

Bruchim Podcast – EPISODE 6

Episode 6-Ethics and Jewish Law Part I

In the first part of this four-part series, Eli is joined by Bruchim's Director of Education Max Duboff to discuss the relationship of Ethics and Jewish law. They begin by defining their terms and explaining what they mean by Ethics and what they mean by Jewish law. They then lay out Max's idea of four logical positions that one might take regarding the relationship between the two, both in terms of whether or not they can conflict and if they can, what one does when they do. Max and Eli then swear allegiance to one of the four positions and explain their choices. Finally, they talk about whether circumcision can be considered an example of a conflict between Ethics and Jewish law.

Show Notes

Conservative Halacha and LGBT Issues

<https://www.myjewishlearning.com/article/conservative-halachah-and-homosexuality/>

Plato's Euthyphro Dialogue

<https://www.sparknotes.com/philosophy/euthyphro/full-text/euthyphro/>

Covenant of Blood by Lawrence Hoffman

<https://www.abebooks.com/first-edition/Covenant-Blood-Circumcision-Gender-Rabbinic-Judaism/31163296277/bd>

ELI UNGAR-SARGON:

This is the Bruchim Podcast, the only podcast in the world dedicated to Jews who think differently about circumcision.

♪ (THEME MUSIC PLAYS) ♪

Welcome back to the *Bruchim Podcast*. I'm your host, Eli Ungar-Sargon, and joining me today from New Haven, Connecticut – is that right? –

MAX DUBOFF:

– Yeah, New Haven, Connecticut –

EU-S:

New Haven, Connecticut is our director of education, Max Duboff. Max, it is so great to have you here. Please introduce yourself to our audience and tell us a little bit about how you came to the topic of circumcision.

MD:

Yeah, well, Eli, I'm so happy to be here. Really excited to be on this podcast and for this podcast to exist.

So, I'm doing a Ph.D. in philosophy at Yale. I work on a combination of bioethical issues – philosophical bioethics. I work especially on philosophy of death and reproductive ethics, and then a bit, of course, on circumcision. And I came to this issue both sort of as a Jew and as a philosopher, and I really started to think first about questions of how to do circumcision from an ethical perspective.

I was thinking a lot about the questions of anesthetic and sort of what we owe to infants and also the perspectives in halacha, in Jewish law. And then eventually I got to thinking more about the ethicality of the practice itself and what its significance is and should be for us as Jews.

And then I was connected with some folks who were involved with Bruchim, and then I also became involved with the organization, fortunately, before it launched, and it's been a really great journey.

EU-S:

The topic that we're going to be talking about today is one that's very near and dear to my heart.

It was actually at the forefront of my mind when I made my film *Cut*, which in a way was an exploration of the very thing that we're going to be talking about today, which is the question of how ethics, on the one hand, and halacha (or Jewish law) intersect, conflict with each other, might be harmonized in certain perspectives and positions.

So that's what we're going to be talking about today. And before we dive in, I think it's important that we define our terms. And so why don't you explain to our audience what we mean when we say ethics.

MD:

Yeah, great. So we can mean a lot of different things when we talk about ethics. And ethics is one of the major areas of philosophy, and at a sort of basic level, ethics is what we should do, right? How to act, right?

And we often think today, and this is something that stretches back about 200 years in particular to Immanuel Kant, this idea that ethics is about oughts, right? About what you should do, and particularly in many cases, what you shouldn't do, right? How to treat people or something like that.

Sometimes we call that morality as well. So that is a huge part of ethics. And that's something that definitely gets through a lot into the bioethics tradition today.

And there's also another sense of ethics, which will certainly be very relevant for us, which is about how to live more broadly, right? So not just about what you can or can't do to other people, but about what a good life looks like.

And I do a lot of study of Greek and Roman ethics, and in ancient Greece and Rome, you saw a lot of this sense of ethics and sort of how to live what a good life is.

But in ethics today and in the ancient world, we're often thinking about specific cases, right?

So if you think that you generally ought not to hurt someone, right, but under what conditions, maybe does it make it okay to hurt someone, maybe because you don't have any better option or something like that, right?

So all these different sorts of questions are things that we think about when we're doing ethics.

EU-S:

Absolutely. And by halacha, or Jewish law, what we're talking about and what we mean is a religious tradition from the Jewish tradition, and it has its roots in rabbinic texts that also date back thousands of years. And there's a sort of corpus of Jewish legal thinking that spans centuries that has developed, in particular over the last five centuries, I would say.

halacha, Jewish law, concerns itself with how Jews ought to behave. And everything from, you know, what are you allowed to or not allowed to do on the Sabbath, from sundown on Friday night till the stars come out on Saturday night, to, I mean, it goes down into details, like which shoelace you should tie first, what side you should sleep on. So Jewish law is quite exhaustive in that sense. And again, there's centuries and millennia of this legal discourse that we have to go on.

And I don't want to get too deeply into this particular side of it, but, you know, Jewish law, halacha, is understood differently by different denominations of Judaism. And even within denominations, there's a diversity of opinion of what it means. And as we go on in this conversation, we'll try and point out some areas in which these differences might have implications for the conversation of conflicts or potential conflicts with ethics. But that's what we mean by halacha. It's a kind of corpus of Jewish legal opinion about how Jews ought to behave in the world.

MD:

Definitely, yeah. I mean, and one other thing that we'll be thinking about with regard to what you're saying about different movements is that there are a lot of different views on how binding halacha is, right? So in what sorts of ways does halacha shape our lives?

And this is certainly a big question which we won't be answering, but will be in the background of a lot of what we discuss.

EU-S:

So now we've defined our terms, which I think is important, as you'll agree, Max. You're in the business.

MD:

Totally, yeah.

EU-S:

In your business, defining terms is an important first step.

MD:

Oh, yeah.

EU-S:

Defining terms, making distinctions, all of it.

