

Kevod Haadam, Tzelem Elohim and Kevod Habriot

(The Dignity of Man, The Image of God and the Honor of the Fellow-Creature)¹

Shlomo Fischer July 13, 2004

In this lecture, I would like to discuss three concepts of Jewish thought and law – *Kevod Ha`adam*, the dignity of man, *Tzelem Elohim*, the image of God and *Kevod Habriot*, the honor of the fellow-man or fellow-woman. I would like to argue that despite attempts to conflate these concepts and to regard them all as equivalents or even synonyms for the modern concepts of human dignity, they in fact ought to be distinguished as separate concepts and intuitions. Such a recognition of their separate character and the initiation of a dialogue between these separate concepts, I suggest could significantly contribute to the enrichment of the current discussion of human dignity and rights.

Kevod Haadam is a linguistic coinage of modern vintage , in this form it does not appear in the Bible or the Talmud and their Medieval or Post-Medieval commentators. It was coined in order to translate the modern concept of human dignity. This concept itself, I believe, only entered European discourse with Immanuel Kant's *Foundations of the Metaphysics of Morals*. *Kevod Haadam* entered modern Hebrew legal and philosophical usage in Israel in order to translate this concept which denotes that the human being has the right to have rights. The Israeli basic law guaranteeing human rights on the constitutional level, is termed in Hebrew – *Chok Yesod: Kevod Haadam V'Heruto*, that is “Basic Law: The Dignity and Freedom of Man.”

Yair Lorberbaum² has recently shown that the concept of *Tzelem Elohim* – the Image of God – had been a wide - ranging concept in rabbinic thinking and that it has

¹ Originally delivered in Conference in Newton Mass in October 2002.

² Yair Lorberbaum, *The Image of God: Halcha and Aggada*, Schocken, Jerusalem and Tel Aviv, 2004.

informed fundamental concepts about man and God as well as criminal law and law and norms concerning family and personal relations. Lorberbaum concentrated his research on the Tannaitic layer of Rabbinic literature, that is, he located the central focus of interest upon the notion of Tzelem Elohim in those rabbis who were active between the start of the common era and around 200 CE. Lorberbaum's research not only poses the question of the relationship between Tzelem Elohim and the modern concept of human dignity but also to what extent can ancient philosophical and ethical concepts inform our own modern ethical sensibility and how can they do so.

The heart of Lorberbaum's analysis is the insight that the rabbis understood the notion of Tzelem as an *iconic* relationship between man and God. By "iconic" Lorberbaum understands that a figurative similarity between two objects indicates that there is an ontological relationship between them. Thus, if object A is in the image of Object B, then in some sense object B is "present" in object A; object A is an "extension" of object B. This is especially the case of object B is in some sense more primal than object A, if it serves as a "prototype" for it in the Platonic sense. Lorberbaum argues further that this ontological connection is conceived by the rabbis to be a basis for "theurgy." Because of the ontological connection between the two entities, affecting the image or the *icon* (in our terms object A) affects also the prototype (object B).

Lorberbaum applies this iconic relation to the relationship between man and God. Man is the *icon* of God, he is an image (*dyokan* in Greek) in which God is present. Man is thus an ontological "extension" of God. This iconic relationship implies a "theurgic" one. What one does to man affects God. Thus by murdering man or causing him pain or humiliation, one diminishes God, humiliates him or causes him

pain. Conversely, by procreating, multiplying and augmenting man one augments God.

The support that Lorberbaum adduces for this interpretation includes the very terms that the Rabbis use to explain the biblical terms, *Tzelem* and *Dmuth*. They interpret *tzelem* as *ikonin* (*icon*) and *dmuth* as *dyokan*. Lorberbaum shows that this logical/ontological conception was extremely common in the late antique Greco-Roman world. It was widespread in Neo-Platonism and in the various Platonic schools with Plotinus and Iamblichus devoting extensive passages to it. It also informed various spiritual and religious practices of the various philosophical schools and mystery religions which involved images and icons (that is idols in one form or another.) Its assumptions also underlay the widespread political practice of worship of the Emperor's insignia. Thus, Lorberbaum claims, the adoption by the Rabbis of the school of Hillel (especially Hillel the Elder and R. Akiva) was of a piece with philosophical and ethical notions common at that time.

