


RESEARCH ARTICLE

Moses Mendelssohn and the Jewish Questions of Modern Natural Law

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Abstract

In the late eighteenth century, Johann David Michaelis criticized Moses Mendelssohn for bringing what Michaelis termed his native Jewish tradition into his thinking on universal matters. Yet leaning on Jewish sources had been a key feature of European natural law thinking from the onset of modernity. In this article, the author reads Mendelssohn's natural law theory as conversant with early modern legal thought that was scrutinized in the enlightenment, shedding new light on Mendelssohn's innovations and on what Mendelssohn was up against when he offered natural law foundations for toleration. The author finds that arguments for and against toleration of the Jews from the seventeenth century to the nineteenth were tied to the question of whether Judaism contained universal laws or laws particular to the Jews, and suggests that Mendelssohn's approach, while rejected from the eighteenth to the twentieth century, may be newly relevant today.

Keywords: Moses Mendelssohn; natural law; Hugo Grotius; Hebraism; toleration; diversity

Introduction

When Johann David Michaelis, often characterized as a noted eighteenth century orientalist, reviewed Moses Mendelssohn's *Jerusalem* in 1783, he commented on “the remarkable fact that even when discoursing on matters of natural law, Mendelssohn was guided by his native rabbinic tradition.”¹ Michaelis, who deeply admired the legislation of Moses but considered the Jews essentially unfit for assimilation, did not consider the Jews' particular and infantile tradition, as he understood it, to be a valuable resource for thinking on universal matters and was thus critical of Mendelssohn.

Yet Michaelis refrained from mentioning that when Mendelssohn brought rabbinic tradition into his natural law theory, he did so in a manner continuous with early modern natural law theory, and not with Jewish tradition. Indeed, the most significant natural law theorists of the seventeenth century found rabbinic and Hellenistic Jewish texts instructive, as Michaelis would have been aware.² The scholarship that read Jewish sources for natural

¹ Alexander Altmann, introduction to Moses Mendelssohn, *Jerusalem or On Religious Power and Judaism*, trans. Allan Arkush (Waltham: Brandeis University Press, 1983), 15 (citing Johann David Michaelis, “Mendelssohns Jerusalem,” *Orientalische und exegetische Bibliothek*, no. 22 (1783): 59–99).

² Ofri Ilany has speculated on the influence of Petrus Cunaeus, *De Republica Hebraeorum* (Leiden, 1617), on Michaelis, where Cunaeus leaned heavily on Maimonides and other rabbis for his understanding of Hebrew agrarian



law is an important context for reading Mendelssohn's work. This scholarship was not by Jewish thinkers (though Baruch Spinoza was a latecomer to and a critic of the conversation), but rather by European natural-law thinkers from Hugo Grotius through John Selden, Thomas Hobbes, Emmerich de Vattel, and others.

While Mendelssohn becomes more recognizable as a natural law theorist when read in this discursive context, such a reading also lends credence to a criticism directed against Mendelssohn that he fought to disprove, namely that he strayed from Jewish tradition. Yet Mendelssohn's approach to Judaism as praxis rather than text and living rather than ancient renders his work a specifically Jewish contribution to modern natural law theory that extends toleration grounded in natural law beyond what was imagined in early modernity.

There is some irony in claiming that Mendelssohn wrote *Jerusalem* in continuation from early modern natural law theorists, and this relates to Immanuel Kant's distaste for these same thinkers in stark contrast to his admiration of Mendelssohn's *Jerusalem*.³ In *Perpetual Peace* Kant specifically lists Grotius and Vattel among "miserable comforters," calling them apologists for war.⁴ Yet it is worth considering that Kant's admiration of Mendelssohn only went so far, and did not include Mendelssohn's approach to natural law.⁵ Much of *Jerusalem*, I find, is a discussion of natural law conversant with Kant's "miserable comforters," and this natural law discourse ultimately grounds Mendelssohn's main claim in *Jerusalem* that there can be no coercion on matters of religion and that non-Christians can be incorporated into European states. Specifically on the toleration of Jews, arguments from the seventeenth century through the eighteenth hinged on whether Judaism supported universal natural law or offered particular and distinct wisdom. Kant came down on one side of this, Mendelssohn on the other.

A contextual reading of the conversation Mendelssohn had with some of this natural law theory makes a difference in how we understand Mendelssohn's work, including the natural-law foundations of his toleration. Examining the relationship between critiques of modern natural law that leans partly on Jewish sources and philosophical arguments against the inclusion of Jews in political society, reveals that Mendelssohn's work is a counter-current to the dominant exclusionary approach that ultimately led to the necessity of Jewish sovereignty in the modern world. This is a strand of Jewish thought that may be worth revisiting for its relevance to thinking about diverse political societies in our time.

Early Modern Natural Law and Its Rabbis

John Selden, arguably the most important legal theorist of seventeenth-century England,⁶ wrote a major work, *On the Laws of Nature and of the Nations According to the Teaching of the*

law. Ofri Ilany, "Christian Images of the Jewish State: The Hebrew Republic as a Political Model in the German Protestant Enlightenment," in *Jews and Protestants: From the Reformation to the Present*, ed. Irene Aue Ben David et al. (Berlin: De Gruyter, 2020), 119–35, at 130.

³ Reinier Munk, "Mendelssohn and Kant on Judaism," *Jewish Studies Quarterly* 13, no. 3 (2006): 215–22.

⁴ Immanuel Kant, "Toward Perpetual Peace: A Philosophical Project (1795)," in *Immanuel Kant: Practical Philosophy*, ed. Mary J. Gregor (Cambridge: Cambridge University Press, 1996), 311–52, at 326.

⁵ Helge Dedek discusses Kant's calling Mendelssohn a *Rechtswissenschaftler* (loosely translated, legal scholar) in the context of rebuking Mendelssohn for inferior legal thinking to Kant's own. Helge Dedek, "Duties of Love and Self-Perfection: Moses Mendelssohn's Theory of Contract," *Oxford Journal of Legal Studies* 32, no. 4 (2012): 1–22. Although Dedek considers the meaning of this, it is possible that Mendelssohn is being grouped by Kant with the natural law thinkers discussed in the present essay, but only on the matter of natural law.

⁶ On Selden's reputation, see Mordechai Feingold, "John Selden and the Nature of Seventeenth-Century Science," in *The Presence of the Past: Essays in Honor of Frank Manuel*, ed. Richard T. Bienvenu and Mordechai Feingold (Dordrecht: Kluwer Academic, 1991), 55–78.

Hebrews in Seven Books.⁷ Selden's thesis is that the seven "Noahide laws"—the laws the Talmud considers given by God to the sons of Noah after the flood—constitute universal natural law.⁸ Every particular constitution, starting with Jewish law and including English law, should be understood as built on the foundations of these seven laws that are common to all legitimate legal systems. Alongside ancient Greek and Roman sources and sources from the history of English law, Selden's work cites more than a hundred rabbinic works in original Hebrew, Arabic, or Aramaic with Latin translation.

