

The Abraham Arbesfeld
Kollel Yom Rishon

Sunday Morning Learning Program for Men

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**Does the Rav Agree with
Rav Lichtenstein on the
Existence of an Ethic
Independent of
Halakha?**



Rabbi Shlomo Zuckier
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Does the Rav Agree with Rav Lichtenstein on the Existence of an Ethic Independent of Halakha?

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1. 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.

2. Joseph B. Soloveitchik, *Halakhic Morality: Essays on Ethics and Masorah*, Intro., pp. x-xi

[The] essay, "Halakhic Morality," expands upon an idea discussed in the opening essay ["Pirkei Avot and Jewish Ethics," dated to 1950-52; -SZ], namely, the distinction between objective halakhic law and subjective halakhic morality.

- "Halakhic Morality" is an undated manuscript.
- "Religious Styles" is a lecture delivered in Boston to the Chevra Shas on March 19, 1972.

3. Joseph B. Soloveitchik, *Halakhic Morality*, "Two Dimensions of Masorah," p. 8

There is the intimate-personal *masorah*. The medium of transmission is not the word, if it is to be understood in its phonetic dimensions, but an experience, a state of mind, a mode of self-manifestation... Teaching Torah may resemble a conversation, as two people address each other; yet the appearance is misleading. It is rather a monologue. The master addresses, or rather expresses himself, revealing some aspects of his unique personality, and the disciple spies on him and overhears his whisper. The teaching in such a case is not consummated via formulated principles, via memorizing laws and texts, through the transmission of theoretical wisdom, but through life itself.

4. Steven Schwarzschild, "The Question of Jewish Ethics Today," *Sh'ma* 7 (1966), 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 supralegal conduct as purely optional or pietistic is a disservice to Halakha and ethics alike.”

5. 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.

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 suprallegal conduct as purely optional or pietistic is a disservice to Halakha and ethics alike...

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 take your choice.

6. 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 Bartenura in the opening section of his commentary on *Ethics of the Fathers*... 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.”

7. Yeshaya Leibowitz, *Judaism, Human Values and the Jewish State* (p. 18)

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 Mitzvot, divine imperatives... [Ethics is the] atheistic category par excellence.

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

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

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.

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

“Two Dimensions of Masorah,” p. 4

The halakhic system is basically constant and unalterable. Very seldom does it take cognizance of the flux of events and the kaleidoscopic metamorphoses of the environs in which the halakhic norm is realized. The Halakhah is a postulated, impersonal, formal, self-sufficient and bounded-in performance – one which interferes with historical realities and tries to impose its normative and doctrinal authority upon them, rather than an act which grows out of the multifaceted everyday human experience. It is a promulgation of a norm that solves all difficulties once and for all, and lays down beforehand what everyone has to do or refrain from doing in every situation. The changes in the realm of fact do not have a bearing upon the a priori halakhic norm, but rather on its application and its technical aspects.

“Halakhic Morality,” pp. 181-182

The liturgist has already noticed the duality in the God-man relationship in the story of the revelation at Mount Sinai... First, God revealed Himself in a cloud of glory to His people in

order to speak with them. Second, He revealed Himself upon Mount Sinai to teach His people the Torah and commandments. The first section speaks of the confrontation of God and man, of man seeing God, standing “face to face” with Him and being directly acquainted with Him. In short, God was discovered in our sense experience... The second section is concerned with teaching us laws and commandments, the great disciplines: the divine *logos-ethos*.... Halakhic law is the product of the divine *logos-ethos* activity. The latter resulted in the emergence of a theoretical normative system, in a body of ideas-*nomoi*. Halakhic morality, on the other hand, was born from the great God experience... Divine reason is the source of the law; divine romance is the source of morality.

“Halakhic Morality,” pp. 183-85

Halakhic law is, as already stated, 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] beyond the letter 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*.

“Halakhic Morality,” pp. 187-88

There is a very typical halakhic example which would elucidate our thesis.

The related concerning Shammai that all his life he ate in honor of the Sabbath [i.e., he was constantly busy with preparations for the Sabbath.] Thus, if he found a well-favored animal [i.e., a good article of food], he said, “Let this be for the Sabbath.” IF afterwards he found a better item, he would put aside the second [for the Sabbath] and eat the first.

But Hillel had a different *middah* [i.e., a trait, approach or view point], for all his deeds were for the sake of Heaven [i.e., he trusted in God that he would obtain something good for the Sabbath], as it is written, “Blessed be the Lord day by day” (Ps. 68:20)...

We must separate the theoretical principle implied in Shammai’s view from the method of application practiced by Shammai. What is this general principle? To remember the Sabbath signifies not intermittent recollection, but a steady awareness, to always hold the Sabbath in mind and be conscious of it. Hillel was in full concurrence with Shammai’s general idea that “*Zakhor*, Remember,” has the connotation of being continuously aware, without letting this awareness be extinguished even momentarily. However, Hillel disagreed with Shammai concerning the method of translating this enhanced awareness into a religious reality. The key to

their controversy is to be found not in cognitive categories, but in an incommensurability of moral viewpoints.

“Halakhic Morality,” p. 190

Each individual finds in the colorful God-experience whatever appeals to him.... For instance, the judicial, imperious, domineering type will normally be attracted by the aspect of *din*, justice, and to a morality nurtured by this emotion rather than by that of *rahamim*, mercy... that is why there is no *pesak halakhah*, no authoritative halakhic ruling, in matters of morality, and why no controversy on moral issues was resolved by the *masorah* in accordance with the rule of the majority, in the same manner as all disagreements pertaining to halakhic law were terminated. For *pesak halakhah* would imply standardization of practices, a thing which would contradict the very essence of morality.

10. Walter S. Wurzburger, “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 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.