Lorberbaum shows that especially in the school of Hillel the assumption of an iconic relationship between man and God underly attitudes towards the body and the self. and constituted a pervasive cultural theme. Beyond this, however, Lorberbaum wishes to show that the assumption of an iconic relationship man and God shapes rabbinic norms concerning murder and capital punishment:

“Rabbi Akiva said: he who sheds blood negates the Image for its says: ‘Whoso sheddeth man’s blood, by man shall his blood be shed; for in the image of God made he man’ (Genesis, 9,6) (Tosefta Yevamoth, 8,4)

ר' עקיבא אומר כל השופך דמים מבטל את הדמות, שנאמר "שופך דם האדם דמו ישפך כי

בצלם אלוהים עשה את האדם." (בראשית ט' ו') תוספתא יבמות ח', ד'

In this saying, the term, “image” refers to both the image of God and man’s image which is in the image of God. By diminishing man’s image through bloodshed one negates God’s image which is present in man.

The rabbis did not restrict the ethical/legal consequences of the iconic relation of man and God only to criminal acts. It informed also the response of the criminal justice system to those very acts. One of the *locii classici* of the rabbinic conception of man as the *ikon* of God is in the following parable of R. Meir:

Rabbi Meir would say: What does ‘He that is hanged is a reproach unto God’ (Deut. 21, 23) come to teach us?

Two identical twins, one the ruler of the whole world and the second became a bandit. After a period of time, the bandit was caught and he was crucified upon a cross. Every passer-by would say – ‘it seems that the king has been crucified.’ Therefore it says ‘He that is hanged is a reproach unto God’ (Tosefta, Sandhedrin, 9,7)

This parable refers to the relation between man and God. The King is transparently God (Ruler of the whole world) and the bandit is man who has transgressed a capital offense. As Lorberbaum emphasizes, the passer-bys do not make a mistake. They identify the King in the crucified bandit, because of the very real connection between them.

This parable explains the symbolic nature of one of the central procedures of Rabbinic capital punishment. The Torah (Deuteronomy 21: 23) mandates that one who was judicially executed be “hung”. The rabbis turned this into a symbolic procedure. “As one binds him, the other looses his binds.” Lorberbaum argues that because God is present in man, insofar as man is the *ikon* of God, the rabbinic conception of criminal punishment tended to obliquely criticize the Biblical

procedures of execution and even nullify the biblically proscribed capital punishments. Thus Lorberbaum ascribes to the iconic relation of man and God, the well known Mishna restricting the application of capital punishment:

A Sandhedrin (High Rabbinical Court) that executes one [guilty criminal] in seven years is considered “destructive.” R. Elazar b. Azaria says, one in seventy years. R. Akiva and R. Tarfon say, were we in the Sanhedrin, no one would ever be executed in it. (Makot, 1, 10.)

The major ramifications that we have seen thus far of the notion of *Tzelem Elohim* have been mainly in reference to life or death - either the criminal or the judicial taking of life. Those references in rabbinical literature to the prevention of pain and humiliation because man contains the presence of God, are generally also found in the context of the procedures for capital punishment. This is not terribly surprising because the verse that indicates the normative implications of *Tzelem Elohim* indeed deals with the shedding of blood (Genesis 9,6).

One important tradition however expands the implications of *Tzelem Elohim*. I would maintain that due to this expansion, in this tradition, *Tzelem Elohim*, provides a concept that is close to the modern notion of human dignity and its ramifications not only in reference to life itself, but also in regard to the prohibitions against violating one’s body, honor and property that are held to grow out of it.

The tradition in question, as do many rabbinic traditions, has two “stories” or “floors.” The first is a dialogue between two 2nd Century *Tannaim*, Ben Azzai and R. Akiva. The second is a constructed expansion of the dialogue, which appears only in one later text, Breshit Rabba which was edited some time around the 4th Century. This expansion constitutes an interpretation of what seems to have been original dialogue.

The dialogue seems to have been as follows: Regarding the quotation: “Love thy neighbor as thyself” R. Akiva commented “This is a grand principle of the Torah.” Ben Azzai replied, that the verse “This is the book of the generations of man, in the day that the Lord created man in the image of God he made him” (Genesis 5:1) is a greater principle. This dialogue appears three times: in Torat Kohanim, the legal midrash on Leviticus, in the Palestinian Talmud and in Breshit Rabba the aggadic midrash on Genesis. In the report in Breshit Rabba, we find a meaningful addition: “Said Ben Azzai:, ‘according to your principle one could say I am willing to be cursed, I am willing to be shamed’ perhaps the other fellow could be cursed and shamed. Look and see whom you are cursing and shaming? The image of God.”³

In other words, Ben Azzai replaced the formal ethical criterion with a substantive one. In this rabbinic tradition the notion that man was created in the image of God is not only conceived of as a principle that informs judicial practice, it is placed upon the same plane as the ethical injunction of “Love thy neighbor as thyself” (Leviticus 19: 18). Both are considered to be meta-halachic principles, that is principles that inform many laws: “Grand principles of the Torah.” (Breshit Rabba, Sifrei 7) The laws that both of these principles inform, as Maimonides pointed out, are the ethical laws, the laws that govern the relations between man and man. These are the laws that prohibit murder and theft and prohibit violence against the person, body, property of another. In another words they generally prohibit violations of the humanity of another, treating him as if he were an animal or a thing. These grand principles also include laws that affirm and enhance the humanity of the other – enjoining visiting the sick and acts of lovingkindness.

