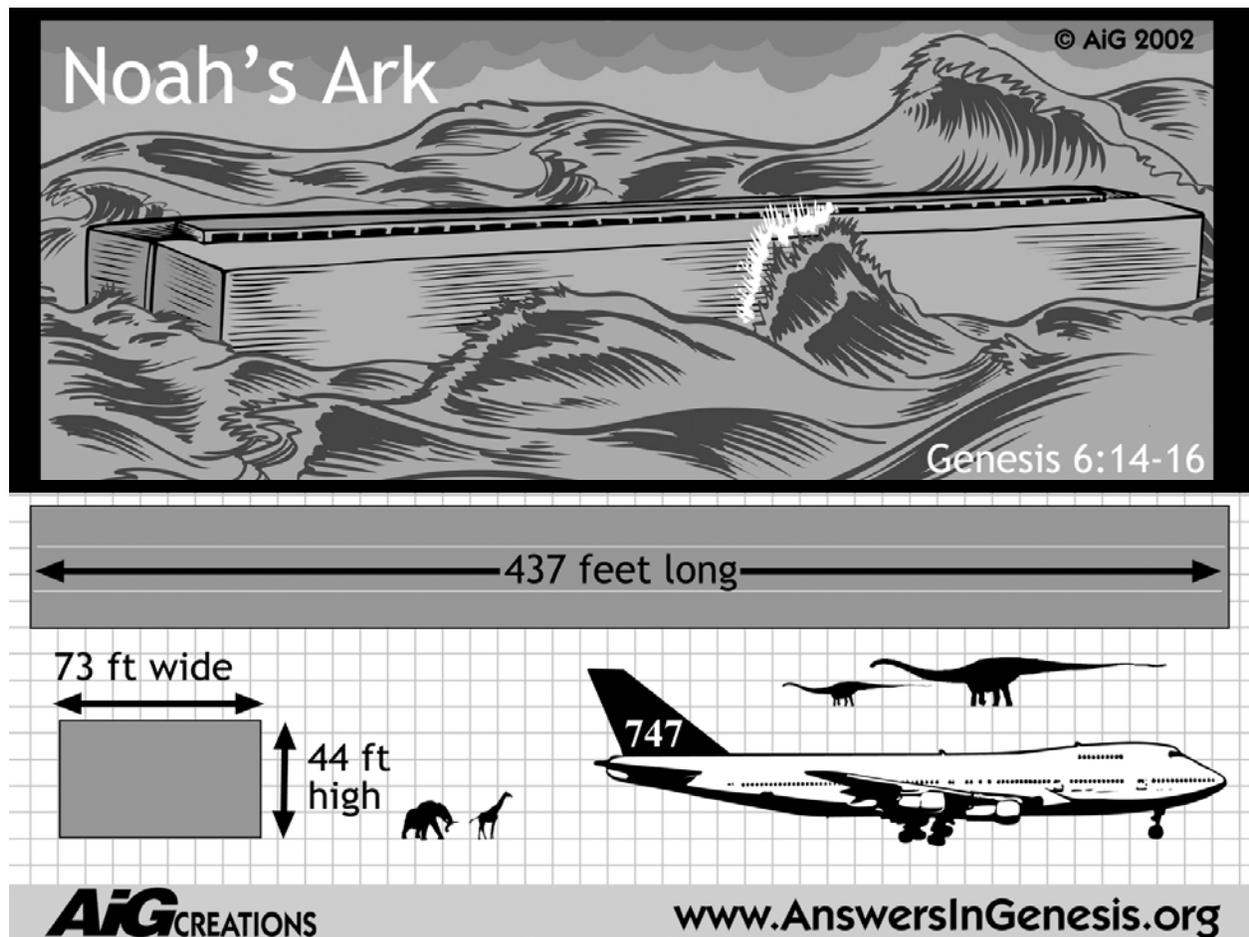


ESSAYS FOR GENESIS 6-8

THE BIBLICAL ARK—THE REAL HISTORICAL ARK

The Ark was a real boat that God told Noah to build. In fact, God's Word supplies us with the dimensions (Genesis 6:14-16).

The Ark was a very large vessel—much larger than a 747 jet airplane. Notice how small a full-grown giraffe and bull elephant look next to it. Even the largest of dinosaurs is dwarfed by the Ark. (Of course, it makes sense God brought young adult animals (including dinosaurs) to the Ark rather than the largest full grown adults.)



GENESIS CHAPTERS 6-8

UMBERTO CASSUTO

Why is the Cain and Abel story in the Torah? There are several lessons, but the primary ones are that life is precious and blood revenge is anathema. Excerpted from *A Commentary on the Book of Genesis, Part One, From Adam to Noah*, Magnes Press, Jerusalem.

THE FLOOD

Traditions relating to the Flood, or to a similar event, exist among different races throughout the world. Nearest to the Biblical account are those found among the peoples of Mesopotamia—the Sumerians and the Akkadians. From them these sagas passed on to the Hittites and the Hurrians, who adapted and translated the Mesopotamian texts on the subject; thereafter, apparently through the intermediacy of the Hittites, they were transmitted to the Greeks and from them, in turn, to the Hellenistic world, which possibly was also influenced by Jewish sources....Stories about floods in general form part of the tribal folklore of distant countries, as far away as the southernmost regions of America, but these possibly preserve only memories of local happenings, or represent confused echoes of the Scriptural narratives, which the natives heard from Christian missionaries....

Only the Mesopotamian account of historical times could be of any help to us in elucidating our section. To this material we have to devote particular attention; and since the resemblance between the Mesopotamian and Biblical traditions is far more manifest in the narrative of the Deluge than in that of the preceding chapters, it is desirable at this stage to discuss the subject at somewhat greater length.

Great importance was attached in Mesopotamia to the story of the Flood, and already the ancient Sumerian writings make it (under the name A.MA.RU. [which means “devastating flood”]) one of their principal themes. It was a favorite subject with the poets, and on the basis of these epics, the “historiographers” distinguished between the antediluvian and post-diluvian lists of kings. From the Sumerians the saga was handed down to the Akkadians, and the Deluge (in Akkadian, *abûbu*) also became a popular topic in Akkadian poetry from earliest time. Among the remains of the two literatures extant today are to be found documents containing descriptions of the Flood that differ in detail, and doubtless there also existed other texts on the subject at some time....

The Babylonian epos was already in existence at the beginning of the second millennium B.C.E., and we possess fragments of it that were inscribed in the first half of that millennium. Subsequent to this recension in ancient Babylonian, an Assyrian copy was made of which we have larger fragments. An examination of the portions that have come down to us from both versions shows that although there are discrepancies between the two, on the whole they are in agreement. Hence, notwithstanding that the story of the Flood survives only in the Assyrian reproduction, it may be

assumed that the narrative in the ancient Babylonian text was essentially similar to the account given in the Assyrian rendering.

The epic relates that the hero Gilgameš, greatly affected by the death of his friend Enkidu, and terrified by the darkness of the netherworld, yearned for eternal life such as the gods enjoyed; and in order to learn how this goal might be attained, he resolved to journey to the dwelling-place of Utnapištim (this is the Akkadian name of the hero, corresponding to the Sumerian *Ziusudra*), who was saved from the Flood and was raised to the status of divinity; perchance he would be privileged to receive from him the desired information. After a harrowing journey through places full of alarming difficulties and terrifying perils, he succeeded in appearing before Utnapištim and asking his question. The latter, in order to demonstrate to him that his deification was due to special, non-recurrent circumstances, tells him the whole story of the Deluge....

This saga, it will be recalled, has its origin in Sumerian literature, and it helps up to understand the fragments of the earlier Sumerian Tablet (mentioned above) that was discovered in Nippur. As I have already stated, only mutilated fragments of the document have survived—a third approximately of each of its six columns. What remains of the first two columns of the Tablets refers to the creation of the world, the descent of kingship from heaven to earth, and the building of the five antediluvian Babylonian cities (Eridu, Badtibira, Larak, Sippar, Šuruppak), and the remnants of the other four columns contain fragments of the story of the Flood. The entire text was intended to be recited, it seems, as a magic incantation.

The first surviving fragment appertaining to the Deluge (col. 3) takes up the story at a point after the deities' decision. The goddess Nintu or Innanna (that is, Ištar) cries aloud like a woman in travail for the bitter fate of mankind, and the god Enki (identical with Ea) devises a plan in his mind. King Ziusudra, who occupies himself with the administration of the temple in humility and reverence, dreams an amazing dream. In the next fragment (col. 4) we are told that he heard [in his dream] a voice that exhorted him to stand beside the wall and to hearken to the words that would be addressed to the wall; a flood would come upon the world, to destroy the seed of man in accordance with the resolve of the assembly of the gods and the command of Enlil. The segment left from col. 5 describes the storm of the deluge: the mighty winds blew violently and the flood swept down. The flood continued to pour down for seven days and seven nights, and the ship moved along over the face of the great waters, driven by the winds; then the sun reappeared and shed its light on the heavens and the earth. Thereupon Ziusudra opened the window of the ship, and the light of the sun entered therein. Ziusudra prostrated himself before the sun-god; he sacrificed a bull and offered up offerings of sheep. In the fragment from the last column (col. 6), it is stated that Ziusudra prostrated himself before Enlil, and that the latter endowed him with life like that of the gods and created for him an eternal godlike soul, and the divinities appointed his dwelling-place in the land where the sun rises.

This tablet is not the only extant document relating to the Sumerian tradition concerning the Flood. The following additional inscriptions, in particular, should be noted:

a) The first part of the Sumerian King List, which enumerates the kings who reigned before the Deluge in the five ancient cities that are named also in the aforementioned epic poem. At the beginning and the end of this section, when the descent of kingship from heaven and the Flood are referred to, there occur expressions similar to, and in some cases identical with, those in the epic—a clear indication...of literary dependence.

b) The fragment K 11624 in the British Museum, which comprises the end of the list of antediluvian monarchs, followed by incomplete epic verses in the Sumerian language with an Akkadian rendering between the lines....They make mention also of the gathering and tumult (*óu-bur-šú[?]-[nu(?)]*) of people, from which it follows that also according to this recension, just as in the epic of *Atraóasis* mentioned immediately below, the cause of the Flood was this tumult, which angered Enlil and did not permit him to sleep in peace.

c) Another Sumerian fragment (Nipp. 4611), in which one of the goddesses instructs Ziusudra (here we find one of the partial variants of the name) in the sacrificial rites and in his religious and ethical duties....

There is still another fragment written in the ancient Babylonian tongue, which was discovered in Nippur. There are left on it only a few incomplete lines, apparently giving the words of Ea, who instructs *Atraóasis* in regard to the making of the ship and its covering, and the bringing of the living creatures on board. It is impossible to tell to which text this fragment belongs; it may have formed part of the Epic of *Atraóasis*, or of some other document. At all events, what is legible fits the subject-matter of this epic.

