In Monty Python, there is a segue after one segment, or *shtik*, and before another, and it signifies a change in mood, topic, or attitude. So—“*and now for something completely different*”—Professor Alan M. Dershowitz, his writings, his advocacy, and his Judaism.

Before World War II and the creation of the State of Israel, there was a common stereotype of the Jew, based in part on Shakespeare’s *Shylock*, but also on adventure books like *The Adventures of Robin Hood* and *Ivanhoe*, and even on well-read classics like Dickens’ *Oliver Twist*. He (it was seldom if ever a she) was miserly, thin, big and pointy nosed, timid, cowardly, and just plain creepy. He was almost always portrayed as a criminal who lived on the fringes of society and who fed off the fears and needs of the innocent, especially children. Sometimes, he was portrayed as

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* Dean and Randolph Baxter Professor of Law; Former Dean, University of Tulsa College of Law; Dean emeritus, Albany Law School; A.B. Temple University; J.D. Columbia University.


2. This is a transitional catch phrase used on the British television show, Monty Python’s Flying Circus. See 1 Graham Chapman et al., *THE COMPLETE MONTY PYTHON’S FLYING CIRCUS: ALL THE WORDS* 17 (Roger Wilmut ed., 1989) (emphasis added).

3. I intentionally use the phrase “Judaism” and not Jewish faith, because Professor Dershowitz makes a point of saying that the tradition, writings, and his Jewish-religious upbringing and background are what has affected his actions and writings. See infra notes 19–30 and accompanying text.


8. See LEONARD DINNERSTEIN, *ANTISEMITISM IN AMERICA* xxvii (1994) (portraying Jews as having “deformed bodies and missshapen character,” and having “a big nose, a bad odor, and a speech impediment”).

9. The classic example of this is Fagin, in Dickens’ *Oliver Twist*, both as written and as
the wealthy banker or loan-maker, who stole from the diligent working class and interfered with the undertakings of the new industrial leaders. In the most extreme characterization, the Jew was, of course, the scourge of good Christians, who killed the Savior and still used the blood of Christian children for ritual foods.

Some of these biased characterizations of the Jew remain, but the modern stereotype is somewhat different. Today, the Jew is portrayed as an assertive, aggressive bully. He (and now she) is smart, and much too powerful. He or she exercises power through money and influence. And then, of course, there are now two conflicting, and somewhat inconsistent, additional sets of traits. To many, Jews are liberals who think they are somehow better than the rest of us and who control the media, the banks, and even the government. They are classic meddlers, who, through a network of civil liberties, diversity, and other do-good groups, are tearing away at our Christian roots. To others, their support for the State of Israel has led our government from one Middle East crisis to another and has made them allies of the Far Right. Their avarice portrayed in numerous film and television adaptations. See Dickens, supra note 7, at 50.

10 See Alan M. Dershowitz, Chutzpah 108 (1991) [hereinafter Dershowitz, Chutzpah] (describing perception of Jews both as lazy because they did not work the land or produce wealth and as part of an international conspiracy of wealth and power—“the bearded shetl Jew and the . . . moneyed cosmopolitan Jew”).

11 See id. at 103.


13 See Dershowitz, Chutzpah, supra note 10, at 126 (quoting the President of the Massachusetts Senate at a hearing in 1990 referring to Jews “as ‘crafty,’ as ‘conmen’ and ‘manipulators’”).

14 Of course, the somewhat conflicting stereotypes of the all-too-powerful and the all-too-powerless Jew is not a recent phenomenon. See Dershowitz, Vanishing American Jew, supra note 12, at 97–98.

15 See Dinnerstein, supra note 8, at 233 (referring to statements made by the chairman of the Joint Chiefs of Staff, General George S. Brown, in 1974).

16 This was, and is, especially true in the South, where “northern liberal Jews” were perceived as the defenders of African Americans and challenges to the southern “tradition.” This often caused conflicts between local southern Jews and those northern “communists” rebels. See id. at 185–86. Of course, this is another example of the concept of shanda fur de goyim. See infra Part I.

has been a major cause of the lack of success of people of color.\textsuperscript{18}

Okay, what does this have to do with Professor Alan Dershowitz? First, he is a clearly self-identified Jew. Professor Alan Dershowitz was born in Williamsburg, a section of Brooklyn, New York, and spent most of his childhood in Borough Park, Brooklyn.\textsuperscript{19} Both sections were considered “Jewish,” and Professor Dershowitz was raised as an observant Orthodox Jew; although, as he describes it, a “modern Orthodox” and not a “frumie” or “ultraorthodox.”\textsuperscript{20}

Over time, he has moved from a religious perspective to an activist Jewish perspective—“from passive observance of ritual to active participation in causes.”\textsuperscript{21} In addition, he acknowledges that his “Jewishness” is the source of his activism, his anger at injustice, his pride in his own and others accomplishments, and his principles.\textsuperscript{22} It is also the basis of his hate of persecution and support for Zionism.\textsuperscript{23} And specifically, the Bible and other religious writings have impacted his teaching and practice.\textsuperscript{24}

Third, he sees as his mission to lecture, cajole, and support other Jews and the American Jewish identity. Professor Dershowitz has taught many Jewish students, served as faculty advisor to Jewish student associations, spoken to numerous Jewish groups, and written books about his Jewish identity.\textsuperscript{25}

Dershowitz not only accepts some aspects of the modern stereotype of the American Jew, he revels in them.\textsuperscript{26} It is acceptable to be smart, pushy, aggressive, and outspoken.\textsuperscript{27} “Why

\textsuperscript{18} See generally DINNERSTEIN, supra note 8, at 210–27 (examining the growth of African-American anti-Semitism in the 1960s).
\textsuperscript{19} See DERSHOWITZ, CHUTZPAH, supra note 10, at 35.
\textsuperscript{20} Id. at 38.
\textsuperscript{21} Id. at 62.
\textsuperscript{22} See id. at 10–12.
\textsuperscript{23} See id. at 14–15.
\textsuperscript{25} DERSHOWITZ, CHUTZPAH, supra note 10, at 10; DERSHOWITZ, VANISHING AMERICAN JEW, supra note 12, at 15.
\textsuperscript{26} DERSHOWITZ, CHUTZPAH, supra note 10, at 19 (“I am a proud and assertive Jew . . . .”).
\textsuperscript{27} See ALAN M. DERSHOWITZ, REVERSAL OF FORTUNE: INSIDE THE VON BÜLOW CASE 52–53 (1986) [hereinafter DERSHOWITZ, REVERSAL OF FORTUNE]. In Dershowitz’s first interview with his future client, Claus von Bülow, von Bülow indicated that his “first” problem with hiring Dershowitz was that “some of [my] acquaintances were upset at the prospect of ‘an aggressive Jew’ taking over the case.” Id. at 52. Of course, “I [(von Bülow)] don’t have an ounce of the anti-Semite in me. But some of these other people have never encountered Jews like you, intellectuals, cultured people.” Id. One interesting aspect of this story is that Dershowitz’s “aggressiveness” was acceptable because it was “countered” by his intellect and status. The other interesting aspect of this telling is that Dershowitz accepts (and perhaps
are there so many Jewish lawyers? Why not? 28

