



## NEAL SCHEINDLIN: UNTYING ETHICAL KNOTS IN JUDAISM

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Joshua Holo: Welcome to the College Commons Podcast and our acclaimed authors series, brought to you by HUC Connect together with the Jewish Book Council. We'll meet authors recognized by the National Jewish Book Awards and discuss their celebrated books. My name is Joshua Holo, Dean of HUC's Skirball Campus in Los Angeles and your host.

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JH: Welcome to this episode of the College Commons Podcast, where we're gonna meet Rabbi Neal Scheindlin. Rabbi Scheindlin is an adjunct lecturer in rabbinics and biblical commentaries at the Hebrew Union College and the Ziegler School of Rabbinic Studies, both in Los Angeles. For 18 years, he taught and developed curriculum in Jewish law and ethics at Milken Community Schools. His recent book, *The Jewish Family Ethics Textbook*, was a finalist for the 2021 National Jewish Book Award. It's a textbook, meaning intended primarily for teaching, but it's also the raw material for a course. It's a source book and chock-full of fascinating case studies, rich with material, and food for thought. To my friend and colleague Rabbi Neal Scheindlin, welcome to the College Commons Podcast.

Neal Scheindlin: Thank you. It's a pleasure to be here.

JH: Before we get into some of the cases, which are really engrossing and cover things like social media, sexual intimacy, abortion, and many, many others, let's start with the big picture. Tell us about ethics as you pose it in your introduction, that is "as the discernment between competing goods."

NS: That's right, Josh, I always like to emphasize that where the study of ethics gets interesting, and where the challenges of ethics really matter, is when there are two values or two positive goods that come into conflict with each other. It's not merely a matter of learn to choose good and not to do the wrong thing, but it's really a matter when we confront a very difficult decision, as in some of the areas of life that you mentioned, that we have to figure out how do we weigh these different values against each other. And that's where Jewish tradition provides us an interesting model for thinking about the problems.

JH: Not only a model but also specific models, meaning it's not just an abstract structure, that the rabbis themselves and Torah actually ask some quite pertinent questions themselves.

NS: That's right, and their answers provide us with values and sometimes direct guidance. But one of the themes that emerges from the textbook is the multi-vocality of the tradition. By that I mean that often enough the sources themselves will prevent disagreements on the same question, and then we're left to continue working on how do we choose between these two opinions that appear in the tradition and both are valued by the tradition.

JH: Sticking for the moment in the big picture realm of our topic, share with us your definition of morals and ethics.

NS: I understand morals as meaning the larger values or the overarching ideals that we think we should strive for in life, and where ethics is the study of how do we apply those to concrete situations that we confront.

JH: Do you think your definition of ethics, as opposed to or distinct from morals, could be a helpful guideline not only for personal investigation in one's behavior but also in the civic realm? Especially in the secular civic realm where we acknowledge that we can't dictate each other's morals, which is an internal orientation towards values as you put it, but where we do undertake to negotiate and sometimes indeed to dictate shared ethics.

NS: It's a provocative idea that might actually help in a society where people tend to talk past each other rather than to each other. Our tradition presents a model of stating clearly what one believes and the reasons for it while hearing the voice of the other. I would argue, as I mention repeatedly in the book, that the rabbinic literature that we draw on so much for this work preserves voices, including opinions that are rejected in their time. This one I don't use in the book, but there's a place in the Mishnah that explicitly says, "Why do we preserve these opinions that are associated with just one individual and have been rejected?" And the answer is, "Because there might come a time when someone will see the value in them." This book, the title indicates that it's far more family-focused and personal-focused, but certainly there are implications for the state of the society.

JH: I should hope so. We can use it. Let's get into some of the case studies. I loved the fact that you tackled honesty. And I point out that this book is titled The Jewish Family Ethics Textbook. And you tackle many of the leading concerns of young people in particular. You really give a lot of attention to that. In one section, you discuss plagiarism, intellectual property, and the pressures to get good grades, where you test the bounds of using those sources of information. Most of all, however, I think you do us a really great service by diving into the gray rather than manufacturing unrealistic cut-and-dried scenarios. In particular, I'd like to ask you to speak to what you call "potential plagiarism." What's going on there? Where is the gray, and how do you help us work through it?