The *Gilgameš* Epic, and with it the story of the Flood incorporated therein, gained currency also in the land of the Hittites. Among the texts found at *Boğazköy*, the site of the ancient capital of the Hittites, there is a fragment of the saga in Babylonian, as well as several fragments translated into the Hittite and Hurrian languages. The fragments of the translations likewise contain references to the episode of the Deluge, which is proof of the dissemination of the Mesopotamian tradition on this topic in Asia Minor....

Comparison between the Biblical section on the Flood and the Mesopotamian stories on the same theme have often been made, the most recent attempt (1946) being in *Heidel's* work. The comparative studies published hitherto have not investigated the matter with all possible and necessary thoroughness; nor do they enter into an examination of the details of the narratives, although these are no less important than the broad parallels. It will not be superfluous, therefore, to devote further study to this comparison....

We shall begin with the parallels, and then proceed to the divergencies.

The essential narrative is identical in both traditions. The divine decision to destroy mankind and all other living creatures by the waters of the Flood; the salvation of one man with his relations and representatives of the animals by the divine injunction to build a structure (an ark or a ship), capable of floating on the water, and to enter it together with all who were destined to be saved; the coming down of the deluge; the grounding of the ark or ship on the top of a certain mountain; the sending forth of birds to ascertain if the waters had subsided from the face of the earth; the offering of sacrifices after the deliverance, their favorable acceptance and the divine blessing for the saved—all these elements are common both to the Israelite and to the Mesopotamian traditions. Regarding details, the following points may be indicated as corresponding in the two traditions, the Biblical and the Mesopotamian:

(1) The place of the hero of the Flood in the order of the generations. In the Pentateuchal version, he was the *tenth* in the genealogy of world-patriarchs; he likewise appears as the *tenth* in the list of antediluvian kings according to several recensions of the Mesopotamian tradition....But in other versions he is given as the ninth king....

(2) Possibly also the name of the hero of the Deluge. If the explanation, based on Ethiopic, of the name *Noah* as meaning *length*, which is advanced by several scholars, is correct, we may see in it a parallel to the name Ziusudra (probably signifying: 'he who lives long') and to that of Utnapištim (connoting possibly: 'found or saw life'). But all these interpretations are doubtful....

(3) The age of the hero of the Flood. The Torah gives Noah's age as 600 years at the time of the Flood; according to...text W.B. 62, Ziusudra had reigned—before the Deluge, of course—ten šars, which came to 36,000 years, that is, 600 units of sixty years....¹

(4) The fixing of the measurements of the ark or ship by divine command (the dimensions vary...).

(5) The division of the ark or ship into various stories and rooms.

¹ Elsewhere, Cassuto explains that a sexagesimal system—calculations, notations, etc., based on units of 60—was in use in ancient Sumer and that the Torah adapted that system in its own chronologies. "According to this method of reckoning," he writes, "sixty years constitute a time-unit called šuš; ten šuš, that is, 600 years, equal a ner; sixty šuš, that is, 3,600 years, equal a šar; sixty šar, that is, 216,000 years, equal a great šar [šuššar]." Thus, the 36,000 of Ziusudra *corresponds to* (but as will be seen below is not the equivalent of) the 600 of Noah. — Shammai.

- (6) The specific mention of the covering, the entrance and the window of the boat or ark.
- (7) The use of pitch [כִּפָּר] *kopher*; Akkadian *kupru*] in fitting out the ark or ship. The noun כִּפָּר *kopher* and the verb כִּפַּר *kaphar* [‘to cover with pitch’] are found nowhere else in Scripture.
- (8) The predetermination of the time of the commencement of the Flood.
- (9) Both in the Torah and in Berossus an exact date, month and day being mentioned, is given for the beginning of the Deluge....
- (10) The Pentateuch clearly indicates that the animals came to Noah of their own accord, that is, as a result of an inner urge aroused in them by God...; we are similarly told in the Epic of Atraóasis that Ea promised Atraóasis to send the animals to him.
- (11) Specific reference to the closing of the entrance of the ark or boat at the beginning of the Flood.
- (12) Specific mention of the opening of the window after the Deluge.
- (13) Express reference to the removal of the covering (or a part thereof) after the Flood.
- (14) The resting of the ark, according to the Torah, on the mountains of Ararat, that is, in the region subsequently called Armenia, and the grounding of the ship, according to Berossus, in Armenia....
- (15) The specification of the kinds of birds that were sent forth: raven and dove, though in different order.
- (16) In the Gilgameš Epic, the birds are sent out on the seventh day after the stranding of the vessel; similarly an interval of seven days elapses between one sending forth and another in the Pentateuchal story....
- (17) In the Torah narrative, too, if we follow the Septuagint version (8:7), the raven did not return, just as in the Epic of Gilgameš.
- (18) Similarity of expressions in regard to the odor of the sacrifices: Gen. 8:21, *and the Lord smelled the pleasing odor*; in the Gilgameš Epic xi 159–160: ‘The gods smelled the odor, the gods smelled the sweet odor.’
- (19) Other correspondences of expression: The word יִשְׁבוּ *yišbotu* in Gen. 8:22 appears somewhat strange, for in all that precedes there is no mention of any such cessation. Possibly we have here an echo of an ancient literary tradition, for in Akkadian the verb שָׁבַת *šabath* signifies the

action of the flood, which sweeps everything away, and this is the meaning of the synonymous verb *ùr* in the Sumerian.

In the Book of Genesis we find the phrase *to (in) His heart* both in connection with the Lord's decision to blot out man from off the earth (6:6) and in regard to His ultimate resolve not to bring a flood again upon the world (8:21); in the Epic of Gilgameš, xi 14 we are told that *their heart* prompted the gods to bring the Deluge. Likewise in the Sumerian Tablet of Nippur it is stated at the beginning of col. 3 that Enki (who is the same as Ea) devised a plan *in his heart*....

Having considered the parallels, let us now glance at the differences....

(1) According to the Sumerian fragment K. 11624 and the Epic of Atraóasis, Enlil wanted to destroy humanity because the noise of mankind disturbed him and did not let him sleep peacefully. It was for his own advantage and benefit that he put forward his proposal in the assembly of the gods, and induced them all to agree. In the Gilgameš Epic and in the summary of Berossus there is no mention of the reason for the decision taken at the assembly of the gods with regard to the Flood; it was an arbitrary resolution. Nor does the dispute that broke out between the gods after the Deluge, as described in the Gilgameš Epic, indicate that there was a motive for the decision. The questions that Ea asks Enlil are only hypothetical, and Ea does not imply that Enlil's decree had actually been intended as a punishment in any respect; on the contrary, Enlil does not attempt by a single word to justify his action. In the Torah narrative, on the other hand, there is an ethical explanation. The Deluge is decreed purely as an act of justice; the Judge of the whole earth brings upon the sinners the retribution that they deserve, measure for measure. The moral corruption of humankind leads to their physical dissolution.

(2) The Mesopotamian texts depict even the deliverance of the hero of the Deluge as due to caprice. No reason is given for Ea's action for the benefit of Utnapištim. It was not on account of his uprightness or righteousness that Utnapištim was saved, but only because the god desired this. Even in the Sumerian fragment, which relates that Ziusudra devoted himself constantly to the Temple service, there is no reference to moral values, but only to Ea's intervention on behalf of one who watched over the cult. In the Gilgameš Epic we are told that Enlil was wroth when he saw that Utnapištim had been saved; in his view, all mankind were doomed to perish without any distinction being made between righteous and wicked. Only the late writer Berossus, living in the Hellenistic period, states that Xisuthros was deified because of his piety; but even he does not attribute Xisuthros' salvation from the Flood to his religious devotion. In the Torah, on the contrary, the rescue of Noah is likewise an act of true justice; it is only right that the virtuous man should not be destroyed through the punishment of the sinners; therefore the Judge of the whole earth prepares for him a way of salvation.

(3) The Epic of Gilgameš portrays the gods as terrified and seeking refuge before the vast might of the elements of nature, which they themselves had let loose in order to bring a flood upon the world. In the Bible narrative God rules nature as He wills. He is outside nature and above it. He commands forces of nature to carry out their tasks and they obey Him. All that happens in the world does so in accordance with His desire; but to Him nothing happens.

(4) In the stories of the Mesopotamian peoples we are told of the differences of opinion among the divinities before the decision to bring the Deluge is taken, and of disputes, quarrels and recriminations between them after the Flood. In the Torah, needless to say, there is nothing corresponding to all this. No other will prevails in the world except that of the One God, and His will is absolute justice, leaving no room for, or possibility of, dispute.

(5) In the Gilgameš Epic it is related that when Utnapištim offers his sacrifices after the Deluge, the deities smell the sweet odor and gather like flies over the sacrificer. Even if we forgive the poet the unedifying simile, assuming that his intention, as in the case of similar expressions in Homer's poems, was only to lessen somewhat the tension created by the narration of the terrifying events, nevertheless the picture of the gods scrambling for the pleasures of the sacrifice is based on an uncouth and primitive idea of the godhead, and reflects the notion current in Mesopotamia that the divinities actually ate and drank what human beings offered to them, and that they had need of oblations if they were not to suffer hunger and thirst. Now they were famished and parched, since throughout the period of the Flood no sacrifice had been offered to them. This conception is diametrically opposed to that of the Torah. In contrast to the whole of this portrayal, the Pentateuch merely contains the expression: *And the Lord smelled the pleasing odor*; only the odor—a thing without substance—is stated. The sacrifices, it should be mentioned, were *burnt offerings*, which were wholly consumed. To later generations the Biblical reference to the smelling of the pleasing odor may appear to smack of corporeality; but when we compare it with the parallel text in the Gilgameš Epic, we immediately realize how profound is the gulf between them. Generally speaking, it is not possible to understand Scriptural passages properly unless we pay attention to the ideas prevailing in their place and time of origin. Not only is there no thought of corporeality here, but, on the contrary, the verse is intended to negate the materialistic notions that characterized the concepts of that period....

(6) The climax of the Mesopotamian stories is the exaltation of the hero of the Flood to divine status. In the Torah, Noah remains mortal after the Deluge just as he was before. The dividing line between humanity and deity is not allowed to become blurred in the least.

(7) The establishment of the Covenant for the good of mankind (Gen. ix 8–17) has no parallel in the Mesopotamian documents known to us so far.

Now let us pass on to the differences in the details of the accounts.

(1) Ziusudra, even in his human state, was a king, whereas Noah was an ordinary person....

(2) Although the number of time-units comprised by Noah's life prior to the Deluge (600 years) corresponds, as we have noted, to the total units of time that Ziusudra lived before the Flood (10 šars, which come to 36,000 years, that is, 600 units of 60 years each), yet the units are different. The Torah set the measure of Noah's life at a minimum, in the same way as it dealt with the ages of the preceding generations..., and assigned to Noah's antediluvian life one-sixtieth of the years recorded in the Mesopotamian tradition.