Jews can be proud of their label as “the Chosen People,” and both supportive of the State of Israel and of civil rights, protect religion in the private sphere and demand the separation of church and state, liberal in politics but still realistic in the implementation of that political agenda. 29 American Jews—both leadership and others—must act with the confidence of our political and intellectual power and not act as second-class citizens. They need not be concerned how words and actions might be viewed by others. In other words, do not be afraid of being too visible and a shanda fur de goyim. 30

Professor Dershowitz has melded his Jewish identity with his academic scholarship and public advocacy. First, he has described in great detail the Jewish stereotype and challenged it—not for its content but for its negativity. 31 In Chutzpah, he defines the Jewish stereotype as “boldness, assertiveness, a willingness to demand what is due, to defy tradition, to challenge authority, to raise eyebrows.” 32 He also recognizes that detractors define these sets of characteristics as “unmitigated gall, nerve, uppityness, arrogance, hypocritical demanding.” 33

Second, Dershowitz’s religious heritage has infused his perspective and commentary on a variety of legal topics from criminal justice, to professional responsibility, to constitutional law. 34 Because of his Jewish, and particularly religious Jewish, upbringing, he uses biblical and Jewish commentary as “sources of analogy and reference.” 35

Third, he has written and spoken about the difference between a faith-based perspective and a faith-biased one. The American tradition is based on many religious traditions and has prided itself on protection of religious, and other, minorities. It has also rejected its control by any religious group, even if it is the dominant

even kvells) about his “aggressiveness.” See id. at 52–53.
30 See infra Part I.
31 See supra notes 4–22 and accompanying text.
32 DERSHOWITZ, CHUTZPAH, supra note 10, at 18.
33 Id.
34 See discussion infra notes 66–101 and accompanying text.
35 DERSHOWITZ, GENESIS OF JUSTICE, supra note 24, at 7.
majority.\textsuperscript{36}

Fourth, he has indicated his unwavering support for the State of Israel (but not all its politics and leaders\textsuperscript{37}) and opposition to those who are not just critical but perhaps have biased and, in some cases, even anti-Semitic attitudes.\textsuperscript{38} It is in the American, and not just American Jewish, interest that we support and understand the only real democracy in the region.\textsuperscript{39}

And finally, Dershowitz has assumed the role of popular translator. He wants to explain his Jewishness, his religion, and other religions in a manner that, though scholarly, can be understood by a broad audience. He can use his visibility and access to convey his perspectives and concerns.\textsuperscript{40} He believes that from his meetings, from his research, and from the letters he receives—from Jews, non-Jews, and even anti-Semites—that he knows what is “on the minds and in the souls of many Jews, of all ages” and that he has a “unique window into the mind of the anti-Semite.”\textsuperscript{41}

Professor Dershowitz has his critics—both in the academy and in the quasi-, and not so quasi-, public sphere. But he brings credibility to his arguments because of his legal skills, careful scholarship, articulate expression, and sometimes overwhelming persistency. You may disagree with him, but be prepared to refute his logic, facts, and citations.

I. SHANDA FUR DE GOYIM

At a recent meeting of Jewish public policy mavens,\textsuperscript{42} I asked a
substantial number of them what they associated with the name
Alan Dershowitz. I expected some reference to the book and movie,
*Reversal of Fortune*, or perhaps to his role as part of the defense
team for O.J. Simpson, or even to his strong support for the State of
Israel or his strong stand on the separation of Church and State.
Almost unanimously, however, this group of Jewish leaders cited
Dershowitz’s “call to action” in his 1991 book *Chutzpah*. Moreover,
they indicated that that book gave them, and others like them, the
license to speak out as Jews.

*Chutzpah* opens with this direct challenge: Jews should be more,
and not less, assertive. Jews too often consider themselves and
act “as second-class citizens—as guests in another people’s land.” Jews
should be proud of their contribution to American success and
demand, and get, “first-class” status.” To put it bluntly, Professor
Dershowitz commands Jews to “strike from our vocabulary the
offensive concept of *shanda fur de goyim*—an embarrassment in
front of the gentiles.”

I now need to get personal. I was raised an assertive, aggressive,
“modern Orthodox Jew” in a very diverse Philadelphia
neighborhood. My parents were always worried about appearances,
and when a Jewish person got into trouble they were ashamed, not
just for themselves, but for all Jews. I did not and do not share
their concerns. As a result, I have been criticized—and sometimes
continue to be criticized—for being “too Jewish,” although the polite
term is “too ethnic.”

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43 See DERSHOWITZ, CHUTZPAH, supra note 10, at 3.
44 Id. at 3–4.
45 Id. at 7. One of my favorite stories in *Chutzpah* is about the two Russian Jews sent to
death by the Czar. Both were offered blindfolds. “The first Jew bravely turned down the
blindfold. The [other whined] to the first . . . : ‘Please, take the blindfold. Don’t make any
trouble.’” Id. at 9. I ran into a similar situation when I was working (as a law student) in
1966 for the then-Federal Office of Education. I was the head of a team going into various
school districts in the South, negotiating with school superintendents and school boards on
desegregation plans. Refusal to prepare and get approval for such plans could lead to loss of
federal [Title I] education funds. In one district, a School Board Superintendent who was
Jewish pulled me over to the side and said he wanted to talk to me “Lantzman to Lantzman.”
*lantzman* or *Landsman* is from the German “fellow countryman” or, in this context, fellow
Jew. See ROSTEN, supra note 1, at 203–04. Didn’t I realize how difficult I was making this
for him? He was sympathetic, but if he took any real action, he would be bringing attention to
himself as a Jew, and now I was bringing attention to his Jewishness by being the leader of
the group. Couldn’t I allow him to just “*sh’a shilll*” (be quiet or remain undisturbed)? My
response was strange to him. As a Jew, I argued, he had a special obligation to help
minorities and use the credit and “chits” he had earned over the years to effectuate peaceful
change.

47 Belsky, supra note 36, at 1065.
I wanted because some individuals were concerned about “my high-powered ethnic style.” In Oklahoma, the phrase is “high-powered Northeastern (or New York) type!”

*Chutzpah*, and Professor Dershowitz’s example in his professional life and in his writings, gave me some gravitas to say and do something that I might not have done otherwise.

After mentoring by two Jewish judges while he was their clerk, Dershowitz carried on his sensitivity to Jewishness at Harvard as a professor. At first, he notes, he had some ambivalence about his Jewish identity, but he soon evolved into a Jewish activist and “unofficial advocate for Jewish concerns.” He believed in diversity, but wanted to make sure that it did not get converted into anti-Jewish quotas. As will be noted later, he is a strong supporter of the State of Israel, and characterizes much of the criticism of that state as “anti-Zionist” bashing.

He acted proudly as a “Jewish Jew.” He states repeatedly that Jews “should feel proud to vigorously defend Jewish rights.” He would not be, and asks other Jews not to be “house Jews”—“allow[ing] his Jewish identity to be used to justify actions against . . . Jewish interest[s].”

