

A brief cautionary and appreciative note - this week's dvar Torah harks back to the kind of dvar Torah that the Harvard Hillel Orthodox community tolerated and even encouraged for many years, thinking out loud about complex issues rather than presenting a crisp, static, (over) simplification. It may be an acquired taste 😊.

Last week's dvar Torah opened by asking whether we needed to at least reformulate two key assumptions of panhalakhism, namely that:

a: No system of evaluation, even one internal to Halakhah, can normatively challenge the outcome of a formal Halakhic process

b. Nothing has value Jewishly unless that value can be captured in formal halakhic terminology
Several readers responded passionately in the negative to the b, asserting that it was almost inconceivable that one could take what I identify as the panhalakhic position.

This was in full awareness that the formulation in b is the apparent position of Halakhic Man as the Rav z"l described him, but the position that Halakhic Man is not a complete religious Jew, or for that matter human being, which I advocate in a particular form [here](#), seems to have gained much traction. At the same time, I do not think my readership is necessarily representative of Modern Orthodoxy, and last week's Orthodox Forum contained some sharp exchanges fundamentally anchored in this issue.

There are also less philosophically bold positions that reach the same practical conclusions as b. For example, one might hold not that "Nothing has value Jewishly unless that value can be captured in formal halakhic terminology", but rather that "Nothing has behavior consequences Jewishly *until* its value *has been* captured in formal halakhic terminology", which points to the possibility that halakhah has to date failed to tap significant reservoirs of value, perhaps the shale oil fields of religious experience. An even more modest formulation would be "Nothing has *halakhic* value *until* its value *has been* captured in formal halakhic terminology", and it is this formulation that I wish to explore this week.

My spur for doing so – and in a sense, my excuse for doing so this week, Parashat Metzora – is an article by Dr. Benjamin Brown found [here](#) on the Chafetz Chayyim's work on lashon hora as an example of the "halakhicization of mussar" (My gratitude is due to the person who sent me the link, but for some reason I'm blanking on who that was.) Brown uses a variety of theoretical tools in his analysis, but the one which interested me most was Professor Lon Fuller's distinction between a "morality of duty", which is the ground of law, and a "morality of aspiration", which cannot and ought not directly be translated into law.

Rav Aharon Lichtenstein has a famous article, "Is there an Ethic Independent of Halakhah?", which argues that the question of whether there are valuable actions that are not halakhically prescribed is ultimately semantic, since one can legitimately include all such actions within halakhah by, for example, regarding the Biblical imperative "You must do the straight and the good" as a generic halakhah mandating ethical action¹. The

¹ Rav Lichtenstein has a second "totalizing" article which argues that the principle העוסק במצוה פטור מן המצוה (One engaged in the performance of one mitzvah is exempt from any other mitzvah-obligations that may arise while performing the first and would require ceasing the performance of the first, regardless of how one might otherwise weight the two mitzvot) in principle should permit one to learn Torah all day without regard for either ritual or interpersonal obligations. However, since it would be a failing in the quality of one's learning if one failed to seize the opportunity to put it into practice, practice is seen as a fulfillment of learning rather than a diversion from it.

question I'm raising here is whether this conclusion in fact reduces the issue to semantics. Perhaps instead it halakhicizes mussar, and the conflation of those categories has to change one or both significantly. In other words, it has to either diminish the extent to which halakhah is law, or else the extent to which mussar is ethics. And in yet other words, it intermingles the moralities of duty and aspiration. Let's therefore revisit those categories.

The morality of duty is an act-ethic – it mandates those actions which are necessary for society to function, which make it possible for individuals to act in accordance with their morality of aspiration. The morality of aspiration, by contrast, is a virtue-ethic – it mandates those actions which maximize the fulfillment of human potential along whichever axes one sees as important. Fuller argues that the morality of duty must, for every individual, be rooted in the morality of aspiration, but that a common morality of duty is possible for individuals with widely divergent moralities of aspiration. We can agree on prerequisites even if we disagree on the ultimate goal. Therefore, the morality of duty can generate law, but except in the most homogeneous of communities, the morality of aspiration cannot.

Turning back to Halakhah, one might argue that “the straight and the good” are aspirational categories which ought not be transformed into law. Put differently, they are categories which should be evaluated subjectively rather than objectively- they are categories to which one should hold oneself (and perhaps one's friends) accountable by your own (joint) standard, and leave others to hold themselves accountable by their own standards.

This is precisely what Halakhic Man opposes. Halakhic Man wishes to quantify and objectify everything, to eliminate subjective and aesthetic evaluation from the realm of religion.

One might think one could leave Halakhic Man in his self-contained objective universe by removing the metahalakhic imperatives from Halakhah, by deciding that there is indeed an ethic independent of Halakhah, or more precisely – that there may indeed be ethics independent of Halakhah. But this works only so long as the universe of Halakhah and Ethics never impinge on one another. But what if the Halakhah itself relates to ethics? What if, for example, the Halakhah is that one must act a certain way unless by doing so one would be in violation of “the straight and the good”? The same applies to all the other metahalakhic imperatives, including holiness, “Shabbosdikness”, kindness - authenticity? beauty?

In such cases, to leave the sphere of the ethical intact – to preserve a realm which is mussar as opposed to Halakhah – we have to surrender even the most modest formulation I suggested at the outset, and require Halakhah to allow individuals to make their own decisions as to what the Halakhah is for them, unaccountable to anyone else or in any objective fashion at all.

In the specific case of lashon hora, let us presume that the Torah forbids speaking ill of others except when doing so is worthwhile, “letoelet”. The Chafetz Chayyim tries, perhaps unsuccessfully, to offer objective guidelines for worthwhileness. But what if the

Briefly - the first article subsumes all right action into Halakhah, and the second subsumes all right action into Talmud Torah. I hope to explore in a future dvar Torah the question of whether these articles are congruent, confluent or conflicting.

entire effort is in error? For example, what if “letoelet” includes categories like “strengthening relationships”, or “building a transparent society”, or “writing compelling history”?

I tentatively suggest that the desire to halakhicize is often a healthy one in society, so long as it has not succeeded overmuch in the past. Objective accountability – to oneself and to others – is a religious desideratum which Halakhah accomplishes well, and which I am willing to surrender much to achieve. Agreement on ultimate values is also a worthwhile and necessary societal goal. But they are the sort of desiderata and goals whose full achievement in practice requires force and oppression, whose full achievement is incompatible with the Divine Will that each human being be unique.

It seems to me likely that there is a useful metaphor in the peculiar halakhot of tzora’at, which require a subjective recognition of a Divine sign whose halakhic meaning is determined by the judgment of the “objective” kohein – with emphasis on the datum that its meaning is determined, rather than discovered, by the kohein. But I shall leave its meaning in your hands.

Shabbat Shalom!

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