

# Universalism and Jewish Values

Michael Walzer

Twentieth Morgenthau Memorial Lecture  
on Ethics & Foreign Policy



Carnegie Council

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*Special Contributors*  
*Morgenthau Memorial Endowment Fund, 2001*

Linda and Matthew Morgenthau

Robert J. Myers

Patricia and Joel Rosenthal

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## Introduction

Today we mark the twentieth anniversary of the Morgenthau Memorial Lecture on Ethics & Foreign Policy. This series can be traced back to 1977, when our Council sponsored the first Distinguished Lecture on Morality & Foreign Policy. The lecturer was Professor Hans Morgenthau himself. His subject was “Human Rights and Foreign Policy,” a very hot topic in those early days of the Carter administration.

After Professor Morgenthau died in 1980, this lecture series was renamed in his honor. Morgenthau’s legacy to us remains vital twenty years after his death. His life’s work was a quest to reconcile the competing demands of morality, interest, and power—to articulate a worldview grounded in realism, yet oriented toward moral aspirations.

In a new book by Christoph Frei, *Hans J. Morgenthau: An Intellectual Biography*, Morgenthau is described like this:

Hans J. Morgenthau never was nor could he ever be solely a realist. Such was his nature that two sides were always present: the lucid, dispassionate observer of reality and the deeply passionate moralist. Which side of his nature was more strongly manifested at any given time depended largely on his surroundings. “I might have become a great idealist if I had lived in a realistic environment,” he wrote without a trace of irony. Fate, however, had cast him adrift in America—in an intellectual environment where the lessons of realism were bound to create a greater stir than his basic liberal values. [Louisiana State University Press, 2001, p. 177]

The questions that animated Morgenthau’s work remain relevant. As he put it in his lectures on Aristotle and politics:

Social and political problems do not change throughout history. The problem of authority, the problems of the relations between the individual and the state, the purpose of the state, the common good, the issue of law versus naked power, the problem of violence, the class problems, the problem of the distribution of wealth in political terms—all of those are of a perennial nature. [unpublished manuscript]

And so we return, year after year, to continue to ask and answer these difficult questions. It is in this spirit of inquiry that we honor the memory of Hans Morgenthau.

Our speaker represents all of the virtues embodied in this lecture series. A moral philosopher and a social critic, Michael Walzer is a socially committed scholar and teacher. As he might put it, he stands only a little to the side of society, actively engaged in issues central to public life. A list of his publications reflects the central problems of our times, ranging from his books, which include *Just and Unjust Wars* and *Spheres of Justice*, to his lectures, *On Toleration*. It should come as no surprise that in addition to his scholarly duties at the Institute for Advanced Study in Princeton, he is editor of the journal *Dissent*.

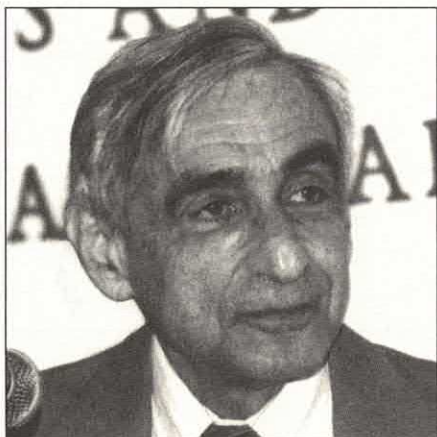
Professor Walzer is one of those scholars whose work extends beyond the community of academicians. His books and articles are used with great effect in military academies, in discussion groups sponsored by local humanities councils, and in places like the Carnegie Council. It is his engagement with the most pressing and controversial topics and his capacity to relate these problems to our moral, ethical, and religious traditions that we at the Carnegie Council admire most.

The title of Walzer's Morgenthau Memorial Lecture, "Universalism and Jewish Values," reflects his ongoing work in building bridges between the deep resources we have in our religious traditions and the responsibility we have to address the difficult social problems of our time. Michael Walzer himself has been an irreplaceable resource to all of us who care about the moral dimensions of politics and the search for peace and justice.

—Joel H. Rosenthal  
President  
Carnegie Council on  
Ethics and International Affairs

## Universalism and Jewish Values





Michael Walzer

My talk was inspired by an earlier Morgenthau Memorial Lecture, Amartya Sen's *Human Rights and Asian Values*.<sup>1</sup> Sen's subject is perhaps best described as the universality of universalism itself, which has been called into question by Asian traditionalists (and authoritarian politicians) who claim that universal doctrines like "human rights" are Western inventions and imperial impositions. Sen shows, in an admirably convincing way, that similar doctrines can be defended from within the world of Asian cultures. I want to make an argument of the same kind about the smaller world of the Jewish tradition—an argument that has, I think, both local and general interest.

Throughout the Enlightenment years, which in the case of the Jews extended from the last decades of the eighteenth century to the end of the nineteenth, prodigious efforts were made to discover a Jewish universalism or, better, to define Judaism as a universal religion of ethical reason. These efforts were sometimes philosophical, sometimes polemical, sometimes merely apologetic; they were in any case convincing for one practical reason: the politics of ordinary Jews during those same years (and ever since) seemed to confirm them. Everywhere, Jews played a leading role in universalist political movements—liberal, socialist, and, later on, communist too. Wasn't this politics, in some sense at least, an expression of, or a secular continuation of, their Judaism?

But these were emancipated Jews, and even when the writers and activists among them looked to Jewish sources for their universalism—the creation of men and women in God's image, the liberation from Egyptian bondage, the prophetic critique of injustice, the vision of a general redemption—the actual creeds they espoused were more likely to derive from Kant or Marx than from the Bible or the Talmud. Indeed, they could find what

<sup>1</sup> Amartya Sen, *Human Rights and Asian Values* (New York: Carnegie Council on Ethics and International Affairs, 1997).



they needed in the Bible and the Talmud to support a universalist politics and morality, but the discovery was too easy: they simply picked the nicest passages and ignored everything else. Their programmatic politics had little in common with the tradition as a whole or with the traditional life of the scattered Jewish communities of the exile.

