

INTRODUCTION

SAM FLEISCHACKER

University of Illinois, Chicago

I am honored to have been asked to put together this first issue of *JTR* on traditional rabbinics, and delighted by the richness and depth of Daniel Statman's essay and the responses to it. The idea behind this issue, which is to be a model for a series that *JTR* hopes to run on a regular basis, is to bring the texts and modes of reasoning characteristic of traditional rabbinic thought together with the tools of modern literary, philosophical, historical, and legal theory. Symposia will both work out from traditional ways of reading these texts towards the concerns of the modern academy, and to the traditional texts from the methods and concerns of the modern academy: will combine internal and external perspectives on them.

There could be no better topic with which to initiate such a project than the question of whether, or to what extent, halakha (traditional Jewish law) is shaped by moral imperatives and ideals independent of it. As Professor Statman says, this is a descendant of a very old theological debate, classically presented in Plato's *Euthyphro*, over whether God's will establishes goodness by fiat or whether even God's will must accord with a (rational) standard of goodness independent of that will. But there are also concerns, specific to the Jewish tradition, that give this debate a particular shape and sharpness as regards the development of halakha. The participants in our symposium refer to a host of extremely important

issues in the contemporary Jewish world (the status of non-Jews in Israel; the role of women in traditional communities) in which the relationship of halakha to universal moral principles is frequently invoked as crucial to concrete decision-making. So, one frame for the issues of our symposium is a series of political issues in the contemporary Jewish community.

But another frame is a much longer story that has played out over the past two centuries of Jewish history. One central theme of progressive religious movements such as Reform, Conservative, and Reconstructionist Judaism, from their inception, has been that Jewish law is and should be at its core an attempt to help us live up to moral norms and ideals that apply to and are accessible to all human beings – to something on the order of Kantian morality. This claim has gone along with a dismissal of aspects of halakha that seem morally unhelpful, of the authority of the rabbinic tradition, and of all rabbinic texts and forms of rabbinic reasoning that cannot be understood as aiming at moral ends. In response, the defenders of the rabbinic tradition – those who came to define themselves as “Orthodox,” especially – have argued either a) that morality, even in its Kantian form, can really be found throughout halakha (this is the approach of Samson Raphael Hirsch, arguably of Joseph Soloveitchik, and certainly of such students of Soloveitchik as Aharon Lichtenstein and David Hartman) or b) that morality, in this general sense, is and should be irrelevant to Jews: that it is a Gentile imposition on Jews, who should seek their notion of goodness solely within the Torah, and rabbinic tradition, that God has revealed to them. Furthermore, option b – which can be used to justify all sorts of demeaning treatment of non-Jews, as some of the remarks quoted by Professor Statman from Rabbi Zvi Yehuda Kook remind us – has been growing enormously in popularity and influence in the Orthodox world over the past three decades or so. This tendency has, in turn, led a large number of thinkers to try to revive option a, to show that halakha is and should be responsible to and pervaded by moral concerns.

Statman, we may say, sets out here to begin the next stage in the dialectic I have just sketched. He accepts the idea that halakha *should* be

responsible to moral concerns (he comes down firmly in favor of the rationalist side of the *Euthyphro* debate), but asks that that normative commitment not lead us too quickly to the conclusion that halakha has *in fact* been so responsible. The idea that the application of halakha could be an entirely formal, mechanical process he dismisses as absurd, maintaining that no system of laws can be interpreted that way. But he points out that that does not mean that the values brought in to make sense of halakha need be *moral* values – universalistic, humanistic values of the sort that the moralists want to uphold. Far too many liberal scholars have been driven by their normative beliefs to read the history of the halakhic process in a very selective way, he says, emphasizing just those moments in the Talmud, for instance, that fit a narrative by which the rabbis were trying to realize universalistic ideals of justice and equality (and reading even those moments so as to occlude the elements that make trouble for the humanistic story). But Statman points out that those who have resisted the moralizing view of halakha have *also* been driven by an ideological agenda. He calls for a careful, case-by-case historical analysis of rabbinic materials free of all ideological prisms, in order to figure out just where and when rabbinic decisors (*poskim*) may have relied on moral considerations. Consistent with the caution he is urging throughout, he refuses to say how such an investigation would be likely to turn out, but he ventures the reasonable hypothesis that it would not neatly fit either ideological program: that the relationship between halakhic decision-making and morality has varied greatly over time and place, with different *poskim* leaning in more or less moralistic directions in accordance with their different cultural and political situations, temperaments, and philosophical outlooks.

