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What is western society's place in determining halachah?

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The Orthodox community is rapidly approaching a moment of truth. The many issues that the Orthodox community is debating internally are rapidly collapsing into one overarching issue, one macro-question, with which it must grapple head-on. And this is: whether the ethical norms of Western society should figure into the process of determining halachah (Jewish law).

Consider the issues that have most roiled Orthodoxy just over the past year or so. There is the controversy over the statement of principles concerning the place of homosexuals within the Orthodox community, a document that while upholding the biblical prohibition on homosexual behavior, mandates that people who are homosexual be afforded full dignity and respect, and that they be included in their Orthodox communities. Signed by 150 Orthodox rabbis and educators, it was flatly rejected by at least as many. There is also the ongoing debate over whether women may serve as synagogue presidents, as well as the sure-to-return debate over women being ordained as rabbis. More recently, we have seen renewed controversy over whether halachah permits us to donate our organs following our brain-stem death, even as it is clear that we are permitted to receive organs from non-Jews who are brain-stem dead. And, most recently, we have witnessed the controversy in Israel as to whether halachah prohibits the sale or lease of apartments to non-Jews in the land of Israel. Each of these issues is complex in its own way, and none can be facilely decided in the absence of rigorous halachic analysis. But over and over again, the wedge issue turns out to be whether consideration of Western ethical norms is relevant to the analysis.

This emerged clearly last week, as the Rabbinical Council of America registered its objection to the ban on renting to non-Jews in Israel, saying that the halachic analysis of this issue demands "special sensitivity to societal realities, widely held ethical principles, and historical injustices." Which is to say that when we examine our universe of viable halachic alternatives, our choice of alternative can and should be influenced by wider ethical considerations. Yet this is, of course, precisely the point of contention.

The story is the same with regard to the organ donation issue. Here, too, viable and scholarly halachic positions have existed on both sides of this issue for many decades. Last month though, a Rabbinical Council of America report (ironically), which preferred the position that effectively prohibits Jews from donating organs, elicited the following response from Rabbi Dr. Moshe Tendler, a prominent scholar and bio-ethicist (and a longtime proponent of the brain-stem definition of death, which results in the permissibility of organ donation): "Their final conclusion is that a Jew who is in need of a heart transplant can receive a heart from a brain-dead patient but he can't donate his heart if he is brain dead. Such a ruling defames Judaism and exposes every Jew to the hatred of non-Jews. It is saying that a Jew can take a vital organ from a non-Jew even though Jews consider him still alive — that his life doesn't count. How could you justify such a ruling?"

The wedge issue is the same when it comes to the place of homosexuals in the Orthodox community. The opening words of the above-referenced Statement of Principles are: "All human beings are created in the image of God and deserve to be treated with dignity and respect." While it is of course true that the idea that all people are created in the image is biblical, its specific application to homosexuals is a distinctly modern historical development. It is our way of clothing in our religious language the modern, Western ethical assertion that "all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." The relevance of such ideas to our halachic calculus is again what stands at the center of the controversy. Similarly, when rabbinic scholars in pre-State Palestine debated whether women ought to have the right to vote in Yishuv elections, the old/new "image of God" idea was one of the main pivots of the discussion. And it continues to play out in today's controversies over the position of women in the Orthodox community.

Are the ethical norms of modern Western society essential to halachic discussion or are they irrelevant? Are they to be integrated or to be shunned? This is, in the final analysis, the central issue that the Orthodox community is grappling with. And the answer will determine Orthodoxy's long-term viability as a positive force in the wider Jewish community, and the wider world.

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