Hence counter-Enlightenment followed quickly upon Enlightenment. Already in the nineteenth century there were Jewish writers who defended the traditional way of life and described Enlightenment politics (and reformed religion) as a flight from Judaism, an effort to assimilate into the gentile world. Similar arguments are still being made today: "The Judaism of the last two centuries," writes Michael Wyschogrod, perhaps the most interesting of American orthodox intellectuals, "is the Judaism of self-liquidation." Wyschogrod's brilliant book, *The Body of Faith*, demonstrates that an anti-Enlightenment traditionalism can still be defended two hundred years after the death of Moses Mendelssohn—and defended with what, from the other side, has to be described as unexpected vigor.<sup>2</sup>

This defense of tradition represents a Jewish version of the argument about "Asian values." Orthodox Jews (not all of them, but many) uphold what they take to be the true understanding of divine election and halakhic [Jewish law] order against the ever-encroaching forces of Western culture. They are resolutely opposed to universalism, at least in its secular philosophical and political versions. They have little use for the idea of human rights or for the claims that are made in its name. Like Asian traditionalists, they reject feminist demands for equality and insist that their own familial life, with all its hierarchies, is superior to anything available in the West. In Israel's disputes about foreign policy, they are unwilling to recognize a universal right of self-determination or to acknowledge the claims of Palestinians to land and sovereignty.

Though I am a product of Enlightenment and emancipation, I do not think that it is enough today to respond to the traditionalist revival by reit-

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<sup>2</sup> Michael Wyschogrod, *The Body of Faith: God in the People Israel* (San Francisco: Harper & Row, 1989), p. 181.

erating nineteenth-century descriptions of Jewish universalism. Judaism is manifestly not a religion of ethical reason; no one looking at contemporary orthodoxy and ultra-orthodoxy can have any illusions about that. Like the other world religions, it includes powerful rationalist and ethical doctrines—and reform Jews especially have made the most of these—but it includes much else besides. At the most abstract level, monotheism, creation "in the image," and messianic redemption can generate a powerful universalist commitment. But the concrete life of the Jewish people for most of its history has not been dominated by those abstractions, but rather by a God of history who not only created the universe but who also chose the Jews, and who will one day bring them a redeemer, the king messiah, son of David. Between the historical moment of election and the promised but always postponed moment of redemption, the life of religious Jews has been narrowly circumscribed, highly vulnerable, and intensely parochial. This was especially the case during the long years of exile, before emancipation and sovereignty: the scattered communities were everywhere subordinate and, most of the time, beleaguered and oppressed. We can readily imagine this experience as the basis for a "liberationist" ethics and a liberal or leftist politics; it can also, however, produce an inwardly turned traditionalism, hostile toward the outside world, resentful of would-be intermediaries, and deeply suspicious of any kind of moral, political, or social inclusiveness. Among religious men and women, this latter outcome seems the more likely one. Wyschogrod, once again a useful example, describes "ethics" as the Judaism of assimilated Jews.<sup>3</sup>

Nonetheless, there are interesting universalist or universalizing arguments that have been made within the Jewish tradition, in the classical texts and commentaries, that reflect what I've called the concrete life of the Jews—which means, they are not philosophical or polemical or apologetic in character. I do not want to deny the value of arguments that take these latter forms (and that figure in the work of major Jewish writers like Philo,

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<sup>3</sup> Ibid.



Josephus, Judah Halevi, Isaac Cardoso, and Hermann Cohen), but I am looking for something else: for the concrete, inescapable universalism of people who are not, so to speak, first-order universalists. And the place to look is in what might be called the intellectual marchlands, the border areas where practical encounters with “the others” ordinarily occur (and also where they are imagined, worried about, anticipated, and reflected on). In biblical history and prophecy there are repeated efforts to deal with, if not quite to understand, the gentile nations, and the same efforts are continued or renewed in rabbinic legal discussions. These arguments are valuable and worth recovering precisely because the universalist positions they sometimes defend differ from the standard versions of philosophical universalism. They reflect the impact of a strongly particularist creed, and they represent, most of the time, a voice from below. Enlightenment universalism in its original French version was, after all, the universalism of an elite class in the leading country of the Western world; and though the Jewish *maskilim* (enlighteners) were from a different class and country, they did the best they could to adapt and naturalize the original version. Pre-emancipation Jewish universalism, by contrast, is the universalism of the weak. I want to reclaim it now, without pretending that it dominates the tradition; I claim only that it is a significant presence, which has been repressed by most contemporary “traditionalists.” Traditions should never be left to their conservative defenders.

My account of this peculiarly Jewish universalism will focus, appropriately for this occasion, on international politics. Once the Jews are a stateless people, of course, international politics does not take conventional forms, but I think that I can make it recognizable. I will begin before statelessness, with two biblical examples. In thinking about these two, it is important to remember that the Israelite kingdoms of the biblical age were themselves small and weak, and that the local imperialisms—Egyptian, Assyrian, and Babylonian—were violent and brutal and, one after the other, triumphant. So there is a significant sense in which the Bible is already the textual record of a subordinate people, even though modern

Zionists looked to it as a proof text for Jewish political independence and warrior heroism. After the biblical examples, I will turn to two rabbinic arguments that are not discussed, as far as I know, in secular or Zionist literature.

## The Customary Law of Amos

Consider first the following lines from the prophet Amos:

Thus said the Lord:  
For three transgressions of Damascus,  
For four, I will not revoke it [the decree of punishment]  
Because they threshed Gilead  
With threshing boards of iron....

Thus said the Lord:  
For three transgressions of Gaza  
For four, I will not revoke it:  
Because they exiled an entire population....

Thus said the Lord,  
For three transgressions of Tyre,  
For four, I will not revoke it:  
Because they handed over  
An entire population to Edom  
Ignoring the covenant of brotherhood....

Thus said the Lord:  
For three transgressions of Edom,  
For four, I will not revoke it:



Because he pursued his brother with the sword  
And repressed all pity....

Thus said the Lord:

For three transgressions of the Ammonites,  
For four, I will not revoke it:  
Because they ripped open the pregnant women of Gilead  
In order to enlarge their own territory....

Thus said the Lord:

For three transgressions of Moab,  
For four, I will not revoke it:  
Because he burned the bones  
Of the king of Edom to lime.

