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## NATURAL LAW IN JUDAISM

This book presents a new theory of natural law, significant for the study of Judaism, philosophy, and comparative ethics. It demonstrates that the assumption that Judaism has no natural law theory to speak of, held by the vast majority of scholars, is simply wrong. The book shows how natural law theory, using a variety of different terms for itself throughout the ages, has been a constant element in Jewish thought. The book sorts out the varieties of Jewish natural law theory, illuminating their strengths and weaknesses. It also presents a case for utilizing natural law theory in order to deal with current theological and philosophical questions in Judaism's ongoing reflection on its own meaning and its meaning for the wider world. David Novak combines great erudition in the Jewish tradition the history of philosophy and law, and the imagination to argue for Judaism in the context of current debates, both theoretical and practical.

DAVID NOVAK holds the J. Richard and Dorothy Shiff Chair of Jewish Studies at the University of Toronto, where he has been since January 1997. He previously held the Edgar M. Bronfman Chair of Modern Judaic Studies at the University of Virginia. His many publications include *Jewish-Christian Dialogue* (Oxford University Press, 1989), *Jewish Social Ethics* (Oxford University Press, 1992) and *The Election of Israel* (Cambridge University Press, 1995).

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*To Zehavya Tzipora*

May you see your children's children. Peace on Israel!

Psalms 128:6

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## *Preface*

This book began in 1995, when I was invited to deliver the Lancaster-Yarnton Lectures for 1996. Four lectures were to be delivered, first at the University of Oxford under the auspices of the Oxford Centre for Hebrew and Jewish Studies, and then at Lancaster University under the auspices of the Department of Religious Studies. Being free to choose any topic relating to Judaism, I decided these lectures would provide a good opportunity to bring together in a more coherent conceptual presentation the question of natural law, a question that has concerned me since my student days. And it has been a *leitmotif* throughout my work for twenty-five years or so. Indeed, to a great extent, this book is stimulated by a challenge directed to me by a perceptive reviewer of a collection of essays of mine, *Jewish Social Ethics* (New York: Oxford University Press, 1992). Writing in the journal *First Things* (no. 34, June/July 1993, p. 48), Edward Oakes expressed his “high hopes for what David Novak can accomplish in the future in a more consistently theoretical work.” Oakes’ challenge gave me the hope that there was more to be said on natural law in Judaism than had been said in my previous work, and that there are people who might be interested to hear it. I cannot really think of any better reason to write a book.

What are now chapters 1, 3, 5, and 6, were initially written during the summer of 1995. They were then delivered in Oxford and afterwards in Lancaster in February of 1996. An abridged version of chapter 1 appeared in *First Things* (no. 60, February 1996) as “Law of Moses, Law of Nature.” An original version of chapter 3 appeared in the *Journal of Jewish Thought*

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*and Philosophy* (vol. 5, 1996). I am grateful for the marvelous hospitality of the Oxford Centre during the month I lived at Yarnton Manor. Special thanks are due to Professor Martin Goodman, the Acting President, and to my old friends Dr. Norman Solomon of the Centre, and his wife, Mrs. Devora Solomon, who always provide me with a home-away-from-home when I am visiting in England. In Lancaster, my stay was greatly enhanced by the kindnesses shown me by the Department of Religious Studies under the chairmanship of Professor John Clayton, and, especially, by Dr. Linda Woodhead, Dr. Robert Segal, and Dr. Paul Morris.

Chapter 2 is an expanded English version of a lecture, “Das Naturrecht und die jüdische Theologie,” which I delivered at the Protestant Theological Faculty of the University of Munich in February 1996. I am grateful for the invitation and solicitude of Professor Gunter Wenz, and for the hospitality and insightful conversations shared with the great theologian Professor Wolfhart Pannenberg, and his wife, Frau Hilke Pannenberg.

Chapter 4 on Maimonides was written for this volume. Parts of it are reworkings of two previously published articles: “Maimonides and the Science of the Law” (*Jewish Law Association Studies* IV, 1990), and “Maimonides’ Concept of Practical Reason” (*Rashi 1040–1990: Hommage à Ephraïm E. Urbach*, Paris, 1993).

Books should begin in conversations about ideas with one’s friends, and this book is no exception. In putting this book together, I recall conversations at the University of Virginia, where I taught from 1989 through 1996 with: Robert Wilken, Daniel Westberg (now of the Memorial University of Newfoundland), James Childress, and Gary Anderson (now of the Harvard Divinity School). There I learned much from the students in the seminar on “Natural Law in Judaism and Christianity” that Daniel Westberg and I taught together on two separate occasions. Gary Anderson was also very helpful in looking over chapter 2 on “scriptural foundations.” He saved me from numerous scholarly errors, even though he is by no means responsible for any of my conclusions. Here at the University of Toronto, my new academic home since January

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of 1997, I have benefitted from conversations with my colleagues in University College: Kenneth Green and Robert Gibbs, as well as from students in the seminar on “Natural Law in Judaism and Christianity” that I am now teaching here in the Centre for the Study of Religion.

Natural Law is the overall topic of the ongoing “Ramsey Colloquium” of the Institute on Religion and Public Life of which I have been a participant from the outset about seven years ago. I am grateful to Richard John Neuhaus, the President of the Institute, for his friendship in general, and his leadership of the Colloquium in particular. Significant conversations have been held there with such friends as Hadley Arkes, Robert George, Mary Ann Glendon, Russell Hittinger, Gilbert Meilaender, George Weigel, and others. And finally, as always, I thank David Weiss Halivni of Columbia University for being ever willing to share his unequaled talmudic learning and insight with me whenever I approached him, and Lenn Goodman of Vanderbilt University for his philosophical perspicacity on the questions that have regularly concerned us both for almost twenty years.

It is an honor to now publish a second book with Cambridge University Press. I am grateful for the care of my editor Ruth Parr and her most competent colleagues at the Press.

Finally, the dedication. Zehavya Tzipora Stadlan is our first grandchild, the firstborn of our beloved children, Marianne and Noam. My wife and I see in her young life and upbringing many of the things we have held sacred in our life together. All thanks be to God.



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## *Abbreviations*

B.	Talmud Bavli (Babylonian Talmud)
M.	Mishnah
R.	Rabbi, Rabbenu or Rav
T.	Tosefta
Tos.	Tosafot
Y.	Talmud Yerushalmi (Palestinian Talmud)