(3) In the Mesopotamian inscriptions, the refuge is the ship; in the Pentateuch it is the ark....[The ark is just a box, with no possibility of being steered in any way; the Torah thus seeks to emphasize] the Divine protection of Noah and all that were with him.

(4) The measurements of the boat given by Berossus (in the Gilgameš Epic these are not quite clear, because the interpretation of the relevant sentences is in doubt) are highly exaggerated. Her length is almost a kilometer and her width is nearly half a kilometer. In this instance, too, the Bible reduces the figures to the minimum.

(5) Ea instructs his loved one to mislead his fellow citizens, if they should ask for what purpose he is building the vessel. To this particular, which the Israelite ethic would not have tolerated, there is no parallel in the Torah.

(6) The ship is closed before the Flood by Ziusudra or Utnapištim; Noah's ark the Lord shuts in person.... Apparently the Torah wished to stress the Lord's paternal love and His providential care for all. Compare also my note to 8:1.

(7) The Deluge continued, according to the Mesopotamians, seven days; according to the Torah, forty days. Here Scripture gives the higher figure, since it is the longer period that is the more credible; it is difficult to imagine so terrible a flood after a storm lasting no more than seven days.

(8) The Mesopotamian narratives describe the Flood as a mighty tempest accompanied by rain, lightning and thunder. The Pentateuch speaks only of rain and the waters of the deep. How this divergency is to be explained, we shall see in our annotation to 7:11.

(9) The Gilgameš Epic relates that the ship stopped, when the Deluge came to an end, on Mount Nisir; this accords neither with the biblical account nor with that of Berossus....

Let us now endeavor to grapple with the question of the relationship between the Mesopotamian tradition and the Pentateuchal narrative.

When fragments of the Gilgameš Epic referring to the Flood were first discovered, many considered this text to be the source from which the biblical story emanated, possibly through the

mediation of the Canaanites. When other Mesopotamian fragments on the same subject subsequently come to light, it immediately became clear that the matter was not so simple....It is hard to imagine that the Torah took over directly a pagan myth for inclusion in its structure, even after editing it and making certain changes....Today most scholars (Heidel being the latest exponent of this view) are inclined to the opinion that the Biblical and Mesopotamian narratives derive from a common tradition. This is the third of three possibilities that can be envisaged in an historical examination of literary works, when there are two similar accounts, A and B: A may depend on B, or B on A, or both may go back to a common source X. But sometimes the matter may be more complicated still. In this case, it is certainly much more intricate. It will suffice to bear in mind that the Sumerian and Akkadian inscriptions that have become available to us were discovered by mere chance, and represent only an exiguous residue of considerable material that has been lost. Since even these are not few and vary considerably from one another, it is likely that many more texts, differing from those in our possession, were once in existence. It is impossible, of course, to guess the contents of the inscriptions that have not survived....

In the Prophets and Hagiographa [Ketuvim, the Writings, the third section of the Tanach] there are many allusions to the Flood. Some of them...[are] simple echoes of the story of our section....However, in other parts of Scripture there occur definite allusions, especially in poetic form, to details that *are not found* in the Pentateuch, and apparently were known to the people from another source. For instance, in Isaiah 54:9, the Deluge is called *the waters of Noah*, a phrase not used in the Torah; nevertheless, the prophet uses it as a well established term. In the same verse there is also mentioned, as an example of something known to all, the *oath* that the Lord swore not to cause the waters of Noah to go over the earth again. The Torah does, in truth, speak of a solemn assurance, but not of an oath. The same applies to the reference found in Jeremiah 33:20–21, 25–26 (compare also *ibid.* 31:35–37), to the *covenant* of the Lord with the day and with the night; our section does contain (8:22) a promise that day and night would not cease, but not an actual *covenant*....

(3) The details of the Deluge with which the talmudic and midrashic literature embellishes the Torah account are in part homiletical interpretations of biblical texts or later legends, but some of them correspond to what is narrated in the Mesopotamian inscriptions and possibly belong to the ancient Israelite store of tradition....

The Torah could not very well pass over in silence the ancient poetic tradition regarding the Flood, which was already widely current among the Israelites. It was necessary to accept it for the sake of the continuity of the narrative of the history of man upon earth, and in order to provide a proper answer to the burning question that stirred everyone who gave more than superficial thought to what this tradition related: Why did humanity suffer so terrible a calamity? Hence the

Torah accepted the traditional story, purified and refined it, and harmonized it in all its aspects with its own doctrine.

It is impossible to determine precisely what innovations the Israelite poets who lived in pre-Torah times introduced, and what changes the Torah made. But this is beyond doubt, that *the Torah's aim was to remove from the story any residual heathen concepts and any detail that retained a semblance of idolatry about it.* [Emphasis mine —Shammai.]

On the hypothesis of such a course of development, it is possible to understand both the parallels and the differences between the Torah narrative and the Mesopotamian sagas. The acceptable elements were taken over, and those that were incongruous with the spirit of the Torah were silently ignored or were amended. Not only does the Torah exclude any reference to the will of the various gods or the natural forces, apart from the will of the Lord of the universe; not only does its concept of God transcend completely the world of nature; and not only is it free from any blurring of the boundaries between the human and the Divine; but also the more astonishing details, such as the exaggerated numbers, the incongruity between the duration of the Deluge and its results, the royal rank of the man who is saved, and the like, are absent or are reduced to a minimum; whilst the attributes of the divinity who acts arbitrarily and cunningly and gives deceitful counsel are changed to qualities of uprightness, of love for the creatures that are deserving of it, and of fatherly care for them.

Thus the story that to begin with was amoral becomes a source of ethical instruction.

The primary lesson it inculcates...is the answer it gives to the vexed question of the cause of the catastrophe, namely, that the universal disaster came on account of the universal wickedness of mankind, but the righteous were not destroyed together with the wicked. The answer, it is true, is only of a general character; it does not probe the problem of calamity deeply, paying no attention to exceptions, such as instances of the righteous suffering, or of good people who are overwhelmed along with the bad. But the narrative provided no opportunity for such profundity. It is content to instruct us in the broad principle of the matter, and to teach generally that justice prevails in the world. Subsequently, the prophets and thinkers of Israel gave deeper thought to the details of the subject and the exceptions, and tried to find an explanation of the problem of the catastrophes that annihilate the innocent equally with the guilty. Then we hear the answer based on the principle that the collective responsibility for the iniquities of a generation rests also on the one who...did nothing to curb the wrongdoing; and the explanation...that "God's nearness" brings to him who endures his suffering with love; and the view that stresses the limitations of the human mind, which is unable to grasp the mystery of Providence in its totality, whilst recognizing the general harmony prevailing in the world despite the disharmony discernible in any particular facet of it; and still other interpretations, diverse but not mutually exclusive, all of which perhaps contribute to man's endeavor to come as near as possible to the solution of the terrifying question....

THE PROBLEM OF THE RELATIONSHIP OF THE TRADITION OF THE FLOOD TO NATURAL PHENOMENA

Several scholars have endeavored to determine the nature of the phenomenon upon which, in their view, the Mesopotamian and Israelite tradition of the Deluge is based. It is worth devoting a few lines to this subject.

The section certainly does not imply that the waters of the Flood submerged the whole earth, to wit, all that we denote today by the name globe. [Emphasis mine — Shammai.] The horizon of the narrative includes only the part of the world in which, according to the preceding chapters, the first generations of mankind dwelt, that is, the Mesopotamian region, as is evident particularly from the Mesopotamian parallels to chapter 5. To this corresponds the Mesopotamian background of this section and of what follows, especially in the two parts of chapter 9, which mentions, inter alia, the land of Shinar and the city of Babylon as the habitation of the human race after the Deluge.

So the Sages of the Talmud rightly understood our section, as we see from B[abylonian Talmud tractate] Shabbat 113b (similarly, BT Zevachim 113b): “R. Ammi said: He who eats earth of Babylon is as though he ate the flesh of his ancestors (Rashi explains: “For they died there in exile”; but from the continuation of the passage it appears more probable that the reference is to the Flood); some say, It is as though he ate abominations and creeping things, because it is written, *And he dissolved* [E. V. *blotted out*] *every living thing*, etc. Resh Lakish said, Why is it [Babylon] called Shinar? Because all the dead of the Flood were tossed there.” The view that the Deluge did not come upon the Land of Israel [is found elsewhere in a Midrash].

Among the exegetes who attempted to determine the origin of the Flood tradition as a natural event, there were those who thought..., on the strength of the Akkadian name for the Deluge *abûbu*, that the ancient tradition was founded on the phenomenon of the annual inundations of the great Mesopotamian rivers. But it is impossible to imagine that a tradition that narrates a story so far removed from the sphere of the normal emanated from the observation of an oft-recurring event. A different view is expressed by the geologist Suess, who based his theory on certain expressions used in the Babylonian and biblical narratives. He conjectures that the origin of the tradition is to be sought in a colossal earthquake that caused the sea to inundate the region extending from the Persian Gulf, or south of it, up to the area north of it. But this hypothesis lacks sufficient foundation; the collection of a few details from a poetic description is insufficient material on which to base a reconstruction of actual happenings, especially if some of the details are not in reality to be found in the texts themselves but were introduced there hypothetically, for example, the reading מַבּוּל מֵיָם *mabbul miyyam* [‘flood from the sea’] in Gen. 6:17, in place of מַבּוּל מַיִם *mabbul mayim* [‘flood of waters’].

Another suggestion was put forward by Sir. L. Woolley. In his excavations at the site of Ur of the Chaldees, he found among the strata containing relics of human artifacts a layer of clay about two and a half meters thick, and he thought that this layer, which in his opinion belongs to the fourth millennium, was formed as a result of the Flood of which the Mesopotamian and biblical tradition speaks. But similar layers, belonging to various periods, were subsequently discovered in other places in the same area, both in the south (in Kiš and in Šuruppak, the city of Utnapištim) and in the north (in Nineveh); whereas other excavations, carried out on sites close to these, showed nothing similar.

It is more likely, therefore, that these layers are the result of local occurrences only, which took place at different times. Generally speaking it may be said that the endeavors to link our section with some given happening is not in keeping with the character and purpose of the section. It is poetic in character, and its aim is to explain how we have to understand and interpret, according to the Israelite conception, the ancient tradition of the Flood, and to point the lessons to be learnt from it. Hence all the attempts at rationalization, such as those we have mentioned in this subsection, are unacceptable....

COMMENTARY TO 8:21

*And when the Lord smelled the pleasing odor ...*In contrast to the corporeal and unedifying picture of the Babylonian poem, which depicts the gods swarming from all sides “like flies” to enjoy the sacrifices, and squabbling among themselves as to who should and who should not enjoy Utnapištim’s offerings, we have here the smelling of the odor only. We can appreciate the biblical expression only when we set it against the terms used in the pagan saga, which it seeks, as it were, to oppose. The God of Israel has no need of sacrifices. *Do I eat*—the biblical poet asks in His name—*the flesh of bulls, or drink the blood of goats?* (Psalms 50:13). Noah’s sacrifices are burnt offerings, whose flesh is wholly burnt and not eaten. Only the odor reaches the throne of the Lord—a thing without substance. Undoubtedly, the reference is not to the smell of burnt meat, which is certainly not pleasant, but to something more important.