(Amos 1:3–2:1)<sup>4</sup>

In his *Ancient Judaism*, Max Weber describes the “transgressions” listed here as violations “of a form of international religious law which was presupposed as valid among the Palestine peoples.”<sup>5</sup> “Religious law” sounds right, given the commitment to divine punishment with which each indictment begins. But whose religious law is this? The acts described are not mentioned in any of the Israelite codes; they are not the subjects of any divine commands elsewhere in the Bible. I suspect that this is in fact conventional law or, perhaps better, a kind of moral custom, obviously violated in practice, but nonetheless the product of informal, perhaps sometimes of formal, agreement. The prophet promises divine enforcement; he does not speak of divine revelation, and the only covenant he mentions is between two of the “Palestinian” kingdoms, not between Israel (or any of the other nations) and God. Nor is anything said

<sup>4</sup> For this and other biblical texts, I quote the New Jewish Publication Society translation, *Tanakh: The Holy Scriptures* (Philadelphia: New Jewish Publication Society, 1988).

<sup>5</sup> Max Weber, *Ancient Judaism*, trans. Hans H. Gerth and Don Martindale (Glencoe, Illinois: Free Press, 1952), p. 302.

about the idolatrous practices of the nations listed in the passages I have quoted; they are not condemned for their idolatry; no specifically religious demands are made upon them; they appear here as equal members of a society of states.

Note the substance of the transgressions: what is indicted here is extreme cruelty, reaching, probably, to massacre; mass deportation and enslavement; the violation of treaties; and the desecration of the dead—all taking place in time of war. In the verses that come immediately after the ones I’ve quoted, Amos turns to Israel and Judah with equal fierceness, but in those cases he is concerned with idolatry and domestic injustice (“they trample the heads of the poor”), not with foreign affairs, and he explicitly invokes divine law and covenantal responsibility. These last are familiar texts; they show the prophet at home, in his role as social critic, and along with similar passages in other prophetic books, they have undoubtedly played a part in shaping the liberal/left universalism of emancipated Jews. But the earlier passages are at least equally interesting, even though Amos shows no concern for social justice within the neighboring nations. He is concerned only with what we call war crimes; the Amos text is a very early example of the effort to set limits on the conduct of war.

It is revealing, I think, that the effort is made within the small international society of what Weber calls “the Palestine peoples”—that is, the two Israelite kingdoms and their immediate neighbors. The limits that are set, though apparently ineffective, are reciprocal: most of the crimes that Amos describes were committed against Israel or Judah, but he also takes notice, as Weber says, of “the injustice of a third people against another,” Moab against Edom.<sup>6</sup> The promised divine punishments (omitted from the quotation above) do not quite fit the customary code. Some of them seem to be directed only against what we would call military targets: “I will set fire to the wall of Rabbah, And . . . shall devour its fortresses.” But God also says: “I will wipe out the inhabitants of Ashdod,” which suggests that he too has “repressed all pity.” The conventions apparently do not apply to

<sup>6</sup> In her useful book, *War in the Hebrew Bible: A Study in the Ethics of Violence* (New York: Oxford University Press, 1993), Susan Niditch misses this last point; see p. 138.



him. Nonetheless, when prophets like Nahum condemn the cruelty of the Assyrians, they are relying on understandings about legitimate warfare exactly like those that underlie the Amos text. The understandings, then, are taken to have universal extension; they apply to everyone's behavior. But they were first worked out among the small peoples; there is no evidence that the Assyrians accepted them, though even they understood the obligations of a treaty and, despite their reputation for cruelty, may have believed themselves to be fighting within some set of rules.

For my purposes here, I simply want to point to the Israelite acceptance of conventional law alongside divine, revealed law and to the prophetic invocation of the moral/legal conventions in arguments about military conduct in the international arena. Statehood makes this sort of thing possible, and perhaps necessary, even when the state structures are fairly rudimentary. In the long years of statelessness, Jewish writers mostly ignored the laws of war (they are obviously relevant again today). Weber is surely right in reading the Amos text as the reflection of an actually existing "international law." But its actuality goes deeper: the text also reflects an existing international morality, underlying the law (as morality commonly does), which must have been worked out in the course of a long series of cross-border encounters. God is, again, only the agent of enforcement; the prophet does not claim any more creative role for him. The condemnation of cruelty, exile, betrayal, and murder is, so Amos seems to assume, natural to humankind—even if it is also natural for human beings to be cruel, murderous, and so on.

One might also deduce from the international law of the small peoples a condemnation of empire—as Isaac Cardoso does in his *Las Excelencias de los Hebreos*. According to Cardoso, the smallness of God's promised land is meant "to show that great realms are great plunders, and that the domination of foreign territories is more the result of violence and force than of justice and equity."<sup>7</sup> But this is a seventeenth-century argu-

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<sup>7</sup> Quoted in Yosef Hayim Yerushalmi, *From Spanish Court to Italian Ghetto: Isaac Cardoso: A Study in Seventeenth-Century Marranism and Jewish Apologetics* (Seattle: University of Washington Press, 1981), p. 393.

ment. Despite the critique of Assyria, I do not think that the prophetic texts reach as far. Amos's indictments tell us more about the equal standing of the small peoples than about the necessary illegitimacy of the great ones.

## The Vision of Peace in Micah and Isaiah

My second example is a famous text that appears in the books of Micah and Isaiah, with only very minor word changes. A majority of contemporary biblical scholars (though these majorities are highly volatile) regards the source as unknown, probably from a third hand; this is a "floating" prophecy. The date is contested, and pretty much irrelevant to my purposes here, but I shall assume that it comes from the time of Micah and Isaiah, roughly, the last several decades of the eighth century BCE.

In the days to come,  
The Mount of the Lord's House  
Shall stand firm above the mountains  
And tower above the hills;  
And all the nations  
Shall gaze on it with joy.  
And the many peoples shall go and say:  
"Come,  
Let us go up to the Mount of the Lord,  
To the House of the God of Jacob,  
That He may instruct us in His ways,  
And that we may walk in His paths."  
For instruction shall come forth from Zion,  
The word of the Lord from Jerusalem.  
Thus He will judge among the nations  
And arbitrate for the many peoples,  
And they shall beat their swords into plowshares



And their spears into pruning hooks:  
Nation shall not take up  
Sword against nation;  
They shall never again know war.  
(Isaiah 2:2-7)

This is clearly a messianic vision, though there is no king messiah mentioned in the text. Partly for that reason, the last five lines have played an especially important role in the literature and culture of the universalist left. But the prophecy as a whole points toward a distinctive form of universalism, which has not been imitated or adapted, or even discussed, in modern times. The prophet's universe is not composed, like the world of contemporary philosophers, of individual men and women who have somehow escaped their parochial identities and transcended their differences; they have only stopped fighting about identity and difference. Nations and peoples still exist and, what is more telling, they still find themselves in conflict; they are different, and they differ. They come to Jerusalem for divine judgment and arbitration.

