



Talmudic Teachings on Ethics and Halacha

1. תלמוד ירושלמי (וילנא) מסכת בבא מציעא פרק ב הלכה ה

שמעון בן שטח היה עסיק בהדא כיתנא אמרין ליה תלמידיו ר' ארפי מינך ואנן זבנין לך חדא חמר ולית את לעי סוגין. ואזלון זבנון ליה חדא חמר מחד סירקאי ותלי ביה חדא מרגלי. אתון לגביה אמרין ליה מן כדון לית את צריך לעי תובן. אמר לון למה אמרין ליה זבנינן לך חד חמר מחד סירקאי ותלי ביה חדא מרגלי. אמר לון וידע בה מרה אמרין ליה לא א"ל לון איזל חזר. לא כן אמר רב הונא ביבי בר גוזלון בשם רב התיבון קומי רבי אפילו כמאן דמר גזילו של עכו"ם אסור כל עמא מודיי שאבידתו מותרת. מה אתון סברין שמעון בן שטח ברברין הוה. בעי הוה שמעון בן שטח משמע בריך אלההון דיהודאי מאגר כל הדין עלמא. ויידא אמרה דא רבי חנינה משתעי הדין עובדא רבנין סבייא זבנין חד כרי דחטיין מאילין דאיסרטוס ואשכחון ביה חדא צררא דדינרי וחזרניה להון אמרין בריך אלההון יהודאי. אבא אושעיה איש טורייתא אמרה אהין להן. לי אהן מהו חשוב עלי אית לי טבין מיניה אית לי סוגין מיניה. א"ל אורייתא גזרת דנחזור אמר בריך אלההון דיהודאי.

1. Jerusalem Talmud, Bava Metzia 2:5

Shimon ben Shetah was dealing with flax [as his profession]. His students said to him: 'Master, leave it behind and we will buy you a donkey and you won't need to work so much,' and they bought him a donkey from an Arab, and it had a jewel hanging from it[s neck]. They came to him and said him: 'from now on you won't have to work again.' He said to them: 'why?' They said to him: ' We bought you a donkey from an Arab and it had a jewel hanging from it[s neck]!' He said to them: 'Did the owner know?' They said to him: 'no.' He said to them: 'go return it.' [Later students objected to this story:] But didn't Rav Huna Bibi bar Gozlon say in the name of Rav, said they responded before Rabbi, even according to the one who says an item stole from a gentile is prohibited, all agree that an item lost by a gentile is permitted!?' 'What, do you think Shimon ben Shetah is a barbarian? Shimon wished to hear 'blessed be the God of the Jews' more than all the wages of this world!' Where did he [Shimon ben Shetah] know this from? Rabbi Hanina was dealing with the following situation: The elderly rabbis bought a *kri* of wheat from certain soldiers, and found inside it a sack of gold coins and returned it to them. They said: 'Blessed be the God of the Jews!' Abba Oshayah of Turaya [was in a similar situation where he found jewels in the queen's wash] and she said: 'They are yours. What are they worth to me? I have many and better things than that!' He said: 'The Torah decrees that we must return it!' She said: "Blessed be the God of the Jews.'

2. תלמוד בבלי מסכת חולין דף ז עמוד א

השתא בהמתן של צדיקים אין הקדוש ברוך הוא מביא תקלה על ידן, צדיקים עצמן לא כל שכן... מאי בהמתן של צדיקים? דרבי פנחס בן יאיר הוה קאזיל לפדיון שבויין, פגע ביה בגינאי נהרא, אמר ליה: גינאי, חלוק לי מימך ואעבור בך, אמר ליה: אתה הולך לעשות רצון קונך ואני הולך לעשות רצון קוני, אתה ספק עושה ספק אי אתה עושה, אני ודאי עושה אמר ליה: אם אי אתה חולק, גוזרני עליך שלא יעברו בך מים לעולם, חלק ליה. הוה ההוא גברא דהוה דארי חיטי לפיסחא, אמר ליה: חלוק ליה נמי להאי דבמצוה עסיק, חלק ליה. הוה ההוא טייעא דלווה בהדיהו, אמר ליה: חלוק ליה נמי להאי, דלא לימא: כך עושים לבני לוייה? חלק ליה. אמר רב יוסף: כמה נפיש גברא ממשה ושתיין רבוון, דאילו התם חד זימנא, והכא תלתא זימנין. ודלמא הכא נמי חדא זימנא! אלא כמשה ושתיין רבוון.

2. Babylonian Talmud, Tractate Hullin 7a

If the animals of the righteous, the Holy One, blessed be He, does not bring about a problem through them, certainly the righteous [themselves] all the more so!... What is [the case of] the animals of the righteous? Rabbi Pinhas ben Yair was going to redeem captives, and he ran into the Ginai River. He said to it: "Ginai, split your water for me so that I can pass through you." He said to him: "You are going to do the will of your Creator and I am going to do the will of my Creator. You may or may not succeed while I will certainly succeed." [Rabbi Pinhas ben Yair responded] "If you do not split, I will decree upon you that water never pass through you again!" [The river] split for him. Another man was carrying wheat for Pesah [nearby]. He [R. Pinhas ben Yair]

said to [the river]: “Split for him as well, because he is dealing with a Mitzvah!” It split for him. There was an Arab [trader] who had joined along with him. He [R. Pinhas ben Yair] said to [the river]: “Split for him as well, so that they don’t say “so one does for one’s fellow traveler.” It split for him. Rav Yosef said: This man is so much greater than Moshe and the sixty myriads, because there [the water split] one time, and here [it split] three times! Maybe here too it only split one time!?! Rather, [he is as great] as Moshe and sixty myriads.