To understand the Scriptural concept of smelling the pleasing odor, we have to consider such passages as Amos 5:21 [the literal rendering of which is]: *I will not smell* [a pleasing odor] *on your solemn assemblies*. If the prophet, who comes to declare that the Lord has no desire for the oblations of the people who transgress against Him, says *I will not smell*, it means that it was possible for Him to smell, but He does not wish to do so. Had the prophet intended to negate this possibility, he would have put it in the form of a question: *Shall I smell?* just as the Psalmist asks: *Do I eat?* in the verse quoted above. If now a prophet like Amos thinks that the smelling of the sacrificial odor is possible, it certainly has no material import. The expression *He smelt an odor* had already lost in Hebrew its original and literal signification and acquired a figurative connotation, such as: “He received favorably,” [meaning] “He esteemed the inner intent of the sacrifice.” In Psalm 50,

immediately after the verse cited, we read: *Offer to God a sacrifice of thanksgiving*, the meaning being: Do not think, as do the Gentiles, that God derives material enjoyment from what you offer to Him, and that He eats the flesh of bulls and drinks the blood of he-goats; instead offer to God a sacrifice that is pleasing in His sight, namely, an oblation that expresses your thanksgiving and is indicative of the feeling of gratitude in your heart. Such was Noah's offering; hence it was pleasing to the Lord.

In the expression *ריח ניחוח* *reah ni-cho'ach* [pleasing odor], a common sacrificial term, there is apparently a play on the name *נח* *Noah*...and *מנוח* *manoach* [place where he set] (8:9). The combination of the two words *ריח* *reach* and *ניחוח* *ni-cho'ach* may have become popular also on account of the assonance of their endings. The word *ניחוח* is derived from the stem *נח* *nuach* [to rest], and signifies something that inspires, and is received with, gratification [literally, "resting of the spirit"]—a meaning well suited to our subject.

THE GENESIS OF JUSTICE

ALAN DERSHOWITZ

GENESIS CHAPTERS 6-9—

GOD OVERREACTS—AND FLOODS THE WORLD

[The following is excerpted from the introduction to Alan Dershowitz's "The Genesis of Justice." In it, he describes the problems the Flood story raises regarding the nature of God. He poses many negatives but concludes that God—and we—are better for them.]

Like most rulers who are soft on crime and unhappy with the results [because He let Cain get off virtually scot free and seemingly did not punish Lamech, if he actually committed murder], God overreacted and swung the pendulum in the opposite direction. We have seen this happen repeatedly in our own world: In the 1960s, enforcement of drug laws was lax; the death penalty seemed a relic of the past; prison terms for violent crimes were shrinking. Then the public and politicians began to rail against rising crime rates. The response was draconian drug laws, dramatic increases in capital punishment, and an exploding prison population. In the early days of humankind, God too saw "evildoing." His response was to be "sorry" that He made human beings—in the words of our translation—and to kill everyone in the world, except for one family, that of the righteous Noah.

Before we get to the injustice of such mass murder, we should pause to consider the concept of a God who is "sorry" about or "repents" His own creation, because He is surprised at what those He created are doing.

The midrash describes God declaring that the creation of humans out of earthly elements was "a regrettable error on My part."¹ Quite an admission for a God! Can such a God be omniscient?² If so, He should have known what He was doing when He created man whose "every form of their heart's planning was only evil all the day." A midrash compares God to a baker who has made bad dough: "How wretched must be the dough when the baker himself testifies it to be poor." Another analogizes God to a planter of trees who knows that someday, he will have to cut them down. But God is not a fallible baker. Nor are people trees. God is supposed to be omnipotent and omniscient.

¹ Midrash Rabbah, vol. 1, p. 221.

² This question is raised in the midrash by a Gentile and answered evasively. Midrash Rabbah, vol. 1, p. 222.

Yet even He was surprised by the human capacity for evil and thus decided to destroy not only all the people He created, but also all the animals, birds, and fish.³

God's fit of pique seems more characteristic of an adolescent in a schoolyard who not only quits a basketball game when he's losing, but takes the ball home, as well. In this case, however, God was playing with more than a basketball, and creators do not simply have the right to destroy the human life they have created. Parents may not kill their children just because they turn out bad. A just being can't destroy and start from scratch, even if He is God.

Saving one family doesn't solve the moral problem. God would seem to have been obligated to work with what He had created. Yet the Bible makes no reference to any ameliorative steps God might have taken in an effort to improve human beings before killing them all. Maybe a code of laws. Perhaps a few examples of proportional public punishment. God could at least have tried something more humane before He lashed out so promiscuously at all living beings. But no. God moved directly from inconsistent and infrequent punishment to total destruction, thus setting a terrible example for lawmakers that has, unfortunately, been followed throughout history.

What is the message we are supposed to take from this display of naked, uncalibrated power? We know that God is capable of bringing floods—any second-rate god can do that! But why is this God incapable of a rational, proportional and individual response to evil? Why must He destroy with so broad a brush? There are few satisfying responses to this question among the commentators.

Again, there is the "just so" story explanation: There may actually have been a flood in the Near East that wiped out much of human and animal life in the region. Many ancient cultures include accounts of a huge and destructive flood.⁴ This terrible event became part of the consciousness and tradition of the biblical writers. A religious explanation was necessary; hence the story of Noah's Ark. As anthropological history, this sort of folktale is understandable. As part of a narrative of divine justice, it cries out for further normative explication.

The traditional commentators focused on several possible justifications: first, the flood was delayed punishment for Cain's murder of Abel. If so, such a punishment would truly be unjust, for the guilty murderer himself becomes a builder of cities and is allowed to live a long, successful life, while his descendants—the innocent along with the guilty—are killed *en masse* several generations later. Second, there was what can best be characterized as the "eugenics" argument, namely that

³ The midrash justifies even the killing of the animals on the ground that they too had engaged in copulation with different species. Midrash Rabbah, vol. 1, p. 228.

⁴ The Akkadian and Babylonian civilizations also depict a great flood in their respective histories. Oxford Dictionary of World Religions (New York: Oxford University Press, 1997), p. 349.

“the divine beings”—whoever they were—had taken “the human women” as wives and procreated with them. There is also a reference to “the giants” (nephilim) who were on the earth in these days. Some have speculated—despite any scientific support—that this bizarre reference may represent a deep, past, collective memory of a time when early Homo sapiens roamed the earth alongside late Neanderthal man or other primitive beings. In any event, God needed to “cleanse” the earth of such overpowering hybrids, if humanity was to thrive. Any such eugenic solution obviously required the destruction of innocent babies along with guilty adults, but it sounds indefensible to the contemporary ear.

A midrash analogizes the flood to a natural “epidemic [which] visits the world [and] which slays both good and bad.”⁵ But the flood was not an epidemic; it was a deliberate punishment inflicted by God.⁶ Some commentators claim that God did, in fact, give the people a warning and an opportunity to repent. According to this interpretation, God’s reference to the days of man being 120 years is a veiled threat: Humans have 120 years to shape up or God will destroy them. A variation on this argument holds that Noah tried to get his fellow humans to stop their violence. Only when he failed did God carry through with His threat to “blot out humankind.”

The defense lawyer commentators reject the possibility that God’s destruction of the entire world was unjust. God’s justice is a constant with these commentators; everything else is variable.⁷ But the God of the Jewish Bible is a learning God as well as a teaching God, and perhaps He was wrong in flooding the world. He seemed to have acknowledged His error by “repenting” his decision to destroy the world just as He had earlier “repented” His decision to create man.

When God made His covenant with Noah after the flood, He promised never again to bring any floods to destroy the world. Yet He knew that people would turn bad again. Indeed, He expressly promises never to “curse the soil again on humankind’s account, since what the human heart forms is evil from its youth” (8:21). Nevertheless, He absolutely precluded Himself from bringing another flood. This certainty suggests that God may have realized He made a mistake, one He did not want

⁵ Midrash Rabbah, vol. 1, p. 214.

⁶ A divine punishment can, of course, take the form of an epidemic or plague, as it did in Pharaoh’s day. But if it were punishment, as distinguished from a natural phenomenon, it would raise the same moral questions. The flood, as deliberate punishment, is indistinguishable from the fire and brimstone threatened against Sodom and Gomorrah that Abraham protested. God did not make any analogy to an epidemic in that instance. He acknowledged that it would be unjust to sweep away the innocent along with the guilty.

⁷ Compare Rabbi Levi Isaac of Berdichev. There is also a tradition suggesting that Noah was wrong for not arguing with God—as Abraham subsequently did about his plans to destroy the world. Bodoff, Lippman, “The Real Test of the Akedah: Blind Obedience Versus Moral Choice,” *Judaism* 42 (winter 1993): 74-75.

to repeat. When God saw how evil man could be, He had a shock of self-realization: He had created this evil creature in His very own image, so maybe He too has the capacity to do evil—a capacity He must learn to control. Like a person who understands that he needs to make a public promise in order to control his destructive instinct, God bound Himself never to flood the earth again. Even God needs rules.

After the flood God did what He should have done before He killed everybody: He enacted a code of laws that explicitly punished murder by death. “Whoever now sheds blood, for that human shall his blood be shed.” By doing so, God recognized that the evil inclinations of human beings can be controlled, or at least in part, by law. From now on God would deal with evil in a more calibrated and individualized manner, rather than by indiscriminate destruction. Moreover, His laws would grow out of the experiences of both man and God, rather than mere fiat. Man would now understand the need for law, as a result of seeing the consequences of lawlessness.

The image of a God who teaches not only by His successes but also by His failures is an appealing one. Every good teacher knows that acknowledging mistakes and learning from them is an excellent pedagogical technique—better in many respects than pretending to be all-knowing or perfect.

In my initial year as an assistant professor, I asked a first-semester student a question about a judge’s instructions to the jury in a case we were studying. He gave me a perplexed look and stammered unresponsively. I then realized that I had made a mistake in framing the question—I had assumed the case had been tried to a jury, when in reality it had been tried to a judge. I immediately acknowledged my *faux pas*. From that point on, the class was much more relaxed and open. Students were more willing to risk being wrong now that their professor had acknowledged making a mistake. For several years thereafter I deliberately repeated my mistake.

An important part of the wonder of the Jewish Bible, and especially of Genesis, is the imperfection of every character in the drama, including the One who plays the leading role. The Jewish God is great and powerful, but even He is not perfect—at least not in the beginning.

