

Rabbi David Wolkenfeld
ASBI Congregation
Acharei Mot/Kedoshim 5775

Does Judaism Recognize an Ethic Independent of Halakhah

You may have noticed that my family was not in shul last Shabbat. (I actually hope you did notice that we weren't here)! Last Shabbat we took a short and much appreciated family vacation to exotic Columbus Ohio where very good friends of ours are now professors at Ohio State University. We feel that we have crossed a milestone in the process of becoming midwesterners in that we considered a six hour car trip a normal thing to do to go and visit friends.

The visit was lovely, the chance to experience a different shul as a "civilian" and to spend Shabbat focused on my family. The drive through Indiana and Ohio was also interesting. I found the massive wind-farm in Indiana to be mesmerizing, and I noticed a midwestern propensity to utilize billboards for religious education. We saw billboards declaring "Hell is Real" in four foot letters. And we saw billboards listing the ten-commandments spread out over two billboards located on two corners of a farm. Even spread out over two billboards, only an expedited version of the ten commandments could fit. I concluded from this that if your religious message is succinct and sufficiently simple to paste on a billboard, you're probably doing something wrong.

Parashat Kedoshim opens with a short and simple slogan. Kedoshim Tihiyu - you shall be holy. That can fit on a billboard. That can even fit on a bumper-sticker. But only with a footnote.

Rashi, trying to explain what the Torah could mean when it demands that we become holy, equates "holiness" as the automatic outcome of observing the mitzvot that had just been listed. Ramban disagrees. Observing the mitzvot of the Torah are not enough to guarantee holiness. In fact, Ramban goes on to argue, one could be a "*naval birshut hatorah*" a sordid individual with permission of the Torah.

How is that possible? How can one be a sordid, base, crude person...and engage in sordid, base, vulgar behavior, all with the permission of the Torah? Ramban explains that the mitzvot of the Torah are not quite as comprehensive as we may sometimes think. Yes, the Torah prohibits certain activities, certain foods, and speaking in certain ways. However, Ramban writes, the Torah has also left available to us most ways of interacting with the world. A vulgar or sordid person, could meticulously keep far away from everything that the Torah prohibits and still live a life of indulgence and course baseness.

Ramban, however, informs us, that the Torah itself is aware of its own limitations and commands us to sanctify our lives within the realm of what is permissible. In Ramban's words, "after the Torah has listed matters that God prohibits altogether, the Torah followed them up by a general command that we practice moderation even in matters which are permitted." When *Parashat Kedoshim* opens with the declaration, "*Kedoshim Tihiyu* - you shall be holy," holiness is not defined by the mitzvot of the Torah, but by the choices we make in the realm where there is no specific mitzvah to control our behavior. The Torah comes later, in a general and not defined way, to command us to ensure that our lives are endowed with holiness.

In *Sefer Devarim*, in Deuteronomy, Ramban will teach us that when the Torah declares "*VeAsita Hayashar veHaTov b'Einei Hashem* - we are to do that which is upright and good in the eyes of God" the definition of *Yashar* and *Tov* - upright and good is not defined by the mitzvot of the Torah but by the choices we make in the realm where there is no specific mitzvah to dictate our behavior. The Torah comes later, after listing specific mitzvot, to command us to strive for all of our actions to be in line with what God considers upright and good.

And even when it comes to celebrating Shabbat and the *yamim tovim*, Ramban will remind us that transforming Shabbat into a "*shabbaton*" a restful and peaceful day, cannot be accomplished simply by

refraining from the forbidden categories of labor. A restful day is not defined by the mitzvot of the Torah but by the choices we make in the realm where there is no specific mitzvah to control our behavior. The Torah comes, after teaching the details of the laws of Shabbat, to command us to ensure that all of our actions on Shabbat and yom tov are consistent with the spirit of the day.

Mitzvot are a floor and not a ceiling. They are necessary but not sufficient and the Torah itself recognizes that deficiency and calls on us to fill that deficiency. Autonomous human choices and decisions about religious practice are a necessary ingredient. And the Torah and its mitzvot provide the training for us to make those choices.

Another way to contemplate this point is through asking, “Does Judaism Recognize an Ethic Independent of Halakhah?”

In 1975, in a collection of essays edited by Professor Marvin Fox, one of the great teachers of Jewish philosophy of the 20th century, was published with an essay with that very title: “Does Judaism Recognize an Ethic Independent of Halakhah” written by Rav Aharon Lichtenstein, who, in 1975, had only recently left important teaching positions in New York and moved to Israel to serve as a rosh yeshiva at Yeshivat Har Etzion in Gush Etzion.

