

Symposium on David Novak's *The Jewish Social Contract*



INTRODUCTION BY GORDON SCHOCHET, RUTGERS UNIVERSITY

Were the Sinaitic covenant and its renewal on the Plains of Moab offers that the children of Israel could not refuse, as Jeremiah seems to have believed? Were they take-it-or-suffer-the-consequences proposals? In his *The Jewish Social Contract*,¹ David Novak eloquently sets forth and defends the contrary and more traditional account of the covenant as the bestowal of God's grace and protection on his "chosen people." By entering into this arrangement with God, the Israelite wanderers committed themselves and their posterity to the acceptance of and obedience to the revealed law.

With his characteristic erudition, rich knowledge of history, and mastery of biblical, rabbinic, and talmudic texts, Novak tells a pair of intertwined stories: one about the theological covenant and its implications and the other about the secular social contract that bound exilic and Diaspora Jews to their states and continues to establish legitimate ties between traditional, covenant-keeping Jews and contemporary—and usually Christian-dominated—polities. The first is an exercise in historical interpretation and textual exegesis; the second, a work of political theory.

The Jewish Social Contract was the subject of an exciting roundtable at the 2005 meeting of the Association for Jewish Studies, and *Hebraic Political Studies* is delighted to publish two contributions to that session and Professor Novak's reply.

¹ David Novak, *The Jewish Social Contract: An Essay in Political Theology* (Princeton: Princeton University Press, 2005).

Leora Batnitzky questions Novak's almost-exclusive reliance on Christian communities rather than Islamic ones for the medieval portions of his historical interpretation, the deployment of a distinction he draws between "secularity" and "secularism," and the relative absence of Maimonides and Leo Strauss from his analysis. Michael Walzer calls into question Novak's paired claims that Judaism properly regarded remains Orthodox and that traditional, covenantal, and observant Jews are ideally, if not prototypically, suited for membership in pluralistic, participatory, and—according to Novak—contract-based political societies.

Uniting these parts of Novak's argument (but unexamined by either Batnitzky or Walzer) is the distinction he draws between covenant and contract. Contracts, with which the modern reader might be more familiar, resemble promises. Typically, they are voluntary and usually negotiated agreements among functional equals that *create* and impose qualifying and reciprocal responsibilities on all parties; the *duties* of parties to a contract are sources of *rights* to their performance in those to whom the duties are contractually owed. Coercion, ignorance, and even accident can—to use the legal term—*defeat* or extinguish contractual responsibilities. In all cases, there are temporal limits to contractual rights and duties: contracts cease to bind when their conditions have been satisfied. (Similarly, violations of those conditions, such as failure to perform, can nullify the agreements.)

Covenants, by contrast, although promise-based as well, presuppose no equality but, as Novak describes them, may take the form of grants from a superior to an inferior and are of indeterminate if not indefinite duration. Covenants are accepted, not negotiated, and that acceptance may signal agreement to something that already exists. Because they depend on largesse and therefore on goodwill, they may be withdrawn at the pleasure of the grantor. Thus, covenants may be coerced and may even be agreed to because of threats; the avoidance of harm rather than the receipt of reciprocal benefits can be a legitimate motive for accepting covenantal conditions—hence, Jeremiah's skepticism.

The most striking instance of this sort of covenant in the history of political thought—and this is not part of the story that Novak tells, but it is directly relevant to it—is the one-sided arrangement in Hobbes' *Leviathan* whereby a conquering sovereign offers to protect those whom he has vanquished on the condition that they accept his authority but retains the entitlement to withdraw that protection at his pleasure. (This is in contrast to the state-of-nature *contract* whereby people agree with one another as equals to set aside their natural rights to all things and so *create* a polity.) Thus, fear of the sovereign's caprice and the presumption

that placating him will decrease the likelihood of his canceling the covenant keeps people in thrall to their ruler.

God's covenant with the Hebrew people, however, was not so chancy as the Hobbesian covenant of the sovereign with his future subjects. However omnipotent the anthropomorphized God might be, he is also a merciful and just promise-keeper. So long as the children of Israel kept God's law—and even sometimes when they did not—they could count on his benevolence. (Not so, by sharp contrast, for the covenantal God of the Hebrews resurrected by Calvin and his successors, notably the settlers of the Massachusetts Bay Colony; their Old Testament God rather more resembled the unpredictable and ultimately unknowable Hobbesian sovereign than he did the firm but loving and self-revealing God of Novak's Hebrew Bible.)

The social and *political* point of the biblical covenant according to Novak is that it welded the Hebrew people into a single community that enabled them to survive exile and even the Diaspora and, in the long run, permits them to enter contemporary secular civil society without succumbing to the demands of "secularism." It gives them what is often called an "identity." Modern, pluralistic society, as Novak sees it, is composed of diverse communities that must constantly find ways of co-existing in order to survive; that is, their relationships are *contractual*. Novak, citing Charles Taylor, here applies the notion of "group rights" to contemporary Jews to bolster his claim. Although unstated, it follows from this analysis that the relationships among the contracting groups in civil society are implicitly but unavoidably subject to constant renegotiation. The great advantage that Orthodox Jews have in all this is rooted in their covenanted tradition and in their experience of divine and divinely maintained justice.

Part of Novak's achievement is the extraction of political theory from an interpretative history. Because it is political theory, it is provocative. Among its many functions, political theory opens discussion and engagement and forces people to confront their political beliefs and practices. One of the most troublesome and contentious issues in contemporary politics is the place of religious orthodoxy. For Jews, no less—or more—than for others, the confrontation of religious commitments with political demands is a paramount concern, but one that is too often too easily resolved one way or the other without sufficient attention to the larger stakes that remain on the other side. Some of the guides through the mazes of conflicting loyalties are historical, but it is always up to the present both to determine what the past suggests and to find ways of making it useful—in short, to put this "usable past" to work in the service of political engagement.

Novak has given us one way of doing all this, and here, with the assistance of Batnitzky and Walzer, he has initiated the discussion that may eventually clarify the process.

COMMENTS BY LEORA BATNITZKY, PRINCETON UNIVERSITY

David Novak's *The Jewish Social Contract* is simply the most stimulating constructive description of what a contemporary Jewish political theology might and should look like. But the import of Novak's latest book moves far beyond an internal Jewish attempt to consider the relation between Judaism and social-contract theory. If Novak is right in what he argues, citizens of democracies in general, and not just Jews in particular, ought to rethink the very basis of their commitment to democracy. On Novak's reading it turns out not only that classical Jewish sources can be resources for thinking about contemporary social contract theory, but also that a consideration of these sources points to the paucity of secular conceptions of the modern state. So too do religious Jews make not only good democratic citizens, but the best citizens of contemporary democracies. In the process of making this argument, Novak also maintains that despite the strong propensity of many to argue otherwise, Jews ought to trust their fellow Christian citizens more than they trust secularists. And this isn't even Novak's most provocative claim. Perhaps most counterintuitively, Novak contends that far from representing the paradigm of the perils of the merging of church and state that modern democracy seeks to overcome, the situation of the Jews living under medieval Christendom, or the Holy Roman Empire, is and ought to be the model for contemporary social contract theory.

Despite the range of classical Jewish sources and political theory upon which Novak draws, one premise holds all of his arguments together: "When one begins with civil society as the primary locus of human sociality, there is no real place for community. But when one begins with community as the primary locus of human society, there is the potential to make a real place for society" (p. 18). The basis of this claim reflects the twofold nature of Novak's argument: that a conception of the Jewish social contract has implications for both Jews particularly and democratic citizens generally. From a Jewish point of view, Novak argues, civil society cannot be foundational, because then the Jewish community can exist only by virtue of the generosity of the state. As Novak puts it in the context of his critical evaluation of the implications of Moses Mendelssohn's political philosophy, "It would seem, then, that any religion the state is to tolerate must be able to justify itself to the state by making the state

an end to which the religion (or any religion) is to be a means” (p. 169). So too, from the perspective of civil society, the notion that the state is the primary locus of identity requires that the state be raised to mythic heights. As Novak rightly notes, this implication has proven increasingly problematic both politically and theoretically for those committed to defending modern democracy.