Selden was famous in the seventeenth century for his rabbinic learning, earning the title Rabbi in correspondence⁹ and being called "the greatest Talmudist of our age or of any"¹⁰ at a time when there were no Jews in England. Yet Selden was not alone among his contemporaries in turning to the Hebrews, or Jews, for teachings on natural law.¹¹ While Selden comments on the fact that rabbinic sources were not to be found in scholastic writings,¹² he credits his Dutch counterpart, Hugo Grotius, for the turn toward "teachings of the Hebrew" for natural law: "Hugo Grotius must be held in the first ranks of these men, who in that outstanding book *De Jure Belli ac Pacis* ... touches upon the teaching of the Hebrews from the Talmud that we are about to set forth and other things from their doctrine."¹³

Grotius is widely considered the father of modern international law as well as the first modern natural law thinker, yet his turn to Jewish sources has received limited recognition.¹⁴ A close look at his most famous work, *De Jure Belli ac Pacis/On the Laws of War and Peace*, reveals that Philo Judaeus is cited 114 times as a source of Jewish wisdom,¹⁵ including as the first source for Grotius's definition of natural law. Maimonides is cited twelve times in this

⁷ Joannis Seldeni [John Selden], *De Jure Naturali et Gentium Juxta Disciplinam Hebraeorum, Libri Septem* [On natural law and gentiles according to the discipline of the Hebrews, book seven] (London, 1640). There is no current English translation of this work, and references are to book, chapter, and page in the 1640 Latin.

⁸ Abraham Berkowitz, "John Selden and the Biblical Origins of the Modern International Political System," *Jewish Political Studies Review* 6, nos. 1–2 (1994): 27–47, at 29; G. J. Toomer, *John Selden: A Life in Scholarship*, vol. 2 (Oxford: Oxford University Press, 2009), 493–98; Jason P. Rosenblatt, *Renaissance England's Chief Rabbi: John Selden* (Oxford: Oxford University Press, 2006), 141.

⁹ Rosenblatt, *Renaissance England's Chief Rabbi*, 4.

¹⁰ James Harrington, *The Prerogatives of Popular Government, Book II*, in *The Political Works of James Harrington: Part One*, ed. J. G. A. Pocock (Cambridge: Cambridge University Press, 1977), 499–566, at 531.

¹¹ Selden was also not alone in turning to Hebrew sources for legal and political thought more generally, and there has been a surge in scholarship over the past twenty years exploring the role of such sources in early modern legal and political thought. See, for example, the following: Eric Nelson, *The Hebrew Republic: Jewish Sources and the Transformation of European Political Thought* (Cambridge, MA: Harvard University Press, 2008); Jonathan Jacobs, ed., *Judaic Sources and Western Thought: Jerusalem's Enduring Presence* (Oxford: Oxford University Press, 2011); Fania Oz Salzberger, Gordon Schochet, and Meirav Jones, eds., *Political Hebraism: Judaic Sources in Early Modern Political Thought* (Jerusalem: Shalem Press, 2008).

¹² Selden, *De Jure*, book 1, ch. 10, 125: "I do not think that a single one of the scholastics made use of them: St. Thomas [Aquinas] does occasionally cite Rabbi Moses, I mean that very famous Egyptian who is usually called *Rambam*; just as John Bacon uses several chapters of the Talmud as a source for his ideas. But Bacon—like many of the other writers of that earlier age—obviously owed his Talmudic and rabbinic knowledge to the former Jews Geronimo de Santa Fe and Nicholas de Lyra; while St. Thomas owed what he knew of Rabbi Moses to an old translation of his *Moreh Nevuchim*, which has nothing to say about this kind of law."

¹³ Selden, *De Jure*, book 1, ch. 2, 34–35.

¹⁴ Arthur Eyffinger, "Hugo Grotius' 'De Republica Emendanda' in the Context of the Dutch Revolt," *Hebraic Political Studies* 1, no. 1 (2005): 71–109; Nelson, *The Hebrew Republic*; Meirav Jones "Philo Judaeus and Hugo Grotius's Modern Natural Law," *Journal of the History of Ideas* 74, no. 3 (2013): 339–59.

¹⁵ Grotius often refers specifically to his reading of Philo as a Jewish source, for example, "The Jews Philo and Josephus call this a law of nature." Hugo Grotius, *De Jure Belli ac Pacis Libri Tres*, vol. 2, *The Translation*, trans. Francis W. Kelsey (Oxford: Clarendon Press, 1925), bk. 2, chap. 19, 304 [450]. See also bk. 2, chap. 1, 107 [181] and bk. 3, chap. 1, 434 [618].

work, including as an interpreter of “Greek Jews” with Philo chief among these,¹⁶ such that Grotius reads Philo as part of a Jewish tradition he constructs that includes Hellenistic and rabbinic texts.

What Grotius found in the Jewish sources he incorporated into his later work was authoritative theoretical grounding for the natural law theory he had developed in his early work, and particularly for its break from scholasticism.¹⁷ Whereas for Aquinas and later scholastics, divine law and natural law were separate and distinct parts of God’s eternal law, in Grotius’s post-Reformation account, the different branches of law—natural, divine, and eternal—were understood as the same law revealed in different ways. The interchangeability of divine, natural, and eternal law was closely related to the early modern rendition of the doctrine of the two books, which found the books of nature and scripture to reveal a single law, expressing both divine will and reason, rather than distinct parts of eternal law.

In Grotius’s early work, the creation of the world starts with an “ordered plan of nature” which is also “the very design of the creator.”¹⁸ This is then legislated into the world by God, both in his creation of nature and in his authoring of scripture, such that divine and natural law are renditions of a single law. For Grotius, the recovery of natural or divine law begins with reasoning from first principles and then what is discovered by reason is confirmed in scripture and in the approval of men of wisdom and nations of high repute.¹⁹ Natural law is what is true universally with independent and prior existence. There is no separate divine law or eternal law, but rather divine law is natural law, which is eternal.²⁰ Grotius urges caution when examining natural law in the “holy writ,” to make sure that the civil law of the Hebrews is distinguished from “divine law,” where divine law and natural law are coextensive.²¹

Philo Judaeus’s notion of natural law which Grotius seems to have come across midcareer, around 1618,²² offers a relationship between nature and scripture which resonated with Grotius for whom Philo represented the Jewish approach. According to Philo, God first created a blueprint of the cosmos in his logos,²³ then copied this blueprint into the natural world at creation. To allow people to access the order inherent in nature, God created a

¹⁶ For the references to Maimonides in the index, see Grotius, *De Jure Belli*, 912–13, 917–18.

