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SHOULD HALAKHAH REQUIRE BELIEF THAT WOMEN ARE AT LEAST EQUAL TO MEN?

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Berakhot 61a records a dispute between Rav and Shmuel as to the identify of the "tseila" that Hashem took from Adam and built into Chava. One of them said it was a face, implying that Adam was initially androgynous; the other said that it was a tail, thus explaining human acaudality. It seems pretty clear that the first opinion holds a more exalted view of women than the second.

Both positions and their implications reverberate through the tradition. Feminists and *lehavdil* misogynists can each selectively but accurately quote Chazal for their own purposes, as they can Scripture.

Yet today, I think, there is a consensus within Modern Orthodoxy, and increasingly throughout Orthodoxy, that women should be regarded as equal faces and not as tails, let alone as Dudley Dursley's unwanted tail. People do not say that "Men are form, women are matter" or the like without adding apologetics; the exemption from time-bound commandments is explained on the basis of intuitive spirituality, not lesser responsibility; and so forth. My teacher Rav Aharon Soloveitchik zt"l's contention that Creation is narrated in ascending order of holiness, culminating in women, seems like a comfortable *vort* confirming what we already know.

So here's my question: Can we pasken that women were created from an equal face rather than from a tail? Can we say that it is against halakhah to take a practical position that depends hashkafically on the "tail" side?

This past Tuesday was the wonderfully serious, fun, and stimulating first session of CMTL's new Online Campus Fellowship (OCF). The first question we addressed was whether "hashkafic" issues are justiciable, meaning whether they can be decided halakhically. (For some of the literature on this issue, see Rabbi Dr. Marc Shapiro, [The Limits of Orthodox Theology](#), pp. 141-146.)

Stereotypically, it is the "right wing" that argues for ruling intellectual positions out of bounds, and the "left wing" that lets a thousand hashkafic flowers bloom. This stereotype is at best historically contingent. So I thought it would be valuable here to share some of the material from the OCF session, and then raise the question of how Modern Orthodoxy should relate to intellectual positions with real traditional grounding that we nevertheless find unacceptable.

The locus classicus for this discussion is Sanhedrin 98, which record the position of a Rabbi Hillel that

אין משיח לישראל, שכבר אכלוהו בימי חזקיה

There is no Messiah for Israel, as they already consumed him in the time of Chizkiyah

This seems in obvious contradiction to Maimonides' statement in Laws of Repentance 3:6 that one who denies "the coming of the redeemer = **ביאת הגואל**" has no share in the World to Come, but rather is "cut off and destroyed and judged for their great wickedness and sins forever and ever." Would the Talmud quote somebody as a Rabbi if they had no share in the World to Come?

In the opening section of Sefer halkkarim, R. Yosef Albo rejects all attempts to reconcile Rabbi Hillel's statement with Rambam. Rather, he asserts, Rambam is incorrect in claiming that one who believes there will be no Messiah loses their share in the World to Come. That punishment ensues only for someone who denies a truth that is philosophically necessary for our religion, whereas belief in the Messiah is a truth that is not philosophically necessary. However, Albo still classifies Rabbi Hillel as a sinner. He does not explain what the category "sinner" means here.

Chatam Sofer (Shu"t Chatam Sofer 2 (YD) 356) provides a developed halakhic explanation.

Rabbi Hillel (Sanhedrin 99a) said "There is no Messiah for Israel"

Rashi explained this to mean that the Holy Blessed One Himself will redeem them, without an agent...

But even according to this explanation, the halakhah does not follow Rabbi Hillel,

and someone who says "There is no Messiah," and holds like Rabbi Hillel, is a denier/*kofer* of the entirety of Torah, which states as a rule "Incline after the majority" –

since the majority overruled Rabbi Hillel, and said against him – it is not proper for anyone to follow him

as for example "In the place of R. Eliezer they would cut down trees to make charcoal to make iron (to make a knife) for the purpose of circumcision (on Shabbat),"

but after the halakhah was decided via the majority of Jewish sages against him (and we rule that one can only violate Shabbat by performing the circumcision, not to prepare for it)

– someone who acts in accordance with Rabbi Eliezer's position on Shabbat in the presence of witnesses and with prior warning would surely be stoned, and would not be able to plead that he held like Rabbi Eliezer.

Chatam Sofer asserts here that intellectual arguments are subject to the same halakhic decision mechanisms as practical arguments. Therefore, a position that was legitimate at one point in history can be *kefirah*/heresy at another. The Talmud still refers to RABBI Hillel because he did nothing wrong by holding his position, any more than Rabbi Eliezer did by holding his halakhic

position. For that matter, Rabbi Hillel's position may have been legitimate for some period after his death for his students.

My teacher Rabbi Michael Rosensweig shlita explained Chatam Sofer as follows, if I understood and remember correctly: Ideas that seem compatible with Judaism can, over time, be revealed as incompatible. The Halakhah does not rule directly whether ideas are true or false, but it can rule whether ideas are incompatible with the overall system. It is not clear to me whether the standard of incompatibility here is the same as R. Albo has for something to be an *ikkar*. (It also seems to me that by this reasoning, the same should be true in reverse: ideas that were once thought incompatible, and therefore banned, can become compatible and therefore permitted.)