So we have these two bodies of knowledge, and you have come up with four logical positions that one might take regarding the way they relate to each other, the way these two traditions relate to each other. And you framed the positions as an answer to two questions.

The first question is, is it possible for halacha or Jewish law and ethics to conflict with one another? And the second question is, if it is possible for halacha (or Jewish law) and ethics to conflict with one another, what happens when they do? And in particular, what happens when they do if you are a Jewish person who cares about both of these things, right?

MD:

Yeah, absolutely. And again, you know, sort of caring about halacha can take a lot of different forms. But this question really does come up if you see halacha as structuring your life in some kind of snipping way, as having a pull over you. And that can be some kind of stronger ought, some kind of obligation, or maybe that can be a different form.

EU-S:

That's right. So let's take a look at your four positions, and then we'll talk about them, all right?

MD:

Yeah, great. Sounds like a plan.

EU-S:

Position number one, halacha and ethics can conflict, and in situations where they do conflict, halacha trumps ethics. So I think of this position, I grew up around this position, I grew up Orthodox, and this is basically the way that all the rabbis who taught me thought about things.

There are Orthodox perspectives that we will get to later in our discussion, maybe in a future episode, in which they don't argue that halacha trumps ethics in this way.

But for the most part, I think of this as a kind of Orthodox perspective, and the idea is, if you have a situation in which Jewish law tells you one thing, and modern secular ethics tells you something else, the conflict is real, and you go with what Jewish law tells you.

And I have an anecdote to share here. My grandfather, who was a rabbi on the Upper West Side of Manhattan for half a century and a great scholar, we used to have conversations about some of these things, and he would denigrate ethics by saying that they're basically just fads that come and go, right? You have moral fads that come and go with the generations, but halacha, Jewish law, is a reflection of the will of God, and that's eternal, right?

So that's halacha, and ethics can conflict, and in situations where they do, you go according to halacha, according to Jewish law.

MD:

Yeah, and maybe just something I'll add here is that a lot of folks who take this position have two other positions that really help to support it.

The first position is that we have some kind of really good idea that there was a revelation to us from God, right? And, we can be confident of what that revelation consists in. And generally, the thought is, "No, that revelation is the Torah," or something like that, right?

And so the more access we think we have to God's plan for the world, what God thinks is right, something along those lines, then the more comfortable we can be saying that halacha is going to trump.

And this is especially true because when it comes to secular ethics, a big problem that ethicists run into is what sorts of starting principles to use, what sorts of bedrock foundations of our philosophy are we going to use to even, down the road, get to particular cases?

And so if you think you have something like divine revelation, then that's really going to help you get around that problem.

EU-S:

Yeah, and I've heard people who take this position also argue exactly along those lines: that basically all of secular ethics is what they call, I think, cut flower ethics, which is the idea that it's, you know, the visual metaphor here is that you don't actually have roots in something in like a firm foundation. You're just sort of, you have to start with, you know, basically assumptions that are unjustifiable.

But if you have, you know, revelation, if you have divine revelation, then you have, you know, something to root your ethics in or something like that, right?

MD:

Totally, yeah. And this is something that really afflicts a lot of attempts to do Jewish ethics as well. What sorts of principles do you start from if you're not starting from revelation, right?

Because revelation is kind of the simplest in a lot of ways, although there are lots of things that we can say about what sort of revelation, what sort of, what philosophers might call “epistemological warrant” does it provide, which basically means what does it allow you to know, et cetera.

EU-S:

Right, so this is the first position. Halacha and ethics can conflict. And when they do, halacha trumps ethics. So an ethicist like Max Duboff might tell you that harvesting the kidneys of someone who's brain dead is the moral thing to do. But in Jewish law, Jewish law doesn't recognize brain death. So it says that you can't harvest kidneys of someone who's brain dead. And you have to follow Jewish law in this situation.

That's position number one.

Position number two: halacha and ethics can conflict, but ethics trumps halacha in these situations of conflict. So this is the position of, you know, what any sort of secular ethicist would hold. I think a lot of liberal Jews in the Reform and Reconstructionist movement probably share this position as well.

And the recognition here is that Jewish law might have something to say about an ethical question, but that the Jewish legal tradition ought to be considered on even footing with any other rational argument that you might make.

And how you determine whether or not to follow Jewish laws is the rational argument in its favor, more or less persuasive than any other rational argument that a secular ethicist might make.

So, you know, for example, Jewish law has a problem with male masturbation. An ethicist might come along and say that not only is male masturbation ethically permissible, but there's actually evidence that it's healthy and a beneficial practice. And so in this conflict, you know, someone who stakes out

this position that halacha and ethics can conflict and in those situations ethics trumps, you would say, go ahead and masturbate, Max, right?

MD:

Yeah, definitely. And one thing I'll say for this as well is that folks might be especially primed to take this position if they see the Torah and Jewish law and really Jewish practices as socially structured, socially contingent, socially constructive, right?

So if you think something like, well, the rabbis were living in a sexist world and so they create sexist law, then that would, if you want to reject sexism, seem to give you reason to privilege other kinds of ethics maybe that do a better job of moving past sexism over the rabbinic law that you think is structured in a sexist way.

EU-S:

Yeah, and I would say, again, I'm gonna make a generalization here, but I do want some touch points for our audience. And I would say that this perspective is the least likely to be coming from an Orthodox -

MD:

Oh, totally, yeah.

EU-S:

- from an Orthodox person. It would much more likely be coming from a Reform or Reconstructionist perspective -

MD:

Oh yeah.

EU-S:

Some even Conservative Jewish perspectives, I think, could work with this one.

MD:

Yeah, totally. I mean, there's a lot we could – so I'm a conservative Jew. I'm very involved in Conservative Judaism and also Conservative halachic discourse and thinking about sort of what is the practice of Conservative Jewish halacha, how does it function, how should it function.