For those who believe that God must be perfect, there is a religiously correct variation on this argument: The perfect God understands that in order to be a good teacher, He must appear to humans to be an imperfect, learning God, open to mistake, argument, persuasion, and repentance. So He speaks in the language of man, “repenting” His creation.⁸ We will soon see that He is willing to argue with a mere mortal and even be bested in debate with His creatures. A God who can admit

⁸ In the Book of Job, God says that Satan “incited Him against job.” Maimonides interprets this divine variation on “The Devil made me do it” excuse as another example of God speaking in the language of man. See Job 2:3-5, Art Scroll edition, Miesorah Publications (New York, 1994), pp. 22-23.

that His mind has been changed by mere humans is a truly great teacher. Those of us who try to be good teachers can learn a great deal about pedagogy from the ever-learning God of Genesis.

The story of the flood, therefore, is the story of God's overreaction to evil; His failure to deal with it in a just manner; His eventual realization that He did wrong; His promise not to make the same mistake twice; and His enactment of a legal code to punish individual wrongdoing. Indeed, God's learning- and teaching-process continues in the next episode of the Bible, when God seems to backslide and Abraham teaches Him an important lesson about the individualization of justice. The teacher becomes the student and the student the teacher. After all, somebody had to straighten God out about justice before matters really got out of hand.

NATURAL LAW AND JUDAISM: THE CASE OF MAIMONIDES

MILTON R. KONVITZ

Philosophers, foremost among whom is Leo Strauss, have contended that Judaism has no concept of natural law. These philosophers cite the Old Testament's lack of any discussion on nature to prove their point. However, closer examination reveals that this assumption is not true. The philosopher Maimonides restates the Talmudic law to prove that there is a concept of natural law in Judaism. The author, who passed away in September 2003, was professor emeritus of law and of industrial and labor relations at Cornell University, as well as a founder of the university's Department of Near Eastern Studies and Program of Jewish Studies. His publications included A Century of Civil Rights (Greenwood Press, 1983), The Legacy of Horace M. Kallen (ed., Associated University Presses, 1987), and nineteen other books. This article appeared in Judaism: A Quarterly Journal of Jewish Life and Thought in January 1996; Konvitz was a co-founder of the journal with Rabbi Robert Gordis.

Is there natural law in Judaism? Leo Strauss has given a partial answer to this question by saying that

Where there is no philosophy, there is no knowledge of natural right as such. The Old Testament, whose basic premise may be said to be the implicit rejection of philosophy, does not know "nature": the Hebrew term for "nature" is unknown to the Hebrew Bible. It goes without saying that "heaven and earth," for example, is not the same thing as "nature." There is, then, no knowledge of natural right as such in the Old Testament. The discovery of nature necessarily precedes the discovery of natural right. Philosophy is older than political philosophy.¹

This passage bristles with problems. First, let us admit that the term "natural right" does not appear in the Hebrew Scriptures; that is, not as such. But just as one could have been speaking prose for forty years without knowing it,² so, too, the Bible can contain Natural Law (or Natural Right) without explicitly avowing the theory or conception. The Hebrew Scriptures does not identify erotic or romantic love "as such," *eo nomine*, but can one argue that it is missing from the *Song of Songs*? Furthermore, as we shall note in the passages from Cicero and Grotius, Natural Law is not dependent upon philosophy, nor upon a philosophy of nature, but upon the nature of man. It is based upon a belief that the nature of man necessarily involves certain natural laws. The theory does not involve general nature, a philosophy of nature, but only Man, the nature of man. Let me quote the passage from Cicero:

¹ Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1953), pp. 81-86.

² Moliere, *Le Bourgeois Gentilhomme*.

No single thing is so like another, so exactly its counterpart, as all of us are to one another....And so, however we may define man, a single definition will apply to all....³

And what is the “single definition” that is applicable to all men? Every man has “right reason” — every man has intelligence, rationality; every man has reason and can be reasoned with:

For those creatures who have received the gift of reason from Nature have also received right reason....

And if every man has reason and can be reasoned with (right reason),

...therefore they have also received the gift of Law, which is right reason applied to command and prohibition.⁴

The background for Strauss’s strange statement is his belief that men cannot live without knowledge of the good to guide them individually or collectively; and this knowledge can be had either by “the unaided efforts of their natural powers” or by “Divine Revelation.” Strauss puts these alternatives as stark, separate choices; there is no overlap, no middle ground: “No alternative is more fundamental than this: human guidance or divine guidance.” Human guidance is characteristic of philosophy, divine guidance is presented by the Bible.

The dilemma cannot be evaded by any harmonization or synthesis. For both philosophy and the Bible proclaim something as the one thing needful, as the only thing that ultimately counts, and the one thing needful proclaimed by the Bible is the opposite of that proclaimed by philosophy: a life of obedient love versus a life of free insight.⁵

This is a fine example of the either/or logic. Things are either black or white; there are no shades of color. Strauss falsifies both religion and philosophy, and thus provides a perverted view of Natural Law. He does not consider the possibility that “free insight” could lead to “obedient love.”

Even a cursory examination of the history of Greek philosophy would show the complex and intimate relation of philosophy and religion. Greek philosophy began in religion, and Greek philosophy, as in Plato and Aristotle, ended in religion. From a concern with external nature the ancient philosophers moved to a concern with the nature of man, to psychology, logic, politics, ethics, epistemology. They discovered the soul, added the dimension of spirituality to the nature of man, and projected immortality for the soul. The philosophical thought of the Platonists, the

³ Cicero, *De Legibus*, I, x, 29; I, xii, 33 (Loeb Classics), pp. 329, 333.

⁴ See *supra*, note 3.

⁵ Note 1 *supra*.

Pythagoreans, of the schools of Parmenides and of Heraclitus cannot be discussed without focusing on their religious perspectives. And as much can be said even of leading twentieth century philosophers: Samuel Alexander, Henri Bergson, Alfred North Whitehead, William James, Josiah Royce, George Santayana, John Ellis McTaggart, F. H. Bradley, Bernard Bosanquet, Thomas Hill Green. All were concerned with the nature of man; all, in one way or another, were concerned with the spiritual nature of man; all were, in one measure or another, concerned with religion.

Let us return to what Cicero says about the definition of Man:

No single thing is so like another, so exactly its counterpart, as all of us are to one another....And so, however we may define man, a single definition will apply to all...

What does the Bible say about Man? How is Man defined?

And God said: "Let us make man in our image, after our likeness...;" And God created man in His own image, in the image of God created He him; male and female created He them.⁶

And then, after the Flood, God addressed Noah and his sons and said to them:

...and at the hand of man, even at the hand of every man's brother, will I require the life of man. Whoso sheddeth man's blood, by man shall his blood be shed; for in the image of God made He man.⁷

As interpreted by classical Jewish commentators, the Hebrew Bible defines Man as sharing in the divine character. As Judaism is a religion of ethical monotheism, so Man has the gift of choosing between good and evil (the blessing and the curse). As God is in some sense a Person, so Man, too, is a person, a thou and not an it. As God acts in accordance with Reason, so Man is capable of acting according to reason, according to "right reason." Because Man is an ethical person and can act in accord with right reason, he was given dominion "over all the earth"; no other creature could be entrusted with such power. Mind and spirit will rule over matter.

From God's address and revelation to Noah and his sons, the Talmud deduced what the rabbis called the Seven Commandments to Noah and his Descendants: a positive commandment, to establish courts of justice, and six negative commandments: prohibitions on blasphemy, adultery (or incest), idolatry, murder, robbery, and eating flesh cut from a living animal.⁸ These seven commandments are said to constitute the essentials of Natural Religion.⁹ These commandments are

⁶ Genesis 1: 26, 27.

⁷ Genesis 9: 5, 6.

⁸ Babylonian Talmud tractate Sanhedrin 56a-b.

⁹ J. H. Hertz, *The Pentateuch and Haftorahs* (London: Soncino Press, 1938), p. 33.

binding on all men, Jews and non-Jews alike. Observance of them by a non-Jew qualifies him to be called a righteous gentile.

Do these Noahide Laws constitute a recognition of Natural Law in Judaism? As we have seen, Professor Strauss would deny this claim; so does Professor Marvin Fox, as we shall see later. But I see no reason for accepting their view. These laws no doubt have as their root the belief that Man *qua* man made in the image of God, having a nature that partakes of divinity, must be subject to these commandments or laws. The fact that these laws are said to emanate from God does not deprive them of their rational ground. Antigone did not say to Creon that her right to bury the body of her brother is grounded in reason. She cried out that Creon's order was not made by Zeus, that it violated "the gods' unwritten and unfailing laws." And Cicero asserted that true law is valid for all nations and for all times, "and there will be one master and one ruler, and that is God, over us all, for He is the author of this law, its promulgator, and its enforcing judge."

And Grotius stated that the law of nature, being a dictate of right reason, makes an act either forbidden or enjoined "by the author of nature, God." The line of argument is straight: What reason demands, God demands; or in more biblical phrasing, What God demands, reason demands. (God may demand more of Jews, but our focus here is on what God demands of Man, what He commands or prohibits for all mankind.)

In Mishneh Torah, Maimonides restates the talmudic law with respect to the Noahide Laws, as follows:

A heathen who accepts the seven commandments and observes them scrupulously is a "righteous heathen," and will have a portion in the world to come, provided that he accepts them and performs them because the Holy One, blessed be He, commanded them in the Law and made known through Moses our Teacher that the observance thereof had been enjoined upon the descendants of Noah even before the Law was given [at Sinai]. But if his observance thereof is based upon a reasoned conclusion he is not deemed a resident alien, or one of the pious of the Gentiles, but one of their wise men.¹⁰

EXAMINING MAIMONIDES' TEXT

I find it difficult to accept the proviso that Maimonides has read into the talmudic statement. For Maimonides gives with one hand and takes back with the other. If the non-Jew is to fulfill the condition—if, for example, he is to refrain from adultery (or incest), not because of a "reasoned

¹⁰ Isadore Twersky, *A Maimonides Reader* (New York: Behrman House, 1972), p. 221. See M. Kellner, *Maimonides on Judaism and the Jewish People* (Albany: SUNY Press, 1991), p. 75, regarding the question of correctness of phrase "but one of their wise men."

conclusion” that such an act is evil, but only because it was prohibited by the Torah as made known to Moses and enjoined upon Noah and his descendants—it seems to me he would essentially be a Jew and not a gentile. It would not satisfy the Maimonidean proviso if the gentile merely believed that it was sinful, that it would be a violation of a divine law (like Antigone, or Cicero, or Grotius); but no, he must refrain from the act because it was enjoined in the Torah as given to Moses. I find this an insupportable condition and contrary to the spirit of the Bible and of Judaism.

It must never be forgotten that the first man was Adam, the first woman was Eve. They, and not Abraham and Sarah, are said to be the progenitors of humanity. It was they, Adam and Eve, who were made by God in His own image. Nowhere in the Bible is it stated or intimated that by choosing Israel, God abandoned the rest of mankind. For God is not a tribal deity, He is the creator of the whole universe. He is *echad*, the one and only God, not only for Israel, but for all nations, all peoples.