It is in the context of Novak’s insistence on the priority of community over society that we can appreciate what he means by “the Jewish social contract” as well as his favorable interpretation of the political arrangement of medieval Christendom. As Novak rightly notes, the political status of Jews living in medieval Christendom was defined in terms of Jewish communities and not Jewish individuals. As such, Jewish communities existed politically not within the sphere of either church or state, but between the two spheres. In Novak’s words,

Jews were not part of Christendom in either the sphere of the church or the sphere of the state. Each sphere of Christendom had to deal with Jews living in its midst as members of a foreign nation. This is why the arrangements between Christendom and Jews were made with Jewish communities.... This being the case, the Jewish contractual relationship with medieval Christian monarchs can be seen as presaging how a social contract might characterize a society in which no one is any longer the subject of the sovereign because everyone is now an equal participant in sovereignty, that is, the autonomy of the civil order (p. 126).

The importance of this medieval model for Novak is that it both authorizes and limits a nonreligious politics by making politics neither wholly religious nor wholly secular. This status of politics being between church and state allows Novak to affirm from the medieval Jewish-Christian model a notion of “secularity” as distinct from what he calls “secularism.” As Novak puts it, “secularism is defined by the idea that human beings can and should constitute their corporate life only with reference to their capacity for social construction. Secularity, though, is simply the realm of interhuman, multicultural interaction that does not look to any unique community with its singular historical revelation” (p. 121). According to Novak, the Jewish social contract authorizes and indeed demands a nonreligious political space, but it also limits this space in light of the absolute priority given to the divine truth as adumbrated in Jewish religious life: “The great task for modern Jewish political theology is to accept human-made secularity with its necessary limitations, to see its positive value for normative Judaism, and to resist reduction of Judaism to secularist premises” (p. 18).

Novak's suspicion of secularists, as opposed to believing Christians, as well as his suspicion of the politically, morally, and religiously defensible identity of secular Jews, follows from what he contends are the false, incoherent, and idolatrous claims to truth made by secularists. This conclusion, along with Novak's very definition of the Jewish social contract, follows from the distinction between community and society. Secularists, and especially secular Jews, overinflate the political and moral capacities of society as distinct from community. As such, secularist defenders of modern democracy, and secularist Jewish defenders especially, have much to learn from the Jewish social contract about the limitations and ultimate failure of their own projects.

The impressive textual, historical, and philosophical breadth of Novak's argument notwithstanding, two notable voices are missing from his book: those of Moses Maimonides and Leo Strauss. This omission is surprising, because Maimonides is arguably the medieval Jewish thinker most concerned with the question of politics, and Strauss is arguably the modern Jewish thinker most focused on the question of politics. As Novak fully acknowledges, the sources upon which he draws are from Jewish thinkers writing within a Christian context. But Maimonides wrote from within an Islamic context, and Strauss famously argued that we, the inheritors of the Christian West, have much to learn from Maimonides and his Islamic predecessors. If, as Novak surely knows, Maimonides and Strauss were included in this story about the Jewish social contract, a number of important questions would have to be asked, first and foremost about the distinction between community and society and, following from this, about the further distinction between secularity and secularism.

We have seen that by embracing the political model of medieval Christendom, Novak maintains that human association is pre-political at its most fundamental level. Yet, as Strauss helpfully reminds us, medieval Islamic and Jewish thinkers understood what we would call today human identity in primarily political terms. This is because, in Strauss' words, while "[f]or the Christian, the sacred doctrine is revealed theology; for the Jew and the Muslim, the sacred doctrine is, at least primarily, the legal interpretation of the Divine Law (Talmud or *fiqh*)."² Novak's contention that "When one begins with civil society as the primary locus of human sociality, there is no real place for community" is in striking tension with Maimonides' claim that "It has been explained with utmost clarity that man is political by nature and that it is his nature to live

² Leo Strauss, *Persecution and the Art of Writing* (Chicago: University of Chicago Press, 1988), p. 19.

in society. He is not like other animals, for which society is not necessary.”³ Novak maintains that we must move from community to society (again, in Novak’s words, “when one begins with community as the primary locus of human society, there is the potential to make a real place for society” [p. 18]), yet Maimonides’ framework suggests the opposite movement, that we move, to use Novak’s terms, from society to community. Employing Novak’s terms again, for Maimonides, the more minimal the political association, the more possible religious association becomes. Or, in Maimonides’ terms in the *Guide*, “although it [the divine law] is not natural, [it] enters into what is natural,”⁴ and further: “The Law as a whole aims at two things: the welfare of the soul and the welfare of the body. As for the welfare of the soul, it consists in the multitude’s acquiring correct opinions.... As for the welfare of the body, it comes about by the improvement of their ways of living with one another.... This cannot be achieved in any way by one isolated individual. For an individual can only attain all this through a political association, it being already known that man is political by nature.”⁵

Strikingly, the priority of man’s political nature over his pre-political nature in Maimonides’ thought makes a case for what Novak calls secularity that is just as strong, if not stronger, than Novak’s. To mention just a couple of examples that correlate with Novak’s very detailed discussion, Maimonides recognizes and affirms a *din hamalchut* in criminal law while also distinguishing strongly between ritual and social law.⁶ Moreover, as Menachem Lorberbaum has recently shown, there may even be resources in Maimonides’ thought for arguing for the necessity of political consent. From Maimonides’ discussion concerning robbery and lost property, Lorberbaum concludes, “Accepting the king’s coinage is equivalent to or, at the very least, indicative of tacit acceptance of his sovereignty.”⁷

But the significance of Maimonides’ case for “secularity” goes beyond creating a parallel with Novak’s conception of secularity as the Jewish justification for the Jewish social contract. In fact, Maimonides’ view of “secularity” calls into question the very distinction between “secularity”

³ Moses Maimonides, *Guide of the Perplexed*, trans. S. Pines (Chicago: University of Chicago Press, 1963), 2:40.

⁴ *Ibid.*

⁵ Maimonides, *Guide of the Perplexed*, 3:27.

⁶ See, for instance, Maimonides, *Guide of the Perplexed*, 3:34.

⁷ Menachem Lorberbaum, *Politics and the Limits of Law: Secularizing the Political in Medieval Jewish Thought* (Stanford: Stanford University Press, 2001), p. 66.

and “secularism” upon which Novak’s *Jewish Social Contract* depends. Here it is helpful to quote from the *Guide* again:

Know that as between these two aims, one is indubitably greater in nobility, namely in the welfare of the soul—I mean the procuring of correct opinions—while the second aim—I mean the welfare of the body—is prior in nature and time. The latter aim consists in the governance of the city and the well-being of the states of all its people according to their capacity. This second aim is the more certain one, and it is the one regarding which every effort has been made precisely to expound it and all its particulars. For the first aim can only be achieved after achieving the second one.⁸

Beginning with the notion that pre-political association is prior to political association (again, community precedes society), Novak condemns secularism, and Jewish secularists in particular, for falsity, incoherence, and idolatry. Certainly there are some “secularists” in the strong sense that Novak uses. And Novak’s book is an important corrective to overly secular views of the social contract in the contemporary academy. But within the context of Maimonides’ notion that political association is most fundamental to human nature, shouldn’t many if not most secular Jews, and many if not most secular defenders of the modern social contract generally, be understood as among those who have not yet perfected their opinions?