And so one area where we see some of these sorts of considerations, particularly clearly in Conservative halacha, was in the debates in the mid-2000s about LGBTQ issues, right? So in 2006, there was a very important teshuva, rabbinic responsum, published in the Conservative world that laid the foundation for admitting openly gay and lesbian students to the rabbinical school.

EU-S:

Yeah, so those are positions one and two. One, again, halacha and ethics can conflict and halacha trumps. Two, halacha and ethics can conflict and ethics trumps.

And then we have a third position. Halacha and ethics can conflict and each trumps sometimes. So this is the last position in your schema that acknowledges that a conflict is possible. We're gonna get to the position that doesn't acknowledge that in a second here.

But the idea here is that in some circumstances of conflict, you have ethics prevailing and in other circumstances, you have Jewish law prevailing. So I'm just gonna spitball here as a thought experiment. You might say, for example, that polygamy, which for much of Jewish history was practiced, is now forbidden, but cross-dressing, which is explicitly prohibited by Jewish law, is now permitted, right?

And of course, the obvious question that comes out of this is, well, what are your criteria for determining when ethics trumps versus when halacha trumps?

And I think this is actually a very rare position. It is logically possible, so I think it's important that we bring it up, right? It is one of the logical possibilities here in thinking about the relationship between halacha and ethics, but it seems to me to be a very, very rare position.

Do you know of anyone who thinks this way?

MD:

Yeah, well, so the only example that I can really think of is, so Rabbi Zalman Schachter-Shalomi, Reb Zalman, who founded the Renewal movement and was one of the most important 20th century rabbinic thinkers, has a position on circumcision, which I think might be kind of similar to this position that halacha and ethics can conflict and each trumps sometimes.

So in general, he seems quite sympathetic to thinking that ethics has a pull on us and other sorts of concepts like ethics, things like political correctness, et cetera.

But when it comes to circumcision, as has been periodically noted, he really sees just a sort of special power of circumcision, and of covenant, that transcends ethics, that's not subject to ethical reasoning or something like that.

And to get to some of what you were saying before, Eli, when we have this position that maybe halacha trumps sometimes and ethics trumps sometimes, either we could have a sort of meta-principle, which dictates when one trumps and when the other trumps, or you might just have a sort of position which relies on intuition.

You might say something like, "Well, you know, you're just gonna know when halacha trumps and you're just gonna know when ethics trumps. It's gonna be that important." And this, I think, makes it difficult to have a conversation with someone who disagrees.

EU-S:

Yeah, and I mean, I think also there are ways you can look at the Jewish legal system and the principle that I'm about to articulate does come into some halachic decisions, you know, system of making decisions when it comes to Jewish law. But there are ways of talking about certain violations of Jewish law that are considered more serious on the tradition's own terms, and certain kinds of violations that are considered less serious.

So you can imagine a situation in which someone who held this third position that, you know, sometimes ethics trumps and sometimes halacha trumps might use that as a heuristic to say, "Okay, in a situation where we're dealing with something that's considered a severe violation of Jewish legal principles, that's when Jewish law trumps, but when it's a less severe kind of violation, that's when ethics could trump," or something like that.

MD:

Totally, yeah, that makes sense. And I mean, even within the rabbinic tradition, the halachic tradition, the distinction between mitzvot Derabanan and d'oraita really expresses something like this, right?

There's different statuses of practices of mitzvot, right? And some of them, you need more justification to break than others do. And so you might see something similar when we're comparing ethics to halacha.

EU-S:

Yeah.

And finally, our fourth position, your fourth position, Max, is halacha and ethics-- - Give me hours.

[both laughing]

EU-S:

Well, we'll see in a second whether it can be hours. But halacha and ethics can't conflict. So any apparent conflicts are at least resolvable in theory. So I think

this is a really interesting position because I think it assumes that for something to be true in halacha, in Jewish law, it has to be morally good. And my take on this position is that it's very medieval, that it has a medieval flavor to it. I think Maimonides falls into this camp specifically.

And I think it actually puts a pretty heavy burden on religious scholars to harmonize points of what they would consider to be seeming conflict between halacha and ethics. Because there are a lot of points of, I would say, actual conflict. I'm giving a little bit away about my position here.

But at least seeming conflict, there are plenty of examples that one can think of. We've mentioned already half a dozen just in our conversation. But the idea is that all of these apparent conflicts would have to be considered illusions or misunderstandings or something like that. And then the work of the religious scholar would be to harmonize and to explain where are we misunderstanding, how are these allusions manifesting.

So this is the fourth position. And in a way, it's one of the most interesting ones, I think.

MD:

Yeah, I totally agree. And this fourth position, that halacha and ethics can't truly conflict, goes along better with some positions that say that we can change what has been the normative halacha for a long time. So you're probably unlikely to take this position if you don't think that halacha can change in some pretty significant ways.

But even so, there could be a wide variety among folks who take this position of how much they think the halacha needs to change in order to be in line with ethics. So that's gonna depend on your view of ethics as well, which is quite interesting.

EU-S:

Yeah. I mean, I think I'm thinking about, since we were presenting these as logical possibilities, I think there's a logical possibility, and I probably run

across one or two of these people in the Orthodox world, of someone who would claim to stake out this position, but basically argue that any time there's a conflict, you're misunderstanding the ethics as opposed to misunderstanding the halacha, right?

Like that's logically possible to arrive at that conclusion from this position, in which case, I mean, I would consider that to be bad faith because I think that's just a cover for a more Orthodox position. For me, that's just a cover for our first position, which is halacha always trumps.

MD:

Yeah, but think about maybe a disagreement between two people about the value of the family or something like that, right?

So I take it that this is a topic I'm very interested in, ethics of the family, sort of what is the value of families, how should we sort of relate to families in society, a lot to say about that, not for today, but we can have a good faith debate between two ethicists, one who says that the family is actually pretty good, right?

