

Human Dignity and Psak Halacha: Where Does the Boundary Lie?

Nechama Goldman Barash

Part I: Dignity during the Holocaust: Responsa from out of the Depths of Horror

Making a Taharah in Advance

Question:

On the night of the 25th of Menachem Av 5701 [August 18, 1941], I was giving a Torah lecture at Abba Yechezkel's *kloiz* in Slobodka. This was after the German invasion of Lithuania, just as the joy of the Jewish people was being cut short by the Germans. In the middle of the lecture, we suddenly heard heartbreaking screaming and wailing. The daughter-in-law of Reb Zalman Sher, who was attending the class—may G-d avenge him—burst into the *kloiz* and told Reb Zalman that the Germans had, moments ago, killed her three sons together with her husband, Reb Zalman's son. Right then and there, as the woman bewailed these tragic four deaths, her father-in-law passed out, fell off the chair, and died right before our eyes.

The director of the chevra kadisha (burial society), Reb Moshe Chayim Kaplan—[G-d](#) avenge him!—who was responsible for arranging funerals in accord with Jewish custom, posed the following problem to me: Since the enemy's decrees affected the entire population—both the living and the dead—it was impossible to know when the funeral and burial would be able to take place. Under the tragic circumstances of the German invasion, there was no question it would take at least a day or two, so it was possible that by the time the funeral could be arranged, there would be no one available to perform the [taharah](#), the ritual washing and preparation of the body for burial, usually performed just before burial. Present in our *kloiz*, however, were a number of Reb Zalman's close friends, and it seemed best to extend final respect to the departed by performing the *taharah* immediately—on the very table where the fallen Jew had just studied Mishnah and Talmud.

The question was simply, "Is it permissible to make the *taharah* in advance, rather than as close to the funeral as possible?"

Response:

I permitted immediate *taharah* for Reb Zalman. For future instances in the ghetto, I instructed the director of the burial society, Reb Moshe Chayim, to perform the *taharah* for the deceased as soon as possible, since no one would ever be certain that it would be possible to perform the *taharah* close to burial.

(Pages 7–8)

Using the Garments of Martyred Jews

Question:

On the day before [Rosh Hashanah](#) 5702 [September 21, 1941], due to the impending holy day, the ghetto Jews did not fill the quota of 1,000 slave laborers demanded by the Germans. The murderers were furious. Led by their bloodthirsty chieftain Neumann, may his name be obliterated, they entered the ghetto toward nightfall to grab Jews for slave labor. They began by molesting and ended with shooting two of them. They were merciless, particularly toward those Jews who they found in synagogues at the time. These men had come to pray to G-d, to beg and supplicate Him to have mercy on His suffering Jewish people. The two men who were shot that Erev Rosh Hashanah by the murderers were Yitzchok Baum, owner of a metal shop on Linkova Street in Slobodka, and Berel Mendelevitch, may G-d avenge their blood!

After the murderers had done their dirty work, they ordered other Jews to dig a grave for the corpses and then to remove the garments of the dead as a macabre gift for the Jews who had dug the grave. I was asked whether these garments—which had no bloodstains on them—might be put to much-needed use, or whether it was forbidden to make use of them.

Response:

The *halachah* (Shulchan Aruch, Yoreh De'ah 364:4) is that if a Jew is found murdered, he is to be buried as he was found, without burial shrouds; not even his shoes are to be removed. This applies to one who died with his

garments on. One who is murdered by non-Jews, even though his blood has stopped flowing by the time he is found, is still buried as found, so as to arouse Divine anger.

Since the garments in this case had no blood upon them, one might certainly use them, and there would be no need to bury them with the corpses, were it not for the stated purpose of arousing Divine anger. Since the dead men had already been buried without their garments, the greatest pleasure one could provide them was to allow their surviving children to benefit from these garments, either by wearing them to warm themselves or by selling them in order to purchase food for survival. It seemed to me that it certainly would be the wish of the martyrs that their garments be given to their children to help them survive, despite the efforts of the accursed murderers.

(Pages 18–19)

Desecrating the Dead

Question:

(On 20 Iyar 5702 [May 7, 1942] the Germans issued an edict that if a Jewish woman was found pregnant, they would immediately kill her . . .)