NS: You're referring to a case in chapter two about a young woman who's an undergraduate. She's taking an art history course, and the assignment is to write about several paintings of the student's choice and to discuss why she appreciates these paintings. And student finds it very difficult to do so she chooses the set of paintings and she starts reading up about them a little bit. In her reading, she finds that what people write about the paintings clarifies her own thinking. And she essentially agrees with what she reads so she writes that up, presenting it as her own views, where the policy of the university indicates that she needed to give citations and give credit for the work that she read. What the student points out in her own self-defense is that she didn't use other people's new findings. It was merely expressions of opinion. And she thought, perhaps that was different. And since it was how she felt as well, she could simply write that up and hand that in.

NS: When I came across the scenario, it struck me as very common, true-to-life situation. I had seen things like that in my work with high school students, I had heard about it from friends who work with undergraduates, even graduate students sometimes. And it's, especially in the time that we live, when so much information is so readily available, so easily through a simple online search, it seems like the kind of dilemma that teachers and their students, or people doing any kind of similar work, could use to grapple with the dilemmas that they sometimes confront.

JH: What was the resolution, in fact, in that case, and what were some of the due resources you use to gain insight?

NS: I believe it was materials from Pennsylvania State University, that they use it to orient their students to academic standards as they begin post-secondary study. The university's determination was that that does in fact constitute plagiarism. It's simply a failure to give credit since she read it from various sources. The sources in Jewish ethics would tend to agree with that determination. There's a very clear statement that appears in two different places in Rabbinic literature, that it freezes it positively. It says, "Anyone who cites something in the name of the person who originally said it, brings redemption to the world." It's perhaps a bit of an exaggeration.

JH: Attempted aspect of a footnote.

NS: After all.

[laughter]

NS: But it's a way of stressing how important it is to give credit to the person who originally said it. There's a Jewish concept that comes up in a couple of different contexts, in the book called *Geneivat da'at*. It's just literally the theft of someone's mind or taking advantage of someone's lack of awareness of something and using another person's idea or words that they wrote without giving them credit or kind of reading over their shoulder and taking it. That also violates

that value. I think it's a form of Geneivat da'at to present as mine, what is actually yours even when it's not fact or research, but merely opinion. Even so, because it's still ought to be associated with the person who originally said it. The young woman in this case study could easily solve the problem with a citation and then go on to explain why she agrees with the person whose article she read.

JH: Rather bravely, I think, you also begin to enter the ethical thicket of social media. Share one of the cases from that section, in particular as relates to another terribly relevant item that you raise, specifically with youth but really in life, namely whistleblowing, and its related matters of tattling, and snitching, and the like.

NS: Some of the case studies, as you probably can tell, are actually taken from the news and from real-life occurrences, and others are my fictionalization of things that do happen around us. In this one, one high school student is aware that his classmate has cheated on an exam. And the problem that confronts him is that the school has an honor code, whose policy is that he is as much responsible to report that dishonesty as the other student is for her dishonesty in cheating. The reason that the girl student cheated in the first place is that she is the type of high school student who is extremely ambitious, extremely focused on her future college admissions. And she just found herself in the wee hours of the morning, unable to go on, unable to continue studying so she wrote herself a cheat sheet for the exam the next morning. The boy who's her classmate confronts his reluctance to follow the school's honor code because the students generally have among themselves a kind of code of silence, that you don't tell on each other. We explore in the chapter some texts that speak about, first of all, there's the value of tochacha, that's rebuke is the literal translation. It's a commandment that appears right in Leviticus, chapter 19. The purpose of the commandment seems to be that each of us should confront other people when they've done something wrong and point out to them ways to make it right or how they should behave.

NS: The first question becomes, Does the boy in the story, is his first responsibility to confront the girl directly? But then, because of the honor code in the school, he has a responsibility to go to the teacher or the administration, according to those rules. Then we explore some texts that talk about the ethics of taking tochacha further beyond the person that did the wrong. And while there's some reluctance about reporting in parts of the tradition, especially in medieval era, when there's a great fear of going to authorities outside the Jewish community for social and political reasons. With that minor proviso that's a bit of an exception I come to the conclusion that as long as the school's system is just, that it's applied fairly, the boy in question does have a responsibility to play according to those rules, even according to Jewish ethics.

JH: What do you think is at the root of the human, and I say human advisedly, the human revulsion for tattling, even when the issue being reported is often in it of itself something that all parties agree needs to stop? And I'd go even further. Generally, I think it's fair to say that we expect people not to tell on each other, even when there is no presumptive loyalty between the parties in question in the first place. What's going on there? Does it have to do with our core

social makeup as social mammals and our need to trust one another to get through the day? Is it about an instinctive distrust for authority? What do you think is going on?