What we might call a sort of lowercase C “social conservative” position, although not necessarily with other problems that often go along with social conservatism, in American society.

And then we might have someone else who says, the family is kind of irredeemable or really flawed or something like that, right? And we should generally do away with the family. Now, halacha clearly values the family, right? And values marriage and things like that.

So an ethicist who in good faith thinks that the family is valuable is going to be able to go along with the halachic position with less change than is another ethicist who maybe for reasons that don't have to do with halacha, like the other ethicist, comes to more of an anti-family position.

EU-S:

Yeah, but if either of them were seeking out this position, they'd have a lot of 'splainin' to do.

MD:

Oh, for sure. Yeah. I mean, and this is absolutely a position that if you take it, you need to think that a lot of Jewish halachic discussion up to this point has been flawed in certain kinds of important ways, and you kind of need to be okay with that.

And also you need to be prepared to do a lot of explaining, or to try to do a lot of explaining, or at least to think that there's a lot of explaining to be done in theory.

EU-S:

Yeah, and I mean, I think this is why it feels very medieval to me, because I feel like the medieval theological project was basically that – was an attempt to harmonize, to bring together, different kinds of theological and philosophical concerns in a way in which the contradictions were all smoothed out.

MD:

Yeah, yeah, no, totally. I mean, there's a sort of totalizing aspect to this view, that halacha and ethics can't ultimately conflict. It's very ambitious, and that might be a pro or con of the view.

And I'll note as well that Rabbi Ethan Tucker of Hadar is one of the most prominent proponents of this view, at least outside the Orthodox world, although there are maybe some folks in the Orthodox world who are big fans of this as well.

EU-S:

Yeah, and we'll come back to Tucker in a future conversation, because he wrote an essay that I think is very interesting, and I have a lot to say about it, and I'm sure you do too.

MD:

Yes, I definitely do.

EU-S:

All right, Max, so do you think that we have done your positions justice?

MD:

Yeah, I think this is great. It's really good to have these on the table. Why don't we just run through them one more time? The first one, right, that halachan ethics can conflict and halacha trumps, right? Okay. The second one, halacha and ethics can conflict and ethics trumps, right? Okay.

Third one, halacha and ethics can conflict and each one trumps *sometimes*, right? Sometimes you go with halacha, sometimes you go with ethics. And then our fourth position, that halacha and ethics can't ultimately conflict. We might have apparent conflicts, but they're resolvable, at least in theory.

EU-S:

Excellent. So, Max, you knew this was coming...

MD:

[laughing]

EU-S:

Which one of these positions do you take?

MD:

So, I used to be in favor of number two. So, definitely, I mean, I think, look, there are big tensions, at the very least, between ethics and halacha. There are absolutely parts of halacha that really seem ethically problematic. And definitely for a while, I thought that just the way that made the most sense to go is to say that, well, halacha and ethics can conflict and ethics is going to have to trump. Certainly, as an ethicist, I'm deeply invested in ethics.

More recently, though, I've become pretty sympathetic to number four, the idea that halacha and ethics can't ultimately conflict. And I think a lot of the reason for thinking that is that I really want halacha to be able to shape my life in a meaningful way.

And if halacha and ethics can conflict, and do conflict in a lot of cases, then it's really hard to see halacha as being authoritative in an important way, as sort of being a reasonable way to structure one's life, being a way to structure one's life that feels authentic.

And I really do want halacha to be able to have that role. Maybe I'm being a little idealistic. Maybe this won't end up being possible [laughs]. But it really does mean that we need to think really hard about how to reconcile halacha and ethics in the case of when they do appear to conflict. And also, I think that we need to be open to a lot of halachic change as well. And certainly, I wouldn't take position four without being open to a lot of halachic change.

But I'm super curious to hear where you're coming from.

EU-S:

Yeah, so before we get to my position, I just need to interrogate that a little bit, because you just said—

MD:

Great, yeah.

EU-S:

--you just dropped a bomb.

MD:

No, no, totally, totally. Yeah, I understand that this is not necessarily a common way to view halacha. And it's certainly not the way that halacha tends to be viewed in traditional sources and in the Orthodox world today.

EU-S:

Right, so what I would ask-- so let me start here. Do you believe, as I think many people who hold our first position, that halacha and ethics can conflict, but when they do, halacha trumps? Do you believe that halacha is a reflection of God's will? I know we've been avoiding theology until now, but I don't think this is an avoid-- I think we need to get to the bottom of this.

So what are your thoughts about the relationship between halacha and the will of God, if you will?

MD:

Totally, yeah. No, I mean, this is a really important question.

And I think we might get into this in other conversations as well, just the importance of theology in figuring out how to do something like Jewish ethics, and also what sorts of debates we can have with other Jews about ethical topics or halachic topics.

So for me, I don't quite see halacha as God's will. Certainly, I see halacha as very importantly shaped by humans and by human society and by human values at different historical points.

And that means that problematic things that humans do kind of "infect" halacha in a way, but that doesn't mean that halacha is irredeemable. That's the position that I want to try to maintain at least. But rather, sometimes we do need to try to make halacha as a system that is shaped by humans more just.

And in a way, I try to at least view it like we're making halacha more godly, right? That we're trying to find the godliest version of halacha that we can. Now, is that something that we're going to achieve in our lifetime? No, of course not.

But this is, I think, something that we can see ourselves doing with ethics as well. This idea that the-- well, I don't really believe that the moral arc of the universe bends towards justice for various reasons. But this idea of sort of making progress in general is something I care about in both halacha and in ethics.

And maybe just briefly, I'll note some folks might be familiar with the dialogue "Euthyphro" by Plato. And one of the big questions that's dealt with in that dialogue is, is what's pious because the gods love it?

Or do the gods love it because it's pious, right?