Chatam Sofer's claim that Rabbi Hillel was overruled is based on the amora Rav Yosef's reaction to his position: **שרא ליה מריה** **לרבי הילל** = May his Master forgive Rabbi Hillel! (Rav Yosef then contends that since the 2nd Temple prophet Zechariah refers to a human Messiah, it cannot be that any hope for such a Messiah was consumed in the time of the First Temple King Chizkiyah.)

Some claim that Rav Yosef's extreme rhetoric is evidence that Rabbi Hillel's position was theologically delegitimized, not just halakhically overruled. However, the evidence is at best ambivalent. On Yoma 86a Rav Nachman bar Yitzchak defines a desecration of G-d's Name as when someone acts in a way that causes his friends to say this about him, but on Berakhot 25a, Eiruvin 29a, and Sukkah 32b the phrase is used in ordinary halakhic conversations. Moreover, Rabbi Hillel's position is cited as the last in a series of four Tannaitic positions in a beraita, and then followed by three other Tannaitic positions in a second beraita, with no indication that it is disfavored. It seems odd for an Amora to unilaterally declare a Tannaitic position **theologically** out of bounds.

However, Rabbi Hillel's position is discussed twice on the page. The second discussion has largely been overlooked, but it may offer valuable insight. Here it is:

אמר רב גידל אמר רב:
עתידין ישראל דאכלי שני משיח.
אמר רב יוסף:
פשיטא?
ואלא מאן אכיל להו?! חילק ובילק אכלי להו!
לאפוקי מדרבי הילל, דאמר:
אין משיח לישראל, שכבר אכלוהו בימי חזקיה.

Said Rabbi Gidal said Rav:

In the future the Jews will consume the years of the Messiah (i.e. there will be plenty).

Said Rav Yosef:

Peshitta (=This is too obvious to bother saying!?)

Who would consume them instead – Hillock and Bulloch!?

Rather it is to exclude Rabbi Hillel's statement that

“There is no Messiah for Israel, as they already consumed him in the time of Chizkiyah.”

OCF Fellow Shabbos Kestenbaum suggested that a great deal may depend on whether Rav Yosef only asked the question on Rabbi Gidal, or also provided the answer. If Rav Yosef concluded that Rabbi Gidal's statement was too obvious, that would mean that Rabbi Hillel's statement was not even a remote possibility. However, if Rav Yosef concluded that Rabbi Gidal intended to

exclude Rabbi Hillel, that would mean that even he held that Rabbi Hillel's position remained part of the tradition.

Which is it? The term *peshitta* occurs 679 times in the Talmud, often to ask this sort of question. However, there are at most 4 cases in which the question is clearly asked by a named Amora rather than by the anonymous Talmudic narrator. (On Taanit 12b, Bava Batra 38b, and Chullin 67b it is put in the name of an Amora as part of a reconstructed alternate version = **איכא דאמרי**). Of those four, the best parallel is Eiruvin 29b – and the parallel version on Makkot 3b leaves out the word *peshitta*. On this basis, it seems to me most likely that the *peshitta* question is the Talmud's reconstruction and that Rav Yosef gave the answer, implying that even Rav Yosef thought that Rabbi Hillel's position was not beyond the pale. Moreover, even if we decide that Rav Yosef only asked the question, we would still learn from here that the anonymous Talmud disagreed with him and thought that Rabbi Hillel was not beyond the pale.

The upshot is that one cannot find clear Talmudic evidence that Rabbi Hillel's position is **unusually** wrong; it's just that by normal halakhic canons, we would rule against it. The question then is whether Chatam Sofer is correct that disputes about ideas, or in this case disputes about what will happen in the future, can be decided halakhically in the same way as disputes about the law.

My sense is that *halakhab* is the wrong modality here. A legal decision can be binding, even if it is in intellectual error, because upholding legal authority is a value in itself. Following an intellectually wrong legal position does not mean doing the wrong thing; it means that there is no ideal option, so one has to choose between two values. But believing an intellectually wrong position – there's no other value there. So it makes no sense to subject ideas to halakhic process unless one believes that the halakhic process is infallible, which would contradict all of Masekhet Horayot, not to mention Sefer Vayikra.

However, if upholding intellectual authority is a value, the law might require one to **say** that one believed something. Furthermore, ideas and beliefs can be crucial elements of communal identity. One can then argue that prohibitions such as “Do not separate oneself from the community” similarly forbid making statements that contradict those ideas and beliefs.

One can certainly argue that belief in the “face” option is a crucial element of Modern Orthodox communal identity, and increasingly part of Orthodox identity generally. Would it be a good idea to halakhicize that? If not, and especially if not for principled reasons such as commitment to maximizing intellectual freedom within Torah, (how) should we establish communal boundaries on beliefs and values?