Dershowitz notes that Jews should not be defensive about anti-Semitism. Being a “Jew-Jew” should be perfectly acceptable.

The important point is that Jews are not to blame for anti-Semitism. Anti-Semitism is the problem of the bigots who feel, express, and practice it. Nothing we [the Jews] do can profoundly affect the twisted mind of the anti-Semite. We should never take—or refrain from taking—any action just because of its anticipated impact on anti-Semites.

And, he urges, Jews should not continue to premise their future on the “Tsuris Theory of Jewish Survival,” or they will be “doomed
to live precariously on a pendulum perennially swinging in a wide arc between the extremes of persecution and assimilation.”\footnote{\textit{DERSHOWITZ, VANISHING AMERICAN JEW}, supra note 12, at 4.} Negative Judaism, he argues, must be replaced by “a more positive and enduring Jewish identification” where we can prove “that Jews do not need enemies to survive.”\footnote{\textit{Id.} at 6.} There are problems, including declining numbers, but Professor Dershowitz is optimistic. Institutional anti-Semitism is almost a thing of the past in the United States.\footnote{\textit{See id.} at 82–83.} “[P]rivate anti-Semitism, although still prevalent, is no longer respectable in most parts of the world . . . .”\footnote{\textit{Id.} at 89.} There still are challenges—Holocaust deniers; anti-Zionists who cross the line to anti-Semitism; religious right militias; some disturbing developments in African-American, anti-Jewish prejudice; and Islamic fundamentalism.\footnote{\textit{See generally id.} at 96–142 (discussing anti-Semitism in the twenty-first century).} And these and other issues require concern and response. But the future success of the American Jew is based on a fair competition in the marketplace of ideas, and not on fear of that competition.\footnote{\textit{See id.} at 320–22.} This marketplace includes both religious and secular Judaism that focus on learning and on Jewish values, even if not on rituals.\footnote{\textit{See id.} at 323–24.} In his mind, the future success of the Jewish mind-set will be dependent on people like him (and me)—educators.\footnote{\textit{Id.} at 331.} The theme will not be “Let my people go,” but “Let my people know.”\footnote{\textit{Id.} at 332.}

II. INFUSING JUDAISM INTO THE LAW

The infusion of Alan Dershowitz’s Judaism into his attitude

\textit{Id.}
towards the law is best illustrated by his description of Chief Judge David Bazelon, for whom he clerked:

“Judge Bazelon rarely went to synagogue, but he was a Jewish judge in every sense. He saw the world through his Jewish background. His humor was frequently in Yiddish. His speeches referred to the rabinic literature. He described himself as a secular American with a ‘Jewish soul.’”

What did he learn? He absorbed the concept of fairness or rachmones—a Hebrew-Yiddish word for “compassion.”

Professor Dershowitz does not hide the fact that his activism is based in part on his Jewish background. He spent his first decades on “the causes of the downtrodden, the underdog, the unrepresented.” This extended to civil rights, the anti-war movement, gender and racial equality, opposition to capital punishment, freedom of speech, and freedom of religion. One basis for this activism and outspokenness comes from the two-part obligation derived from Hillel’s commentary. Hillel said, “If I am not for myself, who will be for me?”. Some of us tend to remember that part of what Hillel said. But you should also remember the second part: “[I]f I am for myself alone, what am I?”

Early in his book on his representation of Claus von Bülow, in fact in its preface, Professor Dershowitz uses an “old Jewish joke” to indicate that there are, in the law, two sides of the story and that an advocate’s job is to make his or her version the convincing one.

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66 DERSHOWITZ, CHUTZPAH, supra note 10, at 58. This was in sharp contrast to his description of Supreme Court Justice Felix Frankfurter, who had been a Harvard Law Professor. Justice Frankfurter described himself as “a Harvard Law School Professor who happened to be a Jew.” Id. at 79 n.4. Worried about the image of the Jew, particularly at Harvard (shanda fur de goyim), Frankfurter “boasted that he demanded higher standards” from Jewish students. Id.

67 ROSTEN, supra note 1, at 301.

68 When he first started to teach at Harvard Law, he was asked to teach on Saturday. As a then observant Jew, he told the Dean that he couldn’t. Eventually, the Dean indicated that he did not have to teach on Saturday, and, in fact, that no classes would be held then. DERSHOWITZ, CHUTZPAH, supra note 10, at 64.

69 Id. at 86.

70 Id.

71 See DERSHOWITZ, VANISHING AMERICAN JEW, supra note 12, at 268–69.

72 Id. at 268.

73 Id. at 268–69.

74 DERSHOWITZ, REVERSAL OF FORTUNE, supra note 27, at xxv. The story is about a Rabbi listening to a dispute between a husband and a wife. After hearing the wife’s version, he says to the wife, “you are right.” Id. After hearing the husband’s version, he says to the husband, “you are right.” Id. One of his students complains and says, “Rabbi, they can’t both be right.” Id. To which, the Rabbi responds, “My son, you are right.” Id. Professor Dershowitz follows this by noting that the student was not right stating, “[B]oth sides of a domestic dispute can
More significantly, Professor Dershowitz uses his Jewish training, and his knowledge of Jewish commentary, as a basis to challenge authority. One of my favorite anecdotes from the Talmud is obviously one that Professor Dershowitz admires also. Let me give my version.\footnote{See 1 THE BABYLONIAN TALMUD: SEDER NEZIKIN 349–53 (Isidore Epstein ed. & trans., Soncino Press 1978) (1935).} Two rabbis are having a debate over the meaning of a certain piece of scripture. The fight goes on and on. Finally, a voice from Heaven—deep and basal—says, I am the Lord and this is what is meant by that language. The rabbis continue to debate. God again intervenes, somewhat more strongly. “This is what I meant!” The rabbis continue to debate. God, seemingly angrier now, says, “This is \textit{halachic}—the authoritative meaning of the law.” Finally, both rabbis look heavenwards and said, “Who asked you!”\footnote{For a longer version by Professor Dershowitz, see DERSHOWITZ, CHUTZPAH, supra note 10, at 196–97.}

Dershowitz interprets this as the rabbis telling God, “[t]his is our job, as the rabbis, to bring meaning to the Torah that you gave us. You gave us a document to interpret, \textit{and} a methodology for interpreting it. Now leave us to do our job.’ God agreed, laughing with joy[,] ‘My children have defeated me in argument.’”\footnote{\textit{Id.} at 197.} Look at the Jewish heritage. We “are [a] quarrelsome people.”\footnote{DERSHOWITZ, SHOUTING FIRE, supra note 28, at 323.} We even fight with God.

Jewish law is based on this premise of debate. The Talmud “is the first preserved record of legal arguments—with dissenting and concurring opinions.”\footnote{\textit{Id.}} This is not religious for Professor Alan M. Dershowitz; it is accepting his tradition. He consults Jewish sources because he accepts their wisdom but he is not bound by these sources.