3. בית הבחירה (מאירי) מסכת חולין דף ז עמוד א

ממדותיהם של תלמידי חכמים שכל מי שנתלזה עמהם בדרך אפילו לא היה מכירו וכן אפילו הוא משאר עממין יהא מסביר לו פנים וחולק לו מכבודו ולא שיתאש ממנו ויניחהו למקרים שלא יאמרו עליהם כך עושין לבני לוייה:

3. Beit Habehirah (Meiri) to Hullin 7a

Among the practices of Torah scholars is that whoever joins them on the way, even if they do not know them, and even if they are of other nations, they show them a friendly countenance and give of their honor to them, and do not tire of them and leave them to the elements, so that it won’t be said of them “this is what one does to fellow travelers”?

4. דברים פרק יב פסוק כח

שָׁמַר וְשָׁמְעָתָ אֶת פְּלִי־הַדְּבָרִים הָאֵלֶּה אֲשֶׁר אֲנֹכִי מְצַגְגֵּךְ לְמַעַן יִיטֵב לָךְ וּלְבִנְיָךְ אַחֲרֶיךָ עַד־עוֹלָם כִּי תַעֲשֶׂה הַטּוֹב וְהַיָּשָׁר בְּעֵינֵי יְקֹנֵךְ אֱלֹהֶיךָ:

4. Devarim, 12:28

Observe and hear all these words which I command you, that it may go well for you, and with your children after you forever, for you will do that which is good and right in the eyes of the Lord your God.

5. ספרי דברים פרשת ראה פסקא עט

כי תעשה הטוב והישר, הטוב בעיני שמים והישר בעיני אדם דברי רבי עקיבה וכן הוא אומר +משלי ג ד+ ומצא חן ושכל טוב בעיני אלהים ואדם. רבי ישמעאל אומר הישר בעיני שמים

5. Sifrei Devarim 79

“For you will do what is good and right” – good in the eyes of Heaven and right in the eyes of humanity’ – the words of Rabbi Akiva. And similarly it says “And find grace and good reason in the eyes of God and humanity” (Prov. 3:4). Rabbi Yishmael says: “what is right in the eyes of Heaven.”

6. דברים ו:יח

וַעֲשִׂיתָ הַיָּשָׁר וְהַטּוֹב בְּעֵינֵי יְקֹנֵךְ לְמַעַן יִיטֵב לָךְ וּלְבִנְיָךְ אַחֲרֶיךָ עַד־עוֹלָם כִּי תַעֲשֶׂה הַטּוֹב וְהַיָּשָׁר בְּעֵינֵי יְקֹנֵךְ אֱלֹהֶיךָ:

6. Devarim 6:18

And you shall do the right and the good in the eyes of God, so that He shall do well with you, and you shall come and inherit the good land that God promised to your ancestors.

7. רמב"ן על דברים ו:יח

ועשית הישר והטוב בעיני ה' - על דרך הפשט יאמר תשמרו מצות השם ועדותיו וחקותיו ותכוין בעשייתן לעשות הטוב והישר בעיניו בלבד ולמען ייטב לך, הבטחה, יאמר כי בעשותך הטוב בעיניו ייטב לך, כי השם מטיב לטובים ולישרים בלבותם ולרבותינו בזה מדרש יפה, אמרו זו פשרה ולפנים משורת הדין והכוונה בזה, כי מתחלה אמר שתשמור חקותיו ועדותיו אשר צוך, ועתה יאמר גם באשר לא צוך תן דעתך לעשות הטוב והישר בעיניו, כי הוא אוהב הטוב והישר:

וזה ענין גדול, לפי שאי אפשר להזכיר בתורה כל הנהגות האדם עם שכניו ורעיו וכל משאו ומתנו ותקוני הישוב והמדינות כולם, אבל אחרי שהזכיר מהם הרבה, כגון לא תלך רכיל (ויקרא יט טז), לא תקום ולא תטור (שם פסוק יח), ולא תעמוד על דם רעך (שם פסוק טז), לא תקלל חרש (שם פסוק יד), מפני שיבה תקום (שם פסוק לב), וכיוצא בהן, חזר לומר בדרך כלל שיעשה הטוב והישר בכל דבר, עד שיכנס בזה הפשרה ולפנים משורת הדין, וכגון מה שהזכירו בדינא דבר מצרא (ב"מ קח), ואפילו מה שאמרו (יומא פו) פרקו נאה ודבורו בנחת עם הבריות, עד שיקרא בכל ענין תם וישר

7. Ramban on Devarim 6:18

“And you shall do the right and the good in the eyes of God”: Plainly, this means that you shall observe God’s commands, statutes, and laws, and intend in doing so to do what is good and right in God’s eyes alone, “and to benefit you,” as a promise, for in doing the good in God’s eyes it will be good for you, for God acts kindly with the good and upright in their hearts. But our sages have a nice teaching, that this [verse] refers to arbitration and acting within the line of the law, meaning that originally God said to observe the laws and statutes as

commanded, and now it says that even regarding that which God did not command you, be sure to do what is good and right in God's eyes, for God loves the good and the right.

And this is significant idea. For it would be impossible to mention in the Torah all the behaviors of a person with their neighbors and fellows and all his business dealings and all the matters of civilization and states, but after having stated many, such as "do not go as a tale-bearer," (Lev. 19:16) "do not take revenge," (Ibid. 18) "do not stand upon your fellow's blood," (Ibid. 16) "do not curse the deaf," (Ibid. 14) "rise before the elderly," (Ibid. 32) and so on, [the Torah] goes back to say generally that one should do the good and right in all matters, including through arbitration and acting within the line of the law, and the laws of neighboring properties, and even that which is said (*Yoma* 86) "his countenance is fine and his speech is pleasant with everyone," such that in every regard he shall be called perfect and upright.