Reading that essay this week, forty years after it was written, and less than two weeks after Rav Lichtenstein’s death is to be reminded of the enduring value of the writings he left behind, to glimpse the brilliance and sophistication with which he educated and guided Modern Orthodoxy for the past two generations, and to encounter, with fresh rawness, the gaping hole that is left in the aftermath of his death.

“Does Jewish tradition recognize an ethic independent of Halakhah?” Rav Lichtenstein asks in the opening sentence of the essay. He then comments: “My subject is a simple factual question presumably calling for a yes-or-no answer. Yet what kind of Jew responds to salient questions with unequivocal monosyllables? Certainly not the traditional kind.”

Indeed, that was Rav Lichtenstein’s way. He was never satisfied with unequivocal answers to salient questions. He was never frightened of complexity and nuance, and had no tolerance for hiding complexity to create a superficial simplicity- even when confronting fraught questions of statehood, like the obligation of soldiers to obey politically distasteful orders, or sensitive questions of contemporary halakhah, like the propriety of women wearing tefilin. To our great misfortune, there are quite a few Jews - and quite a few who present themselves as being “the traditional kind,” who feel no hesitation against responding to salient questions with unequivocal monosyllables.

The essay continues to navigate the philosophical terrain between the unassailable fact, obvious from numerous Jewish sources, that humanity has access to moral guidance and ethics prior to the Torah and separate from revelation, and, on the other hand, the recognition that for Jews, studying the Torah and observing its mitzvot is a uniquely effective way to cultivate a life of ethical excellence.

Much of the essay revolves around a careful analysis of the passage I quoted from Ramban’s commentary to this week’s Torah portion and similar passages. How are we to understand the Torah’s call for creating sanctity in our lives beyond the specific requirements of specific mitzvot? Does that speak to an ethic independent of *halakhah*? Or - does the fact that it is the Torah itself that compels us to develop this ethic, mean that there is no ethic that is truly independent of *halakhah*. Rav Lichtenstein’s famous conclusion to this essay is to point out that our very definitions of the terms of the question; what does “ethic” mean? what does “independent” mean? and what is the scope of “*halakhah*?” - The meaning of these terms will generate the answer to the question. “You defines your terms and your takes your choice,” he wrote.

The interplay between Torah knowledge and ethical excellence is at the heart of famous story that Rav Lichtenstein told on more than one occasion.

Walking through an Orthodox neighborhood of Jerusalem, Rav Lichtenstein encountered a man struggling to repair a flat tire. This is a textbook application of the Torah's mitzvah of "perika u'te'ina" - the obligation help a laborer load or unload his wares. Children in the neighborhood had surrounded the man, but instead of helping, they were engaged in an intricate Talmudic argument about whether or not the circumstances of the case at hand, including assumptions about the laborer's degree of religious piety, warranted intervening to help.

Rav Lichtenstein recalled years later:

I wrote R. Soloveitchik a letter at that time, and told him of the incident. I ended with the comment, 'Children of that age from our camp would not have known the gemara, but they would have helped him.' My feeling then was: Why, *Ribbono shel Olam*, must this be our choice? Can't we find children who would have helped him and still know the gemara? Do we have to choose? I hope not; I believe not. If forced to choose, however, I would have no doubts where my loyalties lie: I prefer that they know less gemara but help him.

I've been emotionally impacted by Rav Lichtenstein's death more than the death of any other public figure in my life. It's not because he and I had a close personal relationship. Although I treasure the memories of my encounters with him, I learned far more from reading his essays and books than from my relatively few in-person interactions with him. Thankfully, his books survive as an enduring legacy that can, and no doubt will, be studied for many years into the future. Why, I've asked myself again and again, have I been so emotionally shaken by Rav Lichtenstein's death?

Rav Lichtenstein was the living and breathing example we could look at to see Modern Orthodoxy at its best. Rav Lichtenstein taught us that one could produce Torah scholarship of enduring value, teach students and involve oneself in the concerns of the community, and appreciate "the best that has been thought and said" by intelligent men and women of all faiths and nationalities.

But, even beyond the example that he represented for Modern Orthodoxy, Rav Lichtenstein demonstrated that traditional Judaism - a life anchored in Torah and mitzvot - could support a life of ethical excellence, of spiritual creativity and vitality, and of sensitivity to the complex and various needs of humanity.

Torah study and mitzvah observance is necessary but not sufficient, as Ramban noted. But Torah study and mitzvah observance can enhance and strengthen and deepen our ethical commitments. Rav Lichtenstein was a man who lived those values to a degree that is hard to fathom. His death places a massive burden on the rest of us to pick up the mantle of ethical sensitivity, not an ethic independent of halakhah, but an ethic enriched by halakhah.