Noah was a righteous man. He lived hundreds, perhaps thousands of years before Moses. Did he avoid doing evil and observe all the commandments (or at least the seven specially marked as the Noahide Commandments) only because God “commanded them in the Law and made known through Moses our teacher that the observance thereof had been enjoined upon the descendants of Noah even before the Law was given [at Sinai]”? Without having this impossible thought in mind, Noah could not be a “righteous heathen”!

The Bible makes many references to righteous heathens. For example, when pharaoh ordered the midwives to kill all male children born to Hebrew women, “the midwives feared God and did not as the king of Egypt commanded them, but saved the men-children alive.”¹¹ The midwives listened to the voice of conscience, “they feared God.” Are we to deny them the distinction of being righteous heathens? In Leviticus we read: “Ye shall therefore keep My statutes, and Mine ordinances, which if a man do, he shall live by them: I am the Lord.”¹² Commenting on this passage, according to the Talmud, Rabbi Meir was accustomed to say: “Whence do we know that even a heathen, if he obeys the law of God, will thereby attain to the same spiritual communion as the High Priest? Scripture says, ‘which if a man do, he shall live by them’—not priest, Levite, or Israelite, but man.”¹³

Professor Fox, in an essay on “Maimonides and Aquinas on Natural Law,”¹⁴ agrees with Strauss and argues the case against the proposition that there is a theory of Natural Law in Judaism, and

¹¹ Exodus 1: 17. Regarding “feared God,” see Hertz, note 9 supra, at p. 208.

¹² Leviticus 18:5.

¹³ BT Baba Kama 38a.

¹⁴ Marvin Fox, *Interpreting Maimonides* (Chicago: University of Chicago Press, 1990), pp. 124-51.

especially that there is no Natural Law in the Bible. He recognizes the fact that in postbiblical rabbinic texts there are some statements that have been interpreted as teaching that there is a conception of Natural Law; but these statements, says Fox, should be properly interpreted as maintaining “the classical biblical teaching that divine commandment is the only ultimate source of law. Even positive human legislation is seen as legitimate and binding only insofar as it is an application or extension of rules or principles set forth in the divinely revealed law.”¹⁵

Professor Fox quotes from the Talmud the following passage:

“Mine ordinances shall you do” (Lev. 18:4), i.e., such commandments which, if they were not written [in Scripture], they should by right have been written, and these are they: [the laws concerning] idolatry, sexual immorality, bloodshed, robbery, and blasphemy.¹⁶

Fox, commenting on this passage, says that there is nothing in it to suggest that human reason by itself could have known that these acts are evil. He does not note that these are five of the Noahide Laws. They are known and respected by pagans. How did they get to know them? They were not at Sinai. If pagans could know them by “right reason,” why cannot Israelites? Why should Israelites be unable to arrive at such laws by “right reason”? This, it is submitted, is the plain meaning of the talmudic passage. Why should it be subjected to a strained—yes, unreasonable—meaning?

Moreover, since they are Noahide Laws, their context is non-Jewish. Jews have the Torah, which contains these commandments. The Talmud in effect says that if Jews did not have the Torah, they could have arrived at these commandments in the way that gentiles arrive at them, that is, by “right reason.”

One might agree with Fox that Jews should consider themselves bound by these commandments, not because “right reason” dictates them, but because they have been ordained by God; but this concession does not, I submit, compel the denial “that human reason could have known by itself that these acts are evil.”

In the Amidah that is recited three times each weekday, there is the following prayer:

You graciously endow man with wisdom, and teach insight to a frail mortal. Endow us graciously from Yourself with wisdom, insight, discernment. Blessed are You, Hashem, gracious Giver of wisdom.¹⁷

¹⁵ Ibid., p. 127. Quote from BT Yoma 67b.

¹⁶ Ibid.

¹⁷ Art Scroll Siddur, 103.

The Hebrew words used are *da'at*, *binah*, and *haskel*, that may be better translated as knowledge, understanding, and discernment.¹⁸ When a Jew arrives at the commandments by “right reason,” by the use of his God-given gift of reason, he knows that he ought to thank the Giver-of-Reason for arriving at right understanding and wisdom. As we have seen, this is exactly what was said by Antigone, by Cicero and by Grotius. Even for the pagan, Natural Law need not be atheistic; its ultimate ground can be a firm belief in God as the source of wisdom—and of law.

The Bible says, “I am the Lord that healeth thee.”¹⁹ This has not kept Jews from cultivating medicine and surgery as a profession, nor has the belief that God is the healer kept Jews from consulting physicians, nor pious, saintly rabbis from becoming physicians—for example, Maimonides, Judah Halevi; before them, in the talmudic period, Rabbi Ishmael, Rabbi Hanina ben Dosa, Samuel ben Abba ha-Kohen. However, all believed—both doctors and patients—that healing was in the hands of God, but physicians are His instruments. By the same reasoning, one can say that wisdom is in the hands of God, but wise men and women are His instruments. Just as one may use “right medicine,” so, too, one may use “right reason.” God is not displaced by such service; instead, God’s purposes are fulfilled by such instruments.

Christianity asserts that “God gave us eternal life, and [that] this life is in his Son. He who has the Son has life; he who has not the Son has not life.”²⁰ Does Judaism make the same claim for Moses? Does Judaism proclaim that eternal life is possible only through Moses; that he who has the Mosaic faith has life, and that he who has not this faith has not life? Christianity asserts that the gate is narrow, and that only few can enter.²¹ But this is the teaching of Judaism:

Rabbi Jeremiah said: Whence can you know that a Gentile who practices the Law is equal to the High Priest? Because it says, “Which if a man do, he shall live through them.” And it says, “This is the Law [Torah] of man.” It does not say, “The Law of Priests, Levites, Israelites,” but, “This is the Law of man, O Lord God.” And it does not say, “Open the gates, and let the Priests and Levites and Israel enter,” but it says, “Open the gates that a righteous Gentile may enter;” and it says, “This is the gate of the Lord, the righteous shall enter it.” It does not say, “The Priests and the Levites and Israel shall enter it,” but it says, “The righteous shall enter it....” So even a Gentile, if he practices the Law, is equal to the High Priest.²²

¹⁸ Authorized Daily Prayerbook, trans. S. Singer.

¹⁹ Exodus 15:26.

²⁰ 1 John 5:11-12.

²¹ Matthew 7:13-14.

²² Sifra 36b, quoted in C. G. Montefiore and H. Loewe, *A Rabbinic Anthology* (London: Macmillan, 1938), 564.

Isadore Twersky, in his magisterial *Introduction to the Code of Maimonides (Mishneh Torah)*, states that Maimonides does not operate with a concept of Natural Law. (As we have seen, this is, indeed, the case.) According to Maimonides, intellect is a tool for uncovering “the congruence between reason and revelation and the ultimate meaning of divine laws...; the religious philosopher operates on the assumption that the Torah—that is, moral-ritual law created by God—is rational and intelligible.”²³

This, however, does not address the problem of the righteous gentile. Can he use his intellect to arrive at the “right reason” for the Noahide Laws? Would that suffice, or must he justify his observance of these laws by avowing his belief that they were enjoined by God’s revelation to Moses? These questions are not addressed, but, it seems to me, they loom large as one reads Maimonides and is perplexed by what he says.

Haim Cohn, former Justice of the Israel Supreme Court, a leading jurist and authority on Jewish law, in an essay on “Authority and Reason in Ancient Jewish Law,” considers the question of the source of the Oral Law when no scriptural text and no tradition or custom or judicial precedent is available. In such a case, recourse is to “independent reasoning (*sevara*).” The sages, Cohn writes,

²³ Isadore Twersky, *Introduction to the Code of Maimonides (Mishneh Torah)* (New Haven: Yale University Press, 1980), p. 458. There is another passage in Mishneh Torah that may be relevant although it does not concern itself with the Noahide Laws. In the treatise on Sabbatical and Jubilee Years (*hilkhot Shmittah veYoval*), Maimonides considers the status of the Levites with regard to shares in the Land of Israel. At the end of his treatment of the subject, Maimonides explains why the tribe of Levi were granted no right to such shares, and then he states the following:

Not only the Tribe of Levi, but also each and every individual of those who come into the world [*not Israelites, but “each and every individual”?*] whose spirit moves him and whose knowledge gives him understanding to set himself apart in order to stand before the Lord, to serve Him, to worship Him, and to know Him, who walks upright as God had made him to do, and releases his neck from the yoke of the many speculations that the children of man are wont to pursue—such an individual is consecrated to the Holy of Holies, and his portion and inheritance shall be in the Lord forever and ever more. The Lord will grant him in this world whatsoever is sufficient for him, the same as He had granted to the priests and the Levites. Thus indeed did David, upon whom be peace, say, “O Lord, the portion of mine inheritance and of my cup, Thou maintainest my lot” (Psalm 16:5). [*The Code of Maimonides—Book of Agriculture*, Isaac Klein, trans. vol. XXI Yale Judaica Series (New Haven: Yale University Press, 1979), p. 403.]

The passage in its context, and when read as against the passage in Mishneh Torah dealing with the heathen who observes the Noahide Laws (*Kings and Wars*, ch. VIII, sec. II, in *The Book of Judges*, p. 230 vol. III, Yale Judaica Series) raises questions that I cannot resolve. Perhaps, since the passage quoted above speaks of priests and Levites, Maimonides, when he used the phrase “every individual” meant Israelites as distinguished from priests and Levites, and did not mean non-Jews?

classified such laws within the Oral Law; “but as a matter of fact and tradition, they were actually classified as Written Law, as if they emanated not from delegated but from direct divine authority.” Cohn does not approve the variety of rabbinic rationalizations. He writes:

The true explanation seems to me to be...: it is God who has imbued human beings with reason and has written it “on our hearts in broad and indelible characters”; and as the human capacity of reasoning is divine and god-sent, so is the use of this capacity an exercise of divinely bestowed power, and its normative result a divine law. Or, in more typically Jewish jurisprudential terms, as the revealed word of God established divine law, so must the divine will be inferred from and reflected by God’s deed and creation, including the human mind and its reasoning capacity. It is the very same idea which underlies Spinoza’s concept of *lex divina naturalis*.²⁴

As I interpret this passage, Cohn asserts that, despite appearances and legal or jurisprudential fictions, the ancient rabbis did, in fact, operate within a theory of Natural Law, as the theory has come down to us from the Stoic philosophers, through Grotius, Scholastic thinkers, Richard Hooker, and Spinoza.