¹⁷ Meirav Jones, “Natural Law as True Law,” in *The Cambridge Companion to Hugo Grotius*, ed. Randal Lesaffer and Janne Nijman (Cambridge: Cambridge University Press, 2021).

¹⁸ Hugo Grotius, *De Jure Praedae Commentarius: Commentary on the Law of Prize and Booty*, trans. Gwladys L. Williams and Walter H. Zeydel (Oxford: Clarendon Press, 1950), 1, f. 3’–4’ [4–6]. The English phrase “ordered plan of nature” appears in the standard English translation to the 1604 manuscript of *De Jure Praedae* referenced here, to translate *ratio naturae*. The translation appears in Martin Van Gelderen, “Aristotelians, Monarchomachs and Republicans: Sovereignty and Republica Mixta in Dutch and German Political Thought, 1580–1650,” in *Republicanism: A Shared European Heritage*, vol. 1, *Republicanism and Constitutionalism in Early Modern Europe*, ed. Martin Van Gelderen and Quentin Skinner (Cambridge: Cambridge University Press, 2002) 195–217, at 201; Martin Van Gelderen, “Contested Kingship: Conceptions of Monarchy and Civil Power in Spanish and Dutch Political Thought, 1555–1598,” in *Felipe II. Europa y la Monarquía Católica* [Felipe II: Europe and the Catholic monarchy], ed. J. Martínez Millán (Madrid: Parteluz, 1998) 365–77, at 373.

¹⁹ Grotius, *De Jure Praedae*, 1.5’ [7].

²⁰ That divine and natural law are coextensive is repeated by Grotius numerous times. See, for example, Grotius, *De Jure Praedae*, 3.15’ [34].

²¹ Grotius, *De Jure Praedae*, 1.4’ [6].

²² Hugo Grotius, “Letter to Vossius, 28 July 1618,” in Hugo Grotius, *Briefwisseling van Hugo Grotius* [Correspondence of Hugo Grotius], ed. P. C. Molhuysen et. al, digital ed. (1928–2001), 1:621–22, letter 579, <http://grotius.huygen.s.knaw.nl/letters/0579/>.

²³ Philo, *De Opificio Mundi* (On the Creation of the World), in *Philo*, vol. 1, 6:25, at 21. References to Philo’s works are to the Loeb Classical Library: Philo Judaeus, *Philo*, 11 vols., trans. F. H. Colson and G. H. Whitaker (London: Heinemann, 1929–62). Numbers refer to section number and paragraph number in the Greek, and page number in the Loeb edition.

second copy of natural law in scripture.²⁴ Beyond these two copies, God also copied his own logos into the logos of particular men who had immediate access to natural law.²⁵ These were the patriarchs in the Bible, and the fact that their logos was a copy of God's logos is the meaning of man being created in the image of God. While subsequent generations of men were also created in the image of God, their logos was a copy of a copy, further removed from the original and thus less precise in its capacity to understand God's truth unaided. The Bible and the order in nature help people of later generations understand and live by natural and divine law.

Philo and Grotius both recognized what would become crucial for Mendelssohn: that the written text of the Bible is not sufficient to contain the "ordered plan of nature" or natural law, due to the endless number of possibilities that a finite text could not represent. For this reason, Philo explains, the Bible contains the lives of exemplary men, and studying the Bible should include reading beyond the words of the text to studying the lives of these exemplary figures as perfect examples of life in accordance with divine or natural law.²⁶ Grotius also finds that natural law is always in the process of being recovered, and we will see this theme as central to Mendelssohn's understanding of the law as living script.

Grotius not only cites Philo in his *On the Laws of War and Peace*, but works with Philo's ideas to elaborate on his own early understanding. One of Grotius's more audacious moves in this work was to render knowledge of God theoretically redundant to moral life. This was possible because of the equivalency between divine and natural law. If God initially wrote natural law into creation and provided the Bible as an aid to reach this law, and if natural law is also in the minds of exemplary men, there are various independent paths to natural law. This is how we should read Grotius's infamous "impious statement" that "[w]hat we have been saying would have a degree of validity even if we should concede that which cannot be conceded without the utmost wickedness, that there is no God, or that the affairs of men are of no concern to him."²⁷ Other than removing its impiety, this reading of Grotius's "impious statement" also renders it consistent with Grotius's finding that the laws of nature were willed into the world by God. They were legislated by God, yet knowledge of God is not necessary to know these laws.

If we consider the relationship between Jewish or rabbinic tradition and natural law in the seventeenth century, we find that a significant move of natural law theory from Grotius onward is the collapse of Scholastic distinctions between eternal, divine, and human law, and one way this was achieved was through reading the Hebrew Bible as Philo, the Talmud, and Maimonides are reconstructed to have read it, for universal wisdom. For Grotius there was no Scholastic scheme of laws, but natural law is the divine law imparted in scripture, and it is eternal. Grotius's work with Hebrew resources to develop post-Scholastic natural law was continued by Selden who also presented a natural law—in his case rabbinic Noahide law—as divine, eternal, and natural.

Thomas Hobbes also participated in the natural law thinking Grotius and Selden pioneered, rejecting Scholastic categories and turning to the Hebrew Bible for information about natural law. In *Leviathan*, the first table of the Ten Commandments appears as the constitution of the Hebrews, the people over whom God was king, and it is read as a universally applicable blueprint for sovereign legislation.²⁸ The second table of the Ten Commandments is read as "the law of nature, that is to say, the precepts of natural reason,

²⁴ Philo, *De Vita Moysis II (On the life of Moses II)*, in *Philo*, vol. 6, 8:46–48, at 471.

²⁵ Philo, *De Opificio Mundi*, 4:16, at 15.

²⁶ Hindy Najman, "A Written Copy of the Law of Nature: An Unthinkable Paradox?," *Studia Philonica Annual*, no. 15 (2003): 55–64.

²⁷ Grotius, *De Jure Belli*, Prolegomena 11 [13].

²⁸ Thomas Hobbes, *Leviathan*, ed. Richard Tuck (Cambridge: Cambridge University Press, 1996), 2:30, at 232–36.

written in every man's own heart."²⁹ Once the state of nature has been left behind, (which for the Hebrews may have been at Sinai)³⁰ the laws of nature, the constitution of the state, and divine law become one.³¹

Yet there are two differences between Hobbes's natural law and that of Grotius and Selden, which relate to Mendelssohn's critique of Hobbes that will be discussed in the next section. First, when Hobbes brought natural, divine, and human law together, he retained a distinct category of eternal law that is beyond the reach of the state. For Hobbes, while the sovereign is a mortal God, in messianic times God is scheduled to return as king. The biblical promise of messianic times contains images that are unimaginable in this world, including "spiritual bodies," from which Hobbes derives that nature will be overturned and with it the laws of nature in this world.³² Hobbes thus sets aside the messianic future, assuring his readers that his theory was for a mortal commonwealth, not an eternal state.³³ He was thus able to theorize this-worldly politics without committing to eternity.