Novak actually gives this sort of magnanimous interpretation not to contemporary secular Jews but to the ancient Babylonians. As he puts it, “Clearly, the Babylonians were not ‘secularist’ in the modern sense of that term. They certainly had transcendent concerns. Nevertheless, because of their morally impressive secularity, the Rabbis concluded that they couldn’t really be polytheists in their hearts.... So, whereas Roman idolatry is considered essentially linked with Roman injustice, Babylonian idolatry was seen as an unintended relic of a culture that must really be monotheistic in principle, whether the Babylonians were fully aware of this or not” (p. 113). The question then is: Why doesn’t Novak accord contemporary secularists the same generosity of spirit accorded to the Babylonians by the rabbis and accorded to all participants in the political community by Maimonides? Aren’t secularists committed to the modern social contract as morally impressive to us today as the Babylonians may have been to the rabbis? And, as Novak’s own example suggests, if it is possible to find political, if not theological or philosophical,

⁸ Maimonides, *Guide of the Perplexed*, 3:27.

commonalities with those with whom we live, is the distinction between “secularism” and “secularity” really meaningful in the end?

This brings us back to the question of why Novak chooses as his resources Jewish thinkers living under medieval Christendom rather than medieval Islam. We have seen that this is more than an academic question, because what is at stake in this choice is the very issue with which Novak is concerned: the simultaneous import and limits of the secular realm for religious Jews and democratic citizens alike. I can only speculate here that Novak chooses medieval Christendom as his paradigm because of his commitment to a renewed political relationship between Christians and Jews in the United States. So Novak’s argument ends where it begins, with the claim that Jews and Christians today ought to be united against secularists.

But methodologically speaking, what kind of claim is this? Is this a historical argument? Might Novak be suggesting that Christianity has gone through modernity and Islam hasn’t, and that therefore today Christians and Jews have a greater affinity to one another, which justifies the methodological focus on medieval Christendom? This would indeed be an important argument whose implications deserve to be drawn out more fully. But to turn back to Strauss once more, couldn’t one respond that the very modern concept of “secularism” is but the product of the melding of religion and politics in medieval Christendom (a melding that for Strauss would parallel the Christian-scholastic melding of theology and philosophy that he claims the Jewish and Islamic philosophers resisted, just as Maimonides, for instance, resisted the melding of religion and politics)? Historically speaking, does the turn to medieval Christendom really yield the political model that Novak desires, which resists both theocracy and secularism? Or is medieval Christendom, despite Novak’s many nuanced descriptions to the contrary, ultimately the source of the dichotomy between church and state that Novak seeks to overcome now in secular form?

Perhaps, though, Novak’s argument is more historically specific. As he notes at the beginning of his book, the work is not concerned with what a Jewish political theology would look like from the perspective of the modern State of Israel. So possibly Novak’s focus on medieval Christendom is justified by a particular argument about the Christian foundation of the United States. If this is the case, one wonders how this argument would transfer to the Israeli, or even, for instance, the French context and what this would say about the relationship between Jews today across national boundaries.

Or perhaps Novak’s argument is ultimately a theological one. Here, of course, Novak’s early work on Jewish-Christian dialogue is quite relevant,

and again we can see how *The Jewish Social Contract* begins where it ends: with an affirmation of the political unity of religious Jews and Christians against secularists. It is in this sense that *The Jewish Social Contract* is, as its subtitle indicates, an essay in Jewish political theology. But it is also in this sense that the receptive audience for this political theology narrows, for it seems that only those already committed to a renewed political relationship between religious Jews and Christians will be convinced by Novak's distinction between secularism and secularity and its implications for contemporary Jews, Christians, and democratic citizens alike. Still, as I stated above and reiterate now, *The Jewish Social Contract* is simply the most stimulating constructive description of what a contemporary Jewish political theology might and should look like. The very ambiguity of the project is captured in what it means to propose a description of a Jewish political theology that is at the same time constructive (or a construction of a Jewish political theology that is at the same time descriptive), but it is precisely this ambiguity that invites conversation about competing political alternatives to Novak and, as importantly, the criteria for so arguing.

COMMENTS BY MICHAEL WALZER, INSTITUTE FOR ADVANCED STUDY

This is a book that I greatly admire and that I benefited from reading. But in this brief comment, I am mostly going to express worries and disagreements—both because it is possible to disagree with admiration and because that is what the occasion invites.

David Novak's claims are, first, that multicultural or pluralist democracy is the best political regime for Jews, and with that proposition I entirely agree; and second, that religious Jews make (or could or should make) the best citizens of democracies of this sort, and about that I am more dubious. I am not sure exactly how to define religious Jews. Novak seems to think that belief is crucial here—above all, belief in what he calls the three dogmas of traditional Judaism: first, Torah from heaven; second, the authority of halacha; and third, the certainty of redemption and resurrection. But he qualifies each of these in ways that make it hard for me to understand exactly what belief means in these cases. Resurrection, for example, "can hardly be described by any human mind short of its actually happening" (p. 27). But surely the *peshat* of resurrection is pretty clear and easily described, even if belief in it is difficult; on the other hand, what can it possibly mean to believe in an indescribable resurrection? What is the content of the belief? I think that there is an epistemological problem here, and I suspect a similar problem with the other dogmas too. But I don't want to deny the importance of the crucial belief that believers

have—which is that they actually are believers in some transcendent reality. And, obviously, this belief does establish a certain distance from the secular state; whether this is the right distance is another question.

Let me suggest instead that the crucial characteristics of a religious Jew have to do with observance, membership, and identity. And then the question that I want to pose is whether the best citizens of a pluralist democracy are Jews who are fully observant—committed, that is, to a traditional halachic life—and who are active members of one or another Orthodox or ultra-Orthodox community, and who identify themselves first and foremost as Jews. Is this the group among whom we find the citizens that democracy needs?

Surely the answer to that question is, at best, *not yet!* Many Orthodox Jews and most ultra-Orthodox Jews live at a considerable distance from the democratic state, which they still view as a gentile state, so that even when they experience its benevolence they don't imagine that benevolence as a common good that they should be engaged in enhancing and sustaining. Perhaps this is a holdover from pre-democratic times. Certainly the prayer for the government that I have found in (some) Orthodox *siddurim* (Jewish prayer books) is a holdover: "May the supreme King of kings, in his mercy, inspire [the president and the vice president and all the officers of this country] to deal kindly with us and with all Israel." This is not the prayer of people who think that the officers of the country are responsible to them, and who regard themselves as responsible for the "dealings" of their government. It is not the prayer of democratic citizens. It has indeed been replaced in Reform and Conservative *siddurim*; nonetheless, it reflects a characteristically Jewish attitude toward the state. As Novak says, the Orthodox approach to public policy "seems to assume that Jews are political outsiders who can only engage in special pleading" (p. 222). Deal kindly with us. But special pleading is the least of our problems.

There is a famous story about David Ben-Gurion, who visited Britain in 1942 or 1943, and was taken by some wealthy Jews from whom he was trying to raise money to a restaurant where he could, he was told, dine well—on black market food. When he realized where he was, he exploded in anger. This was typical *galut* [exile] behavior! How could you live as citizens in a democratic state that was fighting the Nazis... and break the rationing rules? The Jewish state would have to teach its citizens not to behave like that.

And has it succeeded with this teaching? Another story: I was in Israel in 1999, when there was a Netanyahu government and a Shas minister of labor. One day I read in the newspaper that the minister had brought suit against a restaurant in Eilat, which paid Jews to work on Shabbat.

The restaurant was fined NIS 200,000; it appealed, and the court reduced the fine to NIS 18 and berated the minister. He had brought many suits of this sort, the judges said, but had done nothing, literally nothing, to enforce the child-labor laws or the factory safety-laws, nothing to protect Christian and Muslim workers on their holidays, nothing to prevent the exploitation of guest workers. Now this minister, an Orthodox Jew, clearly had no idea what it meant to be responsible for the well-being of the citizens of a democratic state, to be committed to work for the common good and the general welfare. Again, I suppose that this is holdover behavior, but the grip of this behavior and of the mentality that produces it is very strong. Even though he was a democratically elected state official, the Shas minister was still a political outsider, using state power opportunistically for a narrowly sectarian purpose.