Rabbi Aharon Lichtenstein's Position

8. R' Aharon Lichtenstein, "Being *Frum* and Being Good: On the Relationship Between Religion and Morality," *By His Light*, ed. Reuven Ziegler (Ktav 2003), p. 121

[W]e surely should not dismiss nor denigrate moral idealism simply because it springs (in certain cases) from secular sources. Certainly, we believe deeply that a moral idealist would be at a much higher level were his morality rooted in *yirat Shamayim*, were it grounded in a perception of his relation to God and of the nature of a man as a respondent and obedient being. But that surely is not to say that we therefore ought to dismiss totally the possibility or the reality of secular morality. [...] We should not do this because it is simply untrue – there are genuinely moral people within the secular community.

9. David Shatz, "Ethical Theories in the Orthodox Movement," n. 11

See especially Aharon Lichtenstein, "Does Jewish Tradition Recognize an Ethic Independent of Halakhah?" in *Modern Jewish Ethics: Theory and Practice...* This, I suspect, is the single most cited article in Modern Orthodox writings on how *halakhah* relates to ethics.

10. Steven Schwarzschild, "The Question of Jewish Ethics Today," *Sh'ma* 7 (1976), p. 30

Are modern Jewish legal ethics moral or not? Now, that there would be occasional, and sometimes even serious, inconsistencies between domestic and international legislation in the *halakhah* (or any other body of law), or at least in its interpretation and application, cannot be surprising in the least. Individual statutes and even basic constitutional provisions come into conflict with one another constantly...

'In this context *Modern Jewish Ethics - Theory and Practice*, ed. Marvin Fox, Ohio State University Press, 1975 (but for the editor's introduction, papers and discussions at the July 1972 meeting of the Institute for Judaism and Contemporary Thought in Israel) becomes interesting. Precisely the question of contemporary Jewish moralization or demoralization of Jewish (legal) ethics is raised very sharply.

In a contribution that is already gaining fame "Does Jewish Tradition Recognize an Ethic Independent of Halakha?" Rabbi Aharon Lichtenstein, *rosh yeshivah* of Yeshivat Har Zion [*sic*] in Israel, with his acknowledged credentials of traditional as well as modern Jewish learning, makes essentially one point—that, according to Jewish law, to do no more than what the letter of the law requires is itself a violation of this law (i.e. "the quality of Sodom" (2) and that, to the contrary, to go "within the line of the law" (*middat chassidut* - "the quality of [selfless] righteousness") "is part of the fabric of Halakha." The interested reader should consider the full evidence and analysis as presented in this study. R. Lichtenstein's conclusion is this: "What I reject emphatically is the position that, on the one hand, defines the function and scope of Halakha in terms of the latitude implicit in current usage and yet identifies its content with the more restricted sense of the term (*halakhah*). The resulting equation of duty and *din* (statute) and "the designation of suprallegal conduct as purely optional or pietistic is a disservice to Halakha and ethics alike."

11. Aharon Lichtenstein, “Does Jewish Tradition Recognize an Ethic Independent of Halacha?” in Marvin Fox (ed.), Modern Jewish Ethics (Columbus, 1975),

pp. 66-67

The question is not what vestiges of natural morality continue to bind the Jew or to what extent receiving the Torah abrogated any antecedent ethic. It is rather whether, quite apart from ground common to natural and halakhic morality, the demands and guidelines of Halakha are both so definitive and so comprehensive as to preclude the necessity for – and therefore, in a sense, the legitimacy of – any other ethic... I am of course taking two things for granted. I assume, first, that Halakha constitutes – or at least contains – an ethical system... Second, I assume that, at most, we can only speak of a complement to Halakha, not of an alternative. An ethic so independent of Halakha as to obviate or override it, clearly lies beyond our pale.

p. 68

Essentially, then, the question is whether Halakha is self-sufficient. Its comprehensiveness and self-sufficiency are notions many of us cherish in our more pietistic or publicistic moments... If, however, we equate Halakha with the *din*: if we mean that everything can be looked up, every moral dilemma resolved by reference to code or canon, the notion is both palpably naïve and patently false. The *Hazon Ish*, for one – and both his saintliness and his rigorous halakhic commitment are legend – had no such illusions. “Moral duties,” he once wrote, “sometimes constitute one corpus with Halakhic rulings, and it is Halakha which defines the proscribed and permitted of ethical thought.” Sometimes – but not, evidently, always. There are moments when one must seek independent counsels. Recognition of this element rests upon both textual and practical evidence. In this setting, I presume little need be said with reference to the latter. Which of us has not, at times, been made painfully aware of the ethical paucity of his legal resources? Who has not found that the fulfillment of explicit halakhic duty could fall well short of exhausting clearly felt moral responsibility?... Even the full discharge of one’s whole formal duty as defined by the *din* often appears palpably insufficient.

p. 69

In a celebrated passage, [Nahmanides] explains that the general command, “Ye shall be holy” was issued because, the scope of the Torah’s injunctions regarding personal conduct notwithstanding, a lustful sybarite could observe them to the letter and yet remain a “scoundrel with Torah license.” The same holds true, he continues, with respect to social ethics. Hence, there, too, the Torah has formulated a broad injunction: “And this is the Torah’s mode: to details and {then} to generalize in a similar vein. For after the admonition about the details of civil law and all interpersonal dealings ... it says generally, ‘And thou shalt do the right and the good,’ as it includes under this positive command justice and accommodation and all *lifnim mishurat hadin* in order to oblige one’s fellow.”

pp. 76-77

This exposition [on various Medieval authorities and whether they see *lifnim mishurat hadin* as obligatory and/or actionable or not] is open to two obvious objections. First if *lifnim mishurat hadin* is indeed obligatory as an integral aspect of Halakha, in what sense is it supralegal?... What distinguishes its compulsory elements from *din* proper? Secondly, isn’t this exposition mere sham? Having conceded, in effect, the inadequacy of the halakhic ethic, it implicitly recognizes the need for a complement, only to attempt to neutralize this admission by claiming the complement had actually been part of Halakha all along... These are sound objections; but they do not undermine the position I have developed. They only stimulate its more precise definition.