Once this edict regarding pregnancy was issued, other problems came up. The very day the edict was issued, a pregnant Jewish woman passed by the ghetto hospital. A German noticed her swollen belly and shot her for violating the German order against reproduction. His bullet penetrated her head, and she fell dead on the spot. Passerby immediately carried her into the hospital, thinking there might be a chance to save her or the baby. Since she had clearly been in her final weeks of pregnancy, a Jewish obstetrician was rushed over. He said that if surgery was performed immediately, the baby could be saved. Since I had witnessed this shocking murder and was present in the hospital, I was asked if, according to *halachah*, it was permissible to perform the Caesarian section. Since no one could be sure that the baby was still alive, was there a halachic concern with the desecration of the dead mother? In addition, in the remote possibility that the mother was still alive, cutting open her abdomen would surely kill her.

Response:

It was clear to me that when a doctor who knows his medicine rushes to operate minutes after a woman's death, declaring that the baby can be saved, one must listen to him, because the issue at that moment is saving the baby's life.

Where saving a life is involved, we are not concerned with the desecration of the dead. In this case, the mother would be overjoyed if desecration of her body meant that her baby's life would be spared. I therefore ruled that the operation proceed as quickly as possible. As it states in the [Talmud](#): "Whoever saves a single Jewish life is credited with saving an entire world."

The baby, miraculously, was alive. However, to our great sorrow, our hopes were soon shattered. The cruel murderers, with typical mad German punctiliousness for keeping records of the living and dead, soon entered the hospital to record the name of the murdered woman in their book of the dead. When they found the baby alive, their savage fury unleashed. One of the Germans grabbed the infant and cracked its skull against the wall of the hospital room. Woe unto the eyes that saw this!

(Page 73–74)

Reciting the Blessing "Who Has Not Made Me a Slave" in the Ghetto

Question:

During morning prayers, Reb Avrohom Yosef . . . reached the blessing, "[Blessed are You, L-rd our G-d . . .] who has not made me a slave," and shouted bitterly to the Master of all Masters, "How can I recite the blessing of a free man? How can a hungry slave, repeatedly abused and demeaned, praise His Creator by uttering, 'Who has not made me a slave?'"

I was then asked for the Torah ruling on this question: Should the blessing be omitted because it seemed to be a travesty—in which case it would be forbidden to recite it—or was it forbidden to alter or skip any part of the prayer text established by our sages?

Response:

One of the earliest commentators on the prayers points out that this blessing was formulated in order to praise G-d not for our physical liberty, but rather for our spiritual liberty. I therefore ruled that we could not skip or alter this blessing under any circumstance. On the contrary, despite our physical captivity, we were more obligated than

ever to recite the blessing, to demonstrate to our enemies that even if physically we were slaves, as a people we remained spiritually free.

Part One

<p>Tosefta Bava Kamma Chapter 7:10</p> <p>Rabbi Meir said: Come and see how great is the power of labor: An ox which the thief caused to desist from its work, the thief pays five fold. A sheep which the thief did not cause to desist from its work, he pays four fold.</p> <p>Rabban Yochanan Ben Zakkai said: Come and see how great is human dignity: an ox which walked after the thief on its own – fivefold. Sheep which the thief had to carry astride his shoulders -fourfold.</p>	<p>תוספתא מסכת בבא קמא (ליברמן) פרק ז</p> <p>הלכה י' ר' מאיר או' בוא וראה חביבה מלאכה לפני מי שאמר והיה העולם שור מפני שבטלו ממלאכתו משלם חמשה שה מפני שאין לו מלאכה משלם ארבעה רבן יוחנן בן זכאי אומ' בוא וראה כמה חס המקום על כבוד הבריות שור מפני שמהלך ברגליו משלם חמשה שה מפני שטוענו משלם ארבעה</p>
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<p>משנה: אינו אסור משום כלאים אלא צמר ופשתים. ואינו מטמא בנגעים אלא צמר ופשתים. אין הכהנים לובשין לשמש במקדש אלא צמר ופשתים. צמר גמלים וצמר רחלים שטרפן זה בזה אם רוב מן הגמלים מותר. אם רוב מן הרחלים אסור. מחצה למחצה אסור. וכן הקנבס והפשתן שטרפן זה בזה. השיריין והכלף אין בהן משום כלאים אבל אסורין מפני מראית העין. הפרים והכסותות אין בהן משום כלאים ובלבד שלא יהא בשרו נוגע בהן. אין עראי לכלאים. לא ילבש כלאים על גבי עשרה אפילו לגנוב את המכס.</p> <p>MISHNAH: Only wool and linen are forbidden as <i>kilaim</i>. Only wool and linen can become impure by mold disease. Only wool and linen are worn by priests for their service in the temple. If one mixed camel wool and sheep wool, if most is camel wool it is permitted, if most is sheep wool it is forbidden, half and half is forbidden. The same applies if hemp and linen are mixed. Raw silk and <i>kalak</i> silk are not subject to <i>kilaim</i> but are forbidden because of the bad impression. Mattresses and pillows are not subject to <i>kilaim</i> but one's skin should not touch them. There is no provisional <i>kilaim</i>. One may not wear <i>kilaim</i> over ten other garments, not even to trick the customs.</p> <p>Courtesy of Wikipedia:</p> <p>In the Torah, one is prohibited from wearing <i>shatnez</i> only after it has been carded, woven, and twisted, but the rabbis prohibit it if it has been subjected to any one of these operations.^[4] Hence felt made with a mixture of wool compressed together with linen is forbidden.^[5] Silk, which resembled wool, and hemp, which resembled linen, were formerly forbidden for appearance's sake,^[6] but were later permitted in combination with either wool or linen, because we now know how to distinguish them. Hempen thread was thus manufactured and permitted for use in sewing woolen clothing.</p> <p>Only sheep's wool is considered as wool, the finest being that of lambs and rams;^[7] excluded is camels' hair, the fur of hares, and the wool of goats. If any of the excluded wools is mixed with sheep's wool, or spun with it into thread, the character of the material is determined by the proportion of each. If the greater part of it is sheep's wool, it is reckoned as wool; if the contrary, it is not wool and may be mixed again with linen.^[8]</p> <p>תלמוד ירושלמי (וילנא) מסכת כלאים פרק ט הלכה א</p>	
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הרי שהיה מהלך בשוק ונמצא לבוש כלאים. תרין אמוראין חד אמר אסור. וחרנה אמר מותר. מאן דאמר אסור דבר תורה. מאן דאמר מותר כההיא דאמר רבי זעירא גדול כבוד הרבים שהוא דוחה את המצוה בלא תעשה שעה אחת.

