



REFLECTIONS

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Thoughts to Ponder - 689

Thinking Globally Living Jewishly



Under the guidance of Rabbi Nathan Lopes Cardozo,

the DCA's Jerusalem Think Tank, a forum of Jewish thinkers, educators and leaders, explores a wide range of Jewish topics. Think Tank Fellows present issues from their own lives – matters they struggle with every day – with the hope that exploring uncharted realms of Judaism in these challenging sessions will further invigorate authentic religious living. with the hope that exploring uncharted realms of Judaism in these challenging sessions will further invigorate authentic religious living.

THE PERFECT TORAH VERSUS THE EVOLVING TORAH

The Philosophy of The Mei HaShiloach and Its practical Consequences

This is the sixth part of our discussion on the philosophy of the Chassidic thinker, Rabbi Mordechai Yosef Leiner of Izbica, author of the *Mei HaShiloach*, a most unusual work which in many ways goes far beyond the established norms of orthodox Halacha as we know it today. Yehudah DovBer Zirkind continues to discuss my observations, and adds much important information and insights of his own.

It is important that the reader be aware that Rabbi Leiner clearly belonged to what today would be called "Chareidi Judaism"; his Yirat Shamayim, his awe of Heaven, is beyond question. He was not even a modern orthodox and surely not a Conservative or Reform Rabbi.

Only seen from this perspective can we really appreciate his daring, but deeply religious, philosophy. In many ways he sends shockwaves through all of normative halachic Judaism, even while remaining completely committed to it. In fact, he seems to claim that his views are perhaps more authentically "orthodox" than what most orthodox rabbis and Jews would like to believe.

No doubt this is and will remain, a moot point in the orthodox camp.

In our discussion below we state that "we do not expect these arguments to be advanced within a classic halachic *teshuva* (responsum)." This is no doubt true. But I believe that we will see that, slowly but surely, the observations of the Mei HaShiloach will enter—and *should* enter—into future halachic debates and responsa.

In fact, the essay below will show that some halachic authorities have already started doing this.

I predict that more and more of this will happen in the future, notwithstanding some serious problems. The reason is that the Halachic world will be more and more confronted with critical issues related to deep religiosity, morality, and personal conscience, which we can no longer escape, and for which the author of the *Mei HaShiloach*, perhaps unconsciously, laid the foundations.

We hope that these essays will further this phenomenon.

Enjoy!

Nathan Lopes Cardozo

THOUGHTS ON THE MEI

HASHILOACH AND THE HALACHA - PART 6

Based on the Observations of Nathan Lopes Cardozo

Yehudah DovBer Zirkind

Halacha, Morality and the Will of God



Yehudah DovBer Zirkind

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Some of his papers are accessible online at: <https://telaviv.academia.edu/YehudahZirkind>

In the previous essay, we discussed the Mei Hashiloach's radical suggestion that God's will and Halacha are not always identical. He even formulates a dichotomy between following the general rules of Halacha, as exemplified by the archetype of Yosef, vs. seeking direct illumination from God, as exemplified by the archetype of Yehuda. The *halachic* personality consults the external compass of Halacha for guidance, whereas the *religious* personality will follow an internal compass, which, in rare individuals of great stature and spiritual attainment, is synchronized with the divine will.

In this essay we would like to move away from a *theoretical* analysis of the Mei Hashiloach's ideas and focus on some *practical implications and applications* of his ideas within the realm of practical Halacha. However, before we do so, we wish to state several caveats: First, we do not claim that the following ideas necessarily represent a correct interpretation of the Mei Hashiloach's ideas, or that he would agree with any of the positions delineated below. Secondly, we do not claim that our arguments are valid within the standard parameters of halachic discourse. In other words we don't expect these arguments to be advanced within a classic halachic *teshuvah* (responsum). Third, the following suggestions are in no way intended as definitive statements or halachic rulings; rather, we are raising difficult questions that we believe need to be seriously considered. Finally, we embark on this discussion with utmost seriousness and a deep sense of *yir'at shamayim* (awe of Heaven).

The thoughts expressed below are the musings of some who have grappled deeply with these issues. Rabbi Cardozo is fully aware that he is pushing the envelope, and that certain people might deem some of these ideas completely beyond the pale of Orthodox thought; nevertheless, he believes that the dilemma articulated here is one that is shared by many of our coreligionists. At the very least, he feels that this acute dilemma needs to be confronted in a courageous and honest way.

This dilemma is how to relate to Halacha as the will of God, especially when it clashes head-on with our inner religious convictions about what God wants of us. Stated simply, what ought we to do when the Halacha instructs us to violate our religious convictions and moral principles?