Second, Hobbes's natural law required belief in God for natural law to truly be law, which meant that religious conformity was an important part of the Leviathan state. While he initially introduced laws of nature in *Leviathan* as emerging from the state of nature and allowing men to leave this unlivable state, he writes that these precepts are only properly called laws when they are considered to have been legislated by God.³⁴ Here Hobbes deviates from Grotius's statement that natural laws do not require knowledge of God to be binding. For Hobbes, while natural laws can be known without God, they are not binding without God. Yet because natural laws are foundational to sovereignty, Hobbes requires that they be universally accepted, which means that all members of the commonwealth must accept God. This leads to religion having a central role in politics, and a crucial role of the sovereign is to maintain religion.

In *Jerusalem*, Mendelssohn explicitly rejects both the role of religion in Hobbes's state and the distancing of eternity from the natural world. His argument with Hobbes and his return to Grotius's positions that draw on Philo elucidate Mendelssohn's natural law scrutinized by Michaelis, the tradition it continued, and what it was up against.

Mendelssohn and Early Modern Natural Law

Mendelssohn opens *Jerusalem* with the problem Hobbes set out to address in *Leviathan*: the correct balance of civil and ecclesiastical power in the state. This is the question of *Leviathan* even before one opens the book, with the frontispiece depicting the marks of ecclesiastical power and the marks of civil power feeding into the sovereign who presides over both realms.³⁵ Yet despite their common project and Mendelssohn's appreciation for Hobbes, when Mendelssohn considers the civil and ecclesiastical in the opening of *Jerusalem*, he separates himself from Hobbes's understanding of natural law that leads to a repressive

²⁹ Hobbes, *Leviathan*, 3:42, at 356, 357 (capitalization modernized).

³⁰ Meirav Jones, "'My Highest Priority Was to Absolve the Divine Laws': The Theory and Politics of Hobbes' *Leviathan* in a War of Religion," *Political Studies* 65, no. 1 (2017): 248–63, at 253.

³¹ Hobbes, *Leviathan*, 2:26, at 185–86.

³² Hobbes, 3:42, at 399.

³³ Hobbes 2:21, at 153.

³⁴ Hobbes, 1:15, at 111; see note 30 above.

³⁵ Willi Goetschel, "The Hyphen in the Theological-Political: Spinoza to Mendelssohn, Heine, and Derrida," *Religions* 10, no. 1 (2019): article 21, <https://doi.org/10.3390/rel10010021>.

solution of a single sovereign over religion and civil society.³⁶ Still, Mendelssohn and Hobbes share more premises than Mendelssohn acknowledges in *Jerusalem*, blurred by his rejection of Hobbes's account.

Mendelssohn correctly states that for Hobbes “[t]he state of nature is a state of tumult, a war of all against all, in which everyone may do what he can do; every thing one has the power to do is right. This unfortunate condition lasted until men agreed to put an end to their misery, to renounce right and might, as far as public safety was concerned, and to place both in the hands of an established authority.”³⁷

He further explains that with Hobbes's conception of the laws of nature, men should not be able to leave the state of nature as the social contract would not be binding to men in a state in which they owe no allegiance to man or God. He writes:

If men are not bound by nature to any duty, they do not even have a duty to keep their contracts. If there is, in the state of nature, no binding obligation other than that based upon fear and powerlessness, contracts will remain valid only as long as they are supported by fear and powerlessness. Thus, men, by their contracts, will not have come any step closer to their security, and will still find themselves in the primitive state of universal warfare. But if contracts are to remain valid, man must by nature, without contracts and agreements, lack the moral ability to act against a compact into which he has voluntarily entered; that is, he must not be permitted to do so, even if he can; he must not have the moral faculty, even though he may have the physical. Might and right are, therefore, different things; and in the state of nature, too, they were heterogenous ideas. Moreover, Hobbes prescribes to the highest authority in the state strict laws not to command anything which would be contrary to its subjects welfare. For although that authority is not accountable to any man, it does owe an account to the Supreme Judge; and even though, according to his principles, it is not bound by the fear of any human power, it is still bound by the fear of the Omnipotent, who has made his will in this respect sufficiently known. Hobbes is very explicit on this point, and is, in fact, less indulgent to the gods of the earth than his system would lead one to expect. Yet this fear of the Omnipotent, which should bind kings and princes to certain duties toward their subjects, can also become a source of obligation for every individual in the state of nature. And so we would once again have a solemn law of nature, even though Hobbes does not want to admit it.³⁸

Mendelssohn thus faults Hobbes's natural law not for the content of the laws themselves or even their derivation from a state of nature, but for the absence of God as the source of obligation to natural laws.

But here Mendelssohn misrepresents Hobbes, who, like Mendelssohn, claimed there was a need for a binding authority—even a God—to ground the laws of nature and make them properly laws that could be trusted to allow men to leave the wretched state of nature. Hobbes writes explicitly, “These dictates of reason, men used to call by the name of Lawes, but improperly: for they are but conclusions, or theorems concerning what conduceth to the conservation and defense of themselves; whereas Law, properly is the word of him, that by right hath command over others. But yet if we consider the same theorems, as delivered in

³⁶ Moses Mendelssohn, *Jerusalem: Or on Religious Power and Judaism*, trans. Allan Arkush (Hanover: University Press of New England, 1983), 1.35. All subsequent references to *Jerusalem* are to this edition, with the part number and page number indicated.

³⁷ Mendelssohn, *Jerusalem*, 1.35.

³⁸ Mendelssohn, *Jerusalem*, 1.36–37.

the word of God, that by right commandeth all things; then they are properly called Lawes.”³⁹

Thus, while Mendelssohn is correct to point out that Hobbes’s Leviathan state would be on shaky ground if its founding contracts were made in a Godless state of nature, Hobbes himself resolves this by introducing God into the presumptions of natural law. The state of nature is a presumed state, and the God who would allow the conclusions emerging from the state of nature to be properly laws is a presumed God. To ensure the presumption of God by all, religion needed to be cultivated by the sovereign.

With this aspect of Hobbes’s laws of nature clarified, it seems that Mendelssohn agrees with Hobbes on the laws of nature—insofar as there are such laws—being universal God-given laws that ground all social arrangements. He, like Hobbes, describes a state of nature—a state of “wretchedness” in which human beings are lonely and unfulfilled—and human beings exiting the state of nature and entering civil society to promote the common good by common measures.⁴⁰ His disagreement with Hobbes is about the reason for leaving the state of nature and about the cultivation of religion by the civil sovereign. For Mendelssohn, a reason to leave the state of nature was to perform preexisting obligations, whereas for Hobbes—despite the presumed God of his natural law—the reason to leave the state of nature is mere survival. On the cultivation of religion, for Hobbes the civil sovereign must cultivate religion so that people will keep the law, while for Mendelssohn as for Grotius, knowledge of God is not the only path to knowing the precepts of natural law. While the state must demand that human actions accord with morality, the religious convictions behind morality cannot be coerced and need not be, due to the various ways to access moral law.