תני אין מדקדקין במת ולא בכלאים בבית המדרש.

רבי יוסי הוה יתיב מתני והוה תמן מיתא. מן דנפק ליה לא אמר כלום. מן דיתיב ליה לא [דף מא עמוד א] אמר ליה כלום. רבי אימי הוה יתיב מתני אמר חד לחבריה את לבוש כלאים. אמר ליה רבי אימי שלח מאנך ויהב ליה. If somebody was walking in public and discovered that he was wearing *kilaim*. Two Amora'im, one said he is forbidden the other one said he is permitted. The one who said he is forbidden, because it is a word of the Torah. The one who said he is permitted follows what R. Ze'ira said: The dignity of the public is important enough to temporarily override a prohibition

It was stated: One does not investigate (the shrouds) for a dead person.

Rebbi Mana had a garment worth 30'000 denar in which he found kilaim. He gave it to Rebbi Hiyya bar Ada and told him that he had bought it for the dead. He kept it until it got threadbare nor in the house of study.

Rebbi Yose was sitting and teaching where a dead body was present. He did not say anything either to those who left or to those who remained sitting. *The story is inserted here to emphasize the statement of R. Ze'ira, that in the house of study one tolerates not only temporary transgression of the law of kilaim but also of the prohibition of defilement of Cohanim.* Rebbi Immi was sitting and teaching when one said to his neighbor: you are wearing *kilaim*. Rebbi Immi told him: strip yourself of your garment and give it to him.

Berachot 19b-20a

Rav Yehuda said that Rav said: One who discovers diverse kinds [*kilayim*], i.e., a prohibited mixture of wool and linen, in his garment, must remove them even in the public marketplace. He may not wait until he reaches home. **What is the reason for this?** As it is stated: **"There is neither wisdom, nor understanding, nor counsel against the Lord"** (Proverbs 21:30). **Anywhere that there is desecration of the Lord's name, one does not show respect to the teacher,** is derived.

The Gemara **raised an objection** from a *baraita*: After **they buried the deceased and returned, and on their way there are two paths before them, one ritually pure and one ritually impure, e.g.,** it passes through a cemetery, if the mourner **comes on the pure path, they come with him on the pure path;** if **he comes on the impure path,** all of the funeral participants **accompany him on the impure path** in order to show **him respect. Why** would they do this? **Let us say** here too that, **"There is neither wisdom, nor understanding...against the Lord!"** Rabbi Abba explained that the *baraita* is referring to a path that passes **through an area where there is uncertainty with regard to the location of a grave or a corpse [*beit haperas*].** The field is impure only **by rabbinic law**