For Dershowitz, “[t]o ignore the wisdom of our sages is both arrogant and ignorant. It would be like deciding a complex constitutional issue without bothering to find out what the framers of our Constitution had in mind.”\footnote{\textit{Id.} at 328.}

Professor Dershowitz’s perspectives on ethics are also colored by his Jewish background, his training, and from his Jewish “chip.” Henry Drinker, a famous Philadelphia lawyer, former chair of the American Bar Association’s Ethics Committee and author of a
widely respected treatise on ethics, did not hide his biases. Dershowitz notes that Drinker questioned the ethics of “Russian Jew boys who came up out of the gutter [and] were merely following the methods their fathers had been using in selling shoe strings and other merchandise.”

Dershowitz challenges this directly. The core Jewish doctrines are ethical, political, and moral principles that shape our American law. Personally, his ethics and moral sense come from a complex series of perspectives, but this certainly includes his Jewish heritage. “Traditional Jewish writings and experiences are a very important source of my morality—perhaps among the most important sources, both consciously and unconsciously.”

In fact, quoting Hillel again, Dershowitz tells the famous story about Hillel’s response when he was asked to transmit the core of Jewish law (the Torah) in the time Hillel could stand on one foot. Hillel responded, “What is hateful to you, do not do to your neighbor; this is the whole Torah. The rest is commentary . . . .”

The biblical command to “do justice” established the premise of our legal system—to “compromise with power” to require a sharing based on overt and visible rules. It is the premise of “fairness, equality, or due process.” The Jewish Bible, Dershowitz concludes, “is the story of [his] quest for justice.”

In his 2000 book, The Genesis of Justice, Professor Dershowitz argues that the Bible “is a law book explicitly rooted in the narrative of experience.” And, the result is a series of principles focused on justice.

Is not our ethical system, and even justice system, generally supposed to be based on the plea to love goodness, preserve equity, or to delight in kindness? Is not our adversary system and separation of powers based on “the Jewish tradition of questioning,

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81 DERSHOWITZ, CHUTZPAH, supra note 10, at 71 (alteration in original). It is interesting to note that Drinker’s law firm in more recent years has had and still has a number of “Russian Jews,” including a present United States Senator, Arlen Specter.
82 Id. at 197–98.
83 DERSHOWITZ, VANISHING AMERICAN JEW, supra note 12, at 256.
84 Id.
85 Id. at 262.
86 Id.
87 Id.
88 DERSHOWITZ, GENESIS OF JUSTICE, supra note 24, at 6.
89 Id.
90 See DERSHOWITZ, VANISHING AMERICAN JEW, supra note 12, at 256.
doubting, and arguing?” Add to these, the biblical mandate to “repair the world” and we have the core of our modern ethical principles of a “safety net” for our people and environmental protection for our future.

The American constitutional tradition, Dershowitz argues, is similar to Jewish tradition. Our Constitution survives because it “contains no single essence,” reflects compromises that have to be readjusted over time, but primarily creates a “structure for governance.” Jewish tradition contains many “Jewish virtues that can be distilled from our long heritage and . . . our vast library. But we should not expect them to point in any one direction or provide us with specific answers to current and future problems,” those protections into law are derived from Jewish principles and commandments. His claim is broad: “Every ‘ism’—from communism to capitalism to feminism to environmentalism to legalism—has sources in Judaism.”

The scope of the infusion of Dershowitz’s Jewish culture into his theory of law is demonstrated in his 2004 book—Rights from Wrongs: A Secular Theory of the Origins of Rights. His thesis is that rights must be derived from the need for those rights and how society has responded to those needs, rather than directly from some divine source. Yet, to document this thesis, he relies first, generally, on a “great fifteenth-century Jewish commentator.” He then later uses a Jewish anecdote to demonstrate that there can be multiple rights and that they can conflict with one another.

This pattern is repeated in his other writings—he relies on his knowledge of Jewish theology and culture to make his point. In his attack on the use of excuses to justify improper behavior, he cites Adam blaming Eve and Eve blaming the serpent as the earliest example.

91 Id. at 259.
92 See id. at 317–18.
93 Id. at 260.
94 Id.
95 Id. (emphasis omitted).
96 Id.
97 Id. at 320. Dershowitz equates living “a Jewish life” with the willingness to learn and hopefully apply “the rich and diverse array of Jewish sources.”
99 See id. at 5–9.
100 Id. at 6 (observing that “experience is more forceful than logic”).
101 Id. at 99–100.
102 ALAN M. DERSHOWITZ, THE ABUSE EXCUSE: AND OTHER COP-OUTS, SOB STORIES, AND
In trying to decide the proper balance for determining whether preemptive action is justifiable, Dershowitz analyzes Abraham’s “argu[ment] with God about how many false positives would be acceptable in an effort to punish the sinners of Sodom,” and cites the Jewish principle of din rodef (defense of others), as the framework for considering the issue of anticipatory self-defense.

In describing how the United States Supreme Court takes cases, he juxtaposes the practice of the Israeli Supreme Court. In analyzing the criminal justice maxim that “[i]t is better for ten guilty criminals to go free than for . . . one innocent person to be wrongfully convicted,” he cites Maimonides and again references Abraham’s discussion with God about the destruction of Sodom and Gomorrah. The story of Cain and Abel can be used to criticize the present use of the death penalty. Even a story from the Talmud can be used to talk about judicial review.

Alan Dershowitz has visited Israel often. He has great respect for the Israeli system of justice. He often cites the decisions of the Israeli Supreme Court as he makes his arguments, especially as to the balancing of individual rights and government responsibilities in a post-9/11 world.

One commentary by Dershowitz about the reaction of Jews to his
representation of O.J. Simpson is revealing. He is bothered by the mail, criticizing him for being a “turncoat” in representing the killer of a fellow Jew.\textsuperscript{110} His response is both legal and personal. As an attorney, his “job is to advocate zealously, within the rules.”\textsuperscript{111} However, he notes that much of his mail focuses on “greed” and this, he indicates, is another example of self-deprecating hatred.\textsuperscript{112} It furthers the anti-Semitic stereotype “that all Jews care about is money.”\textsuperscript{113} Moreover, he is bothered that many of the people who wrote letters and were the readers of his book \textit{Chutzpah}, so missed the book’s message. It was not, as some of his hate mail writers indicate, a “tribal plea” for special “parochial Jewish rights,” but rather for rights for all, the deprivation of which Jews, unfortunately, have had special knowledge and experience.\textsuperscript{114} He is concerned about the level of Jewish hostility—individual anger at the Simpson verdict could be transformed into Jewish anger at blacks in general.\textsuperscript{115}

\section*{III. Faith-Based vs. Faith-Biased Perspectives}

In \textit{Chutzpah}, Alan Dershowitz describes one of his earliest law school experiences—reading a case about Jehovah’s witnesses’ right to refuse to salute the flag for religious reasons.\textsuperscript{116} He notes Justice Frankfurter’s dissent, where that Jewish Justice noted: “One who belongs to the most vilified and persecuted minority in history is not likely to be insensible to the freedoms guaranteed by our Constitution.”\textsuperscript{117} He then, parenthetically, notes his concern that Frankfurter was “quite ‘insensible’ to the religious freedoms of the Jehovah’s Witnesses.”\textsuperscript{118} He would do better!