NS: I'll share a couple of thoughts. One of the key differences between Jewish tradition and the Jewish way of thinking about things, and on the other side, the way that we think in the United States of America and the atmosphere in which you grow up, is the balance between the individual and the community. Jewish tradition highly communitarian in its expression, and American society, of course, is founded in individualism and while I think it's possible maybe to make the contrast sharper than it rightly should be, it still really exists. And I found in the years in the Jewish high school, that Jewish Studies is very counter-cultural. Students are so deeply influenced by their American cultures and their subcultures, that tends to be the structures of their thinking.

NS: I would often hear in theoretical discussions with students about what should happen when there's cheating in the school. You'd hear, "Well, that's the... It's the cheaters problem. It's not anyone else's concern." And even if you say, "Well, doesn't it damage the teacher, doesn't it harm the rest of the classes?" "No, no. If the student wants to engage in that behavior, let her engage in it, it's not up to me." It's highly, highly, highly individualistic. The second you invoke the suspicion of authority, and when we're talking about adolescents, there's a natural revulsion against any expression of authority, or anyone who attempts to tell them what they should be doing. And I'll end with this, and that of course, is one of the joys of teaching material that says that, "There's a point on this side and there's a good point on the opposite side. What do you think about it?" That opens up a conversation with adolescents as well as with adults.

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JH: In the section on sexuality, you raise questions about LGBTQ Plus orientations and identities. Can you sketch for us some of the tensions built into the Jewish tradition and the framework that you, as a person thinking about an ethical direction, would like to see us, who care about the Jewish tradition, use in order to navigate those various voices, as you've put it?

NS: Sexuality and sexual ethics is a very interesting topic to explore through Jewish tradition. And I should say clearly at some moments it's very difficult to explore. In some of the classical

sources, there's an absolute rejection of expressions that we do not find problematic at all. By we, I guess I mean contemporary Jews from the liberal approaches. So in dealing with, let's just say all sexuality that's not heterosexual, it'd be very difficult to open up some of the material, starting right from the Torah and reading that certain acts are abominations, what are we supposed to do with a flat statement like that? I learned a lot from the Reconstructionist Rabbi David Teutsch, who suggests that where the earlier Jewish tradition expresses ethical ideas through norms, that is the legal literature says, "In this situation this is the correct action, this is the incorrect action that we, contemporary Jews, instead think in terms of values and ideals. What actions would best express the ideals that we learn from our Jewish tradition?"

NS: That enables us to sort of pull the camera back to a wider angle. And if we look, let's just say, at gay and lesbian relationships, when we look at them and we see the same expression of ideals that we see in marital relationships between men and women, expressing loyalty, the desire to build Jewish family, human expressions of love, and so on. When we see those, then perhaps we can find a Jewish language for those kind of sexual expressions.

JH: Let's talk about abortion. Share with us some of the dimensionality of this problem in Judaism. But before you launch into it, I wanna set it in this context. That I have heard, in my relative ignorance on this issue, a claim that the majority of Jewish opinion, including pre-modern and traditionalist opinion, relies on Proverbs 14:10 not only to allow abortion but also to rely on the woman's state of mind as reasonable justification for it, even though it is also true that the tradition looks upon abortion with great regret and prefers to avoid it. Proverbs 14:10 reads, "The heart alone knows its bitterness, and no outsider can share in its joy." All of which is understood to indicate that one's internal state cannot be judged by a third party. And therefore a woman's distress, by this measure, is in fact actionable grounds for an abortion. Have you heard this rationale? And what is the context in which you work through this keen social controversy?

NS: I have to say that I have not seen that rationale and that verse cited in most of the writing about abortion from a Jewish perspective, and that's across ideological commitments from the most traditional minded to the most liberal. The Jewish approach to abortion focuses very differently than the debate that we usually hear in the US. And that's key, I think, to understanding the chapter. And the focus, rather than being on the state of mind of the pregnant person, it's really on matters of safety and the preservation of life. So the key question, in a lot of ways, becomes how do we define who is a living person? The Hebrew word from the rabbinic literature is *nephesh*. People may be familiar with it and know it most commonly translated as soul. But in the rabbinic legal literature on these matters, it actually means something more like the philosophical concept of a person that is a living being with intrinsic rights. So the central text on abortion in rabbinic literature is a Mishnah from the tractate *Oholot* that discusses a woman whose life is in danger as she's giving birth, as she's in labor. And the Mishnah divides neatly into two parts.