Come and hear, as Rabbi Elazar bar Tzadok the priest said: I and my fellow priests **would jump over coffins of the deceased** in order to hurry **towards kings of Israel** to greet them. **And they did not say this only towards kings of Israel, but they said this even towards kings of the nations of the world, so that if one will be privileged to witness the redemption of Israel, he will distinguish between kings of Israel and kings of the nations of the world.** And **why** is this? **Let us say** here too: **"There is neither wisdom, nor understanding, nor counsel against the Lord."**

The Gemara responds to this challenge by saying that it must be understood **in accordance with** the opinion of **Rava, as Rava said: By Torah law, a tent over a corpse, as long as there is a handbreadth of space between the corpse and the tent over it, constitutes a barrier before the spread of impurity** and nothing above the tent can become ritually impure due to impurity imparted by the corpse. **And when there is not a handbreadth of space between the corpse and the tent over it, the tent does not constitute a barrier before the spread of impurity** and the "pressed" ritual impurity, can reach the

heavens. **Most coffins have a handbreadth of space.** Consequently, their impurity does not spread above the coffin. However, the Sages issued a decree regarding coffins in which there is a handbreadth of space **because of** those coffins in which there is not. Nevertheless, **due to respect for kings,** the Sages **did not issue a decree** in a case involving them.

Come and hear: Great is human dignity, as it overrides a prohibition in the Torah. The Gemara asks: **Why? Let us also say here: “There is neither wisdom, nor understanding, nor counsel against the Lord.” Rav bar Shaba interpreted before Rav Kahana to the prohibition of:** “According to the Torah taught to you and the ruling handed down to you, you shall do, **you shall not deviate** to the left or the right from that which they tell you” (Deuteronomy 17:11).

The Yeshiva students **laughed at him,** as the **prohibition of “you shall not deviate” is by Torah law,** like all other Torah prohibitions. Why should human dignity override it any more than any other Torah prohibition?

Rav Kahana replied to them: A great man has spoken, do not laugh at him. The Sages **based all rabbinic law on the prohibition of “you shall not deviate”;** however, **due to** concern for human dignity, **the Sages permitted** suspension of rabbinic law in cases where the two collide. All rabbinic decrees are predicated on the mitzva in the Torah to heed the judges in each generation and to never stray from their words. Therefore, when the Sages suspend a decree in the interest of preserving human dignity, human dignity is overriding a Torah prohibition. In any case, it only overrides rabbinic decrees.

Come and hear: With regard to the laws of returning a lost object, it is stated: “You shall not see the ox of your brother or his sheep go astray **and ignore them;** return them to your brother” (Deuteronomy 22:1). The *baraita* explains that the seemingly extraneous expression **and disregard them** must be understood to give license that **at times you disregard** lost objects **and at times you do not disregard them.** How so? **If he was a priest and the lost object was in the cemetery, or if he was an elder and it is beneath his dignity** to tend to a lost object of that kind, **or if he had more work to do than another person** and he does not want to set it all aside when another person is available to tend to the lost object. **Therefore,** with regard to those cases **it is stated: And disregard them** to permit one to refrain from returning the object. **Why? Let us say** here, too: Although handling the lost object would be beneath his dignity, **“there is neither wisdom, nor understanding, nor counsel against the Lord.”** The Gemara answers: **There it is different, as it is written: “And disregard them,”** indicating that under certain circumstances one is permitted to disregard a lost object. In that case, there is a biblical directive that creates an exception to the prohibition: “You may not disregard” (Deuteronomy 22:3). We found a case in which human dignity overrides a Torah prohibition.

The Gemara suggests: **Let us derive** a general principle that human dignity takes precedence over all mitzvot in the Torah **from this** case. This possibility is rejected: **We do not derive halakhot** pertaining to **prohibitions** from **monetary** laws, and the case of the lost object merely entails a monetary loss, unlike other prohibitions.

The Gemara cites an additional proof from a *baraita*. **Come and hear** what was said in the Torah with regard to the Nazirite: “He shall not become impure for his father or his mother or his brother or his sister in their death, for the crown of his God is on his head” (Numbers 6:7). Since it was already written with regard to the Nazirite: “He shall not come upon a dead body” (Numbers 6:6), why is it necessary to elaborate and specify his parents and siblings? The Sages derived through halakhic midrash that each of these relationships come to teach a specific nuance of the law. They learned: **To what purpose did the verse state: And his sister?** To teach that one **who was going to slaughter his Paschal lamb and to circumcise his son,** both of which are positive mitzvot that if he fails to fulfill them, he is punished with *karet*, **and he heard that a relative of his died, I might have thought that he should return and become ritually impure** with the impurity imparted by a corpse. **You said: “He shall not become impure”;** the death of his relative will not override so significant a mitzva from the