Novak is in opposition to much of traditional Orthodox behavior, and this book on the Jewish social contract is above all a highly commendable effort to convince religious Jews that they should become signatories of the social contract, which is not yet truly a Jewish social contract. But even if religious Jews are convinced of the contract's advantages, is this enough to turn them into good citizens? I don't believe, any more than Novak does, that good citizenship requires an absolute or singular loyalty. But it does require some sort of commitment, however qualified, to the well-being of one's fellow citizens—all of them, Jews and non-Jews alike. And that commitment can't be only a rational choice; it has to involve the emotions as well as the intellect. Hence the importance of a civil religion alongside the other, more particular religions of the citizens. This doesn't have to be, and should not be, an all-consuming religion; it can (and in the United States it does) make fairly modest claims upon citizens. But it must have holidays and heroes, authoritative texts, and ceremonies and rituals, such as the Constitution, the Fourth of July, the inauguration of a president, the oath of newly naturalized citizens, Memorial Day for the war dead, the national anthem, Lincoln's Gettysburg Address, and so on. I don't see how any political community can hold the loyalty of its members, how it can engage their emotions, without things like these.

David Novak is resistant to, even disparaging about, the very idea of a civil religion, which he identifies with the divinization of the state (p. 9). But I suspect that common celebrations and ceremonies, short of divinization, are a necessary underpinning of any democratic politics. If you want citizens who don't buy on the black market; who calculate their taxes honestly; who pay attention to political issues and participate in parties and social movements; who stand in the voting booth and ask themselves not only "what's good for the Jews" but also "what's good for

the country;” and, finally, who are ready in critical times to risk their lives for the state—if you want citizens like that, you cannot depend on a contract of interested parties, even a contract among religious or cultural groups rather than lonely individuals. You need not a covenant (I think Novak is right to leave that to the real religions) but something more than a rational contract.

Now given that the religious Jewish citizens that David Novak is trying to create don't yet exist in sufficient numbers, and that many religious Jews are not (yet) good citizens, what follows for the multicultural demands that he wants to make on the state—above all, for state support of religious education? What kinds of regulation, what degree of centralized power, what versions of *mamlachtiyut* would this state support require? There are at least three issues here that Novak doesn't deal with in his last chapter, where, to my mind, they naturally arise. First, which religions get state support? Are there any criteria—numbers, history, theological seriousness? Should the United States government provide support for every Hasidic sect? For messianic Jews? For Jewish Buddhists? For Scientologists? And if it provides funding for all religious groups, what about ideological groups—libertarians, say, or Marxists? I assume that Novak would draw the line well before these last examples, but where exactly? And how and by whom would the line be policed?

Second, what curricular requirements can the state enforce? Since these children of religious parents are going to grow up to vote in the general elections—our elections—don't they have to be required to learn something about democratic government, American history, political economy? And how can we be sure that these subjects will not be taught with a wink and a nod by religious Jews committed, as Novak says, to “maximal Jewish separation from public life” (p. 221)? Who decides what constitutes a serious commitment to these subjects? And how should that commitment be enforced?

Third, can the state insist on gender equality in schools that it is paying for? Novak suggests that this isn't an issue anymore: “The overwhelming consensus today, even in the most traditional circles, is that the obligation to provide primary and secondary education for Jewish girls is practically the same as that for Jewish boys” (p. 228). This might be true in the United States (although I am skeptical about the *most* traditional circles), but it certainly isn't true in Israel. And, in any case, “practically the same” isn't the same as the same, and surely the democratic state has to insist on equal educational opportunity for all its future citizens. How should it do that, and what kind of state power over religious groups would this rule require? I don't think that you can have state support

for religion without a considerable degree of state power over religion. Novak favors the first and opposes the second, but I don't see that as a consistent position.

Now, if we imagine these three questions, especially the last two, being answered without state coercion, by the conversion of the Jews to Novak's view of the social contract, what kind of Jews would these then be? They would be Jews with a real commitment to democracy, gender equality, political participation, and secular knowledge. Might it not turn out that Reform and Conservative Jews, if only they could be persuaded to study the sources that David Novak explores in this book, would make the best protagonists of the Jewish social contract and the best citizens of a democratic and pluralist state?

RESPONSE BY DAVID NOVAK, UNIVERSITY OF TORONTO

I am grateful to Leora Batnitzky and Michael Walzer for their careful reading of *The Jewish Social Contract*, which they have clearly shown by their trenchant critiques of some of its main points. To get both general praise and specific critiques as I have received from my two colleagues (and friends) seems to me to be the best of all possible authorial worlds. Their responses not only stimulate my response to them, but they also help direct the subsequent trajectory of my thought in the area of political theology and philosophy. And, like any conversation about truly important perennial questions, this conversation includes others from the past and, it is to be hoped, others yet into the future.

I. Leora Batnitzky

Leora Batnitzky is surprised that a book of Jewish *political* theology does not discuss Maimonides and his most controversial modern interpreter, Leo Strauss. Her juxtaposition of Maimonides and Strauss is, of course, intentional, inasmuch as Strauss offered the most explicitly *political* treatment of Maimonides' theology, an approach she interprets and largely accepts in her own impressive new book, *Leo Strauss and Emmanuel Levinas: Philosophy and the Politics of Revelation*. Nevertheless, although Maimonides is mentioned at least ten times in my book (usually in a note by reference), there is no discussion of his political theology there as there is of the political theologies of such Jewish thinkers as Nissim Gerondi, Isaac Abravanel, and Moses Mendelssohn (and even, though more briefly, the political philosophies of such non-Jewish thinkers as Aristotle, Locke, Hegel, and Rawls). And, despite her being correct (in her new book) about Strauss' influence on my own thinking (and despite the fact that I had

the privilege of both learning from and speaking with Leo Strauss at the University of Chicago in the early 1960s), in this book Strauss is not mentioned at all. Because of this, Professor Batnitzky assumes that my stance on the relation of community and society is at odds with that of Maimonides, especially Strauss' Maimonides. Her recognition of this glaring absence in a book of Jewish political theology is typically astute. Indeed, there has been much interest of late in Maimonides' political thought, with important works on it by the Israeli scholars Gerald Blidstein and Howard Kreisel (both of Ben-Gurion University of the Negev).

Maimonides' virtual absence from *The Jewish Social Contract* might be due to his indebtedness to an Islamic view of the relation of community and society, which Professor Batnitzky rightly contrasts with the greater affinity I see between Jewish and Christian views of the relation of community and society. Close to Strauss, she seems to prefer a Jewish-political affinity to Islam. I prefer a Jewish-political affinity to Christianity (although I think she exaggerates my preference for "medieval Christendom" when, in fact, I only sympathize with one particular and unusual manifestation of "Christendom" in the late Middle Ages in northern Spain).

So, let me now examine how Professor Batnitzky and I differ on the relation of community and society via Maimonides (à la Strauss), and how we differ about whether there are greater political affinities between Judaism and Islam or between Judaism and Christianity.

Professor Batnitzky centers her critique on two famous passages in Maimonides' *Guide of the Perplexed* (namely, 2.40 and 3.27): first, where Maimonides asserts that humans are political beings by nature; second, where Maimonides asserts that the Torah had two ends or purposes—first, to provide a stable and just social order for those living by its law, and second, to provide them with correct doctrines about God. The former end is for the sake of the "welfare of the body" (what would later in the West be called the "body politic"); the latter end is for the sake of the "welfare of the soul." As such, human political nature has two aspects: (1) it concerns the interrelations among humans themselves, and (2) it concerns humans in their relation to God. The common point in these two famous passages from the *Guide* is that all human relations in this world are governed by law because they are political; in fact, a lawless regime is not a regime at all, any more than a law not governing a regime is truly law at all (even though, unlike Spinoza centuries later, Maimonides could recognize the legal authority of a regime lacking full political sovereignty).

One could say that Maimonides makes a distinction and then constitutes a relation between *humanly limited society* and *divinely directed*

community. The two “polities,” or (in Professor Batnitzky’s words) “political associations,” are related inasmuch as the Law (*Torah* or *shari’ah*), even in its most theoretical/doctrinal aspects, still governs the plurality of human beings living under its more practical aspects. The two “polities” overlap, since there is no aspect of the Law that is so theoretical that it has no practical correlates, and vice versa. (One can see rich rabbinic precedent for this correlation developed by Maimonides in his great work on the Law, *Mishneh Torah*.) Nevertheless, there are two other political realms that could at least be thought of.