It is here that the division of labor between church (broadly enough conceived to include synagogues and mosques)⁴¹ and civil state appear in Mendelssohn’s thought in a manner that deviates sharply from the Leviathan state. While the fulfillment of human duties clarified in the social contract requires both actions and convictions, for Mendelssohn actions and convictions are not to be regulated by the same institutions after exiting the state of nature. The civil state is responsible for regulating actions, while educating for convictions is the responsibility of the church, synagogue, mosque, or whatever religious institutions there may be. The state may sometimes turn to force or sanctions to command actions, but churches never have recourse to force, and convictions cannot be shaped by coercion, only through persuasion. While the state would be more wholesome with men holding true convictions, hence the desirability of churches, moral actions without convictions can be tolerated by the state.⁴²

In promoting toleration for a variety of convictions, as long as actions accord with state law, Mendelssohn is again in partial agreement with Hobbes, and he notes this in *Jerusalem* when he discusses the realm of freedom of inner convictions that Hobbes leaves when he writes that only God can punish thoughts. Yet Hobbes has the state, with its sanctions, in charge of cultivating true or political religion among the people, and finds that without this religion, natural or moral law itself is in danger. Mendelssohn recognizes the cultivation of religion by the sovereign as a slippery slope toward intolerance, and indeed, as I discuss below, Hobbes does not envision the state—as an institution that must cultivate and demand singular religion—tolerating Jews.⁴³ Hobbes also reserves a separate realm of

³⁹ Hobbes, *Leviathan*, 1:15, at 111.

⁴⁰ Mendelssohn, *Jerusalem*, 1.40–41.

⁴¹ Mendelssohn, *Jerusalem*, 1.41.

⁴² Mendelssohn, *Jerusalem*, 1.43–44.

⁴³ Hobbes, *Leviathan*, 1:12, at 83.

eternity in which the state does not intervene,⁴⁴ while for Mendelssohn eternity is continuous with the political world:⁴⁵ true convictions (and hence churches) serve people beyond the political and beyond this world, but are not necessary for compliance with the moral requirements of political life.

The conversation between Mendelssohn and Hobbes is so lively that one wonders whether the *bon ton* of the late eighteenth century demanded that Mendelssohn smear the seventeenth century as a “period of deep confusion,”⁴⁶ even when he himself was in many respects of the era. When we turn to Grotius, one of Kant’s “sorry comforters,”⁴⁷ the question becomes more acute, as the natural law theories of Mendelssohn and Grotius and their grounding of toleration in natural law, form an unacknowledged continuum from seventeenth century Hebraic thought to eighteenth century Jewish thought.

While my focus is on the proximity of Grotius and Mendelssohn’s natural law theory that grounded their arguments for toleration, it is worth noting that before their major writings on natural law, both Mendelssohn and Grotius had already advocated for the toleration of Jews. Mendelssohn had provided material for Christian Wilhelm von Dohm’s *On the Civil Improvement of the Jews*, and in *Jerusalem* he supports Dohm’s text, almost as a co-author. In addition, one of Mendelssohn’s earlier publications (1782) was a German translation of Menasseh Ben Israel’s *Vindication of the Jews*, which Mendelssohn flagged as an appendix to Dohm. The fact that Mendelssohn turned to a contemporary of Grotius and Hobbes to argue for the legal status of the Jews in Germany should not be passed over as insignificant: Ben Israel himself lived in that same “sorry period” as Hobbes and Grotius, yet Mendelssohn finds the arguments of the period relevant for his own.⁴⁸ His choice to be involved in publishing a work that grounds toleration in crude prejudice, alongside his own work that provides natural law justifications for toleration, involves Mendelssohn providing different seventeenth century arguments for toleration that are usually pinned against each other, even when both were ultimately instrumental in convincing different audiences.

Grotius argued for tolerance of the Jews in Ben Israel’s lifetime, and his early works include the *Remonstrance to the States of Holland*, an early seventeenth-century argument for the formal toleration of Jews in Amsterdam. This work appealed simultaneously to prejudice and natural law, while his *De Jure Belli ac Pacis/On the Laws of War and Peace* offered the natural law argument with which Mendelssohn converses in *Jerusalem*.

As for their similar natural law arguments for toleration, as discussed above, in his *De Jure Belli*, Grotius finds different paths to natural law, and in line with this, Mendelssohn claims that the Hebrew Bible and Jewish law contain no revelation or truth not made manifest already in nature and the intellect. For Grotius, Jews were to be tolerated not because of special access to truth or wisdom but simply because the state does not require conformity on matters of religion to function well. The state requires only that citizens keep their oaths, and the knowledge of natural law that is sufficient for doing so can be accessed through a variety of paths. For Mendelssohn, while some particular laws of the Jews could serve as a model, and seventeenth-century thinkers, including Grotius, agreed on this, toleration of the Jews is based on the agreement between all religions on fundamental principles of morality, not on any special access to divine truth. The Jews understand natural law well, for

⁴⁴ Hobbes repeats numerous times in *Leviathan* the idea that the kingdom of God is not of this world—almost every time that the kingdom of God is mentioned. See, for example, Hobbes, *Leviathan*, 3:41, at 333–34; 3:42, at 398–99.

⁴⁵ Mendelssohn, *Jerusalem*, 1.39–40.

⁴⁶ Mendelssohn, 1.37.

⁴⁷ Immanuel Kant, “Perpetual Peace: A Philosophical Sketch,” [1795], in *Kant: Political Writings*, ed. H. S. Reiss, trans H. B. Nisbet (New York: Cambridge University Press, 1991), 103.

⁴⁸ For more on Mendelssohn’s preface to this translation and its significance, see Willi Goetschel, *The Discipline of Philosophy and the Invention of Modern Jewish Thought* (New York: Fordham University Press, 2013), 182.

both thinkers, but this is not exclusive Jewish knowledge even when they bring in what they perceive as authoritative Jewish texts.