Dershowitz’s Jewish heritage leads to his concerns about the improper application of faith to public policy. Jews do not do well in a closed, sectarian environment; rather, “Jews tend to thrive in open, pluralistic, moderate, nonnationalistic, secular societies.”\textsuperscript{119}

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\item \textsuperscript{110} \textit{See} DERSHOWITZ, SHOUTING FIRE, \textit{supra} note 28, at 335.
\item \textsuperscript{111} \textit{Id.}
\item \textsuperscript{112} \textit{Id.} at 335, 336 (emphasis omitted).
\item \textsuperscript{113} \textit{Id.} at 335.
\item \textsuperscript{114} \textit{Id.} at 337.
\item \textsuperscript{115} \textit{Id.} at 342–43.
\item \textsuperscript{116} DERSHOWITZ, CHUTZPAH, \textit{supra} note 10, at 48.
\item \textsuperscript{117} \textit{Id.} (quoting W. Va. State Bd. of Educ. v. Barnette, 319 U.S. 624, 646 (1943) (Frankfurter, J., dissenting)).
\item \textsuperscript{118} \textit{Id.}
\item \textsuperscript{119} \textit{Id.} at 206.
\end{itemize}
Consider the conflict between Christians and Jews as to the issue of who is the true God; Jewish rejection of Jesus as the true Messiah means, to Christians, that Jews are not “true believers,” while Christian acceptance of Jesus, to Jews, means that Christians have accepted a “false Messiah.” This, he urges, is faith bias—by both sides. Why must both have one true Messiah, or one God?

The protection of people of differing faiths and perspectives’ rights to think and act is premised on the separation of church and state. This is an important issue for all Americans, but especially for Jews. “[U]nlike every other country to which Jews have emigrated, [America] has no established church, no official religion. Judaism, therefore, is not merely tolerated; it has equal status—at least in theory.” Dershowitz bluntly states that “[t]he separation of church and state in America is the foundation on which the first-class legal status of American Jews rests.”

The issues for him are not just professional, they are personal. The push for prayer in public schools challenges his “first-class citizenship.” “It is part of a program to get Anne Frank out of the schools, to get the Bible to become the fundamental vehicle of American literary and political life. . . . It is a screen for the next step of saying religion is to be preferred over nonreligion. And if religion is to be preferred we have to decide which religion. . . . “We [Jews] will be inevitably thrust into second-class status if we accept the first step of prayer in the school, and the second step the religionization, and the third step the Christianization of America.”

Dershowitz does not buy the argument that Jews don’t need to fear the use of God in public—that we are all part of the same

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120 Id. at 105.
121 DERSHOWITZ, VANISHING AMERICAN JEW, supra note 12, at 211.
122 See DERSHOWITZ, SHOUTING FIRE, supra note 28, at 204–20 (discussing historical and personal history pertaining to the wall of separation between church and state, the right to disbelief, and the potential fall of the wall).
123 DERSHOWITZ, VANISHING AMERICAN JEW, supra note 12, at 143 (discussing the Christian Right’s “efforts . . . to lower the wall of separation between church and state, to Christianize America, and, ultimately, to convert the Jews to Christianity”).
124 Id. at 144.
125 DERSHOWITZ, CHUTZPAH, supra note 10, at 313.
126 His father had been “arrested for keeping [a] small store open on Sunday.” Id. at 315.
127 Id.
128 Id. at 204 (some alteration in original).
“Judeo-Christian” heritage. To him, acceptance of the phrase “Judeo-Christian” implies that “Judaism is an incomplete religion and that the Judeo becomes complete only when it merges into the Christian.”

Calling public attention to “faith-bias” is one of Dershowitz’s missions. When President Bush had the prayer at his first inauguration be given by an evangelical minister, who in turn focused on a singularly Christian message, he called the President on it. The implication, he noted, building on themes in his book, *Chutzpah*, is that “America is a Christian nation, and that non-Christians are welcome into the tent so long as they agree to accept their status as a tolerated minority rather than as fully equal citizens.”

Another part of the mission is to convince Jews to show special concern about the Religious Right, and even the Jewish Right, who are challenging “[t]he separation of church and state,” which again he urges, “in my view, has been the single most important reason for the success of the American Jewish community.”

The members of the Religious Right are probably not anti-Semitic—just pro-Christian—but their concepts “undercut . . . the basic reasons America has been so good for the Jews.” They seek to be exclusive as to who are “real Americans.” They challenge the progressive, centrist social agenda of most Jews, premised on an open democratic (note the small “d”) debate (not “stealth” politics). In addition, they want a hierarchy of power with Jews, Muslims, atheists, and even liberal Christians having second-class status.

Recently, Professor Dershowitz directly challenged the faith-biased perspective that there are “God-given rights” that can be

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129 Id. at 318.
130 Id.
131 Id.
132 Id.
133 Id.
134 Id.
135 DERSHOWITZ, VANISHING AMERICAN JEW, supra note 12, at 145.
136 Id. at 149.
137 Id.
138 Id. at 152.
139 See id. at 156.


For a discussion of the central themes of *Chutzpah*, see supra notes 43–53 and accompanying text.

known and enforced. Anyone who believes that God can give all the answers runs the risk that others [and he quotes here Osama Bin Laden] can make equal claims.

IV. ISRAEL

Israel, says Dershowitz, is “Jewry’s positive response to centuries of anti-Semitism in general and to Hitler’s attempted genocide.” It is also the answer to the stereotypes of Jews in the pre-Israel world: the lazy, manipulative exploiter, who can not do normal work like farming and other normal occupations.

Professor Dershowitz’s support for the state of Israel is founded on his Zionism, but it is also premised on his belief that anti-Israel, anti-Zionist comments and attitudes are too often really just good old-fashioned anti-Semitism. This is indicated not by criticism of the actions of the government of Israel, which may be appropriate, but by a double standard. “[W]hat is missing is the comparable criticism of equal or greater violations by other countries and other groups.”

Jews, because of their civil-libertarian inclinations, are expected to defend their enemies, and no other group is asked to do that!

Thus, Dershowitz specifically rejects the criticism that as a civil libertarian and advocate of liberal causes, he is guilty of “inconsistency, hypocrisy, or worse, because of [his] support for Israel.”

He will criticize Israel when it is wrong, but that is not the same as “bend[ing] over backward to single out Israel.” To do so is merely another reflection of the mindset shanda fur de goyim.

Israel as a nation-state has the usual normal attributes—both good and bad—of other nation-states. The only issue is how good and how bad. “[Dershowitz] refuse[s] to use criticism of Israel as a

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140 DERSHOWITZ, RIGHTS FROM WRONGS, supra note 98, at 23–24; see also DERSHOWITZ, SHOUTING FIRE, supra note 28, at 9–10 (discussing the dangers and limitations of advocating an understanding of “divine law,” and warning of its “lethal” ramifications).
141 DERSHOWITZ, RIGHTS FROM WRONGS, supra note 98, at 24–25.
142 DERSHOWITZ, CHUTZPAH, supra note 10, at 209.
143 See id. at 121.
144 Id. at 209–10.
145 Id. at 119.
146 Id. at 120.
147 Id. at 210–11.
148 Id. at 211.
149 Id. at 7.
litmus test of [his] patriotism, [his] commitment to civil liberties, or [his] willingness to melt into the American mainstream.”