The first such realm would be a polity concerned only with the divine. For Maimonides, however, such a polity could only be the world beyond (*ha’olam haba*), where the body, both physical and political, is to be transcended. But, since the *Guide* is meant to be a book of biblical theology, and otherworldliness is not an explicitly biblical topic (but definitely a rabbinic topic; hence, it is treated in *Mishneh Torah*), Maimonides doesn’t mention this possibility there.

The second such realm would be a polity concerned only with the interhuman. Maimonides does discuss this realm, calling it *namusiyyah*, the Arabic transcription of the Greek *nomos* or “law.” However, whereas a regime concerned only with the divine is a political impossibility, a regime concerned only with the interhuman is possible politically. Nonetheless, for Maimonides, such a regime—such a *society*—could only be hypothetical, because there were no such regimes in existence, not only in Maimonides’ own day, but even before his time. In his day, there was not, nor had there ever been, a polity that somehow or other did not see its political/legal founding to be the work of a god (something, by the way, that Socrates, Strauss’ philosophical exemplar, and Plato, Strauss’ favorite philosophical author, fully accepted). This type of regime, which we now call “secular,” had to wait for the French Revolution to actually come into this world as a political reality. So, for Maimonides, *community* can include *society*, but *society* cannot stand on its own, because to do so would be to deny the very possibility of *community*. No human society up until the eighteenth century could explicitly declare that kind of political autonomy for itself. (And, of course, as Strauss so well pointed out, such a denial lies at the core of modern atheistic secularism.)

Up to this point, one can see Maimonides’ correlation of community and society as quite consistent with much of Islamic political theology, certainly the Islamic political theology he learned from Alfarabi (as Strauss brilliantly showed early in his scholarly career). Up to this point, I think my correlation of community and society is not at odds with that of Maimonides. Furthermore, if Maimonides’ *society* is what we would now call *secularity*, then Professor Batnitzky is astute when she asks me:

“But within the context of Maimonides’ notion that political association is most fundamental to human nature, shouldn’t many if not most secular Jews, and many if not most secular defenders of the modern social contract generally, be understood as among those who have not yet perfected their opinions?”

For all intents and purposes, that point could be ascribed to Maimonides. In *Mishneh Torah*, he discusses the status of persons whose morality is due to their “rational inclination” (*mipnei hechreh hadaat*), which basically agrees with the morality taught by the Torah, yet who have not accepted revealed Law (*Mishneh Torah*, Laws of Kings 8:11). Although many have followed Spinoza (*Tractatus Theologico-Politicus*, ch. 5) and have considered this Maimonides’ rejection of any nonrevealed morality, they are, in my opinion, wrong. Maimonides says only that such persons, when they regard their human morality to be existentially sufficient, do not attain the metaphysically constituted world beyond (*ha’olam haba*). Nonetheless, he does not say they are therefore immoral. And, in fact, one could say that such moral, “secular” persons do not attain the world beyond *until* they are able to accept revelation (and one could show that, for Maimonides, revelation is more metaphysical insight than it is a historical event). In their present state, if they are not fully satisfied with it, they have *not yet* attained Transcendence (which Maimonides means by *ha’olam haba*; see *Mishneh Torah*, Laws of Repentance 8:8). Indeed, in my own treatments of Maimonides on the question of rational or natural law (in my 1983 book, *The Image of the Non-Jew in Judaism*, and in my 1998 book, *Natural Law in Judaism*), I have tried to bring out these points, and build upon them for my own thinking on the subject.

All the above notwithstanding, why, as Professor Batnitzky rightly notices, do I differ (even if only by implication) from Maimonides on the correlation of community and society, and why do I make some common political cause with Christianity rather than with Islam?

Rather than saying I differ from Maimonides, I would say that the reason Maimonides is not helpful to me in drawing the current political implications of the distinction and relation between community and society is because Maimonides’ view of society (as distinct from community)—namely, what we would now call secular morality—at best functions only as a precondition for the emergence of community, and as some sort of rational brake thereafter on what might be termed “theological excesses.” In other words, I have seen in Maimonides’ theology how morality prepares one for the metaphysical relation to God (where Maimonides is heavily indebted to the way Aristotle constitutes the relation of *praxis* and *theōria* in *Nicomachean Ethics*). But I do not see in his theology implications for how secular/rational morality can be the

real bridge that enables members of a theological-political community like the Jewish people (*Knesset Yisrael*) to become full participants in a society (like the United States or Canada, for example) that is not based on divine revelation and the tradition of theoretical and practical theology that continually develops the data of revelation. (Yet that does not mean, contra doctrinaire *secularism*, that such a secular society must be antitheological, a point doctrinaire secularism shares with antisecular, doctrinaire *fideism*—*les extrêmes se touchent!*) Instead, I found the talmudic idea of *dina demalchuta dina* (“the law of the state is law for Jews”) as developed by such medieval Jewish thinkers as Samuel ben Meir (Rashbam), Moses Nahmanides (Ramban), Solomon ibn Aderet (Rashba), and Nissim Gerondi (Ran) to be more helpful in developing an idea of the Jewish social contract. And it is no accident that their views were formulated when they were living under Christian regimes, even at times under unfriendly Christian regimes.

The reason Jews could develop a notion of a Jewish social contract is that in most of medieval Christendom they lived under a *contractual* arrangement with the Christian host society. That was because at the heart of the civil law governing most Christian societies was what was considered to be universal/rational law (*lex naturalis*), which emerged from the older notion of *ius naturale* in Roman law (as influenced by Stoic philosophy). Since the secular law of Christians had no civil status for the Jews, and since their canon law governing the religious realm in principle did not deal with civil status, the status of the Jews could only be developed through contract. And, although the Jews were often in an inferior and vulnerable position in these Christian societies *de facto* (especially when the Christian rulers reneged on the social contract with the Jews, as they did in Spain in 1492), at least *de jure* the Jews were on an equal playing field with the sovereign with whom they had contracted, as all parties to a contract are equal *de jure*.

The political vulnerability of the Jews in medieval Christendom was that they were the only community whose relationship with the sovereign was one of contract, and they were a small minority in the overall population of any Christian *society*, thus having limited political clout (and only beginning to develop their economic clout). Their relations with the Christian *community*—namely, *the church*—were almost always ad hoc, since the church was in no position to enter into any contractual arrangement, certainly not with a non-Christian community. (Indeed, this might explain why, when the Catholic Church rethought the character of its relations with the Jewish people at the Vatican Council II in the 1960s, this was done in terms of *covenantal* theology; and, as my book emphasizes at the outset, a covenant is not a contract.)

Once a *modern* secular society regarded its relations with *all* its citizens to be contractual, however, the political position of the Jews improved, since they were no longer the political exception in an otherwise noncontractual polity. And, of course, if the society per se is founded on a social contract, it no longer looks to the church for its theological warrant. Nevertheless, as I emphasize in my book, the absence of a theological (that is, what comes from a historical revelation) warrant does not mean that the parties to the social contract are to come to it from *nowhere*. If so, how would they have any prior rights for whose fulfillment they come to the social contract to negotiate *ab initio*? (*Ex nihilo nihil fit.*) Instead, when coming from *covenantal* traditions, like Judaism or Christianity, parties to the social contract come to it with rights already in hand, including the right to contract with those outside their own covenant. It is this potential in both the Jewish and Christian traditions, and the contractual precedents in the history of the Jewish-Christian relationship, that has enabled Jews and Christians to live in good faith under regimes that do not have an “establishment of religion” (to paraphrase the First Amendment to the Constitution of the United States), and to begin to develop a common approach to certain key questions of public morality. In *The Jewish Social Contract*, I examine this potential from within the Jewish tradition, of which I am a willing part, but with the recognition that there is similar potential within the Christian tradition.