Like Grotius, Mendelssohn argues for the congruence between the laws of nature, eternal law, and divine law, and this unravels throughout both parts of *Jerusalem*: the first which is generally considered properly political, and the second more theological.⁴⁹ In the first part, Mendelssohn discusses the extent to which the state need only concern itself with fundamental principles on which all religions agree, and these are duties toward God as much as they are duties toward man; obligations cannot contradict, and this is written into nature and common sense.⁵⁰ Then in the second part Mendelssohn argues that Moses did not reveal universal truths to the Jews, but laws—so not universal revelation but particular rules—and this was not revelation in any Christian sense. God had revealed the truths he intended to reveal before the giving of the law, in nature and through human reason.⁵¹ Here Mendelssohn strikes an idealist position admired by Emmanuel Levinas in a passage on the intellectual unity of humanity in *Jerusalem* that can now be understood in light of Grotius' emphasis on the agreement between religions on fundamental principles.⁵² Mendelssohn also seems here to be leaving a distinct space for divine law that is different for the Jews than for other people. Yet within pages he explains that this particular divine law is to be read as an encasing of—and a universally accessible path to—already-revealed truth.

Although the divine book that we received through Moses is, strictly speaking, meant to be a book of laws containing ordinances, rules of life and prescriptions, it also includes, as is well known, an inexhaustible treasure of rational truths and religious doctrines which are so intimately connected with the laws that they form but one entity. All laws refer to, or are based upon, eternal truths of reason, or remind us of them, and rouse us to ponder them. Hence, our rabbis rightly say: the laws and doctrines are related to each other, like body and soul. ... The experience of many centuries also teaches that this divine law book has become, for a large part of the human race, a source of insight from which it draws new ideas, or according to which it corrects old ones. The more you search in it, the more you will be astounded at the depths of insight which lie concealed in it. At first glance, to be sure, the truth presents itself therein in its simplest attire and, as it were, free from pretensions. Yet the more closely you approach it ... the more it will unfold before you its divine beauty.⁵³

Mendelssohn proceeds to argue with some rabbis—notably Maimonides—and to side with others on the question of whether Judaism has articles of faith. He argues that true

⁴⁹ Goetschel, *The Discipline*, 205. It is also worth noting that Hobbes's *Leviathan* is usually considered divided into political and theological parts with the perceived theological parts often neglected.

⁵⁰ Mendelssohn, *Jerusalem*, 1.57–63.

⁵¹ Mendelssohn, *Jerusalem*, 2.97.

⁵² I refer to the following passage from Emmanuel Levinas, *In the Time of the Nations*, trans. Michael Smith (Indianapolis: Indiana University Press, 1994), 144–45: “But it was Mendelssohn who, in his idealist theory of religious revelation ... reached beyond ethical humanism and respect for the person in others. He placed particular emphasis on the intellectual unity of humanity centered on the same truths, or on conflicting but always reciprocally translatable truths—which indicates the profound unity of human civilization. And does not that possibility of conflicting truths constitute humanity's life in common, or the very definition, or at least the essential promise, of the West?” Michah Gottlieb has understood this as referring to Mendelssohn's argument for religious pluralism at the end of *Jerusalem*, while I suggest it refers primarily to the natural law justification of toleration, as well as the sustainability of conflicting truths when all are on the path of seeking truth. See Michah Gottlieb, “Mendelssohn's Metaphysical Defense of Religious Pluralism,” *Journal of Religion* 86, no. 2 (2006): 205–25, at 206.

⁵³ Mendelssohn, *Jerusalem*, 2.99.

Judaism does not command faith but actions, and approvingly cites rabbis who concur.⁵⁴ This claim supports Mendelssohn's argument against sanctioning faith, and this section where he argues against articles of faith is one of the very few places in *Jerusalem* where Rabbis are discussed by name. This is interesting in light of Michaelis's critique with which I opened, though it is certainly the case that rabbis are present throughout Mendelssohn's discussion of natural law, including in his rendition of the Golden Rule.

Having reviewed Mendelssohn's tying of the wisdom in the Hebrew Bible with natural law and right reason, I turn back to an early sentiment of his that parallels the "impious statement" from Grotius's work, that natural law can be known even by those who presume there is no God. This statement allowed Grotius's natural law to stand up to skepticism in his time, and Mendelssohn has similarly been found to have sought out ideas—even an idea of Judaism—that would stand up to skepticism and philosophical doubt.⁵⁵ Mendelssohn finds that moral action, which is the realm of the state, can be achieved without conviction, which is the realm of the Church. Moral action does not require belief in God and does not depend on scripture that itself restates but does not add to natural law. It is for this idea—that scripture does not add revelation of universal truth beyond what has already been revealed—that Mendelssohn is criticized as unJewish, just as Grotius was criticized as impious. Mendelssohn responds to this criticism in *Jerusalem*: "It is true that *I recognize no eternal truths other than those that are not merely comprehensible to human reason but can also be demonstrated and verified by human powers*. Yet Mr. Mörschel is misled by an incorrect conception of Judaism when he supposes that I cannot maintain this without departing from the religion of my fathers. On the contrary, I consider this an essential point of the Jewish religion ... I believe that Judaism knows of no revealed religion in the sense in which Christians understand this term."⁵⁶

Mendelssohn's claim is that the revelation in Judaism is not of universal truths but of particular legislation and that this is central to Jewish religion. Further, while religion serves human beings' common purpose and supports existing moral obligations, it does not add obligations.

Mendelssohn's claim that scripture does not reveal eternal truths relates to his discussion of oaths. Oaths do not add obligations just as religion does not add truth. Asking people to swear oaths, or add the name of God to a promise, is asking them to solemnly confirm that to which they are already obligated, just as asking them to add conviction does not add anything to the obligation which already existed. "Where no duty exists, an oath is a vain invocation of God, which may be blasphemous, but can in itself create no obligation."⁵⁷ What oaths add is force and coercion in the name of God. Mendelssohn thus adds a dimension to the contentious question in early modernity of whether the oaths at the foundation of the modern state can be kept without God. For Grotius, God did not need to be added to the obligation, with the first natural law being the keeping of promises or honoring of pacts, whereas for Hobbes, men could not be relied upon without fear of God, and hence the need for states to cultivate religion.

Tolerance, in *Jerusalem*, comes from the fact that different churches all educate for true convictions that serve the state, and alongside this, from the fact that convictions are not necessary conditions for moral action or for keeping the law. While sound convictions could

⁵⁴ Mendelssohn, 2.101.

⁵⁵ Ze'ev Strauss, "The Ground Floor of Judaism: Scepticism and Certainty in Moses Mendelssohn's *Jerusalem*," *Yearbook of the Maimonides Center for Advanced Studies* (2018): 179–206, at 182–83. While Grotius mentioned Maimonides as an interpreter of Philo and read him as part of this same position, Mendelssohn was far more familiar with Maimonides and faulted him for making Judaism susceptible to philosophical doubt.

⁵⁶ Mendelssohn, *Jerusalem*, 2.89–90.

