To Be a Holy People

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Jewish Tradition and Ethical Values

Eugene Korn

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What is the role of ethics, of moral behavior, in the Jewish tradition? How do ethics coexist, or even conflict, with Jewish law? These are important questions that have been discussed by many, and the basic sources go back to the classic rabbinic texts that are themselves influenced by biblical texts. Eugene Korn's new book is not only an introduction for those who wish to be informed on the central questions with which this review begins but also a wonderful example of engaged scholarship. Korn both examines matters from a theoretical perspective and shows the real world implications of his scholarship. Indeed, it is fair to say that this book is written in what we can call a prophetic vein. It is calling on Jews to live in accord with the highest standards of ethics. As Korn puts it at the end of the book, "While the fundamental Jewish values of *tsedeq* and *hesed* are eternal, how and if they are realized are up to us" (p. 249).

However, what is one to do when current ethical standards, which have evolved from earlier times, are not in line with classic Jewish texts or with how these texts are interpreted by contemporary halakhists? This is a basic problem that stands at the center of Korn's project and which he confronts in various chapters. He also sees this as relevant to the issue of the status of women in traditional Judaism. While usually this is approached as a halakhic matter, to see if modern sensibilities can be accommodated in the halakhic system, Korn sees an ethical component that is often overlooked. In his words, "Jewish ethics needs to find a way to honor tradition while taking into account a modern sensibility of justice and equality for women's rights and roles" (p. 31). One who views the issue as an important ethical challenge will be more inclined to support changes in the traditional halakhic approach than those who see the issue as simply a matter of changing perceptions of gender roles. In line with even more recent challenges, Korn wonders if new conceptions of gender identity should also lead to new ethical perspectives.

A particularly powerful chapter is titled "Receiving but Not Donating Organs: Ethical and Jewish Considerations." The ethical conundrum is that many Jewish legal authorities do not recognize brain death as halakhic death. Rather, they require the cessation of heartbeat. Such a position means that the typical heart transplant would not be of any use, since it requires a beating heart that can only be removed after brain death. If this were the extent of the matter, it would not present any ethical problems. Those who insist on cessation of heart beat would not be the recipients of a heart transplant, since it would require removing the heart from a brain dead person who according to their interpretation of halakhah is still alive, meaning that they would receive a heart by killing another person. In addition, people who follow this approach would also not allow the removal of their hearts, or any other organs, based on brain death, for that is not halakhic death. One does not give one's heart, and one does not receive a heart, since removal of a beating heart is an act of murder.

Yet in the real world, matters are not this clear, and there are those in the Orthodox world who wish to have their cake and eat it too. That is, some rabbinic authorities have declared that while a Jew is forbidden to donate organs after brain death, he is permitted to benefit by receiving organs from someone who has been declared brain dead. Is such a position, to receive but not donate, moral? Korn answers with a firm "no," stating that such a position "is contrary to correct moral reasoning and hence ethically unjustifiable" (p. 172). In fact, in seeking to explain how some of Rabbi Joseph B. Soloveitchik's students could arrive at such a stance, Korn puts the blame on "the Brisker formalist theory of *halakhah* as a value-neutral apodictic system to which they were exposed [and which] sometimes conduces to unethical conclusions in practice when not tempered by considerations of justice and *hesed*" (p. 46n14).

Let us assume that Korn is correct that such an action is unethical. Can such an unethical position also be halakhically permissible? That is, does halakhah have to follow logical moral principles or does it have its own principles that need not be in line with accepted morality? Based on earlier rabbinic sources, Korn argues convincingly that halakhists need to incorporate ethical considerations into their rulings, as halakhic sources alone are not sufficient. This is because halakhic sources, not tempered by ethical considerations, can lead to immoral rulings (such as

permitting Jews to benefit from heart transplants while forbidding Jews to donate hearts). Korn states that the question we must ask is not whether taking an organ without giving “is correct *qua halakhah*, but whether it is ethical” (p. 167). What this means is that practices can indeed be halakhic, that is, not in violation of any specific halakhic text, but they can still be unethical, a point famously made by Nahmanides in his commentary to Leviticus 19:2. Elsewhere, in again speaking about receiving organs but not giving them, Korn states that whether the ethical problems “are sufficient to discredit it as a valid halakhah is for halakhic authorities to decide” (p. 172). However, as Korn makes clear, since ethics are an integral part of Judaism and are supposed to undergird the halakhic system as a whole, one does not need the halakhists to determine if a practice is to be regarded as invalid due to it being unethical. Anyone with a clear moral sense can make this judgment.

While one can only admire the moral vision of Korn in arguing his points, I think that sometimes he goes too far. For example, while everyone understands how important procreation is in traditional Jewish thought, it strikes me as a real stretch to conclude that “it is a religious duty to seek artificial reproductive methods (e.g., IVF). If nature poses a problem, it is a religious imperative to ‘get around’ the natural blockage” (p. 20). To my knowledge, there is no halakhic authority who has stated that there is such a religious duty, and this is a halakhic matter, not an ethical issue of the sort Korn elsewhere discusses. If halakhic authorities have not ruled that there is any such obligation, upon what basis can one derive an ethical duty?

In chapter 9, Korn focuses on how Judaism relates to the religious other. Here, as with all the chapters, we find a wonderful example of engaged scholarship. Korn has a viewpoint he feels strongly about, and this is backed up by wide-ranging scholarship. Yet I must challenge his statement that Rabbi Menahem Meiri “had no theological or practical problem with Christianity” (p. 232). While it appears true that Meiri did not have any practical problem with Christianity, it is incorrect to say that he had no theological problem. Meiri was not a religious relativist, and he certainly regarded the belief that Jesus is God as a theological error. What he did hold, however, is that those non-Jews with problematic theological beliefs, if they behave in a moral fashion, should not be regarded like the wicked idolaters of old.

I cannot help commenting on another point Korn makes, which is really not central to his argument. He mentions “Open Orthodoxy” and defines it as referring to “Orthodox Jews who have been touched by modern values and who strive to relate to all of God’s children with sensitivity, ethical integrity, and religious meaning” (p. 181). The problem with this definition is threefold. First, even those who identify as Open Orthodox would assert that while they have been touched by modern values, the values that they accept are in fact identical to Torah values, even if this was not recognized in prior years. Second, Modern Orthodox and Haredi alike believe that they too strive to relate to others with “sensitivity, ethical integrity, and religious meaning.” And finally, Open Orthodoxy is understood to include a good deal more that what is found in Korn’s definition, and that is precisely the reason it has become controversial in Orthodoxy. Yet whatever Orthodox box one chooses to place Korn’s approach, there is no doubt that he has offered a compelling portrait of what an ethically sensitive halakhic system can be.

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