Our halachic complacency is shattered, and our religious equilibrium is shaken, when confronted with acute moral dilemmas stemming from conflicts between Halacha and our innate sense of morality.¹ Some of the most prominent cases where a dissonance between Halacha and morality is felt are issues concerning the changing roles of women: the *aguna* problem, social equality, sexual and gender identity, and other issues. The

profound dissonance between what our innate sense of morality tells us to do vs. what Halacha tells us to do in these instances leads many people to question whether these halachot truly reflect God's immutable will for all time, or whether these laws were historically conditioned and should therefore be revised.

It is important to realize the enormity of this issue. These conflicts should not merely be dismissed as an extraneous concern arising from the confrontation between two competing sets of values, i.e. internal religious values vs. external secular values; rather, religious individuals perceive this conflict as an internal division formed at the very core of their religious commitment. The very same religious commitment that upholds the Halacha as the Word of God also rejects these laws as inconsistent with the Will of God (based on the inner prophetic voice and internal conviction that these laws violate God's justice and morality). This modern day "Akeda trial" plagues the religious conscience of many people who sincerely wish to heed God's call, yet are pitted against two contradictory voices, each one demanding total allegiance in the name of God.

Indeed, the Jewish tradition itself is replete with examples of people who confronted God and argued with Him about the morality of His own edicts and laws. Thus, for example, Avraham Avinu argued against God's decision to destroy Sodom and cried out in righteous indignation, "Shall not the Judge of all the earth deal justly?"² Likewise, the Torah relates, in Parashat Shemini, that on the day that Nadav and Avihu (the sons of Aaron the High Priest) died, the priests did not follow the proper procedures which Moshe had instructed them regarding the sin offering. This enraged Moshe; whereupon Aron responded, "Had I eaten the sin offering today, *would the Lord have approved?* And when Moses heard this, he approved"³ These verses indicate that the Torah reckons with human judgment as a way of discerning right from wrong and determining which actions would find favor in the eyes of God.⁴

While it may run against the grain of conventional piety to question whether a specific Halacha reflects the ultimate will of God for all time, nevertheless, there are many searching religious Jews who, upon encountering specific laws that oppose their deep convictions about the morality of God, will cry out in righteous indignation "Shall not the Judge of all the earth deal justly?" Would the implementation of this Halacha in today's day and age truly find favor in the eyes of God?

Indeed, there are many rabbis and sincerely observant people who, precisely because of their deeply religious feelings, are perturbed about the perceived immorality of certain laws. It cannot be denied, for example, that among the Orthodox Jews who are in favor of expanding the role of women within Judaism, there are those who advocate these changes not because they were bitten by the bug of the secular egalitarian ethos and want to conform to the spirit of the age; on the contrary, they are motivated by a deep moral and religious conviction that promoting greater gender equality is not only a value in the eyes of humanity, but is also a value that, to the best of their understanding, would be more favorable in the eyes of God than a more hierarchical and exclusionary approach.⁵

The Mei Hashiloach's ideas are directly relevant to these issues. Although he does not specifically address the tension between Halacha and morality, his insights about the possible discrepancy between the depth of God's

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will vs. codified Halacha provides a useful paradigm for addressing the dilemma of Halacha, morality, and God’s justice. Unlike the Yosef archetype who can take comfort in obeying the Halacha under all circumstances because Halacha represents the ultimate religious commitment, the Yehuda archetype cannot afford the luxury of taking comfort in the certainties of Halacha, because obeying the rules by the book may turn out to be an infraction of God’s true will and a *chilul hashem*, a violation of His Holy Name.

As we have seen in the first essay, the Rambam and other Jewish thinkers maintain that certain laws in the Torah were historically conditioned and commanded by God as a compromise to human weakness. Is it then possible to take this a step further and claim à la the Mei Hashiloach that these laws do not reflect the true depths of God’s will for today? Moreover, if someone does indeed possess this inner conviction is s/he allowed—or even mandated—to violate Halacha in these circumstances? This is not a typical Orthodox Halachic *she’ilo* (inquiry) that is usually addressed to a halachic authority; however, whether or not this question is deemed “kosher” by the conventional rabbinical establishment, it is still an urgent question that must be asked and addressed.