In another essay, “Legal Change in an Unchangeable Law: the Talmudic Pattern,” Justice Cohn discusses briefly the passage from Maimonides that we have been considering. “It has been said,” writes Cohn, citing Leo Strauss,

that the Old Testament had no knowledge of any “natural law” or “natural right.” No divine revelation can possibly be invalidated by any “superior” law; nor can any law, however “superior,” serve as model for the divine will. The Oral Law, like the Written, is a form of positive law; and since it, likewise, is held to be divine, no unwritten “natural law” can ever transcend the Oral Law, either. The rejection of all natural law concepts is vividly demonstrated by a dictum of Maimonides to the effect that a Gentile who observes the Noahide laws has a portion in the world to come, and is reckoned as one of the righteous of the nations, provided that he accepted these laws as binding upon him because they were divinely ordained; but that if he observes them because of his own conclusions based on reason or compassion, he is not deemed either righteous or wise. At the same time, the talmudical jurists, too, distinguished between laws which, if they had not been expressly laid down, would have had to be observed in any event according to the common standards of mankind (such as the prohibitions of homicide, idolatry, larceny and incest), and laws which had to be laid down for the suppression of natural human urges...and which nobody would observe were it not for their enactment as positive law (such as dietary and purity laws). But the easily understandable reasons underlying the former laws are as irrelevant for their validity as is the

²⁴ Haim Cohn, “Authority and Reason in Ancient Jewish Law,” in *Selected Essays* (Tel Aviv and Jerusalem, n. d.), pp. 122-23.

ostensible lack of reason distinguishing the latter: all of them are expressions of God's unfathomable will.²⁵

Our concern is not with the question whether the ancient authorities recognized the possibility of a claim that there is a Higher Law than the Torah—of course such a claim is inconceivable within the realm of traditional halachah. Our concern is with the question when does a gentile become a righteous gentile, entitled to a place in the world to come. Justice Cohn does not focus on this question, but it should be noted that, in stating what the rabbis required of the gentile, he leaves out the proviso that the gentile must believe that the Noahide Laws were not only commanded by God, but that, in addition, he performs these commandments because God commanded them in the Torah and made them known to Moses: “that the observance thereof had been enjoined upon the descendants of Noah even before the Law was given [at Sinai].” The proviso that has been omitted is the troublesome condition. For if one takes the proviso seriously, one can then question if Judaism seriously takes the statement that there is a common humanity, that every man and every woman is made in the image of God, *betzelem Elohim*. The proviso must raise the question—does Judaism allow for salvation, for immortality, only for those of the Mosaic faith? For, as we have noted, Natural Law is based on the belief that there is a common human nature, that there is a common humanity, that all men participate in “right reason,” under God (not under Moses!). Perhaps Justice Cohn, a staunch advocate of Human Rights, purposely left out the proviso as a necessary emendation of the Maimonidean statement—as if to say that the great codifier of Jewish law could not possibly have meant seriously what he said, or that perhaps a scribe overzealously injected the proviso as a “fence” against a liberal application of the Noahide Laws and the honorific title of “righteous gentile”?

Apart from other serious questions that we have noted concerning the proviso, it should be obvious to persons familiar with Christian dogma that the proviso injected by Maimonides into the doctrine of the Noahide Laws looks disturbingly very much like justification by faith. To the Christian, it is through faith—especially in the death and resurrection of Jesus—that he separates himself from Judaism. In his Letter to the Galatians (Jewish converts), Paul wrote:

Now, before faith came, we were confined under the law [of Judaism], kept under restraint until faith [in Christ] should be revealed. So that the law was our custodian until Christ came, that we might be justified by faith. But now that faith has come, we are no longer under a custodian; for in

²⁵ Ibid., pp. 158-59. In the Cohn statement of the position of Maimonides it is said that the gentile “is not deemed either righteous or wise.” In other versions it is said that the gentile would not be considered righteous but he would be considered as one of the wise men among gentiles. It depends on which of the ancient texts of Maimonides the scholar uses. Cf. *ibid.*, pp. 150-51.

Christ Jesus we are all sons of God, through faith....There is neither Jew nor Greek, there is neither slave nor free, there is neither male nor female; for you are all one in Christ Jesus. And if you are Christ's, then you are Abraham's offspring, heirs according to promise.²⁶

The dogma of justification by faith is in sharp contrast to Jewish belief. "With what shall I come before the Lord," the prophet Micah asks, "and bow myself before God on high?" He answers the question with a resounding affirmation of the ethical nature of Jewish monotheism:

He has showed you, O man, what is good; and what does the Lord require of you but to do justice, and to love kindness, and to walk humbly with your God.²⁷

Unlike Christianity, the emphasis in Judaism is not on faith but on "works," on righteousness, on justice-*zedek*, *mishpat*. How did Amos say it?

Take thou away from Me the noise of thy songs; And let Me not hear the melody of thy psalteries. But let justice well up as waters, And righteousness as a mighty stream.²⁸

The Seven Commandments to Noah are consistent with the ethical essence of Judaism. There is the one positive commandment, to establish courts of justice. There is no positive commandment to believe in any dogma. There are two negative commandments that today we would say fall into the realm of religion, namely, a prohibition on idolatry and a prohibition on blasphemy. But they are prohibitions, they are negatives. The heathen, to be a righteous heathen, is not commanded to make any confession of faith. The other four commandments are strictly ethical, namely, prohibitions on immorality, murder, robbery, and cruelty to animals. Taken at their face value as stated in the Talmud, they eminently qualify as a statement of Natural Law in its pure, classical sense.

Philo, a contemporary of Jesus, was probably the first Jew to have formulated articles of faith.²⁹ With regard to Philo's five principles of Judaism, Rabbi Louis Jacobs has noted that Philo acted to formulate them because he felt that these principles were denied in his day and it was necessary to combat their denial.

This was to happen again and again in the history of Jewish Creed formulation. It was never a question of examining the classical sources of Judaism in an objective manner in order to discover the basic principles of Judaism. This would have been an almost impossible task, since the biblical sources are neither speculative nor systematic but organic and dynamic. It was rather a question of

²⁶ Gal. 3:23-29.

²⁷ Micah 6:6, 8.

²⁸ Amos 5:23-24.

²⁹ Philo, *De Officio Mundi*, ch. LXI (Loeb Classical Library), pp. 135-37.

emphasizing the ideas and beliefs that were required to be stressed as principles of faith in a given age, because it was in these areas that the challenge to the Jewish spirit was felt to be acute. In reality this is only another way of saying that dogmas in the Catholic sense, for instance, are impossible in Judaism because Judaism has no Church, no central authority with the power to formulate beliefs.³⁰

Maimonides in the twelfth century formulated his “Thirteen Articles of Faith” that have become the most famous creedal formulation. His statement that accompanied the formulation was a caveat that a person who held to these beliefs should be loved with affection and brotherly sympathy—even if he be guilty of every possible transgression through his desires and lack of self-control. He will be punished according to the measure of his perversity, but he will nonetheless enjoy a portion in the world to come. However, if a man breaks away from any of the fundamental principles of belief, then he loses his membership in the body of Israel; he is a heretic who should be hated and extirpated.

Maimonides thus made correct faith supreme over all other aspects of Judaism and Jewish life. “The believing sinner is included in ‘the general body of Israel.’ The unbeliever [though a righteous and just person] is excluded.”³¹ This, I submit, is a non-biblical position. I hazard the thought that Maimonides was driven to take this position by his rationalist approach, his great power of conceptualization, and perhaps also by his fear that the danger of apostasy to Islam or Christianity was so great and imminent that a strong and unusual measure had to be taken. Since Islam and Christianity emphasized creedal faith, there had to be, to meet the emergency, a formulation of Jewish creedal beliefs.

When considered against this background, the proviso injected by Maimonides into the formulation of the Seven Commandments to Noah is consistent with Maimonides’s philosophy of Judaism: It is not enough for a gentile to be righteous in order to merit a place in the world to come—he also must have the right belief as the foundation for his righteousness. If the righteous Jew with heretical beliefs has no place in the world to come, why should the righteous gentile who lacks the right beliefs have such a place?³² Perhaps one may venture to say that Maimonides was rational to an extent that was irrational?

³⁰ Louis Jacobs, *Principles of the Jewish Faith* (London: Vallentine, Mitchell & Co., 1964), pp. 9-10.

³¹ *Ibid.*, p. 15.

³² What I have said should not be taken to mean that I hold the position that there are no dogmas in Judaism. There is a place in Judaism as a religion for dogma, ritual and ethics. Countless numbers of Jews have chosen martyrdom rather than avow what they considered heretical beliefs. But priority is given to ethical conduct, not

NATURAL LAW—OR ‘NATURAL MORALITY’?

The proposition that Judaism does not recognize Natural Law or Natural Right has not gone unchallenged. In recent years, two esteemed scholars have questioned and opposed the conclusion dogmatically asserted by Leo Strauss.

In an essay with the significant title “Does Jewish Tradition Recognize an Ethic Independent of Halachah?”³³ Rabbi Aharon Lichtenstein, rosh yeshiva of Yeshivat Har-Etzion in Israel, states that the ancient rabbis recognized the existence of “natural morality.” “The fact remains,” he writes, “that the existence of natural morality is clearly assumed in much that is quite central to our tradition.”³⁴ Although Rabbi Lichtenstein uses the phrase “natural morality,” instead of “natural law” or “natural right,” I do not think that this is a material difference, for the theory of Natural Law was in fact a theory of natural morality; it concerned itself with the rules of right or virtuous conduct and with the moral quality of character.

If the issue stated by the title of the essay is natural morality—whether natural morality is recognized by the Jewish tradition as an ethic independent of halachah—the answer, says Lichtenstein, “need hardly be in doubt.” As prooftext, he quotes the famous saying of Rabbi Yohanan as quoted in the Talmud:

If the Torah had not been given, we would have learnt modesty from the cat, [aversion to] robbery from the ant, chastity from the dove, and [conjugal] manners from the cock.³⁵

According to Lichtenstein, the passage implies (at least) three things: that ante-halachic virtues exist; that they can be inferred from natural phenomena; and that they are not only observable in nature, but that they are inherent within nature.

The author then refers to the concept of *derech erez* that may be broadly defined as civility, proper ethical conduct, conduct “which is right and fitting toward people.” *Derech erez* is important not merely as conduct that is conventionally approved, but “as prescriptive *lex naturalis*.” He quotes the statement of Rabbi Eliezer ben Azaria as it appears in the Mishna, that “without Torah, there is

to beliefs or ritual observance, and there is no consensus on fundamental beliefs, nor on their number or on their interpretation.

³³ Aharon Lichtenstein, “Does Jewish Tradition Recognize an Ethic Independent of Halakha?” in *Modern Jewish Ethics, Theory and Practice*, ed. Marvin Fox (Columbus: Ohio State University Press, 1975).

³⁴ *Ibid.*, p. 63.

³⁵ BT Eirubin 100b.

no *derekh erez*, and without *derekh erez*, there is no Torah.”³⁶ The Midrash, Lichtenstein comments, goes beyond this dialectical reciprocity, stating that “*derekh erez* preceded Torah”—not merely chronologically, but axiologically.