And I think we can ask this sort of "Euthyphro" problem, as it's sometimes called, about halacha, right? Is halacha holy and important to us because it is godly in some more straightforward sense? Or does God love halacha? Does God sort of ratify halacha because it's good sort of independently of God?

And I go more for the latter view, right? That halacha allows us to relate to God insofar as halacha is good in other ways. Does that make some sense?

EU-S:

Yes, yes. No, that's very helpful. Thank you. So on my side, I'm very, very strongly in camp number two, that halacha and ethics can conflict and that when they do, ethics ought to trump. This is the camp that you abandoned me in, Max.

MD:

[laughter] I'm still-- I still appreciate what you're doing there, Eli.

EU-S:

Yeah, yeah. It's lonely here now.

No, but-- so I want to take this in two stages. The first stage is the, can they conflict? And I think you and I would both agree that in a sort of trivial way, this is obviously true, right? It is obviously true that Jewish law conflicts with ethics all over the place. And there's a very good reason for that.

There are two systems that evolved in completely different contexts, side by side with each other. I would say that halacha was probably more aware of what was going on in ethics than ethics being aware of what was going on in halacha in general. I think that's a fair thing to say.

But they evolved in completely different areas of the world and with completely different concerns. And they serve different needs. So it's just sort of trivially obvious to me that you're going to end up in situations where they conflict.

I mean, there's some very stark-- I like the starker examples of the conflict, like the fact that some half dozen of the 613 commandments that the rabbis identified are incumbent upon Jews -- there's like half a dozen that relate to genocide of the people living in the land of Cain.

And other obvious examples of this sort of stark conflict of ethics and halacha would be the sort of comfort with which the Bible-- and then later, even the rabbis right into the Talmud -- think about slavery and the sort of callousness with which they approach those subjects.

So we could talk about dozens and dozens of examples of points of friction or conflict between ethics and halacha. But I think it's trivially true that they do conflict, that they can conflict. And I think when you say that they can't, that's-- it's very much in line with this sort of aspirational idea that you're articulating, right?

MD:

Yeah, no, totally. I mean, I totally agree with you that at this sort of basic level, they can conflict. And certainly, a lot of the process of creating better Jewish societies and a better world will involve really grappling with these conflicts.

So for example, I mean, if we're thinking about something like the role of women in certain kinds of Haredi communities or something like that, I'm not making the claim that women in fundamentalist communities are always oppressed. I'm not making that claim.

But certainly, like, sort of thinking about ways that the halacha seems to be telling folks to do something which looks unjust from an ethical perspective is bound up with relevant ethical thinking.

And I think this is what I would want to say to some of the really important and difficult cases you've raised with, for example, genocide and slavery, that maybe we can think about the ways that creating a better halachic system and sort of contextualizing maybe where some of those halachot were coming from can help us be better Jews and people more broadly, and sort of bring together the different parts of ourselves who are acting and living in the world.

But yeah, it's definitely aspirational, as you say.

EU-S:

Yeah, and I mean, I think from my perspective, you can look at the history of the halachic tradition of Jewish law of the Jewish tradition as kind of a way of dealing with these situations, with these conflicts, and coming up with creative solutions to move the Jewish tradition forward.

You know, it's very rabbinic to notice when something is bothering you about your inherited religious tradition and coming up with a dynamic and creative legal workaround to figure out a way to move things forward in a more just fashion.

MD:

Yeah, no, I mean, I think you're raising a super helpful point. And this is also an area where halacha and ethics are methodologically different.

So change often is a lot more dramatic, a lot quicker. There's more room for disagreement in ethics, right? And in halacha, there were a lot of inflection points that we can see where there are big changes. And we can and should look at those. I know that's something that you're very interested in, Eli, with good reason.

But in general, the process of change in halacha is slower. There's a lot more weight that's given to tradition. And then a lot of the interesting differences in halachic practice between different groups of Jews, different Jewish movements, have to do with in what ways we give deference to tradition and in what ways we can more explicitly innovate, what sorts of values we can use.

But I think that if we want to look at the relationship between halacha and ethics, then we do need to be thinking about these methodological questions, these points about change.

EU-S:

Yeah, I'm an impatient Jew. So I see-- it's sort of classic example to me is the kind of the JOFA situation, where you have these brilliant women trying to figure out a way to work within incredible constraints within a kind of orthodox conception of halacha to somehow inch the ball forward when it comes to the role of women in the Jewish community.

And I just like-- I have a lot of respect for these women. And I also am not a patient Jew. And this is not an approach that I can-- you know, I mean, we're talking the kind of inching forward, the incrementalism, the -- I just don't have patience for this. I'm not even a woman, and I don't have patience for this. I can't even-- I can't imagine what it's like to be a woman with these sorts of dual commitments, you know, the commitment to advancing the role of women in the Jewish tradition and in the Jewish world, and also this commitment to a very, what to me seems like a stifling commitment to the religious tradition, to halacha.

But I do want to say that the reason I think that ethics trumps halacha whenever those two systems come into conflict is not because of my impatience, and it's not because of a lack of respect for the tradition, which I hope people can hear from the way I talk about this, that I have a deep respect for the tradition and a deep pride in what it represents in the world.

But it really does come down to a kind of-- to the theological questions that we were getting to. And I'm a passionate agnostic. And what that means for me is that nothing in the world that I care about has anything to do with God. And this is kind of a position that I don't hear articulated a lot, but I think it's really important.

Like, I don't believe that something is ethical because God says it's right or wrong. I think that that is-- that's not a rational position. I think that that's kind of actually an authoritarian way of looking at the world. And it's a category error, actually. I think when people-- you know, we talked before about the cut flowers ethics critique of secular ethics coming from the religious and, you know, the religious people believing that they have divine revelation and that's what grounds their ethics.