pp. 78-79

Din consists of a body of statutes, ultimately rooted in fundamental values, but which at the moment of decision confronts the individual as a set of rules. It is of course highly differentiated, numerous variables making the relevant rule very much a function of the situation. Yet the basic mode is that of formulating and defining directives to be followed in a class of cases – it is precisely the quality of generality that constitutes a rule – and applying them to situations marked by the proper cluster of features . . . Metaphors that speak of laws as controlling or governing a case are therefore perfectly accurate. *Lifnim mishurat hadin*, by contrast, is the sphere of contextual morality. Its basis for decision is paradoxically both more general and more specific. The formalist is guided by a principle or a rule governing a category of cases defined by n numbers of characteristics . . . The contextualist, by contrast, will have nothing to do with middle-distance guidelines. He is directed, in

theory at least, only by the most universal and the most local of factors – by a minimal number, perhaps as few as one or two, of ultimate values, on the one hand; and by the unique contours of the situation at hand, on the other. Guided by his polestar(s), the contextualist employs his moral sense (to use an outdated but still useful eighteenth-century term) to evaluate and intuit the best way of eliciting maximal good from the existential predicament confronting him. A nominalist in ethics, he does not merely contend that every case is phenomenologically different. That would be a virtual truism. He argues that the differences are generally so crucial that no meaningful directives can be formulated...

p. 83

Traditional halakhic Judaism demands of the Jew both adherence to Halakha and commitment to an ethical moment that though different from Halakha is nevertheless of a piece with it and in its own way fully imperative. What I reject emphatically is the position that, on the one hand, defines the function and scope of Halakha in terms of the latitude implicit in current usage and yet identifies its content with the more restricted sense of the term. The resulting equation of duty and *din* and the designation of supralegal conduct as purely optional or pietistic is a disservice to Halakha and ethics alike...

In dealing with this subject, I have, in effect, addressed myself both to those who, misconstruing the breadth of its horizons, find the halakhic ethic inadequate, and to those who smugly regard its narrower confines as sufficient. In doing so, I hope I have presented my thinking clearly. But for those who prefer definitive answers, let me conclude by saying: Does the tradition recognize an ethic independent of Halakha? You define your terms and you take your choice.

Related Views

12. הקדמת הנצי"ב לאהבת חסד לחפץ חיים

באמת כלל גמ"ח היא קיום העולם וכדכתיב עולם חסד יבנה, והיא חובת האדם וזהו צורתו ... ומשום הכי גם אומות העולם מצווים על גמ"ח [והיא דלא מנה התנא בסנהדרין במצות שאוה"ע חייבים, מבואר שם דף מ"ה דקום ועשה לא קחשיב]. ומשו"ה נתחייבו אנשי סדום כליה בשביל שלא החזיקו יד עני ואביון והשחיתו צורת האדם. והנה בני אברהם יצחק ויעקב מוזהרים בטבע על מצוה (זו) וכדאיתא ביבמות פרק הערל שלשה סימנים יש באומה רחמנים וביישנים וגומלי חסדים. ומכ"מ יש מ"ע בתורה כמו והחזקת בו ועוד אם כסף תלוה וגו' היינו כדי ללמדנו אשר מלבד שאנחנו מצווים על גמ"ח מחמת חובת האדם לאדם עוד אנו מצווים עליה מצד התורה כמו כל חוקי התורה שאין הדעת (ה)אנושי נותן להם. והנ"מ בזה נתבאר בפ' כבד את אביך וגו' למען יאריכון ימיך על האדמה אשר ה' א-להיך נותן לך ואינו מובן מאי דייק המקרא על האדמה וגו' ... אלא בא הכתוב ללמדנו דא"ע ג דכיבוד או"א הוא מצוה שדעת האדם נותן לה וגם אוה"ע מצווים עליה בחובת האדם ומקבלים עליה שכן כמו בני נח ודמא בן נתינה כידוע, מכ"מ ציונו הקב"ה בעשרת הדברים להזהירנו מצד חקי התורה לבד חובת האדם. והנ"מ בזה היא לענין שכרה. דחקי התורה אפילו מצות שאין תלוים בארץ ונוהג אפילו בחו"ל מכ"מ מיוחדות המה בא"י יותר ... משו"ה ביאר הכתוב דגם על מצות כיבוד או"א שהיא מצוה חובת האדם ואין נ"מ בזה א"י מבכל התבל מכ"מ היא מצוה חקית ג"כ ושכרה יותר על האדמה. וממילא נ"מ לדינא, דאחר דכיבוד או"א היא חוקית כמו כל מצות שבתורה, עלינו עם ה' ללכת בה עפ"י חקי התורה דוקא ולא עפ"י דעת אנושי. למשל בעכו"ם שבא על ב"י והוליד בן ויש לו אם ולא אב מה"ת חייב בכבוד אם יותר מכבוד אב:

12. Introduction of the Netziv to Chafetz Chayim's *Ahavat Chesed*

In truth, the principle of kindness is the foundation of the world, as is written "the world shall be built of kindness," for it is the obligation of every person ... Therefore, the nations of the world are also obligated to act kindly (and the fact that it is not included in Sanhedrin among the seven Noahide commandments is because only prohibitions are counted). Therefore the people of Sodom deserved destruction, for they did not support the poor and thereby undermined the form of mankind. And the descendants of Abraham, Isaac, and Jacob are naturally obligated in this commandments, as is written "the [Jewish] nation has three identifying signs: [they are] merciful, humble, and beneficent.

Nevertheless, there are positive commands in the Torah to support the poor, to teach us that separate from our obligation to act kindly due to our being human, we are additionally obligated due to the Torah, just like all the laws of the Torah that cannot be intuited.