The vision is not imperialist (though there are imperial visions in other prophetic texts): Israel neither encompasses the other nations nor rules over them. A recent commentator on the parallel passage in Micah (4:1-3) nicely describes what happens when Zion "towers above the hills": "The result is not a religious empire or a world subject in humiliation to a triumphant Israel. The nations bring their crises to YHWH, their disputes are dealt with, and they depart. They are not dominated and incorporated in a power structure, but helped and led to a new policy that makes for life. The vision is not of some final stage in the struggle for power, but of its end."<sup>8</sup>

I want particularly to call attention to the commentator's perception that this is a messianic age in which there are still "crises." Crisis is a natural consequence of the continued existence of national and ethnic pluralism. In the overwhelming majority of religious millennia and sec-

ular utopias, pluralism is rejected precisely in order to avoid its natural consequence. In this "floating" prophecy, which was sufficiently popular to be adopted by two prophetic schools, political pluralism is made possible, and peaceful, by religious monotheism. But the common faith of the nations or, at least, their common willingness to seek the judgment of Israel's God, does not bring them into harmony, let alone into union. That "God's name is one," as the prophet Zechariah says it will be in the days to come (14:9), does not mean that humanity is one.

This is a vision that comes out of the same world as the Amos indictments, a world of small nations whose members are, so to speak, accustomed to one another. They fight and they negotiate; they share a common law, which they are often tempted to violate. Their vision of peace not only includes the others, but accepts their otherness. The prophets of an imperial power would be likely, I think, to give an entirely different account of the days to come. Presumably they would be critics of imperialism, but what they would yearn for is an empire without domination, a world state of equal citizens, not a jumble of heterogeneous and contentious nations. Imperial intellectuals are commonly captured by the idea of a "pax Romana" even when they have no illusions about the character of "Roman" power. They imagine the pax without the power. The Israelite prophet solves the power problem by invoking a "pax dei," but he then returns to the familiar jumble of nations. It's that return that gives his vision its attractive modesty. If "swords into plowshares" is utopian, the plural "nations" and "many peoples" is realistic.

### "The Law of the Kingdom Is Law"

The third argument that I want to examine develops around the legal maxim with which the rabbis accommodated themselves, and the nation generally, to the political conditions of the exile. Now statehood and sovereignty have been lost; the Jews are scattered, ruled by alien kings. They no

<sup>8</sup> James L. Mays, *Micah* (London: SCM Press, 1976), pp. 98-99.



longer play a part in international society. But they still need what we can think of as a foreign policy: they have to deal with the alien kings. This cannot be a single foreign policy, conducted from a central ministry. It is highly localized, the work of many intermediary figures (like the “intercessors” of the medieval period). Nonetheless, it has remarkably similar features across the diaspora. Everywhere it starts from the legal position first adopted in Babylonia: “The law of the kingdom is law.” *Dina d’malkhuta dina*.<sup>9</sup> The function of this maxim is not only to accept gentile rule, but also to incorporate it into the halakhic system. Now Jews who obey the law of the country in which they find themselves are also, first of all, obeying a Jewish law that tells them to obey the law of the country in which they find themselves. The law of the country is domestic in character; the halakhic maxim is something like international law for the diaspora—and its extensions and qualifications, as we shall see, take on universal meaning. *Dina d’malkhuta dina* is recognizably linked to the international law of the small peoples of the biblical age: it is another example of the universalism of the weak.

The maxim does not stand by itself; it cannot be unqualified, else it would leave no room at all for any Jewish law except this one self-immolating principle. In practice, its effects are limited to civil law; it involves an acceptance of the king’s right to tax and of his regulation of the property system. Religious law, by contrast, is not subordinated to the law of the kingdom, and since religious law includes personal status (marriage, divorce, conversion, and so on), there continues to be much work for the rabbinic courts. But this important exception to the (gentile) king’s authority, insisted upon for the sake of religion, was not developed into a general demand for a separation of religious and civil jurisdictions—and certainly not into a claim for religious freedom. Here a universalist moment is missed: the standard argument is not that people generally should be allowed to follow their understandings of

<sup>9</sup> For the crucial text, from the Babylonian Talmud’s tractate Bava Kama 113a–b, see *The Jewish Political Tradition*, vol. one, *Authority*, edited by Michael Walzer, Menachem Lorberbaum, Noam Zohar, and Yair Lorberbaum (New Haven: Yale University Press, 2000) pp. 435–36.

God’s law, but only that Jews must obey the divine commandments that were delivered to them at Sinai. The Jews in effect separated the synagogue from the (gentile) state, but they did not argue that separation was a good thing; it was just one more perverse but necessary feature of exilic life. Even so, they might have recognized that it was necessary also for other “exiles,” that is, for minorities generally; but I know of no writers who made that argument.

Still, the maxim about *dina d’malkhuta* was qualified in other ways that are more readily universalized. For the rabbis did not mean to expose Jews to arbitrary or unfair laws. From very early on, cases of confiscatory taxation or tyrannical decree or discriminatory legislation were not taken to be “covered” by the maxim. It might be necessary to pay the taxes or obey the decrees, but it was not necessary to call them legitimate. And the standard way of refusing to do that was to say: This is not “law.” The strategy was to essentialize law and thereby to universalize it. What is not law is not legitimate—in principle, it is not legitimate for anybody. The strategy can be extended: if the king confiscates the property of one of his subjects or gives arbitrary power to a tax farmer, setting no limits to what he can extort, that is not “taxation,” it’s robbery. Imagine, says Maimonides, that the king “takes the courtyard or field of one of the citizens [as the biblical King Ahab tried to do], contrary to the laws he has promulgated: he is deemed a robber.”<sup>10</sup> (Most Jewish burghers dealing with most gentile kings in the years before emancipation thought, probably rightly, that they were being robbed.)

But the most important demand of the Jews in exile was for equal treatment: law must be general and nondiscriminatory in its application. The “general rule,” according to Maimonides, is that “any law promulgated by the king [must] apply to everyone and not to one person alone.”<sup>11</sup> This is not quite the same thing as a demand for full equality before the law; it does not reach, for example, to class differences. Ideally, however, it does reach to national differ-

<sup>10</sup> See Walzer et al., *The Jewish Political Tradition*, p. 444; excerpting from *The Code of Maimonides, Book Eleven, The Book of Torts*, trans. H. Klein, Yale Judaica Series (New Haven: Yale University Press, 1954), pp. 108–10.