As the Maharal put it, “From this [i.e., the Mishna] we learn that *derekh erez* is the basis of Torah which is,” as explained by the Midrash, “the way of the tree of life.” Their link [of Torah and *derekh erez*] reinforces our awareness of the Rabbis’ recognition of natural morality.³⁷

A rejection of natural morality, says Rabbi Lichtenstein, cannot mean that apart from halachah—in the absence of divine commandment—“man and the world are amoral....At most, the Rabbis rejected natural law, not natural morality. They may conceivably have felt one could not ground specific binding and universal rules in nature, but they hardly regarded uncommanded man as ethically neutral....One might contend, maximally, that natural morality is contextual rather than formal. It does, however, exist.”³⁸

DEFINING ‘NATURAL LAW’

Along other lines of argument, the late Robert Gordis likewise found a legitimate place for Natural Law (or Natural Morality) in Judaism. The Noahide Laws, he wrote, antedate in Judaism the Talmud. The apocryphal Book of Jubilees (written sometime before the Christian era) attributed to Noah moral instruction binding on all men:

In the twenty-eighth jubilee [year] Noah began to enjoin upon his sons’ sons the ordinances and commandments and all the judgments that he knew and he exhorted his sons to observe righteousness....³⁹

This instruction became in the Talmud the Noahide Seven Laws.⁴⁰ Gordis also cited a passage in the New Testament (written by a Jew?) that seems to refer to the Noahide Laws.⁴¹ The doctrine of the Noahide Laws, Gordis wrote,

³⁶ Mishnah Avot 3:17.

³⁷ Op. cit. supra, note 33, at p. 63.

³⁸ Ibid., p. 64.

³⁹ Robert Gordis, *The Root and the Branch* (Chicago: University of Chicago Press, 1962), 46. The quotation is from Jubilees 7:22.

⁴⁰ BT Sanhedrin 56a.

⁴¹ The Acts of the Apostles 15:20, 29.

...represents in essence a theory of universal religion which is binding upon all men.

Characteristically Jewish is its emphasis upon good actions rather than upon right belief as the mark of the good life. Ethical living rather than creedal adherence is the decisive criterion for salvation. Its spirit is epitomized in the great rabbinic utterance, "I call Heaven and earth to witness, that whether one be Gentile or Jew, man or woman, slave or free man, the divine spirit rests on each in accordance with his deeds."⁴²

A chapter in the book, *The Root and the Branch*, has the title "Natural Law in the Modern World," in which Gordis makes a strong argument for a rightful place of the theory of Natural Law in our time.⁴³ The theory of Natural Law, Gordis stated, is based on three elements; namely, human nature, justice, and reason. Laws must be in harmony with human nature, which is believed to be constant through time, universal and knowable. Laws are not always identical with justice, but they must be just if they are to meet the demands of Natural Law. And law must satisfy reason.

It has been assumed, over the centuries, wrote Gordis, that the sources of Natural Law are to be found only in ancient Greek and Roman thought, while the Hebraic sources have been entirely neglected and forgotten. The Hebraic sources, however, are to be found in the Hebrew Bible, the apocryphal books, and the Jewish deposit in the New Testament. This was known to seventeenth and eighteenth century scholars (e.g., John Selden, who, in 1665, identified the Noahide Laws with Natural Law),⁴⁴ but generally it has been bypassed as if nonexistent.

In our own time, the theory of Natural Law has been in disrepute because the theory has generally been used to sustain the status quo, and this was possible because human nature was assumed to be unchanged and unchangeable, so that what was reasonable and just two thousand years ago must be reasonable and just at all times and everywhere. The Jewish contribution can correct this misapprehension. The fact is, wrote Gordis,

⁴² Op. cit. supra, note 39, at p. 47. The quotation within the passage is from Yalkut Shimoni on Judges, Sec. 42.

⁴³ This chapter is substantially reproduced in a later book by Gordis, *Judaic Ethics for a Lawless World* (New York: Jewish Theological Seminary of America, 1986), published 24 years later. In the latter work, the matter is presented in two chapters, "Natural Law for the Modern World" and "Jewish Sources for Natural Law." The paper is also published in a collection of lectures and papers for the Center for the Study of Democratic Institutions, *Natural Law and Modern Society* (Cleveland, 1963), and as a chapter in *Ethics in an Age of Pervasive Technology*, ed. Melvin Kranzberg (Boulder, CO: Westview Press, 1980).

⁴⁴ Gordis, *The Root and the Branch*, p. 225.

...that the dynamism of the Judeo-Christian world view, the sense of history moving toward a great consummation, was not present in Greek and Roman thought, which saw life as unchanging and human history as going through repetitious cycles.⁴⁵

Since it was Greco-Roman civilization that produced Natural Law, its static character seemed to be indispensable. To be viable today, the theory needs to be reinterpreted to incorporate the Jewish contribution. The demands of human reason and of justice remain essential elements; human nature, however, has in it elements that are constant, universal, and knowable, but the components must be seen as potentially changeable. "Human nature is dynamic and rich in potentialities which must be reckoned with in any viable theory of natural law."⁴⁶

Some elements of human nature are, indeed, constant, such as friendship, love, reason and culture. These are not artificial grafts upon human nature, but inherent elements in it. Without such intellectual, aesthetic and spiritual aspects, human nature is not human.⁴⁷ But there are also darker sides to human nature. "Human nature exhibits the qualities of friendship, love, cooperation, the appreciation of beauty, the hunger for righteousness. But it also reveals aggressiveness, greed, lust, irrationality."⁴⁸ Which set of traits are the basic elements of human nature to be recognized as such by Natural Law?

To answer this question, Gordis considered man in a cosmic setting, in which he saw that

as we ascend the evolutionary ladder from amoeba to man, we encounter an ever greater complexity of physical structure..., and an ever more developed nervous system with a heightened degree of consciousness, which reaches the maximum of self-awareness in man. Nor is this all. This self-awareness in man is more than a consciousness of self; it expresses itself in the love of beauty, in moral aspiration, and in the capacity to reason.⁴⁹

As we observe the phenomena of human behavior, we are compelled to make value judgments, and we make the value judgment that the basic traits of human nature are reason and justice rather than irrationality, greed and cruelty. And in doing so, we make value judgments that "have their source in a world view fashioned by a theistic metaphysics."⁵⁰

⁴⁵ Ibid., p. 213

⁴⁶ Ibid., p. 234.

⁴⁷ Ibid., pp. 215-16.

⁴⁸ Ibid., p. 219.

⁴⁹ Ibid., p. 221.

⁵⁰ Ibid., p. 222.

The jurist may not wish to push his inquiry into such a seemingly remote area as “theistic metaphysics,” but he should recognize the fact that, as Gordis says,

Granted the existence of rationality and creativity within man, far-reaching consequences do emerge with regard to the nature of the universe of which man is the offspring. The nature of man *in esse* sheds light upon the character of the universe *in posse*, which, therefore, emerges as rationally created, dynamic, and possessing within itself the seeds out of which have developed the specific human traits in human nature. These are pre-eminently the attributes of rationality, moral aspiration, and creativity.⁵¹

RECLAIMING A LEGACY

That our view of human nature cannot be static has become clear in the twentieth century. After Freud, our knowledge of human nature is much more complex than it was before psychiatry, psychoanalysis and psychology took into serious consideration the existence and the effect of the subconscious. We know much more about human sexuality. The status of women has undergone a radical change. Since the Holocaust, we can no longer be as trusting in man as were the philosophers of the Enlightenment; we are constantly reminded that, as Jeremiah said, “the heart is deceitful above all things, and desperately wicked.”⁵²

And yet, as the Charter of the United Nations, and the various domestic and international bills of rights affirm, and as the Book of Genesis portrays, there is a common humanity, a human nature in which all men and women participate, despite differences with regard to race, color, creed, nationality, ethnicity, sex, political opinion, language, culture, or class. This belief is the bedrock on which any theory of Natural Law must be based.

It is this view of a common human nature on which the concept of the Noahide Laws is based. And the Seven Laws given by God to Noah and his descendants are as clear and pure an example of what was meant by the theory of Natural Law as is the cry of Antigone in her confrontation with Creon, and the formulations of the theory by Cicero or Grotius.

As Jacob Katz has noted, Moses Mendelssohn felt forced to reject the view of Maimonides that there is no salvation for righteous gentiles who do not acknowledge that their moral beliefs and actions are founded on Divine Revelation (or, even more perplexing, on the revelation by God to Moses). In a letter to Jacob Emden, Mendelssohn wrote:

⁵¹ Ibid., p. 235.

⁵² Jeremiah 17:9.

For shall not the inhabitants of the earth, from the rising of the sun unto the going down thereof, except ourselves [the Jewish people], descend into the pit and become an object of abhorrence to all flesh, if they do not believe in the Torah which has been given as an inheritance to the congregation of Jacob only?⁵³

Mendelssohn's "deep belief in the common humanity"⁵⁴ of all men was rooted in the Hebrew Scriptures. It was not rooted in Enlightenment philosophy but only confirmed and invigorated by it.

The idea of natural law, Jacques Maritain wrote,

...is a heritage of Christian and classical thought. It does not go back to the philosophy of the eighteenth century..., but rather to Grotius, and before him to Suarez and Francisco de Vitoria; and further back to St. Thomas Aquinas; and still further back to St. Augustine and the Church Fathers and St. Paul; and even further back to Cicero, to the Stoics, to the great moralists of antiquity and its great poets, particularly Sophocles. Antigone is the eternal heroine of natural law, which the Ancients called the unwritten law....⁵⁵

There is no mention of the substantial contribution that Judaism has made, for Jewish thinkers, with rare exceptions, have either ignored the subject, or have abandoned any claim to the theory, or have muddied the waters. The theory of Natural Law is a legitimate and significant part of the Jewish legacy, and it ought to be reclaimed, with conviction of its demonstrability, and with a sense of justified self-esteem.⁵⁶

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⁵³ Jacob Katz, *Exclusiveness and Tolerance* (London: Oxford University Press, 1961), pp. 176-77. See also p. 175 regarding the authority on which Maimonides relied for his formulation.

⁵⁴ *Ibid.*, p. 177.

⁵⁵ Jacques Maritain, *The Rights of Man and Natural Law* (New York: Charles Scribner's Sons, 1943), pp. 59-60.

⁵⁶ After completing this essay, I read, with much interest and benefit, the excellent paper by Steven S. Schwartzschild, "Do Noachides Have to Believe in Revelation?" in *Jewish Quarterly Review*, 57, 4 (April 1962):301, and concluded in the subsequent number, 58, 1 (July 1962):30. It is a valuable, scholarly discussion that supports my analysis and conclusions. I have also read the excellent essay by Eugene Korn, "Gentiles, the World to Come, and Judaism: The Odyssey of a Rabbinic Text," in *Modern Judaism*, XIV:3 (October 1994): 265. This essay argues substantially along the lines I do. At the end of his paper, Korn quotes an interesting letter by Chief Rabbi Abraham Isaac Kook, the point of which is that a gentile who reaches the Noahide Laws through the rational process, and not through a belief that they were given by God, merits a share in the world to come and recognition as being one of their wise men.