THE MEI HASHILOACH AND THE ORDINATION OF WOMEN RABBIS

A practical example of the application of the Mei Hashiloach’s approach relates to the ordination of female rabbis. Rabbi Hertzl Hefter, an Orthodox rabbi residing in Israel and a scholar of the Mei Heshiloach’s thought, explained that he decided to ordain women based on the teachings of the Mei Hashiloach and other thinkers. In his view, these thinkers assert the that voice of human conscience may itself be a form of divine revelation.⁶ He proposes a new theology with far reaching halachic implications:

Humans are created in God’s image, which means that human consciousness is the instrument of divine revelation. Since God is revealed through human consciousness, our refined moral convictions and religious sensibilities may be considered a form of divine revelation.⁷

Rabbi Hefter applies his theology to the case of the ordination of women: *Semikha* for women is an instance of where the tradition comes into conflict with deeply held convictions. These convictions, having been tested through the mettle of “clarification”, need to be brought in dialogue with the tradition and in this case determine the normative behavior.⁸

Whether or not the Mei Hashiloach himself would *have concurred with Rabbi Hefter’s decision to grant Semikha to women is not our main concern. The main point we wish to demonstrate is how one Orthodox rabbi invokes the Mei Hashiloach’s theological paradigms in order to determine practical Halachic decisions.*

THE CONSCIENTIOUS OBJECTOR TO HALACHA

Thus far we dealt with the application of the Mei Hashiloach’s insights on a communal level, in terms of issuing halachic rulings which affect the community at large, such as the ordination of female rabbis. But how should these conflicts be handled on an individual level? We would like to raise the question of whether, based on the Mei Hashiloach’s ideas, a person may—or even must—violate Halacha when it clashes with their

own personal sense of what God wants from them.⁹ To put it differently, can there be any religious legitimacy to the notion of being a conscientious objector to the Halacha (in specific instances)? Can violating the Halacha for the sake of God be regarded as an act of religious piety?

Confronted by a clash between our deepest religious convictions and prescribed Halacha, the Yehuda personality, who ventures beyond the law to meet the divine directly, cannot rely on the sole guidance of the Shulchan Aruch or a Halachic authority, since Halacha itself is being challenged. During this moment of truth, we must ask with complete religious integrity “what does God require of me,” and make a decision that is completely honest to God.

The famous Danish philosopher and theologian Søren Kierkegaard (1813-1855) describes the Akeda as “the teleological suspension of the ethical.” A conscientious objector to the Halacha for religious reasons might feel that at times they need to engage in the “theological suspension of the halachic.”

I’m not claiming that the notion of a conscientious objector to Halacha is legitimate within the narrow framework of halachic discourse. Rather, in light of the Mei Hashiloach teachings, I’m asking whether in such a case we might be required to step beyond the formal Halacha and ask not “what does the *Halacha* demand?” but “what does *God* demand?” When we arrive at the crossroads where Halacha and morality part ways, do we need to move away from a strictly legalistic approach to Halacha and reckon with the prophetic voice within to guide our actions?

It must be emphasized that the very notion of a conscientious objector to Halacha on moral and religious grounds requires extreme caution. We have to be extremely careful when trying to discern God’s will to make sure that we are free of all personal prejudices, biases, and agendas. We can easily be misled into mistaking our own personal bias or the contemporary moral zeitgeist, and conflating it with the divine will. For example, in the challenging case of expanding the roles of women within Orthodoxy, we can easily conflate a secular feminist agenda with a religiously driven quest for equality. Extreme humility is required during these moments of truth when performing a moral reckoning before God. Indeed, the Mei Hashiloach writes that only after freeing oneself from all personal biases and nullifying our ego in the presence of God are we capable of discerning God’s true will.¹⁰

Above all, we must avoid the pitfall of trying to rationalize and justify our transgression of Halacha with the “pious” excuse of holy sinning. The *yetser hara* (Evil Inclination) can easily tempt us to sin and also provide a ready-made *heter* (legal dispensation) to do so in the guise of pious transgression.

As the case of Sabbateanism and other heretical and antinomian religious movements have taught us, the possibility of egregious sinners deluding themselves and trying to convince others that they are pious saints is an ever-present threat. Nevertheless, we believe that an honest engagement with the Mei Hashiloach’s ideas requires us to confront the dilemma of what we ought to do when we experience a conflict between the dictates of Halacha and the voice of our religiously informed moral conscience. We’re leaving this as an open question for our readers to contemplate without stating any definitive position on this issue.

To be continued.