Torah. I **might** have thought: **Just as he does not become impure for his relatives, so he does not become impure for a corpse with no one to bury it [met mitzva].** The verse states: **“And his sister”;** he may not become impure for his sister, as someone else can attend to her burial,

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but he does become impure for a met mitzva. Here too, the question is asked: **Let us say** that the obligation to bury a *met mitzva*, which is predicated on the preservation of human dignity, should not override mitzvot explicitly written in the Torah, as it is stated: **“There is neither wisdom, nor understanding, nor counsel against the Lord.”** The Gemara answers: **There it is different, as it is explicitly written: “And his sister,”** from which we derive that although he may not become ritually impure to bury his sister, he must do so for a *met mitzva*. The Gemara suggests: **Let us derive** a general principle that human dignity takes precedence over all mitzvot in the Torah **from this** case. This possibility is rejected: This is a special case, because a case of **“sit and refrain from action” [shev ve'al ta'aseh] is different.** Engaging in the burial of a *met mitzva* is not actually in contravention of a mitzva. Rather, by doing so he becomes ritually impure and is then rendered incapable of fulfilling that mitzva. We cannot derive a general principle from here that human dignity would also override a Torah prohibition in a case where that prohibition is directly contravened

Menachot 37b

The mishna teaches that **Rabbi Yishmael says: The four of them are four discrete mitzvot**, and the absence of one does not prevent fulfillment of the rest. **Rav Yehuda says** that **Shmuel says: The halakha is in accordance with the opinion of Rabbi Yishmael.** The Gemara states: **But the halakha is not in accordance with his opinion.** The Gemara relates: **Ravina was walking behind Mar bar Rav Ashi on the Shabbat of the Festival** when the corner of Mar bar Rav Ashi's garment on which his ritual fringes were hanging **tore, and yet Ravina did not say anything to him. When he arrived at Mar bar Rav Ashi's house, Ravina said to him: Back there, along the way, the corner tore. Mar bar Rav Ashi said to him: If you would have told me then, I would have thrown off the garment there,** as once one of the ritual fringes is torn no mitzva is performed with the rest, and it is prohibited to walk in the public domain on Shabbat wearing such a garment. This is in accordance with the opinion of the first *tanna*, who disagrees with the ruling of Rabbi Yishmael. The Gemara raises a difficulty: **But didn't the Master say: Great is human dignity, as it overrides a prohibition in the Torah?** This includes the prohibition against carrying on Shabbat in the public domain. That being the case, why would he remove his garment in public? The Gemara answers: **Rav bar Shabba interpreted that statement before Rav Kahana:**

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He stated this **with regard to the prohibition of: “You shall not deviate to the left or the right of that which they tell you” (Deuteronomy 17:11).** A prohibition by

תלמוד בבלי מסכת מנחות דף לז עמוד ב

רבי ישמעאל אומר: ארבעתן ארבע מצות. אמר רב יהודה אמר שמואל: הלכה כרבי ישמעאל. ולית הלכתא כותיה. רבינא הוה קא אזיל אבתריה דמר בר רב אשי בשבתא דריגלא, איפסיק קרנא דחוטיה ולא אמר ליה ולא מידי; כד מטא לביתיה, אמר ליה: מהתם איפסיק, א"ל: אי אמרת לי, מהתם שדיתיה. והא אמר מר: גדול כבוד הבריות שדוחה את לא תעשה שבתורה! תרגומה רב בר שבא קמיה דרב כהנא: בלאו דלא תסור. ואיכא דאמרי: מהתם א"ל, וא"ל: מאי דעתך?

