

**YESHIVAT HAR ETZION
VIRTUAL BEIT MIDRASH PROJECT (VBM)**

TALMUDIC METHODOLOGY

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THE ISSUR OF LO TACHMOD - COVETOUSNESS

On Shavuot we read the Ten Commandments, as the centerpiece of this festival's Torah portion. Accordingly, I have selected one of the dibrot as the topic for this week's shiur.

The final commandment listed in the asseret ha-dibrot is "lo tachmod," Do not covet anything which belongs to your neighbor. To be sure, many have commented on the difficulty of prohibiting an emotion - especially when that emotion is by and large natural to the human condition (see Sefer Ha-chinukh 416). What, however, is the legal definition of this issur (prohibition)?

The conceptual structure of this issur might be glimpsed by studying the definition of the word "tachmod" itself. The Ibn Ezra in his commentary to Va-etchanan demonstrates that the word "tachmod" has two meanings. On the one hand, it refers to EXTORTION and forced acquisition of an item. Alternatively, it refers to desiring and CRAVING that which one finds attractive.

This semantic duality reflects, in truth, a broader question: What is the exact nature of the issur of "lo tachmod?" Do we relate to it as a mitzva she-balev, a duty of the heart? If so, one who craves that which belongs to another has violated this issur. We might instead view this issur as related in some way to the world of gezeila (robbery). Without being identical to robbery in all respects, it might still belong to its general category.

The Smak in his book of the 613 mitzvot, divides the mitzvot into seven categories corresponding to each of the seven days of creation. In his list of the "mitzvot of the first day" which refer to mitzvot of the heart, he cites the issur of lo tachmod and defines it as one which focuses upon the emotions and thoughts in the heart. Similarly, the Ramban in his commentary to Kedoshim cites a midrash which maintains that each of the asseret ha-dibrot is alluded to in the list of mitzvot which opens parashat Kedoshim; the parallel to "lo tachmod" is the mitzva of "ve-ahavta le-rei'akha ka-mokha," loving your neighbor as yourself. By establishing this symmetry, the midrash as well, appears to formulate "lo tachmod" as a mitzva governing our emotions.

In contrast, the Rabbenu Bachye in his commentary to Va-etchanan defines "lo tachmod" as a form of gezeila. The Ramban in his commentary to Yitro agrees and thus assures that some ban on stealing is included in the actual asseret ha-dibrot (remember

that the issur of lo tignov which would appear more directly to address theft refers instead to kidnapping). These two commentators apparently viewed "lo tachmod" as an issur based in some way (with, as we said, subtle differences) upon the general model of theft.

The Sefer Ha-chinukh in mitzva 416 confirms this view while drawing an interesting application. He writes that the mitzva applies to both men and women and members of all races. The obvious problem which arises is that the list of seven mitzvot which Gentiles are commanded to keep does not include lo tachmod! His response: "lo tachmod" is a subset of theft which is one of the seven Noachide laws. The Chinukh, by defining the mitzva as an extension of gezeila, expanded the scope of the mitzva to include all individuals.

SUMMARY:

We have isolated two strands within the word "tachmod" - two meanings which reflect two possible characters of the prohibition. On the one hand, "tachmod" might refer to the actual emotion of craving that which belongs to another. Alternatively, it might refer to a prohibition which resembles "gezeila," some form of forced extortion.

Intuitively, we might expect the nafka mina (i.e., the practical difference between those two approaches) to revolve around the level of action necessary in order to violate the prohibition. If indeed "lo tachmod" is a prohibition of the heart, one might violate it even if he does not actually act upon his plans. Alternatively if "lo tachmod" is a form of gezeila we might only prohibit actual extortion. This issue is debated by the Mekhilta to parashat Shemot which rules (based upon a gezeira shava, i.e., parallel language) that one only violates "lo tachmod" if an act is executed. We might conclude, then, that this stipulation proves that the emotion per se does not form the essence of the prohibition.

Closer inspection of the Mekhilta, however, enables us to continue viewing the issur as one of the heart. It is possible that the Torah requires some litmus test to indicate how entrenched a particular trait or emotion is. Many thoughts pass through our heads (especially in a complicated modern world) and we are not held responsible unless such a thought actually becomes anchored within our personality. Perhaps the indicator that covetousness has crystallized is its expression into action. In this view, the action per se does not form the substance of the issur but serves instead as the "shiur" or DEGREE at which the emotion becomes punishable.

