

Thanks to Alan Mittleman for his very deep and helpful opening comments. Let me add a few of my own to get things going:

1. Rabbi Lichtenstein unequivocally concedes that Jewish tradition accepts some version of *lex naturalis*, according to which the fundamental notions of morality are, in some sense, grounded in nature or in reason and are thus “natural.” He would therefore reject what moral philosophers call “divine command theories of morality,” according to which morality is wholly dependent on divine revelation. Rabbi Lichtenstein also accepts that “halakha constitutes – or at least contains – an ethical system,” hence the natural morality I just mentioned is not “outside” halakha but deeply embedded within it. If halakha constitutes an ethical system, and if the meaning and the normative force of ethics is not defined by halakha, the inescapable conclusion is that the Jewish tradition recognizes an ethic independent of halakha.
2. Rabbi Lichtenstein invests a lot of effort in analyzing the attitude of halakhists to cases in which compliance with formal halakhic obligations is less than perfect from a moral point of view such as when the *din* permits actions which are inconsistent with justice or humanity. But the more disturbing dilemmas, both theoretically and practically, arise in cases in which the *din* seems to *demand* such actions, for example, when it discriminates against women or against non-Jews, when it punishes children for the sins of their parents (as in the case of *mamzerut*), when it supports (if indeed it does) a very harsh ethic of war. I’m pretty sure that, in such cases, Rabbi Lichtenstein would not support an interpretation of the *din* in a way that would guarantee its compatibility with morality. Rather, he would say that these requirements of halakha are binding just like the laws of *kashrut* or Shabbat are binding, and that worshipping God sometimes involves doing things whose meaning can often not be fully comprehended. This would accord well with Rabbi Soloveitchick’s famous reading of the *Akedah*: To be a believer is to be ready to *sacrifice*. However, as Alan mentions at the end of his comments, this seems to locate Rabbi Lichtenstein, together with Rabbi Soloveitchick, in the camp of those supporting “quasi-fideistic voluntarism,” from which Rabbi Lichtenstein explicitly wishes to distance himself. The following dilemma thus presents itself in all its force: Either halakha “constitutes an ethical system,” in which case, ultimately, there can be no conflict between halakha and ethics, or such conflicts are possible, in which case if there is a duty to follow the dictates of halakha rather than those of ethics then Rabbi Lichtenstein is much closer to Yeshayahu Leibowitz than he assumes.
3. To ask whether and to what extent post-Sinai halakha recognizes the normative force of universal (“natural”) moral considerations can be understood as referring to two different questions. (a) Did those Jews who philosophically reflected upon halakha explicitly acknowledge this normative force? (b) Did the *poskim* ascribe force to such moral considerations in the way they decided actual cases which involved various forms of tension between (“formal”) halakha and the requirements of justice? Both questions are essentially historical ones – one about the history of Jewish thought and the other about the history of Jewish law – rather than theological or jurisprudential. Rabbi Lichtenstein says little about the former and close to nothing about the latter. Yet it seems to me that if we want to express a reliable view on the way that moral

considerations actually played a role in the shaping of halakha in the course of history, we have no choice but to enter into a meticulous inquiry covering the writings of hundreds of Rabbis, at different times and in different places, in an attempt to discover whether, in what forms, and to what extent, they “recognized an ethic independent of halakha,” namely, to ascertain how, if, and to what degree they assigned weight to justice, compassion, fairness and humanity, even when the simple reading of the relevant halakhic sources (their *peshat*) pointed in a different direction.

4. Rabbi Lichtenstein proposes that ethics is part of halakha. This means that halakha is “comprehensive,” or, as Alan puts it, “omni-sufficient.” How should one understand this proposition? If it says that all the considerations that commentators and *poskim* refer to are regarded by them as legitimate within the tradition, then it is no doubt true, but trivially so. It’s very hard to think of any interpreter, be it in the field of law or any other field, who would regard the considerations she uses in the process of interpretation as “outside,” namely as unrecognized, or illegitimate, from the point of view of the relevant enterprise. The important analogy, of course, is that of legal interpretation: Surely no judge who would rely on the notion of justice in her legal interpretation could assume that this notion is outside the relevant legal system, that its use is ruled out by it. Halakha is no different in this respect. If, however, the above proposition means that, as a matter of historical fact, moral considerations are perceived as “comprehensive” by Jewish thinkers, or – more importantly – that they play a significant role in the actual making of halakha, then, as noted in section 3, much more needs to be said in order to substantiate it.