-avud*), as for example, flax which needs to be hauled up from the steeping pond, or a donkey which has been hired to transport the pipers for a funeral or a wedding and a similar circumstance then neither a day-worker nor a contractor may quit the job except for accident, or for a death in the immediate family.

. . . Should he do so anyway, and workers are no longer available as they were previously then management may engage others as replacements (at higher wages) or deceive the worker (who quit). How may he deceive him? He may say (to the worker) I have fixed your pay at a *Sela*, but if you stay on, you will get double. When the job is finished he need not give him any more than originally contracted for . . .

How may he hire other workers to finish the task so that the loss will not be irreparable? Anything which he has added to the second group of workers over and above what he had agreed to pay the first group, he can deduct from the latter’s pay. How much? Even an amount equal to the entire wages of the first workers.

When does all this apply when there are no other laborers available to finish the work at the same rate of pay . . .

Obviously, in this situation we have no prior need to determine beforehand the moral character or intent of these employees. Whatever their credentials, their actions speak eloquently for themselves. By quitting they demonstrated that they were prepared to cause their employer irreparable damage. They just walked off their jobs giving him no advance notice at all, not seeming to care whether he might thereby be ruined. To prevent him from taking defensive measures would be an injustice especially where it becomes evident that their basic motive was pecuniary, a hike in wages. The proof is that they did return when they got it.

What is most relevant is that once they initiated their attack upon him, then he is permitted to take action to meet the aggression. To take immoral measures must be only a last resort. If

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the employer can rectify the economic threat in a more appropriate manner, either by engaging substitute help that is available at the same rate of pay, or new help at higher pay, then that must be the first line of defense. Should these not be viable options, then he may outwit the workers, but not otherwise. (See Rabbi Moses Isserles and commentary by the *Meirat Eynayim*, *ad locum*.)

It is most significant to observe that human situations are also considered by Karo and other codifiers under the legal category of *davar ha-avud*. Consequently the aforementioned quotation lists "the hiring of a donkey to transport the pipers for a funeral or a wedding." Without their participation the funeral would in those days probably have been a mortal insult to both the dead and the surviving family. The wedding would certainly be "killed" by their absence, thus robbing the participating families and especially the bride and groom of their irreplaceable and unrepeatable moment. Rabbi Moses Isserles, by the way, enlarges this category to include such cases as a tutor to instruct one's children or a scribe to write a manuscript. (The admiration of scholars both Jewish and Gentile for the extraordinary sensitivity and responsiveness of Jewish Law to the personal and human needs of people — a quality not at all rare in varied Jewish sources and perhaps most characteristic of the Judaic impulse — finds here ample warrant and justification.)

One final observation. Naturally the process whereby such a moral decision to use immoral means is arrived at remains in good part a matter of conscience. There is a real danger that such a judgment may be decisively influenced by hurt pride or rationalized revenge neatly and subtly disguised as an outraged response to grave injustice. Another human being could hardly tell the difference!

The exegetist of the *Yalkut Shimoni* and of the *Talmud* wisely, therefore, saw the need of introducing a new note of caution and admonition, and did so in a novel way by means of the central Judaic motif of *Emulatio Dei*. In this way, and especially through the proof-text that was adduced, the effect becomes two-dimensional. In the first place there is an explicit assurance that an action, though immoral in appearance, takes on god-like

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qualities if it is executed in the fullness of religious responsibility. However, a second dimension is also introduced, but in a very subtle and subliminal fashion. As the proof-text *Im navar titavar, im ikesh titapah* is reread, an uncomfortable realization suddenly begins to intrude that in addition being reassuring the text is distinctly challenging. For on the implicit level there is present a warning that a response of deceit performed not in emulation of the Divine Model is carried out not only against man but before God. In that context the human antagonist may be replaced by a Divine Antagonist, Who deals purely with the pure but with the crooked deals accordingly. The deceptive simplicity of the scriptural proof-text emerges in reality as a sharp, two-edged sword standing guard over both the moral response and responsibility of man to his fellow man.

Thus, in long, do we find that the simple facts of a romantic love-story are actually the building blocks for a sturdy moral structure. This, however, constitutes both in content and form the inspired genius of spiritual giants and the mystery and secret of their inimitable and inexhaustible contribution.