In newspaper and magazine column after column, and in his many books, Dershowitz uses his advocate’s skill to make “the case for Israel,” but also to point out that Israel must be willing to bend and enter into good faith bargaining for peace.

The Jewish nation of Israel stands accused in the dock of international justice. The charges include being a criminal state, the prime violator of human rights, the mirror image of Nazism, and the most intransigent barrier to peace in the Middle East...

The time has come for a proactive defense of Israel to be offered in the court of public opinion.

His analysis is a heavily cited case brief: the accusation, the accusers, the reality, and the proof. He rejects the premise that Zionism is racism. He provides historical and other evidence to refute the contention that the Arab refugee issue is a human rights issue, created by Israel.

Israel is not just like the old South Africa. Israel is not just the flip-side of Middle East terrorists. There is just no “moral equivalence between those who deliberately target innocent... civilians and those [like the Israeli Government] who inadvertently kill civilians in the process of trying to prevent further terrorist attacks.”

On the other hand, Dershowitz does believe that Israel, as the only real democracy in the region, can be criticized when it...

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150 Id. at 211.
151 See, e.g., DERSHOWITZ, THE CASE FOR ISRAEL, supra note 39, at 12 (arguing that “judged by any rational standard, Israel deserves the support—although certainly not the uncritical support—of all people who value peace, justice, fairness, and self-determination”).
154 See, e.g., id. at 104–16 (discussing whether “Israel [had] [m]ade [s]erious [e]fforts at [p]eace”).
155 See id. at 154–57; DERSHOWITZ, CHUTZPAH, supra note 10, at 213; see also DERSHOWITZ, THE CASE FOR ISRAEL, supra note 39, at 181–88 (rejecting that Zionism is racism as an indictment against Israel for human rights violations).
156 DERSHOWITZ, THE CASE FOR ISRAEL, supra note 39, at 78–90; DERSHOWITZ, CHUTZPAH, supra note 10, at 217.
157 See DERSHOWITZ, THE CASE FOR ISRAEL, supra note 39, at 13–14 (rejecting the accusation that “Israel is a colonial, imperialist, settler state”).
158 See id. at 178–79 (rejecting the accusation that “Israel’s policy of aggressive retaliation against terrorism... promotes a cycle of violence”).
159 Id. at 189.
overreacts; excessive force, excessive censorship, excessive
detention, and the creation of settlements in certain areas are such
examples.\textsuperscript{160} That criticism, however, has to be put in context and
compared with the actions of adjacent Arab states and terrorist
organizations.\textsuperscript{161} Boycotts of Israeli scholars or products, which do
not even address human rights violations by others, such as Hamas
and Hezbollah, are just “immoral” and “bigoted.”\textsuperscript{162}

Dershowitz has an agenda: “[t]wo [s]tates with [s]ecure and
[r]ecognized [b]orders”\textsuperscript{163} is “both inevitable and desirable.”\textsuperscript{164}
There are several options available to accomplish this end, but they
do not include “the destruction of Israel and the total elimination of
a Jewish state anywhere in the Middle East.”\textsuperscript{165}

Again, as with other areas, Professor Dershowitz refers to the
Jewish stereotypes in order to prove his point: Israel, the Middle
East’s only democracy, is “the Jew’ among nations.”\textsuperscript{166} Intelligence,
aggressiveness, tenacity, and independence are “publicly condemned
as racist, militant, xenophobic, uncompromising, authoritarian, and
stiff-necked.”\textsuperscript{167}

Dershowitz, as is his style, is blunt! Reasonable opposition to
particular government leaders or government policies, and even
“support for the legitimate aspirations of the Palestinian people,
who have suffered greatly,”\textsuperscript{168} have been successfully used to fuel
excessive and exaggerated rhetoric.\textsuperscript{169} This rhetoric, fed by some
lingering anti-Semitism, has led to a dramatic “gulf between Israel’s
actual record . . . and its perceived record.”\textsuperscript{170}

With an advocate’s desire to provide a well-documented refutation
of others’ arguments,\textsuperscript{171} Professor Dershowitz has recently detailed

\textsuperscript{160} See DERSHOWITZ, CHUTZPAH, supra note 10, at 226, 228, 230, 233.
\textsuperscript{161} See id. at 226, 228, 230.
\textsuperscript{162} See id. at 226, 228, 230.
\textsuperscript{163} See DERSHOWITZ, THE CASE FOR ISRAEL, supra note 39, at 197–98.
\textsuperscript{164} DERSHOWITZ, THE CASE FOR PEACE, supra note 152, at 11.
\textsuperscript{165} DERSHOWITZ, THE CASE FOR ISRAEL, supra note 39, at 2.
\textsuperscript{166} Id. at 3.
\textsuperscript{167} Id. at 222.
\textsuperscript{168} Id.
\textsuperscript{169} Id. at 226.
\textsuperscript{170} See id. at 222.
\textsuperscript{171} One individual who Professor Dershowitz seems particularly upset with is Noam
Chomsky, who he characterizes as an “anti-Zionist zealot,” DERSHOWITZ, CHUTZPAH, supra
note 10, at 174, and a supporter of the deniers of the Holocaust, id.; DERSHOWITZ, THE CASE
the Arab-Israeli Conflict Can be Resolved.” It is, in part, a response to Chomsky’s book, No
Chance for Peace: Why It Is Impossible to Establish a Palestinian State with Israel and the
U.S. DERSHOWITZ, THE CASE FOR PEACE, supra note 152, at 4. Chomsky, and his allies,
the arguments for peace.\textsuperscript{172} He describes the various geopolitical barriers to peace and indicates that fair bargaining on major issues can lead to resolution.\textsuperscript{173} There are, of course, “[h]atred [b]arriers to [p]eace” on both sides.\textsuperscript{174}

The most recent illustrations of Professor Dershowitz’s concern for one-sided, anti-Israel bias are his responses to a Kennedy School Working Paper on the “Israel Lobby,”\textsuperscript{175} and to a recent book by former President Jimmy Carter.\textsuperscript{176}

The \textit{Kennedy Working Paper} argues that a group of American Jews, and others, including fundamentalist Christians, make up an all-powerful “Israel Lobby.”\textsuperscript{177} This Lobby has disproportionate power and has forced America to adopt a one-sided and harmful attitude to the activities of nation states in the Middle East.\textsuperscript{178} In short, the authors of the \textit{Kennedy Working Paper} argue that this Lobby, dominated by wealthy Jewish philanthropists and political action groups, force, or “blackmail,” America’s political leaders into causing America to fight for what are really only Israeli interests.\textsuperscript{179} The \textit{Kennedy Working Paper} also questions the legitimacy of many of Israel’s policies.\textsuperscript{180}

Dershowitz attacks the Working Paper directly. The arguments in it, he claims, “are contemporary variations on old themes” of anti-Semitism.\textsuperscript{181} He attacks the research basis, the factual errors, and even the logic.\textsuperscript{182} Two things, in particular, really bother him.