³ As his other dicta indicate, R. Akiva, strongly endorsed the notion of man as the *ikon* of God. Apparently in this dialogue, because of the similarity between the “images” all of whom reflect the same prototype (God), R. Akiva would like to form a formal ethical principle. Ben-Azai objects, pointing out the advantages of a substantive principle. For a different view see Lorberbaum p. 397-405.

I would like to engage this rabbinical concept of *Tzelem Elohim* on two levels. The first is that of the validity or credibility of the concept itself. The second is that of its relation to our modern concepts of human dignity and rights.

As I have indicated the first issues that of the validity of the iconic concept itself, as Lorberbaum presents it. Is this a concept that conforms to our intuitions about the Divine and its relations to man? As Lorberbaum explains, man as the *ikon* of God, does not only refer to his physical configuration, but also, perhaps primarily, to man's total psycho-intellectual being – his intellect, emotions, will etc. which in the monistic rabbinic anthropology are all unified with his body. Nevertheless, *Tzelem Elohim* as an iconic concept implies an anthropomorphism which, I submit, is difficult for modern day Jews (of whatever denomination) to accept. Secondly, I don't think that most people would accept the Platonic or iconic metaphysics that underlies the rabbinic concept of *Tzelem Elohim*. Since the seventeenth century, the main current in modern thought would hold that just because one object is the image of another, one is not "present" in the other, and there is no intrinsic ontological connection between them. Modern metaphysics holds that there is a great gulf fixed between extensive, material, matter and intensive, mental, matter. Two objects are merely that - two separate objects which happen to look alike.

Nevertheless, the concept is highly suggestive. Both the biblical verses and the rabbinic parables and metaphors point to something which I think we feel has a truth to it. Yet, the conceptual and metaphysical garb that the Rabbis have provided is not entirely acceptable. I think that in this situation, the model of interpretation that was suggested by Rudolph Bultmann⁴ for the study of the Gospels is appropriate. Bultmann, it will be recalled suggested separating the existential "Good News" from

⁴ *Faith and Understanding*, London, 1969

the “mythological” story of Christ, which he claimed was appropriate for its time and place, but incredible for modern readers. The “Good News”- of God’s salvational activity- on the other hand, because of its deemed existential truth, is relevant for all readers at all times.

In a similar fashion, many writers such as William Perry, Robert Dahl and Max Stackhouse have pointed to the ineluctably sacred nature of human life – that human beings possess a “divinely endowed core that is the ultimate basis for the right to have rights” (Max Stackhouse). These writers, I think point to widely held intuition that at the base of our concepts of human equality and human rights, is this intuition of human sacredness. Yet what exactly this sacredness consists of is extremely hard to formulate; it tends to bring us to the limit of our conceptual abilities and moral reason. In this situation the rabbinic, iconic concept of *Tzelem Elohim* can stand in a double relationship to . In one sense it does give us a language in which to talk about human sacredness- God is “present” ontologically in human beings; when we hurt, humiliate or kill human beings we diminish God. Yet at the same time, without diminishing the force of this rabbinic language, we can perform, if we wish, a Bultmannian operation: We can identify with the phenomenology of human sacredness that is present in the concept of *Tzelem Elohim* without necessarily committing ourselves to the metaphysics of the rabbinic concept. We can treat it as a myth or metaphor which helps us formulate our thoughts but to which we need not necessarily commit ourselves to its literal truth value.

The Rabbinic concept need not function only as a vehicle for our pre-existent intuitions. Its very foreignness can help to critically challenge our received notion of human rights. This is the second issue that I have alluded to above. The concept of the image of God emphasizes the external source of the sacred value of human beings.