The distinction can be seen in light of the verse "honor your father and mother, so you shall increase your days on the land the Lord your God gives to you." This is not clear, for why did the Torah specify 'on the land'? ... Rather, the verse comes to teach that even though honoring one's parents is a command that can be intuited,

such that gentiles are also obligated in it out of human obligation and receive reward for it, as did the sons of Noah and Dama ben Netina, nevertheless God commanded us [to do so] in the Decalogue out of obligation towards the Torah. The distinction regards the reward. For the laws of the Torah, even those that are not obligations of the land and apply in the diaspora, nonetheless they are special when performed in the land and they earn greater reward. And in turn there is a legal distinction, for seeing as honoring one's parents is a Torah law, we, the nation of God, are to follow it based on the Torah and not based on human intuition. For example, if a non-Jewish man slept with a Jewish woman, such that the child has only a mother according to the Torah, the child would have a greater obligation to honor the mother than to honor the father.

13. Jewish Values in a Changing World, Rav Yehuda Amital, (Ktav, 2005), p. 23-24

According to one commonly-held opinion, after the Torah was given, natural morality lost its validity, such that nothing in the world has binding force other than the Torah. This approach assumes that allowing room for natural morality diminishes the importance of Torah, in that it recognizes an additional source of obligation alongside the Torah. According to this point of view, which zealously tries to defend the honor of the Torah, there is no connection between God, Creator of man, and God, Giver of the Torah, as if that which God implanted in man's heart does not belong to God. There are those who prefer that all obligations be derived solely from the Torah and that no significance be attached to any human element. This approach weakens natural morality. Rav Avraham Yitzchak Kook viewed this as a very negative development (*Orot ha-Kodesh* III, *Rosh Davar*, 11): "Fear of Heaven such that, without its effect on the living, people would be more inclined to doing good and realizing that which is beneficial to both the individual and the community, and where, because of its effect this active force diminishes – such fear of Heaven is unfit." Even after the Torah was given, natural morality retains its special role of guiding man in all his paths.

14. "Law and Morality in Jewish Tradition," (1959), taken from *Essential Essays on Judaism*, R' Eliezer Berkovits, ed. David Hazony, (Shalem: 2002). Pg. 36-37.

We may now say that the division of the laws of Judaism into rational or ethical laws and religious or ritual observances is not quite justified and, taken at face value, may be misleading. [...] One's conduct toward his neighbor is at the same time conduct toward God, and every hurt caused to another is also a sin against God. On the other hand, what appears to be purely religious observance has its ethical relevance through its indirect education of the material element in man. Through its creation of a physical awareness of an "other" and its demands, the system of religious observances educates the body for behavior that is not exclusively egocentric. The "purely religious," therefore, always has indirect influence on moral practice. In obeying the "ritual laws," which regulate the relationship between man and God, one indirectly brings greater order into one's relationships with other people.

15. Gerald Blidstein, "On Human Dignity in Rabbinic Law" (Hebrew), *Annual of Jewish Law*, 9–10 (1982–3), 128

The talmudic concept *kevod ha-beriyot* is known as a concept with significant halachic consequence, expressed, among other ways, in the principle, "Human dignity is so great that it overrides a biblical prohibition." This concept serves a function in the Talmud, is interpreted in halachic literature throughout the generations, and is applied in responsa literature. The purpose of this article is to assess the significance and impact of this concept and its corollaries – their meaning, scope, and stature. And we may already sharpen the question that confronts us: how it should happen that the halachic impact of the concept of *kevod ha-beriyot* is... so modest, apparently across all times and locales.

16. Louis Newman, "Ethics as Law, Law as Religion: Reflections on the Problem of Law and Ethics in Judaism," *Shofar* 9:1 (1989), pp. 13-31, at pp. 19-20

Shubert Spero and Aharon Lichtenstein have adopted positions somewhere between those of Dorff/Gordis and Halivni. Both acknowledge that Judaism recognizes a distinction of sort between strictly legal duties and other kinds of morally appropriate behavior. The question is how to characterize the distinctions and whether, indeed,

it conforms in any sense to the sorts of distinctions we have in mind when we differentiate law and ethics. In Lichtenstein's words, ". . . traditional halakhic Judaism demands of the Jew both adherence to Halakha and commitment to an ethical moment that, though different from Halakha, is nevertheless of a piece with it and in its own way fully imperative." The difference, as Lichtenstein sees it, between halakhah proper and this other ethical moment is that the latter is contextual or situational. Because no legal system can ever prescribe the appropriate response to every imaginable fact pattern, there arises the need to apply the values and principles implicit within the system to situations where no established law exists. But, following Nachmanides, Lichtenstein finds this ethical demand within the Torah itself, as it says, "And you shall do the right and the good" (Deut. 6:18). So the Torah contains both specific demands, which are the realm of halakhah proper, and more open-ended demands, which must be sought out and applied contextually. For Spero, the difference between halakhah and these other ethical demands turns on the conflict between strict justice and benevolence. The legal system, by its nature, is concerned with enforcing justice and equity. Yet, the tradition also acknowledges that these values do not exhaust the whole of the moral life. Acts of selflessness and lovingkindness which do not fall within the domain of administrative justice are nonetheless morally, indeed divinely, mandated. These additional demands arise not, as Lichtenstein would have it, because legal systems are imperfect, but because they are, quite appropriately, limited in purpose. They are in the business of insuring social justice, not compelling benevolence.

Oppositional Views

17. Eugene Borowitz, "The Authority of the Ethical Impulse in 'Halakha'" in *Through the Sound of Many Voices* (1982), pp. 156–71.

[The question often addressed to him, that if Halakha is ethical] "why do you not then fully embrace rabbinic teaching as developed over millenia and as amplified in unbroken tradition today?"

To many Jews today, the Torah's ethical behests come with such imperative quality that they can consider them properly heard only when they are accepted categorically. To qualify their functioning as substantially as do the spokesmen of contemporary Rabbinic Judaism must be seen by them as requiring less than what God now demands of the people of Israel.