<p>rabbinic law is overridden by human dignity, but not a prohibition by Torah law. Therefore, Mar bar Rav Ashi would have removed his garment had he known about the tear. And there are those who say there is a different version of this discussion: It was when they were there, in the place where the corner of Mar bar Rav Ashi's garment tore, that Ravina said to him that it had torn, and Mar bar Rav Ashi said to him in response: What is your opinion? Do you think that I should throw the garment off? But doesn't the Master say: Great is human dignity, as it overrides a prohibition in the Torah? The Gemara raises a difficulty: But Rav bar Shabba interpreted that statement before Rav Kahana: He stated this with regard to the prohibition of: "You shall not deviate," not the prohibition against carrying in the public domain, which applies by Torah law. The Gemara answers that here too, it is not a prohibition by Torah law, as the place where they were walking was not a full-fledged public domain but a <i>karmelit</i>, in which carrying is prohibited by rabbinic law.</p>	
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<p>Maharam of Rothenberg A question from my son: If one of the fringes falls off, if it is permissible to wrap oneself in one's tallit and make a blessing. The one who blesses is taking God's name in vain as it says in Menachot 28a: the four fringes invalidate one another for the four are one mitzvah since the halacha is not like Rabbi Yishmael who said each fringe is a mitzvah. Therefore, if a person went to synagogue and found a tallit that had a fringe missing and was not thus fringed properly according to halacha but is embarrassed to change his custom and sit before the congregation without a tallit, it is possible that he would be allowed to wrap himself without a beracha as found in Menachot 37b with regard rabbinic karmalit for great is human dignity. er since there is no corner.</p>	<p>שו"ת מהר"ם מרוטבורג (דפוס פראג) סי' רפז +כת"י מינכען סי' מ"ב שאלת בני אם נפסק א' מן הציציות אם מותר להתעטף ולברך בשבת המברך [בן] מוציא שם שמים בשבת לבטלה כדקיי"ל סוף הקומץ רבה (כ"ח ע"א) דארבע ציצית מעכבי' זא"ז שארבע מצוה אחת היא דלית הלכתא כר' ישמעאל דאמר ארבע מצות. ומיהו אם הלך אדם לביהכ"נ ומצא טליתו שנפסקו החוטין ואינו מצויצת כהלכתו ומתבייש לשנות מנהגו לישב בפני הקהל בלא טלית אפשר דמותר להתעטף בלא ברכה כדאשכחן בהקומץ רבה (ל"ז ע"ב) בכרמלית דרבנן גדול כבוד הבריות. ואותן טליתות העשוין כמין קפרוניש שמעתי שזו היא טליתות של חסידי אשכנז ויש לו ד' כנפים וכשפושט מעליו שוטחן ומתכסה בו וי"א דלא מקרי טלית אלא כעין שלנו שעשוי להתעטף בו ולהתכסות כדכתי' כסותך ומברכי' להתעטף ואני נוהר מללובשן לאפוקי נפשאי מספק אבל אותו קוטיוש שיש להן בית זרוע לא דמי כלל ואין כאן מיחוש [דכנף] דידהו לאו כנף. +עיי' יו"ד סי' ס"ח וסי' ס"ט וסי' א' וסי' ע"א ס"ב. +ורגלי בהמה אין מליחה מועלת בהם במקום הצפורנים עד שיסירם ושלוש שמשון בר' אברהם ז"ל.</p>
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Really? Nakedness in the Marketplace?