The concern in rabbinic iconic concept is for God who is “present” in the human being, who is diminished, if His *ikon* is harmed. According to this religiously based concept human beings have value because they “participate” in the Platonic sense in something that is radically other to what otherwise would be human ontology. The basis for human value is a Being that is totally outside the imminent human world. This state of affairs *ipso facto* creates ethical standards which are heteronomous vis a vis the human world. This perspective on human value is in contrast to the accepted perspective, which might be termed modern or “secular” which I think, anchors absolute human value in the immanent human being herself, or in some characteristic of hers such as autonomy or the ability to legislate one’s moral laws for oneself.⁵

This contrast has immediate practical ethical implications. There are and will be some areas and situations that an approach to human dignity based upon the “image of God” will judge very differently than the secular discourse of rights. Three such limit areas immediately come to mind – suicide, abortion and responsibility for the life of the other. In regard to the first two, the religious image of God approach takes the general position that the continuation or extinction of human life cannot be the object merely of autonomous human decision making even if another autonomous human being is not harmed. The sacredness of human life comes from “outside,” and does not fully belong to human beings, even to oneself, to dispose of as one see fit. Thus human beings do not automatically have the right to conduct hunger strikes unto the death in order to make a political point, nor even to kill themselves if they decide that their lives contain too much pain and indignity. The very verse that prohibits

⁵ A more “moderate” interpretation of Tzelem Elohim, one in which human beings “reflect” somehow the Divine being, would also, I think lead to a similar result. However, the rabbinic iconic approach to *Tzelem Elohim* with its emphasis upon Divine Presence and theurgy underlines the theo-centric nature of the ethics based upon it.

murder because man is created in the image of God (Genesis 9:6), is understood by Jewish commentators to explicitly prohibit suicide. The ethic of *Tzelem Elohim* if it permits suicide and abortion at all, will be very cautious and reluctant in doing so. This is in contrast with current liberal -rights oriented thinking which tends to affirm both assisted suicide and abortion.

Similarly, Jewish religious law based upon the ethic of *Tzelem Elohim* obligates one to actively intervene to prevent the death of another. Indeed, in contemporary Israeli law, simply being a passive bystander in the face of an accident without offering aid and assistance is a legal offence. This too, contrasts with at least some forms of the liberal sensibility, in which each individual lives within his own zone of privacy and self-reliance and one does not cross the boundaries of such zones without invitation.

Our third term, *Kevod Habriot*, which I have translated as the honor of one's fellow-man or woman, is of early Talmudic origin and has served as a principle of Jewish religious jurisprudence until recent times. That is, it has figured in the literature of Jewish law as a consideration of some weight which can overcome injunctions and prescriptions of various sorts. Apparently because of the linguistic similarity between the two terms, *Kevod Haadam*, which denotes the modern concept of human dignity and rights and *Kevod Habriot* there has been a tendency among legal and talmudic scholars, looking for traditional Jewish roots for modern notion of the right to have rights, to conflate the two terms and concepts and to anchor the modern concept of *Kevod haadam* in the Talmudic concept of *Kevod Habriot*. In contrast to this approach, which was initiated above all, by Prof. Nahum Rackover, the distinguished former Deputy-Attorney General for Jewish Law, I would like to argue that the usage that the Rabbis in the Talmud and the Halachic commentators

and decisors make of this concept indicates a totally different intuition and principle; one in fact which exists in a certain tension with the modern concept of human rights.

I would like to argue that *Kevod Habriot* refers to the respect due to woman and man without reference to their special ontological positions as *ikons* of God. In order to amplify this and make clear the difference between it and *Tzelem Elohim*, I would like to have brief reference to the work of Louis Dumont⁶ on Early Christianity. Dumont argued that in the Late Antique era almost everyone existed within the framework of organic kinship communities of production and reproduction. It was only by developing an outwardly relationship with Christ based upon contemplation that an individual in the Western sense was able to develop.

I would like to point to a similar relation in regard to *Tzelem Elohim* and *Kevod HaBriot*. *Tzelem Elohim* by focusing upon the iconic relationship with God is able to “extract”, as it were the individual from his organic setting. It makes categorical normative claims vis a vis every individual which relate to his person, body or property. *Kevod HaBriot*, in contrast, does not relate to these issues. It relates to the standing of a human being without reference to her special iconic status. Since the human being’s special iconic status is disregarded, the human being that it relates to is the human being in society – the human being embedded in her organic community.

Since *Kevod Habriot* is concerned with standing, it is concerned with the “externalities” of human existence. Thus it addresses itself not to the sacred core of one’s humanity, where God’s presence is to be found, but to the penumbra as it were of that core – the necessary material layers in which that core is embodied. To use a Kabbalistic terminology, one could say than man is “clothed” in two garments; the

⁶ *Essays on Individualism*, University of Chicago, Chicago, 1986

“garment” of the physical body and the “garment” of the social body. *Kevod Habriot* does not relate to negations or affirmations of man’s essential humanity and its divine core, but to the “garment”s of human existence – the body as a garment – when it is merely a corpse, devoid of the live human being that formerly gave it form and life and the garment of social existence. It is concerned with shame – you can commit an indignity upon a corpse and you can vaporize a man’s standing in society by shaming him. Thus the basic commandments of *Kevod Habriot* are protecting the dignity of the corpse by burying it and protecting the standing of men and women in society by preventing their shame.