18. ר' עובדיה מברטנורא מסכת אבות פרק א משנה א

משה קבל תורה מסיני - אומר אני - לפי שמסכת זו אינה מיוסדת על פירוש מצוה ממצות התורה כשאר מסכתות שבמשנה, אלא כולה מוסרים ומדות, וחכמי אומות העולם ג"כ חברו ספרים כמו שבדו מלבם בדרכי המוסר כיצד יתנהג האדם עם חבירו, לפיכך התחיל התנא במסכת זו משה קבל תורה מסיני, לומר לך שהמדות והמוסרים שבזו המסכתא לא בדו אותם חכמי המשנה מלבם אלא אף אלו נאמרו בסיני:

18. R. Ovadiah Barternura to Avot 1:1

Moshe received the Torah at Sinai – I say that since this tractate is not organized around the explication of a commandment in the Torah, like other tractates of Mishnah, but it is rather all messages of ethics and virtue, and the scholars of the nations of the world also wrote books that they made up with paths of ethics, how a person should interact with their fellow, for that reason the Tanna opened this tractate with "Moshe received the Torah at Sinai," to teach you that the ethics and virtues in this tractate were not made up by the scholars of the Mishnah but were also said at Sinai.

19. חזון איש, אמונה ובטחון, פרק ג

חובות המוסריות המה לפעמים גוף אחד עם פסקי ההלכה, וההלכה המכרעת את האסור ואת המותר של תורת המוסר היא.... שגדרי הגזל והחמס אינן נפתרין ע"פ דעת בני אדם רק ע"פ חקי התורה וכל שהוא נגד הדין הוא גזל אף שאין בני אדם מסכימים עליהם בבחינת הרגש, וכל מעשה שהוא בדין הוא קיום משפט, אף שזה נגד דעות האנושות.

19. Hazon Ish, *Emunah U-Vitahon*, chapter 3

Moral duties are at times synonymous with halakhic rulings, and Halakha determines moral right and wrong... Human beings do not decide what is robbery and injustice, only the laws of the Torah do. Any act opposed to these laws is robbery, even if human beings agree with it, and any act within these laws is a fulfillment of justice, even if contrary to human views...

20. Yeshayahu Leibowitz, "Religious Praxis: The Meaning of Halakhah," from *Judaism, Human Values, and the Jewish State*, ed. Eliezer Goldman (Harvard UP: 1995)

If the Mitzvoth are in the service of God, not of man, they may not be directed toward the satisfaction of human wants. Any attempt to ground them in human needs - cognitive, moral, social, and national - deprives them of their religious meaning. If the commandments were expressions of philosophic cognition, had a moral function, or were directed at the perfection of the social order or the conservation of the people of Israel, the observant Jew would be doing service to himself, to society, or to the nation. Instead of serving God he would be utilizing God's Torah for his own benefit as an instrument for satisfying his needs.

The foregoing considerations apply equally to the ethical importance the secularists attribute to the Torah and its commandments. Ethics, when regarded as unconditionally asserting its own validity, is an atheistic category *par excellence*. A person who is ethical in this sense regards man as the supreme end and value, that is, deifies man. A person who perceives man as one among God's creatures and keeps in mind the verse, "I have set God always before me," cannot accept ethics as the overriding norm or criterion. Being moral, from the standpoint of a secular ethic, can have only either of two meanings; directing man's will in accordance with man's knowledge of reality - the ethics of Socrates, Plato, Aristotle, the Epicureans and especially the Stoics, and among the later philosophers Spinoza; or directing man's will in accordance with man's recognition of his duty - the ethics of Kant and the German idealists. Among the passages of the Shema we find the words: "that you seek not after your own hearts and your own eyes": "after your own hearts" is the negation of Kantian ethics; "after your own eyes" is the negation of Socrates'. The admonition: "I am the Lord your God" follows shortly thereafter. The Torah does not recognize moral imperatives stemming from knowledge of natural reality or from awareness of man's duty to his fellow man. All it recognizes are Mitzvoth, divine imperatives. The Torah and the prophets never appeal to the human conscience, which harbors idolatrous tendencies. No equivalent of the term "conscience" appears in Scripture. The counsel of conscience is not a religious concept. The "God in one's heart" which humanist moralists sometimes invoke is a "strange god." Halakhah as a religious institution cannot admit the category of the ethical. Needless to say, it cannot admit the utilitarian justification, whether it be for the good of individuals, of society, or of the nation. "You shall love your neighbor as yourself" is the great rule in the Torah not because it is a precept transcending the formalism of law and above the Mitzvoth but precisely because it appears as one of the 613 Mitzvoth. As a guide rule, "You shall love your neighbor as yourself" is not specific to Judaism. Similar precepts were laid down in writing by thinkers who were not influenced by Judaism and were not even acquainted with it, by the wise men of China, India, and Greece. Moreover, "You shall love your neighbor as yourself" does not, as such, occur in the Torah. The reading is: "You shall love your neighbor as yourself, I am God."

21. J. David Bleich, "Is There an Ethic Beyond Halakhah?" (1985, selections)

Is there a standard of *lifnim mi-shurat ha-din* or is the sole moral standard that of *din* itself? The answer to the question thus formulated is obvious. Rabbinic literature is replete with references to ethical norms described as *lifnim mi-shurat ha-din*. The very juxtaposition of the two categories constitutes an acknowledgement of standards of *lifnim mi-shurat ha-din* which are not coextensive with *din*...