<p>Rambam Kilayim Chapter 10: Halacha 29 When a person sees <i>kilayim</i> that are forbidden by Scriptural Law on his friend - even if the latter is walking in the market place - he should jump up and rip it off him immediately. [This applies] even to his teacher from whom he has learned wisdom For [the obligation to] honour people at large does not supersede a negative prohibition in the Torah.</p>	<p>כט הרואה כלאים של תורה על חבירו אפילו היה מהלך בשוק קופץ לו וקורעו עליו מיד ואפילו היה רבו שלמד חכמה שאין כבוד הבריות דוחה איסור לא תעשה המפורש בתורה ולמה נדחה בהשב אבדה מפני שהוא לאו של ממון ולמה נדחה בטומאת מת הואיל</p>
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<p>Why is such [a prohibition] superseded with regard to returning a lost object? Because the prohibition involves financial matters.</p> <p>Why is [a prohibition] superseded with regard to the ritual impurity associated with a corpse? Because Scripture made an exclusion regarding his sister.</p> <p>According to the Oral Tradition, it was taught: For his sister, he may not become impure, but he may become impure for a corpse that it is a mitzvah to bury.</p> <p>If, however, a prohibition is Rabbinic in origin, it is superseded by the consideration of a person's honour in all situations. Although the Torah states [Deuteronomy 17:11]: "Do not deviate from any of the statements they relate to you," this prohibition is superseded by considerations of a person's honour.</p> <p>Accordingly, if [another person] has upon him <i>sha'atnez</i> that is forbidden according to Rabbinical law, one may not rip it off him in the marketplace, nor must [the person himself] remove it in the marketplace until he reaches home. If [the <i>sha'atnez</i> was forbidden] according to Scriptural Law, he must remove it immediately</p>	<p>ופרט הכתוב ולאחותו מפי השמועה למדו לאחותו</p> <p>אינו מטמא אבל מטמא הוא למת מצוה אבל דבר שאיסורו מדבריהם הרי הוא נדחה מפני כבוד הבריות בכ"מ ואף על פי שכתוב בתורה לא תסור מן הדבר הרי לאו זה נדחה מפני כבוד הבריות לפיכך אם היה עליו שעטנז של דבריהם אינו קורעו עליו בשוק ואינו פושטו בשוק עד שמגיע לביתו ואם היה של תורה פושטו מיד:</p>
<p>טור יורה דעה הלכות כלאי בגדים סימן שג</p> <p>המוצא כלאים בבגדו אם הם דאורייתא פושטו אפילו (בשוק) ואם הוא כלאים דרבנן והוא בשוק א"צ לפושטו וכן אם הוא בבית המדרש א"צ למהר בשבילו לצאת משם</p> <p>כתב הרמב"ם הרואה כלאים של תורה על חבירו אפילו הוא בשוק קורעו מעליו אפילו הוא רבו שלמדו חכמה</p> <p>וא"א הרא"ש ז"ל כתב אף על פי שהמוצא כלאים דאורייתא פושטו אפילו אם הוא בשוק דוקא שהלבוש מוצאו בעצמו שהוא מזיד אבל הרואה כלאים על חבירו א[ו]הלבוש אינו יודע א"צ לומר לו בשוק עד שיגיע לביתו דמשום כבוד הבריות ישתוק ואל יפרשנו משוגג כתב הרמב"ם המלביש את חבירו כלאים אם היה הלבוש מזיד הלבוש לוקה והמלביש עובר על ולפני עור לא תתן מכשול ואם לא ידע הלבוש שהוא כלאים והמלביש מזיד המלביש לוקה והלבוש פטור:</p>	<p>קיצור פסקי הרא"ש מסכת ברכות פרק ג סימן יב</p> <p>יב. המוצא כלאים דאורייתא בבגדו פושטו ואפילו בשוק אבל כלאים דרבנן לא ואין מדקדקים במת ובכלאים בבית המדרש שאם לא היה יודע שיש מת בבית המדרש ולומד שם או שאינו יודע שהוא לבוש כלאים והוא יושב בבהמ"ד אין צריך להודיעו שיש שם מת או שהוא לבוש כלאים כדי שיצא:</p>
<p>שולחן ערוך יורה דעה הלכות כלאי בגדים סימן שג</p> <p>סעיף א</p> <p>הרואה כלאים של תורה על חבירו, אפילו היה מהלך בשוק, היה קופץ לו וקורעו מעליו מיד, א {א} ואפילו היה רבו. (וי"א ב {א} דאם היה הלבוש א' שוגג, ג אין צ"ל בשוק, דמשום כבוד הבריות ישתוק, ואל יפרשנו משוגג) (טור בשם הרא"ש). ואם היה של דבריהם, אינו קורעו מעליו א[ו] אינו פושטו בשוק, עד (ב) שמגיע לביתו. (ב) וכן בבית המדרש אין צריך למהר לצאת (טור). ואם היה של תורה, פושטו מיד.</p>	<p>בית יוסף יורה דעה 303:1</p> <p>המוצא כלאים בבגדו אם הם מדאורייתא פושטו ואפי' בשוק וכו' בפ' מי שמתו (ברכות יט:)</p> <p>אמר רב יהודה אמר רב המוצא כלאים בבגדו פושטו אפילו בשוק שנאמר אין חכמה ואין עצה ואין תבונה לנגד ה' כ"מ שיש חילול השם אין חולקין כבוד לרב ומשמע התם דהיינו דוקא בכלאים דאורייתא</p> <p>וכ"כ הרא"ש בפ"ט דנדה וכן הם דברי הרמב"ם ז"ל ומ"ש וכן אם הוא בבית המדרש א"צ למהר בשבילו לצאת משם ירושלמי אכתבנו בסמוך:</p> <p>וכתב עוד שם הרא"ש ירושלמי הרי שהלך בשוק ונמצא לבוש כלאים תרין אמוראין חד אמר אסור וחד אמר מותר</p>

	<p>מאן דאסר ד"ת ומאן דמתיר כרבי זירא דאמר גדול כבוד הבריות שדוחה את המצוה בלא תעשה שעה אחת תניא אין מדקדקין לא במת ולא בכלאים בבית המדרש רבי אמי הוי יתיב ומתני אמר חד לחבריה את לבוש כלאים א"ל ר' אמישלוף מאנך והב ליה וסבר רבי אמי כאמורא דשרי</p> <p>א"נ בכלאים דרבנן א"נ בכלאים דאורייתא ודאי המוצא כלאים בבגדו אין חכמה ואין תבונה לנגד ה' וצריך לפושטו אפילו בשוק</p> <p>אבל אם אדם רואה כלאים בבגדי חברו והלבוש כלאים אינו יודע אין לומר לו בשוק עד שיגיע לביתו דמשום כבוד הבריות ישתוק ולא יפרישנו עד כאן לשונו</p> <p>וכתב רבינו כאן כדברי התירוץ השני וכן כתב סמ"ג:</p>
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Part II. Bodily Cleanliness