<sup>11</sup> Walzer et al., *The Jewish Political Tradition*, p. 444.



ences, as the Bible seems to require: "There shall be one law for the citizen and for the stranger who dwells among you" (Exodus 12:49). There are other biblical commands, however, that require discrimination, and this verse from Exodus was probably honored most often in the breach. Still, it was what Jews hoped for in the lands of the exile. Their extreme vulnerability sometimes forced them to concede that special laws might be enacted for "strangers" like themselves—and then they asked only that all Jews be treated equally. It is worth noting that this concession was forced by the harsh conditions of Jewish life in Christendom; rabbinic authorities in Muslim lands claimed a more general equality (which is not to say that the claim was accepted).<sup>12</sup> Of course, the rule that law must be nondiscriminatory was a formal principle of both Christian and Muslim jurisprudence, even when "strangers" were in fact discriminated against. But it was the strangers themselves for whom the principle had practical value; it was worth insisting on whenever they were able. "This is not a fair law," says a thirteenth-century rabbinic responsum, criticizing an act of royal discrimination, "and is not law."<sup>13</sup> Here again is the universalism of the weak.

As in my other examples, it is a very modest universalism. It does not require that the law be substantively just, only that it not be radically unjust. And, at least in its Jewish version, it does not propose resistance or revolution in the face of illegitimate law. In general, I think, the members of pariah religious and ethnic groups cannot be revolutionaries; emancipation is the precondition of revolutionary politics. And resistance in the "internationalist" terms that I have adopted here would have to take the form of a war—a just war, perhaps, but not a possible course of action for the scattered and vulnerable Jewish communities. What the rabbis propose instead is evasion: since this is not a tax, you are justified in looking for any possible way of not paying it. Since this is not a law, you are justified in disobeying it and also in lying about your disobedience. There is no call for civil, that is public, disobedience in the Jewish texts; that kind of behavior depends upon a significant degree of trust in the overall justice of the political system, and the Jews had no such trust, and no reason to have it,

<sup>12</sup> *Encyclopedia Judaica*, sv *dina d'malkhuta dina*.

<sup>13</sup> Walzer et al., *The Jewish Political Tradition*, p. 441 (Hayyim Or Zaru'a, Responsa 206).

in pre-emancipation times. What they did have was a minimalist sense of what justice might mean in a system that included small peoples like themselves. The minimum requirements were all negative in character: taxes should not be arbitrary or unlimited; the king should not rule by decree (but only by public enactment or longstanding custom); the laws should not discriminate among the individuals and/or nations subject to the king's authority.

## The Noahide Code

My last example is the Noahide Code, which represents the Jewish tradition's closest approximation to a standard universalism. The actual meaning and purpose of the code is the subject of much debate both in the classical texts and among contemporary scholars. I will not provide an account of the debate here, though aspects of it will be reflected in my own analysis. I am radically dependent in this section on two wonderfully erudite and subtle books by David Novak that analyze the code as a kind of natural law.<sup>14</sup>

These are the laws that, according to the Talmud, were given to Adam and again to the sons of Noah—that is, to humankind generally. The number varies in different versions, but the standard number is seven, and six of these laws are, again, negative in character: the Noahides are forbidden to practice idolatry and blasphemy; they are forbidden to commit murder, robbery, and a set of sexual acts that includes incest, adultery, and homosexual intercourse; and they are forbidden to eat the flesh of a living animal (this last is read by Maimonides as a ban on cruelty). The seventh law is positive: they are required to establish a judicial system (presumably to enforce the first six laws).<sup>15</sup> These seven are derived exegetically from verses in the book of Genesis that, with the exception of the bans on

<sup>14</sup> David Novak, *The Image of the Non-Jew in Judaism: An Historical and Constructive Study of the Noahide Laws*, Toronto Studies in Theology, vol. 14 (Toronto: Edwin Mellen Press, 1983) and *Natural Law in Judaism* (Cambridge: Cambridge University Press, 1998).

<sup>15</sup> The classic statement can be found in the Babylonian Talmud, tractate Sanhedrin 56a–b.



murder and the flesh of a living animal, do not bear the interpretations they are given. The Noahide Code is a speculative venture of the rabbis; it describes at once the obligations of all humanity before the Sinai revelation and the obligations of non-Jews after—the Jews having been given a much larger set of laws, which includes the original seven. The seven, however, are so generally stated that they invite elaboration, and in some versions they pretty much cover the same ground as Jewish law except for its ritual provisions: holidays, the dietary code, sacrifices, purity, and so on.

It is easy to see how the code could come to represent a Jewish version of natural law. It incorporates the standard moral rules, which have in (some) other traditions also been thought to include or require a commitment to monotheism. And a number of Jewish writers have explicitly argued that it is possible to arrive at the seven laws through reason alone or, more specifically, through reflection on the human need for society. But in the original rabbinic teaching, the laws of the Noahides are commandments, not rational deductions and hence not, in the usual sense, “natural” to humankind; they are the first example of revealed law; the Torah delivered at Sinai is only the second. This is how religious Jews recognize gentiles as moral beings: they live, like the Jews, “under the commandments.” There is quite a bit of leeway for interpreting the commandments, but all human beings start by being commanded. The traditional Jewish view is that we do not create the moral universe; we only inhabit it. What is important here is that we all inhabit it.

But it is also the traditional view that we inhabit it by choice. Human beings are free to refuse the commandments and walk out of the moral universe. It is wrong to do that, but not impossible. And the standard Jewish claim about the idolatrous nations is that they have done exactly that. It is virtually analytic to the Jewish understanding of idolatry that idolaters recognize no moral restraint.<sup>16</sup> If they violate the primary Noahide commandment, then they violate all the others. Simple empiricism would lead observers of real-idolaters-in-the-world to question this analysis, and

<sup>16</sup> Again, the classic statement can be found in the Babylonian Talmud, tractate Avodah Zarah (Strange Worship).

such questions do surface in rabbinic literature.<sup>17</sup> But the double standard with which early Jewish law treats Jews and gentiles makes sense only if the idolatrous others are taken to be radically lawless. (They have no sense of property, for example, hence the law about the return of lost articles [Deuteronomy 23] does not apply to them.) One purpose of the Noahide Code, then, is to mark out the people to whom the double standard itself does not apply and with whom moral coexistence is possible.