Having assimilated the concept of *lifnim mi-shurat ha-din* to *din* itself, we are now in a position to pose the second question: "Does Judaism recognize an ethical standard beyond the eight categories herein enumerated?" The question of whether or not there exist ethical standards in addition to the eight earlier enumerated categories of *lifnim mi-shurat ha-din* can itself be formulated in two distinct ways:

1. Does Judaism recognize a subjective morality? Is there room in Judaism for accommodation of the moral demands advanced by individual conscience? To that question the answer must be an emphatic no. Indeed, the question is unequivocally answered in the negative by R. Ovadia Bartanura in the opening section of his commentary on *Ethics of the Fathers*... It clearly follows from these comments of Bartanura that any valid system of ethics must be Sinaitic in origin. The very possibility of a subjective morality is dismissed out of hand. The contents of Tractate *Avot* are clearly regarded as being in the nature of *halakhah le-Mosheh me-Sinai*. As such, the content of a system of ethics of this nature is not only objective, rather than subjective, but is, accurately speaking, merely a sub-category of Halakhah...

2. However, precisely the same question can be reformulated in a second manner: Is there a natural morality which is discoverable by reason? The content of such a moral system might well be coextensive with the content of dogmatic ethics but might yet be endowed with independent validity. That such a concept exists is manifest in biblical verses such as “Shall the Judge of all the earth not do justice?” (Genesis 18:25).

Nevertheless, an affirmative answer to this question does not dispose of the issue. The concept of natural morality must be distinguished from the concept of natural law.

III. This then leads us to a final reformulation of the original question. Is there an ethic beyond the recorded Halakhah? To this the answer is: Of course! To the extent that *da'at Torah* is a cognitive discipline that is precisely what it endeavors to explicate and it is precisely for this reason that Halakhah is an art rather than a science...

Recognition of the inherent difficulties associated with a concept of natural morality leads to a position which can best be described as halakhic formalism or halakhic positivism. Such a position recognizes the norms of Halakhah as constituting the sole constraints upon human conduct. In turn, a system of this nature makes possible improvisation of devices such a *prosbul*, *heter iska*, carefully drafted testaments to avoid statutory principles of inheritance, etc. This is not necessarily to condemn such legal constructs as being tainted with any degree of immorality. But, such a position does lead to a moral stance, which permits an individual to take advantage of any loophole in the law which may present itself and to do so without feeling any degree of culpability based upon an ultimate moral concern.”

Cases of Conflict Between Halacha and Ethics

22. Daniel Statman, comments on the APJ blog (2012, accessible <http://www.theapj.com/wp-content/uploads/2012/04/Statmans-opening-comments.pdf>)

Rabbi Lichtenstein invests a lot of effort in analyzing the attitude of halakhists to cases in which compliance with formal halakhic obligations is less than perfect from a moral point of view such as when the din permits actions which are inconsistent with justice or humanity. But the more disturbing dilemmas, both theoretically and practically, arise in cases in which the din seems to demand such actions, for example, when it discriminates against women or against non-Jews, when it punishes children for the sins of their parents (as in the case of mamzerut), when it supports (if indeed it does) a very harsh ethic of war. I'm pretty sure that, in such cases, Rabbi Lichtenstein would not support an interpretation of the din in a way that would guarantee its compatibility with morality.

23. משה הלברטל, מהפכות פרשניות בהתהוותן, 1997

השאלה המרכזית בדין זה היא מהו מקורו של השיקול הערכי – האם הפרשן רשאי לשלב ערים, המבוססים על האינטואיציות המוסריות שלו, או הוא משלב אותם רק אם קיימת להם הצדקה פנימית שנובעת מהטקסט עצמו? אם הוא אינו תולה אותם בכתוב, איזה צידוק ניתן לספק לשילובם בהליך הפרשני? (ד' 179)
ברצוני להתמקד באלה המנסים להוכיח את הטשטוש הקיים בין פנימי לחיצוני... בעמדות אלו ניתן יהיה למצוא צידוק רחב יותר לשימוש בשיקולים ערכיים של הפרשן. (85-184)
על טקסט קדוש מופעל עקרון חסד בלתי מוגבל. המחויבות של הפרשן כלפיו היא כך שיואר באור הנכון והטוב ביותר, זאת מפני שמקורו האלוהי אינו מאפשר טעות או סטייה מן הצדק, חובת ההצלה של הטקסט מטעויות או מעיוותים היא מוחלטת ומלאה. (91-190)

The View of Rabbi Joseph B. Soloveitchik

24. יוסף דוב סולובייצ'יק, מה דודך מדוד, ד' 78

קאנט בשעתו הכריז על עצמאותה של התבונה הטהורה של ההכרה המדעית-מתמאטית. ר' חיים נלחם את מלחמת השחרור של תבונה ההלכה ותבע לה אוטונומיה שלמה. פסיכולוגיזאציה או סוציולוגיזאציה של ההלכה הן התנקשות בנפשה, כשם שניסיון כזה יחריב את החשיבה המתמאטית. אם החשיבה ההלכית תלויה בגורמים נפשיים, הריהי מפסידה את כל האובייקטיביות ומידרדרת לדרגה של סובייקטיביות שאין בה ממש.

24. Joseph B. Soloveitchik, *Mah Dodekh mi-Dod*, p. 78

Kant in his day declared the independence of pure reason as expressed through scientific-mathematical thinking. R. Hayyim fought the war of independence for Halakhic reason and demanded its complete autonomy. Psychologization or sociologization of Halakhah are an assault on its soul, just as such a process would destroy mathematical thinking. If Halakhic thinking is dependent on psychological factors, it loses all of its objectivity and deteriorates to a level of subjectivity that has no substance.

25. Joseph B. Soloveitchik, *Halakhic Morality: Essays on Ethics and Masorah*

“Halakhic Morality,” pp. 183-85

Halakhic law is... a body of ideas expressed in clear, discursive and precise categories, universally valid and applicable to all people at all times, regardless of social stratification, intellectual diversity, emotional incommensurability or multifaceted wills. In a word, the halakhic law does not vary with shifting human situations or changing human destiny; political, social and cultural changes have no effect upon the validity of the divine imperative revealed to us as *mitzvot*... The halakhic divine imperative was addressed not to the ever-changing, transition-minded individual continuously passing through a variety of stages and opposites; not to the concrete, tangible, individual Jew who is involved in a singular, private destiny, which is nothing but a point between the vanishing and the anticipated; but rather to the Jew who can be discovered in all of us, to those who rise above both historical metamorphoses and individual idiosyncratic traits to the heights of unchanging, universal essences...