Under Islam, conversely, although the Jews many times did better in its societies *de facto*, nevertheless, they always had an inferior status *de jure*, because that is what had already been irrevocably assigned to them by Islamic law (*shari'ah*). According to Islamic law, Jews (and Christians), having as they do a divine law (however imperfect according to Islamic theology), were assigned a permanent second-class (*dhimmi*) status in any Islamic society, that is, when they were also willing to accept Muslim sovereignty over themselves. As such, no secular status needed to be worked out for the Jews (or for anyone else, for that matter); revealed law was taken to be totally sufficient for that political question too. And, very much along the same lines (to be sure, skillfully drawing upon certain rabbinic sources), Maimonides saw the status of any gentile willing to live according to basic Jewish moral law, and willing to accept Jewish sovereignty over himself, to have second-class status in any reconstituted Jewish society as a permanent resident-alien (*ger toshav*; see *Mishneh Torah*, Laws of Kings 6:1, 8:10). Hence, the equality needed for a contractual relationship with any non-Muslim community is missing from Islamic political theology; and it is also missing from Maimonides' political theology as it pertains to gentiles. Furthermore, as far as we know, Maimonides did not desire or envision any relationship

of political equality between Jews and non-Jews. He seems to have been willing to accept Muslim political rule over Jews in the present (when it is just and conducts itself according to consistent rules) and to envision Jewish political independence from gentile rule altogether in the future (even though he does play down earlier Jewish notions of Jewish political domination of gentiles in the days of the Messiah; see *Mishneh Torah*, Laws of Kings, ch. 12ff.).

That is why I could not draw upon Maimonides, let alone from his affinity with Islamic political theology, for my constructive argument about the Jewish theological and legal validity of a contractual arrangement between Jews and a non-Jewish society. And, although I know from personal and scholarly contacts with some important Muslim scholars and political thinkers in the West that they are very seriously researching their own tradition for sources to enable Muslims to live in good faith as equal participants in non-Muslim societies, the fact is that their research is still in its infancy, and its successful outcome is still in doubt.

Turning to realpolitik, the current political struggle between Jews and much of the Muslim world does not give either Jews or Muslims (or, perhaps, Christians too) the public leisure (Aristotle's prerequisite for philosophical activity) to escape that struggle and its immediate burdens. Jews and Christians, conversely, do have such leisure, and we have had it for at least the past fifty years. Thus, the more even political playing field between Jews and Christians, plus the greater resources for social-contract thinking and doing in Christian theology (especially in the Christian natural-law tradition) and non-Maimonidean (but not nonrational) Jewish theology, plus the fact that Jews and Christians have already come (perhaps limping) through the Enlightenment and the end of Christendom as a political reality, has led me to seek out Christians for my Jewish forays outside the proverbial "four cubits of the Law." Indeed, experience has taught me that the only gentiles truly interested in what Judaism has to say about any important human question have been Christians. On the other hand, secularists, whether gentile or Jewish, have been either disinterested in any public voice for Judaism or hostile to it. Secularists, whether Jewish or gentile (and I say this as someone who teaches Jewish studies in a secular university), seem to be interested only in descriptive truths about Judaism rather than in any normative truth Judaism speaks in its own voice.

I think that, for the time being anyway, I have answered Professor Batnitzky's questions about my views on society and community, on Maimonides and Strauss, on secularity and secularism, and on the greater Jewish political affinity with Christianity than with Islam. In the long run, though, these perennial questions will all reappear, both

for Professor Batnitzky and for me, and for all others to whom they are important.

II. Michael Walzer

Michael Walzer raises a number of questions that are, for the most part, concerned with the political implications of *The Jewish Social Contract*. However, at the very beginning of his response, he does raise an important theoretical question. I need to deal in some detail with that question first in my response to his response, not only because it is best to deal with questions in the order in which they have been raised, but also because in this case the theoretical question he raises does, I think, underlie the more practical political questions one would expect from the premier political theorist Professor Walzer surely is and is recognized by many today to be.

The thesis of my book, which is put forward in the introduction, can be paraphrased in four sequential propositions:

1. The idea of a social contract is the best way to understand the relationship among the citizens of a democratic polity; indeed, the democratic polity itself can best be seen to be founded in the social contract negotiated by those equal persons who become the equal citizens of that polity.
2. Jews (and members of other religions of revelation) have ample resources within their tradition that enable them to enter into such a democratic social contract in good faith as equal citizens, and the task of a Jewish political theorist is to retrieve those sources and translate them into a more current philosophical idiom.
3. Limited government is essential for a democracy, and a government can be limited only when most of its citizens recognize an authority like the God of the Bible and his law, which transcends democratic polity and thereby limits it from above.
4. Of all Jews, Orthodox or traditional Jews are best able to consistently participate in the social contract as adherents of Judaism, both in terms of the coherence of their theology and in terms of the specific correspondence of their theology with the data of the Jewish tradition.

If I understand his response to *The Jewish Social Contract* correctly, I think that Professor Walzer would agree with proposition 1; that he

would be somewhat doubtful about proposition 2; that he would disagree with the second part of proposition 3, about democracy's need for an affirmation of the transcendent by most of its citizens; and that he definitely (and explicitly) disagrees with proposition 4 and its privileging (theoretical but not practical) of Orthodox or traditional Jews. Nevertheless, this fourth proposition does not mean that nonreligious or "secular" Jews cannot be participants in a social contract. I only question how coherent their view of Jewish identity is, just as I only question how much correspondence their view of Jewish identity has to the Jewish tradition. In other words, I question the meaning of what secular Jews call "Jewish," and I question its truth value. As such, I question the political efficacy of their overall position in the interhuman world. I do not, however, question the fact that secular Jews are Jews, although my criterion (and I could show that it is their criterion too, however oblivious they are to its religious source) for accepting their "Jewishness" comes from the religious tradition of Judaism.

Although my presentation of a religious Jewish position on the Jewish social contract could be termed "Orthodox" (actually, I prefer the label "traditionalist," for both epistemological and political reasons), I do not prejudge non-Orthodox/nontraditionalist Jews to be either "secular" or even "nonreligious." Clearly, Reform and Conservative Jews (and, more doubtfully, Reconstructionist Jews) affirm the transcendent God of the Bible and Jewish tradition. Yet, because of what seems to me to be their incoherent theology (and on that score, I see no essential difference between what is espoused by at least the official spokespersons of the three non-Orthodox Jewish religious denominations just mentioned above), plus the fact that there are too many counterexamples to their more radical positions from within the tradition, I therefore question how effective these non-Orthodox Jews can be in negotiating a social contract that, to me anyway, presupposes that one comes from a clearly identifiable, precontractual *somewhere*. That *somewhere* transcends the contractually founded democratic polity, both historically (it came first) and ontologically (it claims cosmic status for itself; hence, it is greater than anything humans could invent, construct, or contract, even greater than the best democratic polity). In my view anyway, non-Orthodox Jews cannot coherently affirm, or affirm at all, the three dogmas set forth above; hence, they cannot present themselves in the secular public arena as clearly enough connected to a precontractual *somewhere* to be able to be anything more than a special interest group *within* all-encompassing secular society. Ultimately, they have no Archimedean fulcrum with which to move the world. Nevertheless, I never say that secular Jews are not Jews or that non-Orthodox Jews are not practicing Judaism.