And I think it's quite the opposite. If you are grounding your ethical system in the will of an all-powerful divine being, you're not doing ethics anymore, as far as I'm concerned.

MD:

Yeah. I mean, I think that it's really helpful that you're laying a lot of this on the table. And I personally-- I mean, I'm sympathetic to a lot of what you're saying with being very uncomfortable with any sort of "divine command theory" in ethics, as it's often called. And, you know, it even seems like something like divine commands are a bit in tension with how we might want to view our own relationship with God as being a real sort of give and take.

I mean, this is a big question, and there's a lot in the rabbinic tradition about the importance of commandedness and of fear of heaven and things like that.

For myself, I mean, here's how I often view these questions, and other people might find this helpful or not so much. I mean, I see ethics as a primary source of truth or something like that. And halacha and Judaism more broadly as a primary source of meaning for me. And so the ways that we pursue meaning ought not to conflict with ethics, right? It's a problem if the ways that we're pursuing meaning are themselves unethical.

But that doesn't mean in any kind of straightforward way that truth is going to trump meaning, right? They're both really important in somewhat different ways, and they can conflict.

I mean, I'll say a little bit of philosophical “inside baseball.” So French existentialism of the 1940s, for example, makes the mistake of taking meaning to be kind of what there is to ethics. They're not the only ones who do this. There are some other examples of philosophical views that do that.

So instead, I want to see meaning and truth as each being really important, something we have sort of independent reasons to care about.

And then when we bring them together in one life and both are sort of telling us how to live, then we do need to have a give and take between them.

EU-S:

Yeah, I think that's really-- that's a beautiful way of putting it, Max. And it's interesting also to think about this. I don't know if you're familiar with Yashayla Labovitz.

MD:

Yeah, yeah, a bit.

EU-S:

But I think he's relevant here in a really interesting way in that he was an agnostic. A lot of people don't know this, but I know this for a fact because one of my mentors was one of his students.

MD:

I didn't know that, actually. Yeah.

EU-S:

Yeah, it's not well known. I've said this before in public forums, and there's like a gasp that goes out from the crowd. But it's true. He was an agnostic. He was a very brilliant man. But he was a halachic Jew. And he had this concept of being “mitzueh,” that he was commanded, even though he was an agnostic.

And so it's this sort of unusual-- it's a very unusual kind of position. You don't find that-- you need a Yeshayahu Leibowitz to actually live that way, right?

MD:

Yeah.

EU-S:

But it's interesting in the -- if you think about -- I think, an obvious question here that anyone would ask someone like me is, why value halacha at all if you don't think it has any relationship to God's will? And I think one answer would be, well, you can point to someone like Yeshayahu Leibowitz, who was also an agnostic and found meaning in your language in the tradition.

And then the sort of larger, I think, way that you're framing this of meaning being one thing and truth being slightly-- a slightly different thing that can sometimes be in tension with each other, I think, is really beautiful.

MD:

Yeah.

Yeah, I mean, and this is a question I've thought about a lot, you know. To what extent does halacha make sense if it's not any kind of straightforward divine revelation?

And there are some really interesting responses to this. But one thing I'll say now is that I don't think that relationship with God is limited to believing in God in a sort of traditional sense, right? What we often call faith is not a prerequisite for feeling like one is able to have a sort of meaningful give and take in a conversation with Jewish tradition – or Jewish tradition to have sort of a pull over one's life.

But, you know, look, I'm not sure that my sort of view is something that would necessarily be popular or generalizable. You know, it's just for me. But certainly, it comes out of struggling with, I think, a lot of the same questions as you and, you know, discomfort with a lot of what it might seem like God wants us to do that we think is problematic if we do think that halacha is a revelation of God's will.

EU-S;

All right, Max, I think it's time to bring this back to circumcision. What do you say?

MD:

[laughter] Yeah, sounds like a plan.

EU-S:

OK, so my question to you, Max, is do you think that circumcision constitutes an area of conflict between ethics and the Jewish tradition? Do you think that that is a legitimate area of conflict? Now now, I understand that you're in position four, you're in camp four, and in theory, they can't actually conflict.

MD:

Indeed, indeed.

EU-S:

But like in the mundane way, do you think that circumcision is an area of conflict between ethics and the Jewish tradition?

MD:

Yeah, no, I mean, I do absolutely think it's an area of conflict. I've been using the word tension a bit, right, for something-- maybe that's not quite a conflict, maybe resolvable in some ways. No, but definitely, I think that there's some significant conflict here with Jewish tradition – ethics on circumcision that we need to think about how to resolve.

And so one of the considerations that I've been thinking about a lot is what egalitarianism means. So egalitarianism is quite an important concept in a lot of liberal, but it's not orthodox Judaism today. And egalitarianism is often taken to talk about ritual roles, right? So starting in the '70s, this became a lot more common in the U.S. that, for example, women could lead anything men could. B'nai mitzvah, that is for girls, became as common as b'nai mitzvah.

And one question that I think a lot about, though, is what does it mean to build a truly egalitarian community, one that I think has to be deeply informed by feminists, by anti-racist considerations, et cetera?

And one of the things that I think is not necessarily talked about enough with circumcision is the way that it takes away from our attempts to build truly egalitarian communities. And so I think that figuring out a better way to look at the halacha of circumcision is part and parcel of a much broader project of making halacha more egalitarian in this really expansive sense.

This idea of body marking, of marking maleness, of surgery without consent, or in a case where there's not autonomy, all of these considerations, which I think we should bring up in the ethical discussion of circumcision, speak to these concerns of egalitarianism in my mind.

And this is not necessarily the way that everyone would want to frame it, but it's a way that I find helpful for myself in thinking through circumcision. But certainly, I'm deeply uncomfortable with performing surgical procedures that are not medically indicated without consent.