It could do much more than this: the code also provided the basis for a full acceptance of the “other” as a religious equal. Thus Menachem Meiri, a fourteenth-century halakhist and talmudic commentator living in Provence, writes: “Every Noahide whom we see, who accepts upon himself the seven commandments, is one of the saints of the nations of the world, and is in the category of the religious, and has a portion in the world-to-come.”<sup>18</sup> In some sense, this is the standard view of the Noahides, though the meaning of its various parts (above all the phrase “accepts upon himself”) is disputed, and Meiri’s strong statement owes a great deal to the relatively benign character of Jewish-Christian interaction in fourteenth-century Provence. But the central focus of the legal literature is not on individual Noahides, but rather on the gentile nations. The code is, again, a kind of international law; the agents to whom it is chiefly addressed are organized groups of men and women, imagined as accepting the code or not, living with or without legal constraint.

At the same time, many of the rabbis in both the talmudic and medieval periods regard the code as if it were designed for resident aliens in the Land of Israel, the subjects of a Jewish king. Since there was no continuous tradition of gentile acknowledgement and observance of the code from the days of Noah forward, and since the Noahide Code was included in the Sinai revelation (in effect, revealed again), these rabbis take the code to be, effectively, Jewish law for the gentiles. This is “our” universal law for “them”—much like the earliest form of the *jus gentium*, which was simply a

<sup>17</sup> For an interesting example, see Novak, *Image of the Non-Jew*, pp. 206–11.

<sup>18</sup> Novak, *Image of the Non-Jew*, p. 351.



form of Roman law for non-Romans.<sup>19</sup> Hence the Noahide Code is meaningful only when Jews exercise political power: they take responsibility for the seventh commandment and set up a judicial system to enforce the other six commandments on their non-Jewish subjects. In this form, “natural law” is very much an imperial creation, and here, as in other empires, it marks out a way of tolerating foreign nations. Or, at least, it defines a limited toleration: resident aliens must give up idolatry; they need not convert to Judaism.

If the Noahide Code is an imperial creation, then, so it is often said, it must have been created in an empire.<sup>20</sup> This belief has led some scholars to date the code from Hasmonean times, when Jewish rule extended over a number of non-Jewish nations. But some of these, like the Idumeans, were forcibly converted—which suggests that adherence to the code was not yet available, or not yet acceptable, as an alternative to conversion. Probably, the code is a later creation, the product of an imperial imagination rather than an actual empire. The rabbis imagined a messianic age when a Jewish king would rule, not over the world, but over the land of Israel, and they imagined the land with its existing heterogeneous population. Given their unhappiness with the Hasmoneans and with the policy of forced conversion, they then had to work out a more minimalist set of rules for gentile residents. These are conceived to be rules that all human beings must obey, but mostly do not; thus, the rules are enforced by the Jews wherever they are able to enforce them (but this is, again, a purely imaginary “ability”). Maimonides, the greatest of the medieval Jewish philosophers, seems to have held this view of the Noahide Code. Isaac Cardoso argued from it, on the principle of reciprocity, that Christians should give to Jews the same status as Noahides would have or, as he thought, once actually had in a Jewish kingdom—“resident sojourners, who . . . were able to live among [the Israelites], although they did not follow their Law.”<sup>21</sup>

But there is an alternative understanding, according to which the code is simply the law of the Noahides, and the Jews have no special responsibility for its enforcement. This alternative is less the product of philosophical or theological reflection than of experience. Exilic Jewry had no powers of enforcement; yet in all the countries of the exile the code was more or less effectively enforced by the Noahides (that is, the gentiles) themselves. So here is a set of laws/commandments, revealed to humankind in the days of Adam and Noah, knowable by reason, and visibly established in the world. Taking the Noahide Code to be the actual law of the gentile nations is a way of recognizing what Novak calls the “normativity” of the others.<sup>22</sup> Not only do non-Jews live “under the commandments,” but they also live—some of them, some of the time—*according to* the commandments. Anyone who wants to deny non-Jews this status must also deny or minimize the meaning of the code. Thus Wyschogrod: “But the law is addressed only to Israel. It is not a universal law, obedience to which is expected of all peoples. Apart from the Noahide commandments, the Torah is addressed only to Israel.”<sup>23</sup> Wyschogrod says nothing more about the Noahides. But focusing on their “normativity,” as Novak invites us to do, has important and interesting consequences.

First of all, the Noahide Code provides a new grounding for *dina d'malkhuta dina*, which appears now as something more than an exilic accommodation to gentile power; it is also a recognition of the substantive validity of gentile law. “The law of the kingdom” is based on revelation and/or confirmed by reason, exactly as Jewish law is—or, better, revelation and reason provide critical standards for non-Jews as well as for Jews. Second, the code, and the gentile law that it validates, provide a comparative standard for Jewish law: “they” are stricter here, “we” are stricter there; “they” do things this way, “we” do things that way. I do not want to suggest that comparative law was ever a central feature of Jewish scholarship. Until very recently, at

<sup>19</sup> Novak, *Natural Law*, pp. 139–42.

<sup>20</sup> See Novak’s account of the debate about the origins of the Noahide Code, *Image of the Non-Jew*, ch. 1.

<sup>21</sup> Yerushalmi, *Cardoso*, p. 470.

<sup>22</sup> Novak, *Image of the Non-Jew*, p. 59; Novak’s argument in the whole of ch. 2 is bold, original, and (I hope) right.

<sup>23</sup> Wyschogrod, *Body of Faith*, p. 211.



least, it was not. Indeed, curiosity about the “others” is barely visible in the classical Jewish texts. There was no Jewish Herodotus in ancient times, and while writers like Philo and Josephus labored to explain Judaism to the gentiles, they made no effort, nor did anyone else, to explain Hellenistic culture to the Jews. With rare exceptions, that pattern persisted into medieval and early modern times. But the complex engagement of exilic Jewry with gentile law forced Jewish writers to think, sometimes, about legal practices in a comparative way. And Noahide law provided a framework within which to do this.