Beginning his thoughtful critique, Professor Walzer says that it seems that “belief is crucial here” and that it is hard for him to understand exactly “what belief means [for Novak].” Since I admit that the three indispensable dogmas of Judaism are (1) the divine revelation of the Torah, (2) the authority of halacha, and (3) the hope for the resurrection of the dead, Professor Walzer sees “an epistemological problem here” in my admission that the exact meaning of each of these three dogmas is open to much speculation. Moreover, for him, it seems dogmas are propositions that are directly affirmed by a mental act called “belief,” which then leads the believer directly into the practice of the commandments. That is what “orthodox” means, namely, “correct doctrine,” which is a “dogma” when given official status by a religious community that upholds that doctrine and regards public denial of that doctrine as sufficient cause to prevent the denier from remaining a bona fide member of the traditional community. Dogmas or correct doctrines (*ortha doxa*) seem to require affirmation by belief (*pistis* or *credo*) as inner conviction. Along these lines, “belief” means one’s inner conviction that these dogmas are true, namely: (1) God gave the Torah to Israel; (2) traditional Jewish law (whatever its historical origins) is the valid, normative interpretation and application of the Torah; and (3) God will resurrect from the grave those deemed to have been righteous during their sojourn in this world.

Conversely, though, I do not mean that *belief* qua inner conviction is a Jew’s initial public connection to the dogmas of Judaism. Instead, a good case can be made out of traditional sources for maintaining that all a Jew is required to do is not publicly deny these three dogmas. For example, one deserves ostracism by the traditional Jewish community if he or she *says* [in public], “The Torah is not from God” (*ein Torah min hashamayim*). More positively, there are liturgical requirements that a Jew affirm certain dogmas. For example, a Jew is required to say three times daily, in morning, afternoon, and evening prayers: “You, Lord our God, be praised as the One who resurrects the dead.” Yet, even in one’s positive affirmation of the dogmas, one is not required to be able to specify their meaning as one would be required to specify the meaning of a commandment to be done. So, for example, one need only affirm *that* the Torah is from God, but one is not required to specify just *how* God gave the Torah to Israel. (Along these lines, see my late revered teacher, Abraham Joshua Heschel, *Heavenly Torah*, in the 2005 English translation.) On the other hand, in order to fulfill the commandment to blow the shofar on Rosh Hashana, one does need to know and intend exactly *how* this act is to be done so that one can be considered to have fulfilled the *mitzva* properly. Furthermore, there is solid halachic opinion that someone who is inwardly convinced that these propositions are false (as distinct from

those who have doubts about them) might be legally exempt from reciting the prescribed liturgy where they are expressed, because that person could not have the proper intention (*kavana*) that is required for the effective utterance of these liturgical affirmations. To be sure, such a person should make every effort to become inwardly convinced that these dogmas are asserting the truth, or at least try to reduce his or her inner denial to a more tolerable level of occasional doubt. (Indeed, without the effort to coordinate public affirmation with inner conviction, a religious person risks being torn asunder psychically.)

Nevertheless, someone who cannot be convinced that these dogmas assert the truth, yet who does not publicly deny them, does not risk being forced out of the community for his inconsistency with what the community regards as the indispensable presupposition of its normative praxis. But someone like Baruch Spinoza, who couldn't live being silent about his heterodox thoughts, let alone continue his public participation in the praxis of the community, left the Jewish community of Amsterdam and agreed (as he stated in a letter to one of his gentile friends) with its authorities who wanted him out (after he had already left willingly).

Belief as inner conviction seems to entail that one first inwardly intend just *what* the dogmas mean and then outwardly affirm *that* the dogmas are true. But it could be consistently argued from within the Jewish tradition that Judaism seems only to require a Jew to publicly affirm *that* the dogmas are true (by participating in public worship) or, minimally, not publicly deny them, but that one need not provide public arguments (*apologia*) about *what* they fully mean. As for one's inner conviction or intention, that is an individual Jew's private concern, to be sure not something he or she can take leave of, but rather, something he or she must strive to understand, through one's personal experience and reflection, namely, just *what* the dogmas do mean. Outer affirmation is called *emuna*, or "assurance"; inner conviction, what we might call "faith" or "trust," is called *bitahon*. Hence, one could say that Judaism does not require "belief" as foundational, but it does require public affirmation *that* its dogmas are true and public restraint from declaring these dogmas to be false. Thereafter, Judaism bids individual Jews to internalize in their own way, almost as an ideal, just what their lips have uttered or at least not rejected. This might be best seen in the well-known words of the Passover Haggada: "Everyone ought to look upon himself [or herself] as if [*k'ilu*] he [or she] personally left Egypt." Along these lines, moreover, one could see the preponderance of the Jewish tradition being on the side of the philosophical view that thought is the internalization of language rather than language being the expression of thought. (Here, in explicating this logic, I admit to being influenced by the important 1984 book

of the Christian philosopher George Lindbeck, *The Nature of Doctrine*, with Lindbeck himself being influenced by Wittgenstein's later views on language.)

The public function of the few, but essential, dogmas Judaism has is not for them to be parts of some sort of dogmatic system. (Here is where most Jewish philosophers would differ from kabbalists like Moses de Leon, Moses Cordovero, Meir ibn Gabbai, and Isaac, who constructed elaborate theological systems from which they thought they could deduce all Jewish doctrines and laws.) Franz Rosenzweig, for many the most brilliant modern Jewish theologian, spoke of Judaism "having dogmas but no dogmatics." And even the most systematic presentation of Jewish theology, *Sefer Haikkarim*, by the fifteenth-century theologian Joseph Albo, is far less tightly structured than similar works by Christian systematic theologians (like Aquinas, Calvin, or Barth) and is not presented as a series of premises from which practical halacha can be inferred. Instead, the most systematic Judaism is to be found much more in halacha. So, for example, one finds much more system in Maimonides' theologically charged *summa legae*, namely, his *Mishneh Torah*, than in the *Guide of the Perplexed*, his book of theological speculations sans halacha. The dogmas function as presuppositions rather than premises. Their function in the normative system is to make the deeds it prescribes intelligent actions and not just obedient behavior (what Abraham Joshua Heschel sneeringly called "religious behaviorism" or "pan-halachism.") (On this subject, one will be well instructed by the important 1986 study by the Israeli scholar Menachem Kellner, *Dogma in Medieval Jewish Thought*.) Nevertheless, in the absence of the proper internal understanding of these dogmatic presuppositions, obedience is preferable to either rebellion or inaction. There are times when religious Jews have to "go through the motions," even when our minds and hearts are elsewhere or nowhere. Yet our desire (often expressed in private prayer) is always to return to a more coherent relationship with God and our fellow humans (*teshuva*) and that such schizoid times be only random episodes.

All of the above is needed for me to properly answer Professor Walzer's concern about my "epistemological problem," which, like anything else he says, I take seriously and do not slide by as if it were a throwaway line. Indeed, the type of Jews I am arguing to and for in *The Jewish Social Contract* have the epistemological problem Professor Walzer thinks I have only if they fall into one of the two extremes my theological epistemology tries to carefully avoid, namely, the Scylla of the requirement of a dogmatic system, one from which Jewish norms are then deduced, and the Charybdis of the denial that intelligent, Jewishly authentic action has need of any dogmas or doctrines at all.

While I agree with Professor Walzer that many Orthodox Jews have a political problem with their adherence to democracy, I think their problem stems from an epistemological problem. Not having a clearly thought-out view of what constitutes truth for Judaism, they have trouble articulating, and even more so practicing, what is true in democracy according to Jewish criteria and what can therefore make a justified claim on the allegiance of faithful Jews living in any particular democracy. That might explain why many Orthodox Jews seem to make only authoritarian-type arguments in public rather than more rational (and democratically attractive) arguments for what they claim for themselves, both from their fellow, non-Orthodox Jews and from the larger, non-Jewish world. Such authoritarian arguments (usually in the form of: "our great rabbis have ruled"), which rarely tell us *how* or *why* their "authorities" have so ruled, lack both epistemological clarity and ontological depth. That is why they are so often offensive to those, even to those Jews (and even to many of their fellow Orthodox Jews), who have grown up within and benefited from participation in democracies. Democracies make epistemological assertions (for example, "We hold these truths to be self-evident," as in the Declaration of Independence of the United States) as well as ontological assertions (for example, "the supremacy of God and the rule of law," as in the Canadian Charter of Rights and Responsibilities). Jewish citizens of a democracy should be looking for sources within our own tradition to be able to accept such epistemological and ontological assertions in good faith. Our task, then, is to coherently affirm democracy, making it neither an object of ultimate commitment nor a temptation to be avoided. Yet that requires more reflection on the basic dogmas of Judaism, and how democratic, social-contract-type thinking has already been conducted in the Jewish tradition.