And one problem in the halachic tradition as well is that consent isn't necessarily a halachic value. This is a difficult question, maybe something that we'll leave for another day. But there's a common idea that in halacha that our bodies are not our own, that they actually belong to God. And I think that's something that you and I, Eli, would both disagree with because of some other --

EU-S:

Yeah, yeah. Yeah, that's not an idea that I'm comfortable with.

MD:

– considerations as well.

EU-S:

But to your point about egalitarianism, I often, when I'm having conversations with someone who's religious, it'll oftentimes be like a liberal rabbi, I'll try and drive that point home by saying to them, look, the more emphasis and importance you place on the rite of circumcision, the less important women are in the Jewish world. And it's just there's no way around that, right? That's just a fact.

That the more you sing the praises of circumcision and talk about how important it is, the more you're highlighting the fact that it only applies to half of the population. I think it's a pretty stark and obvious kind of bind that you put yourself in. And I like to say that because I think it drives home the point to someone who does value egalitarianism to understand that this particular -- it doesn't matter what you do to try and equalize it on the female side. It's always going to be-- it's always going to create this emphasis on the male body.

MD:

Yeah, I think that's certainly right. And there are sometimes attempts, I think, to think of body-based rituals that are associated with those who are female. And so sometimes folks are thinking about things like menstruation as an analog to circumcision. But the problem there is that then you might be reinforcing a sort of biological essentialism, right? So circumcision might be doing this to some extent.

But certainly, if you're trying to come up with ways of talking more about the body, then you're really going to run the risk of making bodies limiting our potential. And that could really take away from some of these egalitarian concerns.

EU-S:

Yeah, and I think Lawrence Hoffman has done some really interesting work on this. And the conclusions he arrived at disturbed him so much that he postponed the publication of his book on this subject by a decade, I think he says in the introduction.

And his conclusion, which I think is well-supported by the texts that he cites, is that in the rabbinic imagination, there is a kind of gender essentialism that goes all the way down to the level of the blood, that female blood is a pollutant in the rabbinic imagination, and male blood is salvific.

MD:

Yeah, yeah, no, I mean, and I think a lot of Rabbi Hoffman's work holds up really well. And even though it's a few decades old at this point, a lot of the important considerations are still incisive, communal, and textual critiques.

EU-S:

Yeah, so I, of course, agree that circumcision is an area of conflict between ethics and the Jewish tradition. I made a whole film about it.

MD:

Indeed.

EU-S:

I think it's one of those stark examples that I like. It's one of those inescapable examples of a conflict between these two systems. And I think the only way to say that it isn't, right, there is a way in good faith to say that it isn't. You can't do it from the side of the Jewish tradition, right? The Jewish-- you can't say the Jewish tradition doesn't insist on this. It does.

The Jewish tradition insists that parents circumcise their male boys at eight days. And anyone who tells you otherwise is being dishonest with you. But you could come at this from the side of saying, circumcision is not an ethical violation. And there are philosophers who try to make that argument. And in that way, if those philosophers are right, then it isn't a conflict, because the Jewish tradition is recommending something that is not ethically problematic.

My problem is I don't find any of those arguments persuasive. Are you-- you know who-- you know the people I'm talking about here, right?

MD:

Totally, yeah. No, I don't find those persuasive as well. I mean, for a few different reasons. But as is often discussed, I think, in the literature on this, or at least in conversations, and certainly in both of our circles, attempts to find medical justification for circumcision have been, in large part, a cure in search of a disease.

You know, that the kind of what the proposed medical benefits of circumcision are have shifted so much and seem to be really socially informed in problematic ways. And you really can't escape, I think, this basic issue of imposing a surgical procedure with risks on someone who's not directly benefited and who's not really able to give their consent. But I mean-- right.

I mean, what I just said, though, does open up a bit of a door, right? So certainly, someone who thinks that circumcision is really beneficial in a religious sense, and that religious sense is important enough, is going to be able to disagree with us. But then this just gets back to our schema above, and maybe claim one, that halachah trumps ethics.

EU-S:

Right.

And yeah. So then the question is, I suppose-- my last question for you today, Max-- what should Jews who care about their history, and their religion, and their tradition, but also with us, find this practice to be ethically problematic, or abhorrent, even, or mutilation? Or -- what's a Jew who cares about their tradition, and their religious identity, and their history, but also has a deep problem with this central rite? What are they to do? How do we move that ball forward?

MD:

Yeah, this is certainly a really, really difficult question. I mean, so one thing that I try to do, and that I think anyone who really cares about this issue should try to do, is focus on the lived experiences of folks who are affected by circumcision in all kinds of different circumstances.

As an ethicist, it's really important to me that we start with and remain sensitive to lived experiences. So I think trying to understand both what it's like for folks to have undergone circumcision at all different ages, and also what the significance is to different folks of circumcision is going to be the basis of how we move forward.

And a lot of that will involve shining a light on the perspectives of Jews who are opting out of circumcision, or who are uncomfortable with circumcision, who generally have been silenced. That's a lot of what Bruchim is doing.

And then when it comes to halacha, I think a lot of what we can be doing is really thinking critically about the resources that our tradition provides, and

also about the sorts of ethical values that we can authentically bring to the halachic system.

So in the sort of position that I've been outlining, because ethics doesn't simply trump halacha, there are different sorts of ethical considerations that can legitimately inform halacha, and maybe not all ethical considerations can.

And I say “inform halacha,” and what the circumstances are when certain kinds of values can legitimately inform halacha, that's a really difficult question, and not something we'll go into now. But what I mean is sort of allow halacha to continue to function as a system in the way that we think is important. What will both allow halacha to be more authentic to our values and also operate as a system?

Because it gains power from being a system, power over us, power in relation to the tradition. And I'm definitely concerned that it be able to remain whole, but I think it can bear to be changed a lot and still remain whole in a sort of important sense.

And so I think that looking at a real variety of sources and also looking at the sorts of values which are both reflected in Jewish tradition by Jews today and in society is super important. So I mean, here's an example.