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\textsuperscript{172} See, e.g., DERSHOWITZ, \textit{THE CASE FOR PEACE}, \textit{supra} note 152.

\textsuperscript{173} See, e.g., \textit{id.} at 51–57 (discussing a possible compromise with respect to the city of Jerusalem).

\textsuperscript{174} \textit{Id.} at 121–22.


\textsuperscript{177} Mearsheimer & Walt, supra note 175, at 14, 15.

\textsuperscript{178} \textit{Id.} at 14, 16–18.


\textsuperscript{180} Mearsheimer & Walt, supra note 175, at 9–14.

\textsuperscript{181} Dershowitz, \textit{Debunking}, supra note 179, at 4–5.

\textsuperscript{182} \textit{Id.} at 5–6.
First, as he has stated in earlier writings, is the one-sidedness of the authors—a total lack of balance.\(^{183}\) He concedes that criticism of both the State of Israel and the power of lobbies are appropriate, but he argues that the language and misuse of information in this paper must lead to questions of its real motive.\(^{184}\)

Second, Dershowitz argued that by focusing on the “all-powerful Israel lobby,” as compared to those of the Saudis or the Emirates, for example, or the American oil lobby, the authors really are attempting to direct the focus through “thinly veiled charges of Jewish control of American thought.”\(^{185}\) In Dershowitz’s estimation, this is similar to the “notorious [pre-Israel] . . . The Protocols of the Elders of Zion.”\(^{186}\) The authors do not just target Israeli policies, “[t]hey are very explicitly targeting American Jews.”\(^{187}\) The paper presents a “conspiratorial view of history . . . in which Jews manipulate and control the media and government”\(^{188}\)—in the style of Nazi David Duke.\(^{189}\) The marketplace of ideas requires an open debate and not a one-sided rehash of “old stereotypes and canards.”\(^{190}\)

Dershowitz has stated his admiration of former President Jimmy Carter and his political support for Carter over the years.\(^{191}\) In his 2005 book, *The Case for Peace: How the Arab-Israeli Conflict Can be Resolved*, Dershowitz approvingly cites Carter’s recognition of efforts made in 2003 by leading Israeli and Palestinian political leaders to make peace—the Informal Geneva Accords.\(^{192}\) That is why he is so bothered by Carter’s most recent book. As Dershowitz notes, “it troubles me so much that this decent man has written such an indecent book about the Israeli-Palestinian conflict.”\(^{193}\) Dershowitz first criticizes the omissions and errors in the book and then, as a good advocate, documents his concerns.\(^{194}\) He raises

\(^{183}\) Id. at 7.
\(^{184}\) Id.
\(^{185}\) Id. at 12–13.
\(^{186}\) Id. at 13–14.
\(^{187}\) Id. at 15.
\(^{188}\) Id. at 16.
\(^{189}\) Id.
\(^{190}\) Id. at 42.
\(^{192}\) DERSHOWITZ, THE CASE FOR PEACE, supra note 152, at 59.
\(^{193}\) Dershowitz, Anti-Israel Bias, supra note 191.
\(^{194}\) See Dershowitz, *Crossed the Line*, supra note 17, at 22; see also Dershowitz, Anti-Israel Bias, supra note 191 (pointing out the same comparison).
concerns about the title of Carter’s book, *Palestine: Peace Not Apartheid*, which compares Israel’s relationship to the Palestinians to that of white South Africans to blacks.\(^1^9^5\)

He criticizes the former President for his one-sided portrayal and also raises his concern that the President, like the authors of the *Kennedy Working Paper*, seems to imply that there is an over-powerful “Jewish lobby” that controls the media and academic institutions.\(^1^9^6\) He asks Carter to apologize and correct the mistakes in his book.\(^1^9^7\)

When President Carter was asked to speak at Brandeis, he did respond to Dershowitz and other critics. Carter took their attacks personally and admitted some poor use of language, but otherwise stood by his assertions.\(^1^9^8\) However, Carter would not share the podium and debate Professor Dershowitz, who had to wait until after he left to respond.\(^1^9^9\) When his turn came, Dershowitz, again, chided the former President on his use of facts and on his one-sided portrayal of the situation.\(^2^0^0\)

What is significant about Professor Dershowitz’s responses to the Working Paper, to Carter’s book, and to criticisms of Israel and American Jews’ support for Israel, is his use of advocacy and scholarship. He could not just let these attacks—one-sided in nature—go unanswered. He hopes, and continues to hope, that others will respond; but, *he had to!*

### V. TRANSLATION

Some commentators and academics have criticized Professor Dershowitz as being too “popular.” His books are written for legal and non-legal audiences. He gives public commentary in newspapers, on radio, and on television. “My God,” one may hear,

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\(^1^9^5\) See Dershowitz, *Crossed the Line*, supra note 17, at 22; see also Dershowitz, *Anti-Israel Bias*, supra note 191 (pointing out omissions and errors).

\(^1^9^6\) Dershowitz, *Crossed the Line*, supra note 17, at 22. Quoting from his book, *The Case for Peace*, Dershowitz notes that there are several criteria for determining whether criticism of Israel crosses the line to anti-Semitism, and speculates that perhaps the former President has crossed that line. *Id.*

\(^1^9^7\) Dershowitz, *Anti-Israel Bias*, supra note 191.


\(^2^0^0\) See Belluck, *supra* note 198, at A11; Cohler-Esses, *supra* note 199, at 1.
“they’ve even made a movie where he is portrayed!” The assumption behind these comments criticizing Dershowitz’s popularity is, simply, that it is not the true role of the scholar to be “translatable” into popular culture. Obviously, Professor Dershowitz rejects this perspective.

Making issues understandable is not a bad thing. Bringing lay attention to important constitutional, ethical, or criminal justice issues and being able to speak in simple, straightforward, understandable language are not bad things.

As noted earlier, one of Professor Dershowitz’s themes is the need for a more positive self-identification by Jews. Writing a book about this was not enough; he felt it necessary to visit numerous cities and speak to numerous groups.

He is worried about the future of all of our rights, so he writes popular books about that concern.

He is worried about the future of American Jewish tradition, so he writes a popular book about it.

He is worried about how the American press and the American people are being misled about the Middle East, so he writes books and columns about it.

He is angry about “How the High Court Hijacked Election 2000,” so he quickly writes a book about it.

He is worried about terrorism, the need to counter it, and the need to balance our fear of it against the protection of individual rights, so he writes several books about it.