If there was legitimate law and law enforcement among the gentile nations, there were also, visibly, different versions of legitimate law among the different gentile nations. The idea of Noahide law made for pluralism: the code could be realized in different ways. Jews believed, of course, that the Torah was the ideal legal system, but it was not the only one. Whether founded on revelation or reason, the law of the gentiles was “essentially independent.” At the same time, it was possible to recognize a minimalist version of the code, which it was incumbent on all nations to enact and enforce. And here “we” could learn from “their” enactments. “The recognition and affirmation of the presence of *dinim* (laws, legality) among the gentiles,” writes Novak, “provided a theoretical model for determining the necessary minimal moral standards to which Jewish law must adhere.”<sup>24</sup> I am unsure about the idea of a theoretical model, but the “recognition and affirmation” certainly had a practical effect, which is reflected in another legal maxim: “There is nothing permitted to Jews that is prohibited to gentiles.”<sup>25</sup> It would have been a scandal and a discredit to God, so the rabbis thought, if Jewish law on any subject was more permissive than gentile law. A discredit in whose eyes? Obviously, in the eyes of the gentiles, whose “normativity” is thus given extraordinary force. Of course, the reverse form of the maxim is not accepted: “There is nothing prohibited to Jews that is permitted to gentiles.” The strictness of gentile law is controlling, not its leniency. In traditional Judaism, strictness is more valued—and yet, some-

times, the gentile nations are stricter! The ability to acknowledge this fact is the unexpected outcome of the revelation to the sons of Noah.

## Conclusion

I have tried to describe a number of approaches to universalism from within traditional Judaism. Think of these as moving toward, perhaps eventually constituting, what might be called a “low-flying” universalism; that is, one worked out in close contact with the political landscape. Its crucial moral perception is the existence of other nations as moral and legal agents. This acknowledgement of the others derives from Jewish particularism; it is, so to speak, the turning outward of a particularist perspective. Sometimes the turn can reach to what I have described elsewhere as a “reiterative universalism”—as in the following passage from the prophet Amos:

To Me, O Israelites, you are  
Just like the Ethiopians  
—declares the Lord.  
True, I brought Israel up  
From the land of Egypt,  
But also the Philistines from Caphtor  
And the Arameans from Kir.

(Amos 9:7)

This suggests that there is not one deliverance (and one election) but a reiterated series, each engaging a different nation.<sup>26</sup> The nations are fully equal in God’s eyes, and so they should be in each other’s. Amos’s argument was never accepted (in fact, it is rarely mentioned) in later Jewish texts, but

<sup>24</sup> Novak, *Image of the Non-Jew*, p. 69.

<sup>25</sup> Babylonian Talmud, tractate Sanhedrin 56a.

<sup>26</sup> I develop the idea of “reiterative universalism” in “Nation and Universe,” *The Tanner Lectures on Human Values* XI, edited by Grethe B. Peterson (Salt Lake City: University of Utah Press, 1990), pp. 507–56.



note that his universalism is also worked out close to the ground—on which real Philistines and real Arameans walked. In this sense, it fits nicely with my four examples, in all of which the ongoing coexistence of Israel and the nations is assumed.

Coexistence is necessarily rule-governed. That, at least, is the Jewish assumption; there is no love of anarchy among traditional Jews; antinominism appears sometimes in mystical thought, but not here in the marchlands, where one actually has to deal with the other nations. Here there are rules for the conduct of war; divine arbitration; legal limits on taxation and on state action generally; rules of adjudication; and, finally, a basic moral code. All these apply across actually existing national and religious boundaries. Some of their content is included in halakhah, formally incorporated into Jewish law. But all of them are first imagined and developed outside, and they are best understood as constituting a Jewish universalism—which takes the characteristic form of a common law for the nations.

In fact, we should think of it as a common law in the making, as common law commonly is. Amos's rules for war are not a code, but only a series of examples; the argument invites more work, and the work is well worth doing. The wars of modern Israel have led some contemporary rabbis to struggle with halakhic precedents about military conduct, but these are meager (because there were no Jewish armies whose conduct required regulation) and they are scarred by exilic resentments. Amos's customary law reflects, as I have already argued, a state-like posture and a morally helpful commitment to ongoing relations with other states. Similarly, the limits on *dina d'malkhuta dina* have to be figured out anew in each "kingdom"—and why not in Israel, too, where the principle of nondiscrimination could play a useful critical role? And, again, the Noahide Code is far too vague to serve as an actual set of laws; it has to be expanded and interpreted—as it has been the subject of a wide range of expansions and interpretations. None of these are definitive, but the arguments themselves have served as a useful background for everyday encounters with the

"others." There is no reason why these arguments cannot go on today, taking into account the place of Jews in the modern world and of Israel in the society of nations. In any case, they have gone on long enough so that it makes no sense to claim that universalism depends on Greek philosophy or on Christianity (or on some combination of the two), or that it is a secular liberal invention, or that it must be grounded philosophically in Kantian ethics, or that it is uniquely Western (or, for that matter, that it is the product of Jewish assimilation). There are many different universalisms, many different idioms in which similar universal values can be and have been expressed.

Among the Jews, one can find both high-flying (philosophical) and low-flying (political/legal) versions of universalist argument. I have focused on the second partly because it is less well understood, but also because it is more realistic and perhaps more useful on the ground. But does this second version reach as far as many Jews today want to go? Does it reach to an account of human rights? Does it allow for feminist claims to equality? There is no reason why Amos's ban on the exile and enslavement of "an entire population" cannot be expressed in the language of rights (as the condemnation of "ethnic cleansing" is expressed today), and no reason why the Noahide Code's ban on murder and robbery cannot be taken to rest on rights to life and property. What is today called "rights talk" could easily be introduced into the common law of the Jews.<sup>27</sup>

Feminism is harder, given the overwhelmingly patriarchal character of rabbinic Judaism. But the comparative perspective opened up by the Noahide Code offers interesting possibilities. For if gentile men are now prohibited from ruling tyrannically over their wives and daughters, how can this be permitted to Jewish men? It would be a scandal and a discredit to God. I do not say this to mock the tradition. In fact, I am being true to it. Polygamy was finally ruled out as a Jewish practice, sometime around the year 1000 CE, with arguments of exactly this kind. When Rabbi Gershom and his

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<sup>27</sup> See Novak's argument for introducing it in *Natural Law*, pp. 154–56.



colleagues in the Jewish communities of the Rhineland forbade marriage to more than one woman, they acted, writes Robert Gordis, because "they found it intolerable for Jews to maintain an attitude toward marriage . . . that set [Jewish] women on a lower social and ethical plane than did their monogamous Christian neighbors."<sup>28</sup> That is a good argument, and it is no sign of progress that contemporary orthodox writers would probably find it incomprehensible or repugnant—a call for assimilation. This way of recognizing the possible moral value of what the "others" think and do is a key feature of low-flying universalism, and low-flying universalism arises within the tradition. You live with other people, and you have to look and see what they are doing. There are still judgments to be made, of course, and these will reflect Jewish experience and values. But Jewish experience is not the whole story; Jewish values are not the only ones.

