
Natural Law in Judaism

David Novak

Cambridge: Cambridge University Press, 1998. xi + 210 p.

As the author (University of Toronto) notes in the preface, the subject of this volume is one which has occupied him for many years, a claim which is corroborated by the numerous references to his own previous studies. The present study appears to be addressed to an audience of philosophers and ethicists. The character of the intended audience influences several features of the presentation. For example, Novak supplies some basic information about well-known Jewish thinkers and their works that would not be required in a work aimed at students of Jewish or Religious Studies. More significantly, the philosophical orientation inclines towards a presentation of Judaism as a systematic and consistent ideology, an approach that will create uneasiness among those of us (such as myself) who take a more historical or cultural approach to the study of religions. As Novak himself acknowledges on occasion, his depiction of Judaism must occasionally limit itself to those manifestations that promote a rationalistic exposition, while ignoring or underestimating passages from other streams. Thus, in his treatment of biblical sources that presuppose ethical standards prior to the revelation of the Torah at Mount Sinai, Novak provides an extensive analysis of Abraham's bargaining with God over the fate of the righteous minority of Sodom and Gomorrah, epitomized in the patriarch's charge in Genesis 18:25, "Can the judge of the whole earth not himself do justice?" He has nary a word to say, however, about Abraham's readiness to sacrifice Isaac in obedience to the divine word, an irrational leap of faith that was regarded as paradigmatic for normative Jewish tradition, but continues to be deeply troubling from an ethical perspective. Absent as well is a confrontation with the capricious God who brushed off Job's accusations of injustice with the assertion that he is unfathomable to mere mortals. In general, the most perceptive of Novak's biblical interpretations are those which diverge from the familiar Jewish commentaries, a fact which calls into question the validity of his citing those interpretations as evidence of the philosophy of "Judaism."

Among the most stimulating and original sections in the book are those in which Novak tries to set the philosophical question within the context of post-enlightenment Jewish history or of American social policy. Such is his intriguing suggestion that Natural Law form the foundation of a neutral, secondary social domain in which otherwise distinct religious and ideological communities can interact with one another in a multicultural society. As with his espousal of the Mishpat Ivri programme of implementing the structures of traditional Talmudic jurisprudence in a secular setting in the State of Israel, the proposal invites the challenge that, by the very act of contextualizing an all-embracing religious ideology relative to a more inclusive superstructure, one is thereby undermining its fundamental integrity. He takes some valid jabs at those current Orthodox ideologists whose eschewal of any rationalist analysis of Jewish law betrays a misrepresentation of the classic Talmudic method. In light of Novak's openness to engaging current public agendas, it is disappointing to note that he avoids discussion of areas in which Jewish Law appears to find itself in collision with the dictates of Natural Law, e.g., on the matter of same-sex relations.

It is all but inevitable that any author who attempts to provide a rationalistic exposition of Jewish law will ultimately gravitate towards Maimonides' analysis of

the divine commandments as set forth in the third section of his *Guide of the Perplexed*. Maimonides argued (in contrast to what were probably the prevailing views through most of Jewish history) that all the major categories of biblical precepts—even those realms that had ostensibly been defined by Talmudic tradition as inherently irrational—could be accounted for according to humanly intelligible rationales. The seemingly mysterious or arbitrary character of some laws is, for Maimonides, usually no more than a reflection of the fact that translation of general principles into particular application involves a measure of arbitrariness, since there is more than one valid way of implementing a general principle. Novak's summary and analysis of Maimonides' ideas is clear and insightful. Although this is familiar territory for anyone who is at home in Jewish tradition, one hopes that its restatement in the present volume, in the phraseology of contemporary ethical discourse, will help bring Maimonides' perspicacity to the attention of a broader audience of philosophers and jurists.

There can be no doubt that Maimonides deserves to occupy the central place in any exposition of Natural Law in Judaism. Nevertheless, by focussing so exclusively on Maimonides Novak has neglected several other treatments of the topic among Jewish authors of the past and present; though, to be sure, some of them have been dealt with by Novak himself in his numerous other publications. Thus, though Saadia is cited briefly in connection with the classification of rational and irrational precepts, he is not credited with introducing the fundamental problem of the "two sources of truth," i.e., of why reason and supernatural revelation are both required to lead to the same ultimate truth. The medieval rabbinic tradition of central and eastern Europe, which was not grounded in the rationalistic culture of Arabic-speaking lands, tended to approach the question of Natural Law *via* a group of Talmudic passages that draw a distinction between the "law" and "beyond the letter of the law," apparently appealing to ethical standards that are not within the purview of the commandments or halakha. The rich literature dealing with these questions, including A. Lichtenstein's seminal "Does Jewish tradition recognize an ethic independent of halakha?" are confined to a few footnote references.

Novak relates how the present study originated in a challenge made by a reviewer of an early volume, to follow up more thoroughly themes that he had been suggested, but not followed up to their full potential. While it is clear to me that *Judaism and Natural Law*, with all its erudition, insight and wisdom, deserves an honoured place in any library of ethics or legal philosophy, the last word has still not been said on the topic, and hopefully we can look forward to yet further cultivation of these topics in Novak's future endeavours.

Eliezer Segal

Religious Studies, University of Calgary