⁵⁷ Mendelssohn, 1.71.

mean that moral obligations are met for the right reasons, these reasons are indifferent to the state so long as the obligations are met. Regarding tolerating multiple churches (or multiple religions), Mendelssohn writes that the state need not

trouble itself with all the principles which a dominant or merely tolerated faith may adopt or reject. It is a question only of those fundamental principles on which all religions agree, and without which felicity is but a dream, and virtue itself ceases to be virtue. Without God, providence, and a future life, love of our fellow man is but an innate weakness, and benevolence is little more than a foppery into which we seek to lure one another so that the simpleton will toil while the clever man enjoys himself and has a good laugh at the other's expense.⁵⁸

Religion is therefore politically desirable but not politically necessary. While it makes moral life meaningful and people may need this, the state requires compliance, not meaning.⁵⁹ Mendelssohn gleans this from his understanding of Judaism as requiring actions not convictions, tying back to his argument with Maimonides on the question of whether Judaism has articles of faith.

Regarding toleration of non-religionists, even of atheists, Mendelssohn goes further than his seventeenth century counterparts. Atheists in Grotius's thought—as in the thought of Hobbes and later John Locke—cannot be trusted to keep their promises and hence cannot be tolerated. Yet because Mendelssohn stressed the singularity of moral law and the fact that the state has sanctions to enforce this law, he extends toleration to atheists. Coercive state law can safeguard moral action and the state is able to free itself entirely of requiring faith. This stems from Mendelssohn's understanding that law is about action rather than faith, and from his understanding of Jewish law that is foreign to Christian understandings of religion as faith. Also interesting from a Jewish perspective is that Mendelssohn tolerates not only atheism but polytheism and even idolatry. This was set up in his discussion of various types of idolatrous temptations that even Hebrews were challenged by, implying that idolatry is a continuum.⁶⁰ Regarding polytheistic religions, these are portrayed as sharing a reverence for God and common sense with monotheistic religions.⁶¹ Grotius, who found common ground with diverse religions in his time, could tolerate polytheism but not Atheism.

I end this discussion of Mendelssohn's natural law in the context of early modern natural law discourse with two notes, one on Noahide law and one on the Golden Rule.

On Noahide law, we have seen that John Selden considered the seven laws the Talmud finds were imparted to the sons of Noah to be natural law. In Mendelssohn's memoirs we can find him identifying natural law with Noahide law,⁶² further relating his work to seventeenth-century Hebraic natural law discourse. In *Jerusalem*, he offers a more abstract account of laws within the Jewish textual tradition that are to be considered natural law,

⁵⁸ Mendelssohn, 1.63.

⁵⁹ Mendelssohn, 1.57.

⁶⁰ Mendelssohn, 2.110–12. On clinging to ceremonial law as Judaism's defense against idolatry according to Mendelssohn, see Edward Breuer, "Rabbinic Law and Spirituality in Mendelssohn's *Jerusalem*," *Jewish Quarterly Review* 86, nos. 3–4 (1996): 299–321, at 314.

⁶¹ Moses Mendelssohn, *Gesammelte Schriften. Jubiläumsausgabe* [Collected writings. Anniversary edition] (Stuttgart: Friedrich Frommann Verlag, 1990), 16:186, translated in Gottlieb, "Mendelssohn's Metaphysical Defense," 215.

⁶² Moses Mendelssohn, "Open Letter to Deacon Lavater of Zurich from Moses Mendelssohn (1769)," trans. Richard Levy, *German History in Documents and Images*, vol. 2, From Absolutism to Napoleon 1648–1815, https://germanhistorydocs.ghi-dc.org/sub_document_s.cfm?document_id=3646.

closer to the accounts of Grotius and Philo and to the enlightenment idea of common sense than to specific rules elaborated in the Talmud and by Selden.

The Golden Rule is both the sum of natural law in Hobbes's *Leviathan* and the quintessence of Jewish law in Mendelssohn's *Jerusalem*. Like other aspects of early modern natural law theory, Mendelssohn offers something subtly new from within his lived Jewish tradition. He writes:

Should you, nevertheless, want to obtain their quintessence, listen to how that great teacher of the nation, Hillel the Elder, who lived before the destruction of the second Temple, conducted himself in this matter. A heathen said: "Rabbi, teach me the entire law while I am standing on one foot!" Shammai, whom he had previously approached with the same unreasonable request, had dismissed him contemptuously; but Hillel, renowned for his imperturbable composure and gentleness, said: "*Son, love thy neighbour as thyself*." This is the text of the law; all the rest is commentary. Now go and study!⁶³

Two things are worth noting. The first is that Mendelssohn includes, in the text, different rabbinic approaches, recalling that Judaism contains various approaches that all share the goal of attaining God's truth. The second is Mendelssohn's inclusion of "now go and study!," which is easy to set aside but crucial for understanding Mendelssohn's innovation in natural law theory. He calls not only for obedience to moral law, which the state can sanction, but for a life of active inquiry, which is a life of religious learning. A life of not only going through the motions of the law, but of living with the law and of constantly peeling back action and text in pursuit of truth.

This is Mendelssohn's unique contribution from within his own lived Judaism. Early modern thinkers had found the Hebrew Bible and Hebrew wisdom to contain natural law, and divine law and natural law to concur. Mendelssohn added that living in light of natural law is not mere obedience—though this is enough for the state—but a constant process of learning and engagement. Continuous inquiry is part of acquiring moral convictions, and because convictions are not necessary for moral actions, the learning is valuable in and of itself, without a political end. This is how Mendelssohn, even when he argued with some rabbis and sided with others, promoted respect for all. The rabbis were all involved in learning and refining their ideas, in peeling back actions and texts—in a life of inquiry.

Interestingly, the life of inquiry is present in both Grotius and Philo's work, with both thinkers finding the words of the biblical text insufficient to contain God's plan, leading to constant inquiry. For Philo, it is the lives of the patriarchs that are to be interrogated beyond the words of the text, and the idea of the forefathers as living law in both Philo and Mendelssohn, who revered Philo, has been noted.⁶⁴ For Grotius, who similarly revered Philo, natural law was constantly being recovered and agreement among people constantly sought. But the role of the person living in the light of the law was never as active as in Mendelssohn's Jewish addition of "now go and study!," which makes the life of inquiry part of universal revelation and valuable on its own for the person, not for politics.

In sum, Mendelssohn's natural law thinking is conversant with seventeenth-century thought, starting with the use of Hebrew sources in natural law thinking and affirming that nature and scripture both package natural law. Mendelssohn continues the natural law case for toleration presented by Grotius, that because there are various ways of accessing moral truth, people of different religions can be tolerated and even understood as sharing the key

⁶³ Mendelssohn, *Jerusalem*, 2.102.