<p>Eruvin 41a MISHNAH. HE WHOM GENTILES, OR AN EVIL SPIRIT, HAVE TAKEN OUT [BEYOND THE PERMITTED SABBATH LIMIT] HAS NO MORE THAN FOUR CUBITS [IN WHICH TO MOVE].</p> <p>An enquiry was addressed to Rabbah: What is the ruling where a man had to attend to his needs? — Human dignity he replied, is so important that it supersedes a negative precept of the Torah. (he can move beyond the four cubits which are rabbinic...)</p>	<p>משנה מסכת עירובין פרק ד משנה א</p> <p>מי שהוציאווה עובדי כוכבים או רוח רעה אין לו אלא ארבע אמות. החזירוהו - כאילו לא יצא</p> <p>גמרא: בעו מיניה מרבה: הוצרך לנקביו מהו? אמר להם: גדול כבוד הבריות שדוחה את לא תעשה שבתורה.</p>
<p>Megilla 3b Raba propounded the question: As between the reading of the Megillah and [attending to] a Meth Mizwah, which takes precedence? Shall I say that the reading of the Megillah takes precedence in order to proclaim the miracle, or does perhaps [the burying of] the Meth Mizwah take precedence because of the respect due to human beings? — After propounding the question, he himself answered it saying, [Burying] the Meth Mizwah takes precedence, since a Master has said: Great is the [obligation to pay due] respect to human beings, since it overrides a negative precept of the Torah.</p>	<p>תלמוד בבלי מסכת מגילה דף ג עמוד ב</p> <p>בעי רבא: מקרא מגילה ומת מצוה הי מינייהו עדיף? מקרא מגילה עדיף משום פרסומי ניסא, או דלמא מת מצוה עדיף - משום כבוד הבריות? בתר דבעיא הדר פשטה: מת מצוה עדיף. דאמר מר: גדול כבוד הבריות שדוחה את לא תעשה שבתורה.</p>
<p>Shabbat 81a Rava bar Rav Shila asked of Rav Hisda: Is it permissible to carry them up [the stones] after one to the roof? [to use as toilet paper] Human dignity is very important, he replied, and it supersedes a negative injunction of the Torah. Now, Meremar sat and reported this discussion, [whereupon] Rabina raised an objection to Meremar: R. Eliezer said: One may take a chip [lying] before him to pick his teeth therewith; but the Sages maintain: He may take only</p>	<p>תלמוד בבלי מסכת שבת דף פא עמוד א</p> <p>בעא מיניה רבה בר רב שילא מרב חסדא: מהו להעלותם אחריו לגג? - אמר ליה: גדול כבוד הבריות שדוחה את לא תעשה שבתורה.</p>

<p>from an animal's trough? How compare! There, one appoints a place for his meal (and should prepare toothpicks in advance); but here, does one appoint a place for a privy?</p>	
<p>Shabbat 94b A dead body was lying in Darukra, which R. Nahman b. Isaac allowed to be carried out into a karmelith (because it was rotting in the sun or lying in disgrace). Said R. Nahman the brother of Mar son of Rabbana to R. Nahman b. Isaac: On whose authority? R. Simeon's (who exempts one from liability when carrying a corpse)! But Perhaps R. Simeon merely exempts [such] from liability to a sin-offering, yet there is a Rabbinical interdict. By God! said he to him, you yourself may bring it in. For [this is permitted] even according to R. Judah: did I then say [that it may be carried out] into the street? I [merely] said, into a karmelith: the dignity of human beings is a great thing, for it supersedes [even] a negative injunction of the Torah.</p>	<p>תלמוד בבלי מסכת שבת דף צד עמוד ב</p> <p>ההוא שכבא דהוה בדרוקרא, שרא רב נחמן בר יצחק לאפוקיה לכרמלית. אמר ליה רבי יוחנן אחוה דמר בריה דרבנא לרב נחמן בר יצחק: כמאן - כרבי שמעון, אימר דפטר רבי שמעון מחיוב חטאת - איסורא דרבנן מיהא איכא! - אמר ליה: האלהים! דעיילת ביה את, ואפילו לרבי יהודה שרי. דמי קאמינא לרשות הרבים? לכרמלית קאמינא! גדול כבוד הבריות שדוחה את לא תעשה שבתורה.</p>