

## CENTER FOR MODERN TORAH LEADERSHIP

Center for Modern Torah Leadership



חירות ואחריות

www.TorahLeadership.org

"Taking Responsibility for Torah"

### SHOULD MORAL INTUITION AND HALAKHAH ALWAYS AGREE?

Rabbi Aryeh Klapper, Dean

Dear Rabbi Klapper:

*I identify as a passionate Modern Orthodox Jew, but there are things about the theory and practice of halakhah that bother me morally. I've usually found ways to deal with these conflicts without violating normative halakhah in any way. Sometimes that makes me feel proud of my willingness and ability to put ego aside and submit to G-d. But sometimes it just makes me feel yucky. Sometimes I feel that I really won't be able to live with myself if I carry this halakhah out in practice, and I understand why it would be impossible for someone else to live the way I do.*

*Here's the thing.*

*I believe that halakhah is the best method we have of transforming G-d's will, as expressed in Torah, into specific instructions.*

*I believe that the Written Torah is the word of G-d, and that Chazal and the Rishonim and Acharonim were collectively the authentic bearers of the Oral Torah.*

*Should I feel religiously inadequate because I have these conflicts, or because it's not obvious to me that I should always follow the halakhah no matter what? Should I just ask a great Torah scholar and let them make these decisions for me?*

*In great perplexity,*

*Yosef Alcenta Judahson*

Dear Yosef:

I was greatly impressed and heartened by your letter. These are the sorts of perplexities we should welcome nowadays. Even in communities that try to isolate themselves, people are under so much pressure from the changing moral perspectives of the world around us – progressing and regressing, but always changing – that it is almost impossible for conformists to develop authentic values deeply rooted in Torah, rather than grafting a veneer of Torah rhetoric onto a political or social program grown from very different roots. A spirit of rebellion

and stubborn moral independence is a religious necessity in our day. Probably it always was.

Nevertheless, when one's moral sense conflicts with practical halacha, it is usually shallow or arrogant to think that the choice is either/or. The first things any sensible person considers is that they might have missed a way of reconciling the two, or that there might be a way of ensuring that the conflict has no practical expression, or that they have either the morality or else the halakhah wrong.

Each of these modes of resolution can themselves be done shallowly and arrogantly. You are right to bristle at people who tell you that there is obviously no conflict, and that your perplexity is unjustified.

I'm also not claiming that there's never an either/or. Sometimes there is. I'm only claiming that **usually** there are other choices, and that it's responsible to explore the other possibilities first.

But we need to address an underlying issue before we grapple with the questions you raise directly. How should we feel about feeling conflicted? I began by saying that we should welcome these sorts of perplexities – why?

My sense is that conversation about conflicts between halakhah and ethics focuses on two positions.

The first, sometimes called "Akeidah Orthodoxy," sees these conflicts as *nisyonot*, as theological tests. Following one of Kierkegaard's interpretations, which has important Jewish antecedents and echos, they argue that the message of the Akeidah is that sacrificing one's independent notion of the good to G-d is a supreme religious act. We should celebrate such opportunities, while at the same time recognizing how excruciatingly difficult they can be.

The second position is that conflicts between ethics and halakhah always reflect a failure to understand halakhah properly. Principles such as "all her ways are

*noam*="pleasantness" are assigned axiomatic and a priori meaning. They are fixed and certain points on the basis of which every halakhah must be evaluated, rather than as part of an iterative process in which our understanding of "pleasantness" is also influenced by its compatibility with halakhah.

Akeidah Orthodoxy holds little appeal for me. I much prefer to read the *akeidah* as teaching Avraham that his moral intuition was reliable.

But this doesn't mean that all human moral intuitions are reliable, or that Avraham "failed the test" by not insisting on following his moral intuition over G-d's command. The first claim seems ridiculous to me, and is why I don't find *noam* theology attractive either. It's also hard to read the Torah as fundamentally critical of Avraham's performance. I think we can learn from the Akeidah that human moral intuition is valuable, and we should do our best to develop it, without succumbing to moral megalomania.

We also don't have the direct access to G-d that Avraham did, so our chance of misunderstanding what He wants is much greater. And Rashi suggests that even Avraham mistook His intent, which never included Yitzchak actually being killed! So a clash between moral intuition and halakhah should certainly send us to recheck with great thoroughness whether we have the halakhah right.

If we grant that we might have one or both of the values and the halakhah wrong, how are we to make decisions? If we don't endorse "akeidah theology," is there a reason to prefer halakhah over intuition?

I suggest that there is. Specifically in times of great moral ferment, when it is obvious that even the most strongly and broadly held human intuitions (whether correct or incorrect) are often the product of socially contingent factors, one of the attractions and advantages of halakhah is that it provides an Archimedean point for values, a fixed polestar we can follow when everything else seems mutable, fleeting, and invented. Halakhah – in its imperfection – is a desperately necessary bulwark against relativism and nihilism. Moreover, a moral tradition that has stood the test of time is much more likely to be correct overall than the creation of any particular society – *kal vachomer ben beno shel kal vachomer* when that tradition as a whole is authentically rooted in and nourished by the word of G-d.

In such times, the absence of conflict between one's moral intuition and halakhah is disturbing. It seems to indicate not that we have been עושה רצונו כרצונו, but rather that we have

been עושה רצונו רצונו – that we have not subordinated our will to His, but rather attributed our will to Him.

This doesn't mean that we should look to manufacture such conflicts by pretending that we have two opposing certainties when really we have none. But I want to argue for a middle ground. We should find such clashes comforting rather than disturbing.

Why? Because if you value both halakhah and moral intuition, and you recognize that both of them are inevitably unreliable, you realize that you must be doing them one or wrong if they never conflict. Different imperfect epistemologies cannot honestly yield identical results.

All of this is very abstract, and I hope serves as the introduction to many profoundly challenging conversations about specific issues that raise these sorts of conflict for you. But I owe you at least the beginnings of direct responses to the questions in your last paragraph.

You are not inadequate because your moral intuition is not in perfect accord with the halakhah as you understand it.

*Aderabbah* – I would worry if that were not the case.

Your understanding of what the halakhah is should not always take precedence over your moral intuition. First of all, you might have the halakhah wrong. Second, there are (rare) cases in which halakhah recognizes its own limits.

Asking a Torah scholar to make the decision for you is not a reliably safe way out. Torah scholars are also fallible. You may not have the privilege of access to a genuinely great Torah scholar whose moral intuition resonates with yours and yet gives you confidence that it has much deeper roots in our tradition. The greatest Torah scholars will in any case often refuse to make these decisions for you, but instead seek to add depth and breadth to your decisionmaking process. But – you should make every effort to bring such scholars into your life.

The introduction to *Shiurei Daat* contends that Judaism recognizes three necessary and legitimate epistemologies: knowledge of the Torah, of the world, and of one's own soul. When these come into conflict, the reason is a lack of balance, that we know one of them more deeply than the others. I find this a very useful and powerful framework for thinking about the kinds of perplexities you face. I hope that you'll respond to them by seeking to deepen your knowledge of all three areas.

Bivraklah,

Aryeh Klapper