The arguments that I have canvassed here are invitations to further argument, which will rightly be shaped, in the future as in the past, by the ongoing, permanent engagement with other nations and religions. Anyone who claims that this engagement is an imposition of Western culture is not being faithful to the Jewish (or, I suspect, to any other) traditional way of life.

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<sup>28</sup> Robert Gordis, *The Dynamics of Judaism: A Study in Jewish Law* (Bloomington, Indiana: Indiana University Press, 1990), p. 143.

## Discussion

**Question:** How does one apply this philosophy to the present political relations between the Israeli government and the Palestinians?

**Professor Walzer:** I think it is especially important to deny the orthodox and ultra-orthodox in Israel a monopoly on this tradition and to insist that it is possible to defend, from within it, both in general terms and in Jewish terms, a peace settlement with the Palestinians. This is not the occasion for me to try to analyze the current disaster in the Middle East. I don't pretend that the application of any set of moral principles at this point is easy. In fact, my own suspicion is that at this point there is no chance of making peace; one has to act in ways that don't preclude making peace somewhere down the road. My own analysis and my defense and my critique of Israeli policy would follow that maxim: don't do anything that makes peace harder when the next opportunity comes, even if it doesn't come soon.

**Question:** It seems to me that your talk could be seen as a kind of an assimilationist argument, in that you want the Jews too to be able to be universalists. It seems that the argument you have made is not a universalist argument; it's an aspirational argument for goodness between peoples.

But there is one thing about it that seems to require a universal dimension: it is worked out between peoples, across borders. It doesn't claim to be grounded in anything that necessarily reaches across the globe, and I don't see what the payoff is in talking about it in universalistic terms.

**Professor Walzer:** Well, first of all, I think that it is right to say that when local parochialisms are overcome and cross-border understandings reached,



which are not merely agreements on how to deal with some particular problem but moral understandings about how to act in the world—that is the beginning, at least, of universalism, that is the way in which universalism arises when it doesn't arise in a philosopher's study. It was precisely that alternative origin of universalist arguments that I was exploring today.

It also seems to me that the claim made by medieval Jews, that illegitimate law is not law—this is a universal claim. It can be made by anyone, and it implicitly applies to anyone. Whether in practice it was always understood in that way, that's a matter for historical investigation and scholarly debate. But the strategy of essentializing law in order to insist upon the illegitimacy of discrimination is a universalizing strategy.

**Question:** It does seem as if we are moving back to a basic natural law position, and I wonder if you would distinguish what you have said from that tradition?

**Professor Walzer:** I don't feel any great need to distinguish it. But I believe there are many features of the arguments that I have described, the four different arguments, that are not features of standard natural law conceptions.

First of all, the Noahide Code, which can be understood as a Jewish version of natural law, is explicitly described as a set of commandments, not a set of deductions from some principle of reason. It is available to any rational person, but it does not have the form of a rational argument. It is, like the Sinai laws, a set of commandments.

And the Jewish perception of equality among peoples takes the form of saying, "We all live under commandments, we are all commanded." Now, that is a different view than the natural law view. I am not a believer, so I don't in fact believe that we live under divine commandment; and yet, I am sure that that description of us as commanded beings comes closer to the reality of moral life, the sense of being an obligated person, than classical natural law arguments do.

**Question:** Has anybody arrived at these seven laws by reason alone?

**Professor Walzer:** I think that the Maimonidian view, perhaps the common view of Jewish philosophers in the Middle Ages, was that Aristotle had arrived at these views by reason alone. Aristotle is generally taken to be the representative of philosophical reason. There are very interesting arguments in medieval Jewish texts about whether Aristotle, because of his understanding of moral law, has a place in the world to come.

**Question:** I want to go back to the question about whether this is universalism at all. Your answer to that question seems to indicate that somebody like Hitler who crosses borders comes up with universalism. Clearly, that's not a moral universalism.

**Professor Walzer:** No. Nazi doctrine doesn't cross borders; it makes borders, it insists on borders. It insists on drawing a very hard line between the Aryan race and other races, between the German people and other peoples, and it gives that line extraordinary significance, ideological (and biological) significance, and, so Nazis would say, moral significance.

A universalizing creed has to deny the moral significance of borders—not to deny it entirely, because there are reasons for the existence of different cultures, nations, peoples, but to deny that borders can ever justify fundamental inequalities. That is the crucial denial that I see in the Amos text, which applies the same international law to all nations—interestingly, idolatrous as well as monotheistic nations. That's what makes that Amos text virtually unprecedented in biblical literature.

**Dr. Rosenthal:** Thank you, Michael. When Andrew Carnegie founded this Council eighty-seven years ago, he had this intuition that the world's religious traditions had much to add to the discussion of a search for peace and justice. But there was a hitch, which was that it would depend on people like you, who could fly low and fly high and fly right, to explain it to us in ways we could actually use. I want to thank you on behalf of everybody involved with the Carnegie Council for doing this.



## About the Speaker

Michael Walzer has been Permanent Faculty Member at the Institute for Advanced Study in Princeton, New Jersey, since 1980. Earlier, he taught at Princeton University and Harvard University. Other activities include: editor of *Dissent*; member of the editorial board, *Philosophy and Public Affairs* and *Political Theory*; contributing editor, *The New Republic*; and member of the Board of Governors, Hebrew University. Professor Walzer has written a number of books, among them *Just and Unjust Wars* (1977, revised third edition, 1999), *Spheres of Justice* (1983), *Exodus and Revolution* (1985), and *On Toleration* (1997). He is an editor of *The Jewish Political Tradition: Authority* (2000), the first volume in a landmark four-volume work exploring the political thought of the Jewish people from biblical times to the present.

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