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Center for Modern Torah Leadership



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### IS HALAKHAH ALWAYS LAW? THOUGHTS ABOUT AGGADIC AGING, MORALITY, AND MORTALITY

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Does Jewish tradition recognize an ethic independent of Halakhah? In his article by that title, Rav Aharon Lichtenstein zt"l argued that the question is semantic. If one defines Halakhah expansively as the totality of Jewish religious obligations, ethics are included; if one limits Halakhah to the realm of religious law, then some ethical obligations are external to the system.

**ראויים דברים למי שאמרם** – This answer was a fitting formulation for R. Lichtenstein, who for me and countless others embodied Awe of Heaven (**יראת שמים**). But there are many ways in which it can fail to satisfy others. The most obvious is that it ignores (other than in Footnote 5) the question of whether ethics can ever legitimately **conflict** with religious law, and if yes, how a religious person should behave when legitimate sources of religious obligation conflict.

I want to raise a less obvious but perhaps more fundamental issue. To what extent, and in what contexts, is halakhah supposed to **function** as law rather than as ethics? Rav Lichtenstein's approach distinguishes between formal law (**דין**) and informal ethics (**לפנים משורת הדין**), or alternatively between the letter and the spirit of the law. These distinctions may not do justice to the phenomenon of halakhah.

For example: Does law require a human enforcement mechanism external to the person bound by the law? In other words, must law make me accountable to other human beings to be "law"? I think the conventional answer is yes. But Halakhah includes many crimes that, in its own terms, are punished by G-d and not by human beings. It includes other categories of wrongdoings which Chazal admit can never be conclusively observed by human beings because they depend on intent in cases where intent cannot be conclusively inferred from actions (**לכך כתוב ויראת** **מאלקיך**). Are these law, or ethics?

A second, more immediately practical, question is whether halakhah is always supposed to **tell** people what to do, or rather – at least in some cases and contexts - to provide a framework which leaves room for subjective decisionmaking.

This second option may seem oxymoronic – in what sense is something halakhah if it leaves room for subjectivity? But the apparent contradiction stems from the same issue of accountability to others. What if halakhah sometimes has a right answer that absolutely binds you, but that only you can discover and know?

I want to explore that possibility through a fascinating Rabbinic reading of an element of this week's parshah, when Yosef is told "behold your father is ill".

Avraham, Chazal tell us, was bothered because people could not tell him and Yitzchak apart. He therefore asked G-d to introduce cosmetic aging. In some versions, Yitzchak asks for aging to involve suffering as well, so that sins can be atoned for. Yaakov then asks for illness to precede death, so that people will know to put their family affairs in order.

This paragraph is best read as the sustained development of a science fiction premise, along the lines of Alan Lightman's treatment of time in Einstein's Dreams. What would it be like to live in a world with no physical aging, or with purely cosmetic aging, but without immortality?

It seems to me that in such a world death would be experienced as totally arbitrary. The Master Timekeeper blanks your cardioplate without any notice, and you keel over and die. (In Harlan Ellison's magnificent "Repent, Harlequin", said the Ticktockman", the Master Timekeeper does send advance notice. **עיין שם**.)

Yaakov feels that this condition deprives him of dignity. Mortality per se is undignified, but Yaakov feels that the indignity can be diminished by facing (or perhaps confronting) death. He is willing to sacrifice his physical quality of life, and experience the physical indignities of old age, in order to face death squarely.

One might object to Yaakov: Shouldn't we face death every day, since it may come at any time? Didn't Rabbi Eliezer tell us to repent the day before our death, and when challenged, acknowledge that this meant we should repent every day?

I think the proper answer is that the mussar mentality also has its limits. Death-consciousness should be in the back of a healthy mind in an apparently healthy body, but not at its front. But there comes a stage – thanks to Yaakov – when it properly moves to the front.

Does this aggada have anything to teach us about modern halakhah?

Contemporary medical technology has created a world which is the opposite of Chazal's prePatriarchal imaginarium. Before Yaakov, we had death without mortal illness; now, we have mortal illness which can go on for years, with progressive mental and physical debilitation. The practical impact of this reality can be that Yaakov's gambit now gives the elderly the worst of both worlds; the indignity of physical (and mental) limitations without the compensation of confronting impending death in full consciousness.

One vision of geriatric halakhah assumes that the prolongation of life is always the supreme value. Observant Jews facing a progressive mortal illness should manage their care accordingly. While there is room at some point for refusing some kinds of care, perhaps rather than endure overwhelming pain, the choices are always made on an either/or basis, and decisions which prioritize anything above life are always concessions to weakness.

A very different vision, informed by our aggada, would relate to mortal illness as an intended Divine gift, requested and bestowed to diminish rather than escalate the indignity

of dying. Patients would be empowered and encouraged to make decisions within that framework from the very outset of their illness.

Even suggesting such an approach is risky nowadays. Whereas Yaakov sought to **know** when death was imminent, the contemporary West has often instead sought the autonomy, and the consequent dignity, of **determining** the time of one's own death. This has generated the push to legalize physician-assisted suicide in many states, and euthanasia in several European countries. From a halakhic perspective I believe such laws are fundamentally licenses to murder, and I believe that the same argument can easily be made in a secular key.

Here is where it should make a difference to have halakhah, rather than unrooted ethics. Halakhic rules can prevent one from imagining – or at the least from acting on the imagination - that suicide is a defeat of mortality, rather than a rejection of the value of life. They can force the concession that one is not always entitled to dignity when that conflicts with acknowledgement of G-d's sovereignty.

At the same time, I am suggesting, halakhah might leave space for individuals to determine whether to adopt a course of treatment that will prolong life but diminish conscious life, or the mental acuity with which one lives, or one's capacity to live with some modicum of independence.

These must not be free-for-alls, but rather real halakhic decisions with absolute right and wrong answers for each individual, and yet, decisions that should be left in the realm of **ויראת מאלקיך** rather than externally imposed. They must be made in the religious arena and not with halakhically unjustified deference to the regnant practices of the medical profession. What we need is a model of G-d-fearing that eagerly seeks intellectual and moral accountability to the tradition **and its past and present human interpreters** without surrendering responsibility.

In other words, I am suggesting that halakhah here should be a hybrid or new construction at the intersection of ethics and law, and furthermore, that perhaps there is space for such an approach in many other halakhic contexts.

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