Of course, as we have seen, Tzelem Elohim is also concerned with the dignity of the corpse. One of the central prohibitions associated with man as the *ikon* of God, is leave the executed man “hanging.” Yet as all the commentators have pointed out, there is a fundamental difference between the two commandments. The prohibition against leaving the executed man hanging is categorical. Under no circumstances is one leave the corpse on the cross, even if it cannot be buried. This reflects the iconic relationship. By leaving the corpse hanging one is harming and diminishing God. The obligation to bury in contrast is flexible and negotiable. It refers to the general honor accorded to the dead. One need not bury immediately if one needs to build a coffin or even wait for relatives to arrive at a funeral. Thus it belongs to the general obligations of *Kevod Habriot*, not to the peremptory and categorical injunctions (such as the prohibition on murder) of Tzelem Elohim.

What is especially interesting about the Rabbinic concept of *Kevod Habriot* is that it extends to the social body as well. Thus in the rabbinic understanding, *Kevod Habriot* also encompasses not obligating or forcing one to undertake actions or to suffer situations not in keeping with one’s social standing. Thus an elderly

gentleman is not required to chase, capture or return a lost ewe, and a King or even a prominent family is exempt from certain requirements.

I would suggest that the contribution that the concept that *Kevod Habriot* to current political and ethical discussion has to do with its universal aspect. When we think of the concept of a person's standing in society, we generally think of it in terms of hierarchy and stratification. Indeed, the laws of *Kevod Habriot* have a hierarchical aspect – priests, elders, and kings are exempt from this or that obligation because of their standing. However the point of *Kevod Habriot* is that **everybody** has a body and a social existence. Thus the paradigmatic injunctions of *Kevod Habriot* are the *met mitzvah* – the overriding obligation to bury the anonymous corpse found upon the field, and the prohibition against stripping any man naked in the marketplace (e.g.,if he wears prohibited clothing) because of the social shame involved. In other words having a social existence and the honor affiliated with it are part of the universal human condition. Along with the divine core and the human rights that it generates we must also, in any situation, consider the social being that women and men necessarily have, and the honor that goes along with it.

Conclusion

There has been some discussion of late concerning the religious origins and nature of human rights. Writers such as Max Stackhouse, Michael Perry and Louis Henkin have debated whether we ought to consider the three monotheistic faiths or the Enlightenment as the source of our concept of human rights. I would like to suggest that we consider the notions of human dignity and human rights not as single monolithic concepts which have a single exclusive source but as a field in which various related concepts of various origins co-exist and carry on a dialogue with each other. Thus, undoubtedly secular notions of rights that have their origin in Hobbes and

the Enlightenment have enriched religious conceptions of the sacredness of human life by adding that human autonomy in one fashion or another is an essential component of that sacredness. On the other side the contemporary emphasis on autonomy may bring us into the danger of the fundamental violations of taboos, that not only fetuses but other helpless forms of human life may be extinguished due to the autonomous will of human beings. We have all ready seen the first stirrings of such a danger in those manifestations of child pornography that contain a component of sadism and murder. The notion of *Tzelem Elohim*, that man was created in the image of God, by reminding us of the external source of human sacredness could perhaps counteract such developments.

Another dilemma which faces us is that between the rights of victims and the rights of the public to know and issues of shame and confidentiality both in relation to victims and even perpetrators of crimes and violations of human rights.

I would suggest that adopting the concept of *Kevod Habriot*, of the honor of our fellow-creatures, would at least give us a language to discuss the many sidedness of such ethical problems. In line with my explication, this concept states that aside from possessing a divine core on the individual plane, human beings necessarily have an existence in society that generates a modicum of social honor which too must be taken into ethical consideration.

As Aristotle pointed out many centuries ago, ethics and politics are practical sciences. Trying to solve ethical dilemmas involves weighing and deliberating among varied considerations, some of which are incommensurable with each other. The more refined and rich is our conceptual apparatus and the more we can define our considerations, the better chance we have of successful resolution. By introducing the concepts of *Tzelem Elohim* and *Kevod Habriot*, I have made an attempt to advance

such refinement and enrichment.