

ASHER MAOZ

**RELIGIOUS AND PHILOSOPHICAL FOUNDATIONS OF
HUMAN RIGHTS – JUDAIC ASPECTS**

I've been asked to talk about the Judaic religious and philosophical foundations of human rights and to do so in no more than 9 minutes.

Well, that's easy. I need no more than 20 seconds to tell you that there are no such foundations in Judaic teachings since no human rights are acknowledged in Judaism. Indeed, even the term 'human rights' is absent in Jewish classic texts, as is the term 'rights' in general.

However, I need much more than 9 minutes to explain their absence, yet I'll try my best to meet the time limit.

The issue of rights stays at the heart of a major clash between Judaic philosophy and liberal attitudes. The late Professor Robert Cover insightfully noted the difference between both systems: Judaism is the jurisprudence of

Mitzvoth – obligations – while western post-Enlightenment secularism is the jurisprudence of rights.

Let me try to demonstrate this difference in the realm of private law.

Mr. Smith, a resident of Provo, lent money to Mr. Brown who fails to repay. What should Mr. Smith do? – Obviously he will go to court.

Now let's move the same to a Jewish traditional community and replace Smith & Brown with Reuben & Shimon. Reuben, the creditor, will also go to court. However, the jurisprudence of both courts will be totally different.

The court in Provo will enforce Mr. Smith's right. The Rabbinical Court will not be concerned with Reuben's right but rather with Shimon's duty, a duty he owes to God. Note that Reuben does not even have a right correlative to Shimon's duty since Shimon owes him nothing. He will

only incidentally benefit from Shimon being enforced to fulfill his duty.

This difference becomes even clearer in the area of public law. Let's confront two basic constitutional documents – the first ten amendments to the American Constitution & the Jewish Constitution, the Ten Commandments.

The American Bill of Rights states basic human rights.

The Ten Commandments – the Hebrew Bill – states human duties.

Note one more difference that may account for this discrepancy: The American Constitution starts with the declaration "We the People". The Hebrew Constitution declares "I am the Lord your God".

While "we the people" are the source of all norms, it is "I the Lord" that imposes Mitzvoth upon us.

But does this mean that human rights are ignored? By no means!

Take for example the right to life. This right is paramount in Western civilization. But does it impose any correlative duty upon others? The only duty is merely not to interfere with one's right to life.

Or take the right to education. Again this right imposes no positive duty on others.

No 'right to life' exists in Jewish law, yet the sages inferred from the Torah a positive legal duty to save another person's life, the infringement of which is tantamount to actively shedding blood.

Likewise, no right to education exists in Jewish law. One is rather under a duty to study while his father and the community at large are under a duty to teach.

Professor Cover pointed at the irony that while the rhetoric of obligations enables the realization of rights, the jurisprudence of rights is empty since the right is not followed by any obligation. This discrepancy is an

outcome of using wrong vocabulary. Western jurisprudence is not right-centered but rather freedom-oriented. We do not speak of rights in the strict sense, but rather of rights in the generic sense. What we actually have in mind is privilege or liberty, namely being free or at liberty to act as we please. While rights in the strict sense are positive in nature implicitly creating a positive obligation, liberty is a negative right that imposes on the others merely a negative obligation not to interfere with the right.

It is no wonder that in American freedom oriented society the right for health-care comes under fire. Unlike the right to life and the right to education this is a positive right in that it imposes on others the duty to provide for it. The right to life or to education, on the other hand, is the right of the individual not to be enjoined by society from carrying out his "right". This is why these "rights" are rather rhetorical. We even may say that the right to life is

no less a right to die while the right to education is no less the right to stay ignorant.

In Judaism, on the other hand, there are active duties to save life, to provide for medical care and to provide education.

This is why the duty oriented jurisprudence seems more promising. Rene Cassin, the drafter of the Universal Declaration of Human Rights wished to formulate a duty-oriented declaration. No wonder that he was vetoed by Eleanor Roosevelt, a true representative of the right-oriented philosophy.

Rene Cassin states that “the spirit prevailing during the preparations of the Declaration was completely at variance with any intention of drawing deliberate and direct inspiration from the Ten Commandments”. Yet, while “any relationship between the Declaration and the Decalogue as the first formulation of man’s basic duties is not a formal one it does exist and its reality is evident for

the Decalogue is the point of departure, and the present Charter is our temporary point of arrival”.