We might then seek to analyze the role of the action within "lo tachmod." This will indirectly assist us in deciding whether the action or the emotion forms the nucleus of the issur.

An extreme issue in this regard is raised by the Smak. Remember, the Smak groups this issur within the "first day" list which contains only mitzvot of the heart. Hence, he feels compelled to reinterpret the Mekhilta and somehow marginalize the element of action while continuing to focus upon the emotion. He rules that the action only forms the FINAL stage of the issur which indeed began with the thought itself. If the action never

occurs, the issur is never consummated. Once, however, the action is performed, the violation is seen as having begun retroactively from the moment of the thought. By de-emphasizing the action and keeping the thought in the foreground the Smak is able to retain his vision of "lo tachmod" as a duty of the heart despite the Mekhilta's insistence upon the actual extraction of the item before one becomes culpable.

Another significant question might be the type of action which the Mekhilta requires. The Rambam in Hilkhot Gezeila interprets the Mekhilta in the most straightforward manner: only a successful extortion entails an issur. Others, however, demand far less of the action. For example Rabbenu Tam (quoted in the Commentary of Tosafot to Chumash) only requires that the desire be verbally articulated. Clearly we would demand a successful extortion if we sought to define the case as resembling gezeila. If, however, the action were necessary only to consolidate the emotion even a verbal declaration would suffice. In a similar vein, the Netziv in his commentary to this Mekhilta claims that any attempt to extract the item suffices - even if it is unsuccessful. It is likely that he, too, views "lo tachmod" as an issur relating to the emotions of the heart and interprets the Mekhilta as requiring an action to demonstrate the solidity of the emotion - as a shiur in the emotion. Successful extortion, though, is unnecessary.

A third issue which might prove significant is a factor raised by the Rambam. He rules that no malkot (lashes) are administered for violating "lo tachmod" since it is a "lav she-ein bo ma'aseh" - a violation which involves no action, which according to the gemara in Makkot carries no corporal punishment. The Ra'avad is understandably skeptical of this ruling since the Mekhilta which the Rambam himself cites requires that an action be performed. The Ra'avad himself waives malkot in this case but for alternate reasons. What, though, could be the logic of the Rambam who, on the one hand, requires that the action of the Mekhilta be performed but on the other defines this issur as one which contains no action?

Apparently the Rambam himself might have viewed "lo tachmod" as a prohibition relating to emotions. Hence the action (even though he demands a successful one) is merely AN INDICATOR rather than the ACTUAL ESSENCE of this lav. Even though practically an action - and a successful one at that - must be executed, this does not represent the essence of the prohibition. Hence, the Rambam cannot categorize this as a lav which contains an action. Evidently, then, the Ra'avad himself equated "lo tachmod" to gezeila, viewing the action as the lav itself and defining it as a lav SHE-YESH bo ma'aseh. He was forced to discover some other logic to justify the lack of malkut. We will examine this factor as well as some additional issues related to "lo tachmod" in next week's portion I"H.

METHODOLOGICAL POINTS:

1) Whenever dealing with a mitzva which is biblical in origin, three types of seforim must be consulted before learning the more familiar sources (gemara, Rishonim, Rambam, commentaries etc.):

- a) Look up the actual pasuk which serves as the source of the mitzva/halakha. Check the biblical commentaries (Rashi, Ramban, Ibn Ezra etc.).
- b) Look up the various sifrei ha-mitzvot (Rambam, Chinukh, Smag, Smak, Yirei'im etc.) and check the manner in which they define the mitzva. These seforim are generally written in very precise and unambiguous language which greatly assists in deciphering the nature of the mitzva.
- c) Check the midrash halakha. If it is a pasuk in Shemot see what the Mekhilta writes. For a pasuk in Vayikra check the Torat Kohanim. For one in Bamidbar or Devarim consult the Sifrei. These are statements/derashot of Chazal, some of which are quoted in the mishna and some of which are not. For those statements which are actually cited in the gemara one can often detect slight linguistic changes which the redactors of the gemara made. The original statement might contain a slightly different meaning. Very often, though, you can locate a derasha which was not cited about a topic which the gemara discusses. Sometimes these derashot will not be accepted as halakha, but they are just as important to study as a shitat yachid (minority opinion) which the gemara cites. We do not neglect the study of Beit Shammai's position simply because we don't rule like him. In some instances the derasha of the Mekhilta, even though not cited by the gemara, will be quoted by the Rishonim and accepted as halakha.

Shabbat Shalom and Chag Same'ach

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