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ENDNOTES

1 There is a vast literature devoted to the topic of religion and morality spanning millennia, including such prominent works as Plato's *Euthyphro*, Immanuel Kant's *Groundwork of the Metaphysics of Morals*, and the works of many other theologians and philosophers. It is beyond the scope of this essay to provide a comprehensive bibliography of this topic. There is also a considerable literature on the topic of Torah, the Jewish tradition and morality in particular. For selected works on this topic, see Shubert Spero, *Morality, Halakha, and the Jewish Tradition* (New York: Yeshiva University Press, 1983); Avi Sagi and Daniel Statman, *Religion and Morality* (Amsterdam: Rodopi, 1995); Avi Sagi, *Judaism: Between Religion and Morality* (Tel Aviv: Hakibbutz Hameuchad, 1998) [in Hebrew]; Michael J. Harris, *Divine Command Ethics: Jewish and Christian Perspectives* (London: Routledge, 2015); Shira Weiss, *Ethical Ambiguity in the Hebrew Bible: Philosophical Analysis of Scriptural Narrative* (Cambridge: Cambridge University Press, 2018); Moshe Halbertal and Donniel Hartman, *Judaism and the Challenges of Modern Life* (London: Continuum, 2009); David Hartman and Charlie Buckholtz, *The God Who Hates Lies: Confronting & Rethinking Jewish Tradition* (Woodstock, VT: Jewish Lights Publishing, 2014); Donniel Hartman, *Putting God Second: How to Save Religion from Itself* (Boston: Beacon Press, 2016).

2 *Bereishit* 18:25.

3 *Vayikra* 10:19-20.

4 Several Orthodox thinkers deal with the question of whether the Torah recognizes natural morality as a basis for mandatory behavior and the problem of navigating the tensions between Halacha and morality. Most notably, R. Avraham Yitzchak Ha-Kohen Kook deals with this in some of his writings. See Na'ama Bindiger, "Moral Conception of Rav Kook; Meta-Ethics, Normative Ethics and Application," (PhD dissertation, Ben-Gurion University of the Negev, 2016), idem, "Mirage and the Elevation of Mankind: Rav Kook's Approach to Conflicts Between the Torah's Morality and Natural Morality," *Daat: A Journal of Jewish Philosophy & Kabbalah* 84 (2017): 427-442. See also, R. Aharon Lichtenstein, "Does Tradition Recognize an Ethic Independent of Halakha?," in Marvin Fox ed., *Modern Jewish Ethics: Theory and Practice* (Columbus: Ohio State University Press, 1975), 62-88; reprinted in R. Aharon Lichtenstein, *Leaves of Faith: The World of Jewish Living* (Jersey City: KTAV Publishing House, 2004), 33-56; Rabbi Yehuda Amital, *Jewish Values in A Changing World* (Jersey City: KTAV Publishing House, 2005), chap. 2 on natural morality. Rav Amital's essays are also available online at: <https://www.etzion.org.il/en/topics/jewish-values-changing-world>. See also the transcribed lectures of Rav Assaf Bednarsh on Natural Morality, available online at; <https://www.etzion.org.il/en/shiur-25-natural-morality-1>; <https://www.etzion.org.il/en/shiur-26-natural-morality-2> and Rabbi Chaim Navon, "Halakha and Morality," available online at: <https://www.etzion.org.il/en/halakha-and-morality>.

5 It also cannot be denied that the internalization of liberal values may also shape one's religious sensibilities. People can easily fall into the trap of conflating their moral conscience which is shaped by the moral zeitgeist with their perception of God's will. Thus, there is no guarantee that one's own moral compass is a reliable guide for discerning God's will. However, our argument in this essay is based on the premise that moral considerations do play a role in Halacha and in interpreting God's will.

6 R. Yoel Bin Nun articulates a similar idea in his analysis of the writings of Rav Kook. See Yoel Bin-Nun, *The Double Source of Human Inspiration and Authority in the Philosophy of Rav A.I.H. Kook* (Tel Aviv: Hakibbutz Hameuchad, 2014), chap. 5.

7 Rabbi Herzl Hefter, "Why I Ordained Women," available online at <http://www.har-el.org/2015/07/20/why-i-ordained-women/>

8 Ibid.

9 For an example of how some Orthodox rabbis dealt with this dilemma, see R. Benjamin Lau, "A Reflection of Truth: Rabbinic and Academe in the Writings of Rabbi A. S. Rosenthal on Violating the Sabbath to Save a Gentile's Life," translated by Joel A. Linsider, available online at: <http://lookstein.org/resource/articles/reflections.pdf>. See also Alan Brill, "Worlds Destroyed, Worlds Rebuilt: The Religious Thought of Rabbi Yehudah Amital," *The Edah Journal* 5 no. 2 (Sivan 5766), p. 5 for some illuminating anecdotes about the differing attitudes of Rabbi Aharon Lichtenstein and Yehudah Amital regarding this issue.

10 See for example *Mei Hashiloach*, vol. 1, on *Devarim* 22:6, s.v. Ki Yikare.