One may be sure, that if there is a topic about which Dershowitz has concerns, he will go on television, write a column, and most

201 See REVERSAL OF FORTUNE (Sovereign Pictures 1990) (depicting the Claus von Bülow murder trial and starring actor Ron Silver as Professor Dershowitz).
202 See DERSHOWITZ, RIGHTS FROM WrONGS, supra note 98 (examining the origins of human rights); DERSHOWITZ, SHOUTING FIRE, supra note 28 (investigating the changing nature of civil rights in modern times).
203 See DERSHOWITZ, VANISHING AMERICAN JEW, supra note 12 (exploring the need for contemporary American Jews to retain a Jewish identity).
204 See DERSHOWITZ, THE CASE FOR ISRAEL, supra note 39 (probing the veracity numerous criticisms of Israel); DERSHOWITZ, THE CASE FOR PEACE, supra note 152 (examining methods for overcoming barriers to peace between Israel and Palestine); Dershowitz, Anti-Israel Bias, supra note 191 (criticizing errors and omissions in Carter’s book).
205 DERSHOWITZ, SUPREME INJUSTICE, supra note 105, at xi. Dershowitz explains that he felt obligated to “try to explain” what happened. Id. at 10.
206 See DERSHOWITZ, PREEMPTION, supra note 40, at 190–250 (discussing, inter alia, methods used to determine whether preemptive government action is necessary); DERSHOWITZ, SHOUTING FIRE, supra note 28 (examining the tension between civil liberties and security); DERSHOWITZ, WHY TERRORISM WORKS, supra note 106 (discussing the mechanics of terrorism and possible solutions).
likely write a book about it! But there is a more significant aspect of Professor Dershowitz’s ability to translate complex topics into more understandable language—he is able to explain both legal and religious topics with the same skill.

For example, how can God exist in a terrible world?! One issue constantly raised by Jewish religious scholars and lay people alike (especially survivors and their offspring) has to do with reconciling the existence of God with the Holocaust. Dershowitz also asks why the Holocaust did not lead to a thirst for “revenge.” He rejects those biblical readings that seem to indicate some guilt by the victims. He also acknowledges that the Holocaust can lead to a cynicism about justice. His answer is obvious—activism. Jews have a right to demand special indulgence because of the Holocaust. Jews have a right to seek and punish Nazi war criminals even sixty years later. Jews have a right to holler when others are insensitive to the story of the Shoah.

But Jews also have an obligation to use the experience of the Holocaust as a call to future justice. Racial discrimination is bad. Ethnic purity (whether in Bosnia or Darfur) must not be a basis for any political action, let alone military action. Genocide is genocide.

Professor Dershowitz has also sought to explain the importance of the Bible to a non-technical audience. In *The Genesis of Justice*, he explains why he wrote a book about the Bible.

Unlike others who have written about the Bible, I do not bring to the project a lifetime of biblical study. Instead I bring a lifetime of legal studies and practice coupled with a solid grounding in the Bible.

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207 See, e.g., DERSHOWITZ, PREEMPTION, *supra* note 40, at 8–9 (raising concerns that post-9/11 fears can lead Americans to accept the argument for preemptive action to control behavior both by individuals and governments, and addressing the impact of that acceptance on rights and justice).


210 *Id.* at 131–32 (quoting the Thirty-Seventh Psalm, “I never saw a righteous person abandoned”).

211 *Id.* at 134.

212 *Id.* at 135.

213 *Id.* at 136–37.

214 See *id.* at 139–80 (describing Dershowitz’s response to attempts by several people and groups to downplay the significance of the Holocaust to Jews).

I try to use my legal, political, and personal experiences to raise new questions about ancient sources and to provide new insights into old questions.\textsuperscript{216}

What is his goal?—a “popularization one.” He wants “to stimulate discussion among believers, nonbelievers, skeptics, and others” about the impact of the Bible.\textsuperscript{217} Use of religious narrative can explain theories of law. God did not kill Adam and Eve, as promised, after they ate the apple.\textsuperscript{218} He did punish, but even God had to learn about balance and equity, justice and injustice. He never really told Adam why he could not eat the apple. Part of their act was his fault.\textsuperscript{219}

The idea that we learn from our actions and our experiences—must temper justice with equity—is also found, Dershowitz explains, in the story of the Flood. God did not destroy the world. He gave it a second chance.\textsuperscript{220}

Even inexplicable stories, like Abraham’s offered sacrifice of his son to God,\textsuperscript{221} can be used to explain both religion and the law. Abraham argued for the saving of Sodom and Gomorrah if enough good people could be found, but did not argue for the saving of his son.\textsuperscript{222} How do we explain this? We can’t! Right and justice do not always speak with one voice. The two Abrahams are not reconcilable. There may not be any clear answers from faith. Sometimes religion and the law “cry for explication, for disagreement, for reflection, and for concern.”\textsuperscript{223}

“[The Bible] provides no answers, only eternally unanswerable questions, and in that respect it is the perfect tool for teaching the realities, limitations, and imperfections of both divine and human justice.”\textsuperscript{224}

The stories in the Bible about the accusations against Joseph and his eventual overcoming of hardship\textsuperscript{225} illustrate, says Dershowitz, several more themes—how justice can depend on human intervention and even fate, but also how we need protections, like

\textsuperscript{216} DERSHOWITZ, GENESIS OF JUSTICE, supra note 24, at 11.
\textsuperscript{217} Id.
\textsuperscript{218} See Genesis 3:3.
\textsuperscript{219} DERSHOWITZ, GENESIS OF JUSTICE, supra note 24, at 40–46.
\textsuperscript{220} Id. at 65.
\textsuperscript{221} Genesis 22:9–10.
\textsuperscript{222} Id. 18:23–25.
\textsuperscript{223} DERSHOWITZ, GENESIS OF JUSTICE, supra note 24, at 129.
\textsuperscript{224} Id.
\textsuperscript{225} See Genesis 39:12–18, 41:37–44.
those against false evidence, and due process-type procedures in addition to substantive rules.\textsuperscript{226} “The story of Joseph forms the prelaw predicate for the intricate and innovative system of legal protections found in the later books of the Bible . . . [T]he Joseph story shows us what it was like to live in a world without a legal system . . . .”\textsuperscript{227}

Dershowitz concludes \textit{Genesis of Justice} with an explanation of why Genesis is the beginning of our modern concept of law. Law, especially the common law, is a series of stories that develop rules and “[t]he Bible is the first law book to integrate narrative and law” as compared to cold blank codes.\textsuperscript{228} When we finally get to the rules, at the revelation at Sinai,\textsuperscript{229} the world is ready to use the narratives to formulate a set of written principles.\textsuperscript{230} Each of the principles can be derived from some theme in the previous narratives.\textsuperscript{231}

Again, as can be asked about all aspects of Professor Dershowitz’s scholarship and advocacy, especially as it relates to his religious background, why did Dershowitz write this book?

Because he could. He had built over time recognition in the lay world as a lawyer. He had built over time recognition in the Jewish world as an outspoken advocate. He did this by being visible. He did this by “translating” legal rules and doctrines and now religious stories into more easily understood and digestible tidbits.

Why? Again, because he could and, more importantly, he felt he should.

\textsuperscript{226} DERSHOWITZ, \textit{GENESIS OF JUSTICE}, supra note 24, at 193–96.
\textsuperscript{227} \textit{Id.} at 195.
\textsuperscript{228} See \textit{id.} at 219–20.
\textsuperscript{229} \textit{Exodus} 20:2–17; \textit{Deuteronomy} 5:6–21.
\textsuperscript{230} DERSHOWITZ, \textit{GENESIS OF JUSTICE}, supra note 24, at 245–46.
\textsuperscript{231} \textit{Id.} at 247–58.