NS: The first part is where the fetus is mostly still inside the woman's body. In that case, we save the laboring woman's life at the expense of the fetus. However, if either the majority of the fetus has emerged, or in some versions of the text it's the head of the fetus has emerged, then we can't intervene to choose which one survives. The great Jewish ethical principle that we don't set aside one life, that word *nephesh*, for another. What that tells us, boiling it down to its essence, is that the fetus doesn't have the status of *nephesh* while it's inside the woman's body. That's a completely different kind of analysis than the whole question of does life begin at conception and matters like that. It's clear as you continue to study the related text that it doesn't mean that the fetus has no status. The Talmud says, in one place, that for the first 40 days of gestation it's mere fluid. But beyond 40 days, it begins to have some status, but the mother will still take precedence until it seems that birth is actually taking place.

NS: The main criterion, then, that legal writers and ethicists will look at is the safety of the pregnant person. And that's where we get some divergence about the nature of what threat permits an abortion. Clearly, if her life is at stake, there's no question. However, what about other threats to her health, and what about threats not to her physical health but to her mental health?

JH: As intimated by the quote from Proverbs.

NS: As intimated by the quote from Proverbs. There are two medievals that are critical to the whole debate. One is Rashi from the 11th century in the what are now French part of the world. And the other is Maimonides from the 12th century. He lives in Egypt at that time. Rashi being more permissive based on what I described of the fetus not being a *nephesh* the whole time it's in the womb. And Rambam being more restrictive, saying that if and only if the fetus is threatening the mother's life can we abort it and not for any lesser threat. It's Rabbi David Novak in writing in 1983 suggested that everyone since then divides into one of those two streams depending on how permissive or restrictive they prefer to be. There's a misconception that Judaism is extremely liberal about permitting abortions. And while it's important to get out into the American political debates that not every religious tradition is the same as the Catholic and evangelical Christian tradition. It oversimplifies it to say that Judaism allows abortion. It's much more nuanced than that.

NS: I have a wonderful excerpt from an article from just a few years ago that surveys the Orthodox writing about abortion, the most traditional writings about abortion, from classical times to the beginning of the 21st century. And the writer who has a feminist perspective shows that a lot of Orthodox rabbis in North America and in Europe, who are influenced by the reaction of their Christian counterparts to *Roe V. Wade* and other social developments, that prior to the 20th century, the traditional writings are more permissive and are very concerned about women's welfare. But in the wake of the sexual revolution and the wider availability of abortion, they become much more restrictive, they become afraid that this is going to lead to what they see as immorality all throughout society.

JH: I'd like to close with a final question. One of my favorite questions that I ask many of my guests, which is, share with us a surprise that you encountered in the course of preparing this book.

NS: I was taken somewhat by surprise, when I went to research what's known as physician assisted dying. People may know the phrase assisted suicide, but because of the stigma associated with the word suicide, the correct term is physician assisted dying, or medical assistance in dying. And there are so many heart wrenching cases where people just wanna be able to choose not to suffer needlessly for many, many months. I knew that the Jewish tradition is opposed to the taking of one's own life, in principle. Yeah, even there's a lot of compassion that can be developed to work around the stricter parts of the law for people who end their lives for mental health reasons that turned out not to be preventable.

NS: But I was surprised how few contemporary thinkers, were looking for a way for Jewish values to guide such people. Well, I wound up writing that it's nearly impossible to find a way to tell someone it's okay for them to go ahead with it. Rabbi Dorf, a wonderful colleague of ours here in Los Angeles, who's written a lot about medical ethics. He had written very strongly against medical aid in dying, and there's a concept in rabbinic law, you're not allowed to support people as they commit sins. So that means if you're a medical doctor, you can't be involved in this kind of thing. It turns out that just in the last year or so, Rabbi Dorf rethought this issue a little bit and he wrote a new response and with some very narrow circumstance where he sees it as permissible. I made a presentation on some of these ideas to chaplaincy students at the Academy For Jewish Religion, California, while the book was in preparation. And one of them had sent me a chupa that someone coming out of Jewish renewal circles wrote about medical aid and dying, trying to reimagine it from Jewish perspective, which only proves that the debate continues.

JH: Well, Rabbi Neal Scheindlin, thank you so much for the pleasure of your company and this wonderful book, which is just fascinating. It's actually a page turner, I have to say, so much is going on. Thank you.

NS: Thanks so much. Pleasure to talk with you.

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