In short, the law is inseparably bound up with the identity of a community that is universal, eternal, and unchangeable, persisting and enduring throughout the ages, indeed the millennia.

“Halakhic Morality,” 185-86

[Subjective halakhic] morality, on the other hand, flows not from the highly trained mind comprehending God but from the heart sensing and feeling God; from the exalted, great, versatile, transcendental experience; from one's inner religious life – a life which is divided into a number of incompatible patterns, full of inner conflicts and tensions, dominated by the heightened contrast of ecstasy in God's companionship and the pain of loneliness and abandonment by God, by the discordant feelings of self-appreciation and self-effacement, and by the dichotomy of *contemptus mundi* and *amor mundi*...

Therefore, we must say that morality – in contradistinction to the halakhic law – is a personal, subjective affair. I use the term “subjective” in a twofold meaning. First, morality does not lend itself to objectification in the form of precise definition and formulation. It is impossible to describe morality in distinct cognitive categories. We must avail ourselves of metaphors, illustrations, oblique allusions, indirect media of expression, for we deal not with concepts but structure, not with laws but commitments stemming from our religious perceptions and intuitions.

The second is more of a corollary to the first rather than an independent premise. The moral commitment cannot claim uniform universal validity, equally binding upon all people at all times, without taking into account the incompatibility of individual tempers and modes of thinking... The moral obligation [as opposed to the halakhic law] ... was handed down to the concrete individual, to each Jew as a separate, autonomous, one-timely and singular being living in a changing, history-making world. Each individual fulfills his moral commitment in his own private and unique fashion.

“Religious Styles,” pp. 196-97

We have in Torah a *derekh Hashem* (Gen. 18:19) and a *derekh ha-hayyim* (Jer. 21:8), a way of God and a way of life. I want to introduce here another term. Besides possessing *derekh ha-hayyim*, a Torah way of life, we also have a Torah style of living, what we may call a *signon ha-hayyim*.” The difference between a way of life and a style of living relations to the basic difference between *din* and *lifnim mi-shurat ha-din*. *Din*, the law, belongs under the rubric of *derekh ha-hayyim*, the style of religious life.

The difference between the two is obvious. The way of a religious life is universal. Everyone travels along the same path. No highway is paved for just one individual and denied to all others. The Torah way of life is a wide, well-paved road lined with signs, arrows and other symbols pointing out each turn, curve or twist... However, two people may travel on the same highway, in the same direction, following the same signs – and

yet each may have an individual style of movement. One moves gracefully, with rhythm to his movements; the other moves clumsily, awkwardly, always out of step with his co-travelers...

Two people may sit at a *seder* table and go through the same motions. If we should ask what they are doing, the answer would be that they are both doing what the *Shulhan Arukh* requires of them. However, if the question should shift from *what* they are doing to *how* they are doing it – if the question should be related not to the *way* of doing but to the *style* in which they are doing it – the answer would be that each does it in his own characteristic individual style. One lets joy manifest itself in song and dance; his performance is an ecstatic one. The other celebrates the *seder* with subdued happiness; he cannot express the joy which remains arrested within him. Another celebrant of the *seder* may fulfill the *mitzvot* not with ecstasy, but with a sense of commitment and surrender to the Almighty. There is one way of Jewish life, but there are a variety of styles of how to experience God while performing one's duty. "That they should do' – this refers to [going] within the line of the law," each person in his own manner or style.

As a matter of fact, the great conflict which divided the Jewish people into *Hasidim* and *Mitnagdim* at the end of the eighteenth century never revolved about the way of doing things... Their respective styles differed and clashed, bringing about the great controversy between *Hasidut* and *Mitnagdut*.

26. Walter S. Wurzbarger, "Rav Joseph B. Soloveitchik as Posek of Post-Modern Orthodoxy," *Tradition* 29:1, pp. 17-18

The Rav's sharp reaction to the tragic massacres in Lebanon, when large segments of the Jewish community wanted to sweep the problem under the rug, also attests to his extraordinary concern for ethical propriety. It was because of the threat that unless Mafdal pressed for the appointment of an independent investigation commission, he would publicly resign from membership in Mizrachi, that the leadership of Religious Zionism had no choice but to comply with his request...

His extraordinary ethical sensitivity engendered what at first blush strikes us as non-traditional attitudes towards women. Although he never advocated egalitarianism or questioned the halakhic stipulations governing the respective roles of the genders, he emphasized that these distinctions by no means implied an inferior status...

Ethical considerations also prompted the Rav's refusal to participate in granting a *heter me-a rabbanim* to husbands whose wives were unwilling to accept a *get*. The Rav explained that his policy was based upon the realization that, if the shoe were on the other foot, corresponding procedures would not be available to the wife. Especially revolutionary was his pioneering of the intensive study of Gemara by women...

[E]ven more important is the Rav's general approach to the nature of rabbinic authority, which in his view was limited to the domain of *pesak halakha*. He respected the right of individuals to form their own opinions and attitudes with respect to matters which were not subject to halakhic legislation. Because of his respect for human autonomy and individuality, he never wanted to impose his particular attitudes upon others or even offer his personal opinions as *Da'at Torah*. On the contrary, when I turned to him for guidance on policy matters, which at times also involved halakhic considerations, he frequently replied that I should rely upon my own judgment. Similarly, whenever the Rav expounded on his philosophy of halakha, he stressed that these were merely his personal opinions which he was prepared to share with others but which did not possess any kind of authoritative status.