We see folks talking a lot about Jewish responses to abortion right now in the wake of Dobbs a little over a year ago and even before since abortion rights have been under threat in the U.S. for so long.

And I think abortion is one of those topics where what the halacha has to say is not necessarily the most helpful for someone who really wants to campaign strongly for abortion rights. Which is not to say that the halacha is irrelevant. The question then becomes, how do we campaign for abortion rights as Jews, even though halacha is not our only perspective? And even though with the sorts of values that we're bringing to our political organizing, we might be saying somewhat different things than we would if we were just basing our view on the halacha.

So yeah, just to sum up, I think sensitivity to lived experience, sensitivity to our tradition, sensitivity to our own values, and really, really engaging in a give and take with other folks in our communities and with the tradition. I mean, I think that we're in a continuing conversation with the rabbis of old. And fortunately, the perspectives that we have on the table now are so, so much broader. And we as Jews are so much the better for it. And I want to see that process continue.

But I'm super curious to hear your thoughts as well, Eli, on how we move forward.

EU-S:

Yeah, I mean, I have a lot of thoughts about this.

The first thing I want to say is, you know, if you're listening to this and you are a Jew that fits the description of this question, in other words, you care very much about your identity and your culture and your history, and you may be even sensitive to some of the religious concerns that we've been talking about, and you are disturbed by this, right?

Find Bruchim. There are lots of us! And we have created a wonderful community for people just like you to be able to be their full authentic selves and not have to park their ethical concerns at the door.

MD:

Absolutely.

EU-S:

And so that's the first thing I have to say about that. You know, I also just like, in a larger sense, I think the Blu Greenberg quote is, when there's a rabbinic will, there's a halachic way. And you know, I actually don't think it's a heavy lift. I don't think that arguing for postponing the decision making about circumcision to an age when an individual can make their own mind up about their own body is a big halachic lift. It would be refraining from performing

one mitzvat aseh. And yes, it's an important one. And yes, you know, there's a lot of cultural and anthropological baggage that comes along with it. But in terms of just sort of purely religious law, it's not as big a deal as people think.

There is no temple. So the restrictions on what “intact Jews,” you know, Jews who have not been circumcised, male Jews who have not been circumcised, I should say, the limits on what they can do in terms of participation in Jewish life from a strictly Jewish law perspective are zero at this point in history.

So yeah, I think people kind of are very emotional about this topic. And they mischaracterize the consequences of leaving this decision to individuals at an age when they can consent to this procedure. So that's one side of things.

The other side is I also think people have this tendency to think that this is some kind of a linchpin in Jewish practice. And I just don't think that's true.

MD:

Yeah, agreed.

EU-S:

I just, like, there are other Jewish practices that are, I think, you know, much more wholesome, much less violent, can deliver much more meaning to your life than cutting the genitals of your children.

And I just, I think people have a tendency to kind of, again, in a very emotional way and for obvious and understandable historical reasons, overemphasize the importance of this to Jewish identity and to Jewish life.

And I just think it's, you know, we can all take a deep breath and recognize that the Jewish tradition is incredibly resilient and has made much more dramatic and radical changes over its history than, you know, postponing this one, like the timing of this, of like one right to an age of consent.

So my feeling is that if we can overcome the taboo nature of the subject and, you know, sort of understand the psychological complexity that comes with

this issue and talk about that intelligently, I see a very bright future where people don't need or don't feel the need to circumcise their boys at eight days anymore.

MD:

Yeah, no, I think you bring up so many good points, Eli, which I'll maybe only respond to briefly. But in terms of, you know, the idea of postponing circumcision, I'm definitely concerned about any kinds of body marking, especially that involved genitalia at any age and the possibility for coercion. But certainly that would be an improvement in a lot of ways to not have as many of the issues around consent.

And something else, you know, that I would say, but just personally, is that my own circumcision has never been something that was really meaningful for me. Like I can't think of a time when it's sort of like it really brought me any kind of connection with my Judaism. But when I started keeping kosher and when I started having more of a community around Shabbat, that changed my life.

And I really want to see us as Jews invest in ways of creating meaningful Jewish experiences, spaces, and thinking, and ways of creating meaningful Jewish lives, most of all. And for thinking about circumcision and maybe that gets to that point for some folks, but there's a lot that's so much more central, I think, to my Judaism and really to that of many others.

And even in the B'rit Milah ceremonies now, we can see that the naming is more important for a lot of folks than the cutting itself, than the circumcision.

And I think that shows something really deep about where a lot of Jews' priorities lie.

EU-S:

Max, thank you so much for joining me today.

MD:

Eli, it's been such a pleasure to chat with you and I really got a lot out of this and I'm sure our listeners will too.

(gentle music)

ELIYAHU UNGAR-SARGON:

Next time on the Bruchim Podcast...

So this is what he says. First of all, the fact that the Torah is not silent in this case, in the case of circumcision, nor in any case where it has affirmatively commanded a specific action, can and should be taken as a fundamental statement of the practice's morality. I was like, I had to read that sentence like five times. I could not believe that he had actually said that.

Because at this point, I am totally out. I'm like, this was a -- Max, this was a bait and switch of epic proportions. I was like, "oh, we're not talking about the same thing anymore." So how did you feel when you read that sentence? 'Cause to me, it was just like, oh, we are off the rails.

MAX DUBOFF:

I really sympathize with where you're coming from here, but I think, personally, I read that sentence or read that sentence as aspirational, especially in the context of some of Rabbi Tucker's other thought.

And I'm not fully on board with this, but what I think he's asking us to do is to, when we get to something in the Torah that appears to be really morally on a different page and to confront it with at least somewhat of an open mind and try to be charitable towards it and try to sort of understand how that practice could fit into a morally good life.

EU-S:

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[Music]