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RESPONSE TO DANIEL STATMAN

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Daniel Statman's crisply argued and clearly written exposition leaves little room for reply since he is so clearly right. That, of course, will not stop me from commenting on one or two points in the paper. In the course of his discussion, Statman mentions two important questions:

- (a) To what extent, if at all, were Jewish thinkers aware of the fact that halakhic ruling necessarily involves value and moral considerations?
- (b) If they were aware of this fact, what meaning did they ascribe to it?

Statman states that halakhic ruling necessarily involves value and moral considerations. It is hard to deny that he is right. If he is not correct about this, it is very hard to understand how Haredi and Zionist rabbis in Israel almost never see eye to eye on halakhic issues affecting state policy. So, let us assume for the sake of argument (or, actually, for the sake of avoiding argument) that Statman is correct in this claim. Two very important questions arise at this point, questions not addressed in the present essay: First, it follows from Statman's argument that Judaism (whatever that is) recognizes a normative realm independent of or antecedent to halakha. What, then, is the precise relationship of that realm to halakha? Second, what is the source of these "value and moral considerations" which constitute the normative Jewish realm independent of or antecedent to halakha? Rabbi Dr. Aharon Lichtenstein addressed the first questions

many years ago in what remains a classic essay. I will here address myself to the second question.

This question, it turns out, is hotly debated in Orthodox Jewish circles today. Let me give one example of how it plays out. Just last week I heard a lecture in my synagogue in Haifa about how Jerusalem was the “heart” of *am yisrael*, the people of Israel. From the context and content of the talk, there is little doubt but that the speaker literally meant that there exists an entity, over and above the aggregate of living Jews, denoted by the term *am yisrael*. This Platonic Israel has a “heart,” and that heart is Jerusalem. Just as damaging the heart of a human being damages the whole person, so damaging Jerusalem (by, for example, sharing political power in it with Palestinians) is damaging to *am yisrael*. It is important to emphasize that the lecturer was not speaking metaphorically, and it was clear that his listeners did not think he was speaking metaphorically. Our speaker, as I happen to know, addressed these subjects out of the context of one aspect of the thought of Chief Rabbi Abraham Isaac Kook. That being the case, and given Rabbi Kook’s status in the eyes of his disciples, our speaker was sure that he was speaking in the name of Judaism *tout court*.

Many scholars, however, are of the considered opinion that Rabbi Kook’s views about the nature of Jewish people, while containing with them elements traceable to R. Judah Halevi and to Kabbalah, also contain important elements traceable to nineteenth century German romanticism. A whole range of halakhic and/or policy positions (one example: how welcoming should the State of Israel and its Rabbinate be towards IDF soldiers whose fathers are Jews from Russia but whose mothers are Gentiles from Russia?) hinge on “value and moral considerations” relating to our understanding of the nature of *am yisrael* and its state.

Let us take what might be construed as an example from the opposite perspective: people such as myself (and, I allow myself to add, Professor Daniel Statman) are often criticized for allowing Western liberal and universalist values to color (and in the eyes of our critics, damage) our understanding of the nature of the Jewish tradition. The immediate response to these accusations is to show the “Jewish” sources of these values (just as the response of Rabbi Kook’s followers to the suggestion

made in the previous paragraph is to show the “Jewish” sources of his views). This is why Maimonides becomes so important to these debates and is the object of so much contention: if any crucial Jewish figure held universalist views (other, that is, than Abraham, Moses, Isaiah, Rabbi Yisham’el and God), then it is Maimonides. There is thus a tug of war over Maimonides: major rabbinic scholars like R. Yizhak Sheilat try to “Halevize” him, while people like me emphasize his closeness to Rabbi Aristotle.

Let us take another example: Yeshayahu Leibowitz used to say (jokingly, one hopes) that there are two traditions in Judaism: one from Moses, through Isaiah and Maimonides up to and including Leibowitz himself; and another, from Korah through Ezra, Rabbi Simeon bar Yohai, Judah Halevi, the author(s) of the Zohar, the Maharal of Prague, the author of the Tanya, up to and including Rabbi Zvi Yehudah Kook. The first tradition accepts the biblical teaching that all human beings are equally made in the image of God, while the second tradition finds ways of watering that claim down. Both traditions are in actual fact found in classic, normative Jewish texts. Leibowitz has every right to prefer one over the other, but he has no right to read one as normative and the other as heterodox. Both traditions have served as sources for “value and moral considerations” which underlie halakhic and policy decisions taken by rabbinic authorities.

Has Daniel Statman’s argument thus led us to a situation where anything goes? I think not. According to a charming urban legend, a student of the late Nehama Leibowitz once offered an interpretation of a verse. Nehama simply said, “No.” The student then protested, “But Nehama, the Torah has 70 aspects!” “Seventy,” Nehamah replied simply and conclusively, “but not seventy-one!” “Value and moral considerations” drawn from the Jewish tradition allow for a large, but not endlessly open, set of conclusions. In each generation we argue over which of the Torah’s aspects are among the seventy and which are the seventy-first (and second, and third); it is only in retrospect that we can know the answer.