Our other symposiasts strongly agree with Statman's overall program, but they also offer immanent criticisms of it – Statman's own effort to make the historical examination of halakha's relationship to morality more nuanced, they suggest, may not yet be nuanced enough. Shalom Carmy notes that halakha, which is after all a legal system, need not be concerned with moral questions in many cases; he proposes, as a specific focus for Statman's concerns, the laws about *agunot* (women

whose husbands have disappeared but are not known to be dead), but points out that even there it is hard to say exactly *which* moral considerations may have played into the tendency towards leniency in such cases. Menachem Kellner pursues a similar line, noting that the “non-Jewish” sources of an influential rabbinic view may be very hard to discern: hence the debates over the degree to which Rav Kook’s nationalism derives from German romantic sources, or the degree to which Maimonides, even in his legal rulings, is indebted to Aristotle.

The remaining respondents press more general methodological questions. Suzanne Stone questions Statman’s dismissal of formalism, pointing out that sophisticated defenders of formalism in law today see working within a formal system as itself expressing moral values; Devorah Schoenfeld makes a similar point, illustrating it with a debate between Rav Ovadia Yosef and Rav Kook over whether Israel may renounce biblically-granted land for the sake of a peace settlement. And Mark Rosen questions Statman’s very distinction between halakha and morality, pointing out that *poskim* frequently use broad, vague categories to bring in moral concerns without explicitly labelling them as such (e.g., *shalom bayit*, which can justify otherwise questionable actions that will prevent conflict between spouses). Rosen suggests that these categories serve as “moral conduits” by which humanistic values, shared by Jews and Gentiles alike, are “domesticated” by the halakhic system. But that means that such values may be an integral part of the halakhic process itself.

Rosen also asks why Statman supposes that the history of halakha might settle the normative question about the relationship between it and morality. Why, on Statman’s own account – which stresses the degree to which halakhic decisors feel free to write off strands of the tradition as either insufficiently universalistic or excessively influenced by “Gentile” concerns – should a better grasp on the history of the process by which halakhic decisions are made have any implications for how they should be made today? He proposes seeing halakha as part of a cultural system, rather than simply a product of history. Like other cultural systems, then, halakha will try simultaneously to extend itself to new circumstances and

preserve continuity with its own past – so the history of the process will have a *prima facie* claim on how it is applied in the present, insofar as that helps it preserve continuity.

In his “Reply,” Statman largely accepts the suggestions of his commentators, recognizing them as friendly amendments to his proposal. In response to Carmy, he makes clear that he did not mean to identify “morality,” here, with any particular moral philosophy. Rather, an investigation into the role of universalistic or humanistic values in the halakhic process would do better to avoid identifying them with such abstract systems as utilitarianism or Kantianism and focus instead on concrete notions such as “the alleviation of suffering” (“thick” rather than “thin” ethical concepts, to use a distinction favored by the contemporary moral philosopher Bernard Williams). In response to Schoenfeld and Stone, he distinguishes various senses of formalism, but acknowledges that formalism, in some of its senses, can express moral values. And in response to Kellner, Statman notes that the degree to which a particular value should be seen as “internal” or “external” to the halakhic process will depend in large part on whether one takes up an internal or external viewpoint on the process itself. The *poskim* themselves see hardly any value to which they appeal as “external” to halakha, while they may very well appear that way to the sociologist or historian examining halakha from the viewpoint of an “external observer.”

Finally, in response to Rosen, Statman develops an argument for the assumption in his original piece, which he agrees went unargued there, that history sheds an especially important light on halakha. In the first place, says Statman, history can save us from ideology, giving us access to the truth about the role of morality in halakha (I would like to press Statman further on why *history*, rather than, say, legal theory, should be the best source of such truth). And in the second place, the fact that “[l]egal systems in general and Jewish law in particular tend to be conservative” entails that the history of Jewish law provides important ammunition to anyone who wants to make a case for how that system should develop further: the fact that a particular path *has* been taken in the past, if that is a fact, is a good *prima facie* ground, if not a decisive one, for it to be

pursued in the present. Essentially, Statman accepts Rosen's claim for the importance of continuity to the halakhic system, and uses it to underwrite the importance of a careful investigation into the history of halakha.

The subtlety and intellectual energy in all of these pieces is remarkable, and they amount as a whole to a call for a new program within the debate over the normative foundations of Jewish law that has been going on, within the Orthodox world, for at least 30 years, and has in some form been at the center of all Jewish denominations for almost 200 years. We hope that readers will respond in a lively manner, and that this inaugural issue in the "traditional rabbinics" stream of *JTR* will help enrich a discussion of central importance to the self-understanding of Jews everywhere.