Professor Walzer (in this and in other stimulating exchanges we have had in the past decade or so) seems to think that a collision course between democracy and Jewish Orthodoxy is unavoidable, both in principle and in fact. Judging from recent political experience, I could hardly disagree with him in fact, considering the antidemocratic actions (some would say the "antics") of major segments of Jewish Orthodoxy, both in Israel (a democracy) and in Diaspora democracies. But I disagree with him in principle. That is, this doesn't have to be the case, even though it still is the case all too often. In fact, he has hit upon the chief reason I wrote *The Jewish Social Contract*, and why I have carefully tried to retrieve all sorts of resources from the Jewish tradition, going back to the Bible, to bolster my argument and protect it from the likely charge that it is merely obsequious apologetics designed to make American and Canadian Jews feel good about their *galut* lives.

To illustrate Orthodox political incoherence, Professor Walzer cites the prayer for the government found in traditional prayer books, where the worshippers ask God to inspire the head of state (in the Canadian Orthodox synagogue where I worship, there is some debate whether that prayer should be for “Her Majesty the queen” or for the current prime minister) “to deal kindly with us and with all Israel.” Professor Walzer rightly considers this phraseology “a holdover from predemocratic times... not the prayer of democratic citizens.” (In fact, in an Orthodox synagogue I often attended as a child, the cantor’s pulpit prayer book still referred to “the czar, Nikolai Alexandrovich, may his glory be raised”!) And he sees this to be an example of what I criticize toward the end of the book as Orthodox “special pleading.”

One could say Professor Walzer is right and this seemingly antiquated prayer should be changed or eliminated from the liturgy. That would not be very hard to do, since this prayer is not part of the halachically prescribed liturgy (*matbe’a shel tefilla*) any more than having national flags on the pulpit is prescribed (compare the Mishna in *Avot* 3:2, which itself is not a codified norm). Personally, I think saying this kind of prayer still has some importance, so I have no qualms about changing it to be more like similar prayers in Reform and Conservative prayer books. Nonetheless, though, there is a difference between what this customary prayer says and “special pleading.” My criticism of special pleading is its exceptionalism, that is, asking the government of a democracy to regard Jews as bizarre or exceptional enough to grant them unique privileges rather than making a universal argument that could apply to all others as well. However, asking for governmental recognition of the *communal* needs of the Jews (and, presumably, recognizing that other religious or even ethnic groups could ask for similar recognition) is not special pleading in this sense. Instead, it is a recognition that just as a democracy needs to recognize the individual rights of its citizens, so it should recognize their group rights as well, that is, if they are not denying other groups that same right. (On this score, in the book I acknowledge the influence of the preeminent Canadian philosopher Charles Taylor.) Along these lines, think of how hard American and Canadian Jews try to influence their respective governments to deal favorably with the State of Israel (a prayer for which usually follows the prayer for the non-Jewish government, at least in most Orthodox and traditional synagogues that have any Zionist sentiments). And, until recent times, Jewish Zionists have had to defend themselves against the charge of “dual loyalty,” a charge made by anti-Zionist Jews and by anti-Zionist gentiles (whose anti-Zionism has often been a thin cover for their old anti-Semitism).

Following his point about synagogue liturgy, Professor Walzer agrees with me that "good citizenship [does not] require an absolute or singular loyalty." (Indeed, that is one of the chief points in his 1983 book, *Spheres of Justice*.) Yet he thinks that a democracy needs some sort of "civil religion" that is "short of divinization [but] a necessary underpinning of any democratic politics." Accordingly, he questions whether Orthodox Jews can participate in these civil ceremonies in good faith. Now I agree with him that civil society in a democracy needs some civil ceremonies for the sake of having more than formal political cohesion. In the United States, this issue usually comes to the fore in Orthodox communities in a debate (which many might think to be silly) as to whether celebrating Thanksgiving with special foods, let alone special prayers, is permitted to Jews or is an example of the forbidden "statutes of the gentiles" (like Christmas). While there are Orthodox Jews for whom any celebration not specifically Jewish is forbidden, many other Orthodox Jews do celebrate Thanksgiving much like their fellow Americans. And, in fact, many American rabbis, Orthodox and liberal, have enthusiastically pointed out to their congregations how Thanksgiving is based on the Jewish holiday of Sukkot, whose primary message is thanksgiving for God's beneficence to humans through nature. That, by the way, brings up a point many more liberal or secularly minded Jews might want to overlook, that the "pilgrim fathers" who instituted Thanksgiving were, as Calvinists, as deeply rooted in the Hebrew Bible as was possible for any group of Christians in the seventeenth century. That is why it is quite easy for Orthodox Jews to feel such sympathy for them, as many of us do. Like Judaism, their theology was very much a *covenantal* theology.

Speaking of religion-type affinity, it should be noted that prayers uttered in public at civic occasions are certainly an American civil tradition. Most Orthodox Jews do not object to such prayers' being uttered in their presence at these occasions, and do not object to their rabbis' being called upon from time to time to utter such prayers. (The very first rabbi invited to open a session of the United States Congress, Orthodox Rabbi Morris Raphall of New York in 1859, did so wearing his tallit and tefillin.) Yet is it not liberal or secular Jews who frequently protest such intrusion of religion in the public sphere, even extending their fierce opposition all the way up to the Supreme Court of the United States? So, despite some confusion on the part of some American Orthodox Jews about practices of "civil religion," I think it is easier for them to accept civil religion and even participate in some of its public celebrations than it is for liberal or secular Jews, who seem to want even civil religion, let alone traditional religions like Judaism, to be a totally private affair ("in the closet," as

it were). Here again, Orthodox Jews need to discuss among themselves what Professor Walzer and I are discussing in these pages now. But, in the end, their more coherent connection to the Jewish tradition will enable them to work out a more coherent public philosophy than that of liberal or secular Jews, whom I find to be as philosophically incoherent as they are theologically incoherent and out of touch with major aspects of the Jewish tradition.

Getting down to the most practical political question in *The Jewish Social Contract*, my argument for state support of some kind of religious schools (the details of which I leave to those more politically adroit than I), Professor Walzer queries: “[W]hat curricular requirements can the state enforce?” And more specifically, he queries: “[C]an the state insist on gender equality in the schools it is paying for?” Quite astutely, he zeroes in on my assertion that “the obligation to provide primary and secondary education for Jewish girls is practically the same as that for Jewish boys.” Professor Walzer says my position is not “a consistent position.”

Does Professor Walzer mean that the state must consistently support what used to be called “coeducation” across the board? If so, how would he respond to the proposal of the Milwaukee school board that there be an all-male high school for African-American males, with an all-male teaching staff, because these young men need an all-male academic environment to compensate for the fact that most of them come from homes where there has never been an adult male for them to look up to as a role model? Would he say this proposal is “racist”? Or how would he respond to the proposal of the New York City school board that there be a special high school for gay students to compensate for the fact that so many of them have been ostracized in schools where the vast majority of the teachers and students are not gay or are, in fact, “homophobic”? All I mean by raising these questions is that it is not totally inconsistent to realize that there are cultural reasons (“group rights” reasons) why in some, but not all, Orthodox Jewish communities boys and girls need to be educated in separate schools, that is, as long as the secular curriculum is identical. (That, by the way, has been my wife’s experience teaching French both in an all-boys yeshiva and in an all-girls yeshiva in Toronto.) In other words, there are times when cultural concerns need to be given at least as much public recognition as the concerns of doctrinaire egalitarians and feminists are given.

Let me say in conclusion that both Leora Batnitzky and Michael Walzer have forced me to think and rethink ideas in a way I could never have

done without them. And I do hope our exchange has been helpful to more people than just me, beginning with the readers of *Hebraic Political Studies*.