⁶⁴ Strauss, "The Ground Floor of Judaism," 193–94.

foundations of moral life. He further finds that even atheists can be tolerated in a coercive state that demands obedience to the law, even when truly living with natural law is about more than mere obedience: it requires a life of inquiry. The state does not mandate a life of inquiry but only obedience to the law. Hobbes is a key thinker with whom Mendelssohn conversed and argued, and Hobbes's key question of the theological and the political was Mendelssohn's question, too. Yet Hobbes's natural law required acknowledgment of a divine legislator, and thus compliance with state religion was imperative and toleration could not be extended. For Mendelssohn, separation of church from state was essential, and a life of inquiry could not be pursued for political gain. Somewhat ironically it was the state's forceful sanctioning of moral actions, regardless of convictions, that allowed Mendelssohn's political vision to be more tolerant than Hobbes's.

Rabbis in Natural Law? Critics of “Sorry Comforters” and Their Jews

Turning to rabbis and Jewish thinkers for natural law, for which Michaelis censured Mendelssohn in the late eighteenth century, was not Mendelssohn's innovation but was a move made by Grotius and other seventeenth-century thinkers, including Hobbes and Selden, who parted from Scholasticism and shaped modern natural law. Reading Mendelssohn as writing in conversation with early modern thinkers—continuing from his own conversation with Hobbes in Jerusalem—contributes to understanding Mendelssohn's work and innovations. Mendelssohn's natural law was akin to that of Grotius, whose natural law is eternal law, is common to all religions, and is packaged in the laws of the Hebrews. This natural law thinking, which brings Jewish tradition in as expounding universal wisdom, affirmed toleration: the essence of morality is universal, and while it may be found in religious sources, it can be found in sources of different religions. Further, for Mendelssohn, moral actions can be assured independently of convictions when state law sanctions them, so that the state need not concern itself with policing convictions at all.

The context I propose for reading Mendelssohn's natural law thinking and understanding his toleration emphasizes Mendelssohn's reading of Jewish sources as being of universal import, rather than being relevant only for the Jews, and this he held in common with seventeenth-century natural law theorists. To what extent was toleration drawn from considering Judaism as having universal import, and to what extent did intolerant attitudes toward Jews in both the seventeenth century and Mendelssohn's time draw on a theoretical perspective on Jewish law as pertaining only to the Jews?

The idea that Judaism was particular, not universal, was of course not new: this was the long-held attitude of the Catholic Church that sought to bring Jews to the universal, it was the attitude on which Martin Luther insisted in the face of early Protestants who considered God's word, which was said to the Jews, as spoken to them, and it is arguably the approach of rabbinic Judaism itself, which is generally understood as not having a natural law teaching. New in the seventeenth century was that Christian thinkers who emphasized Jewish particularism did not necessarily point to the inferiority of Judaism. Post reformation, the ancient Hebrew republic became a model as a particular polity—even a sovereign state—with exemplary laws and institutions, such that the particular became exemplary. The question of whether contemporary Jews could be incorporated in a commonwealth governed by good laws, or whether Jews should rather have their own separate politics, hinged on how theorists understood the contribution of Judaism to wisdom: whether it contributed to our understanding of how to run a particular polity or whether it confirmed universal natural law, or both. Grotius, who leaned on Philo and found Judaism confirming universal natural law, found that Jews could and should be tolerated, while Hobbes, who modeled *Leviathan* on God's rule over the Hebrews as his peculiar people, focused on the exclusive nature of the Jewish commonwealth. Hobbes mentions that Jews were not tolerated even in

ancient Rome due to their distinct religion. Republican theorist James Harrington explicitly considered the Jews' separateness intolerable in England and sought a political solution to a Jewish question he raised.

I opened with Michaelis's critique of Mendelssohn that even when writing about natural law he engaged the rabbis. Yet the theoretical disagreement Michaelis had with Mendelssohn could have been had with Grotius or Selden. But Michaelis's scholarship was not negative toward Jewish texts. He did read Jewish texts as particularistic rather than universalist, yet he held the Old Testament and Moses as a lawgiver in highest regard, and his reputation as a great orientalist draws on the resources he put into understanding Mosaic law in a Semitic context. On his interpretation, Mosaic law was an admirable achievement; an adaptation of Egyptian law and localized nomadic Hebrew customs that related Jews to their land and enabled them to survive as a separate people.⁶⁵ Michaelis drew on his understanding that the laws of Moses were intended to keep the Jews separate, not to be universal or shared, and from here he derived that Jews should not be tolerated in the modern state. This, like Mendelssohn's employment of the rabbis for natural law, was not an enlightenment innovation, though it is a perspective Michaelis shared with Kant and other enlightenment thinkers. Jewish particularism was grounds for the exclusion of the Jews already from the seventeenth century, and even among Jewish thinkers such as Spinoza. But while Spinoza has been seen as a source of the eighteenth-century approach to Jewish particularism, there were other theorists whose accounts were far closer to those of Michaelis and Dohm.

Scholarship that relates Michaelis's orientalist study of the ancient Hebrews and Mosaic law to his exclusion of the Jews has generally not observed the continuity of his arguments from seventeenth-century "Hebrew republic literature,"⁶⁶ and the exclusion of contemporary Jews that sometimes followed from employing a Hebraic political model. There has been some grounded speculation that in studying Mosaic law as exemplary, Michaelis followed seventeenth-century Hebraists, specifically Petrus Cunaeus, who, as did Michaelis, emphasized the Hebrews' agrarian law as a definitive feature of their republic.⁶⁷ Another thinker who followed Cunaeus was Harrington, who in *Commonwealth of Oceana* both elaborated on the Hebrews' agrarian law and recommended settling the Jews in Ireland rather than incorporating them into England. It is Harrington's text that I find a precursor to the approach articulated by Dohm and Michaelis in the late eighteenth century.

This is what Harrington writes in *Commonwealth of Oceana*, offering the Hebrew commonwealth with its particular laws and institutions as a model for how contemporary Jews—or Jewish questions—should be settled:

[I]t had been the Interest of Oceana [England] so to have disposed of this Province [Ireland] ... that it might have been ordered for the best in relation to her purse: which in my opinion, if it had been thought upon in time, might have been best done by planting it with Jews, allowing them their own rites and laws ... And though the Jews be now altogether for merchandize, yet in the land of Canaan (except since their exile from whence they have not been landlords) they were altogether for agriculture; and there is no cause why a man should doubt, but having a fruitful country, and excellent ports too, they would be good at both ... Wherefore Panopea [Ireland] being farm'd out to the Jews and their heirs for ever ... would have been a bargain of such advantage both to them and this commonwealth, as is not to be found otherwise by either. To receive

⁶⁵ For more on this see Ilany, "Christian Images," 127–28.

⁶⁶ Eric Nelson, *The Hebrew Republic: Jewish Sources and the Transformation of European Political Thought* (Cambridge, MA: Harvard University Press, 2010), 16–22.

⁶⁷ Ilany, "Christian Images." See also [note 2](#) above.

the Jews after any other manner into a commonwealth were to maim it: for they of all nations never incorporate, but taking up the room of a limb, are of no use or office to the body, while they suck the nourishment which would sustain a natural and useful member.⁶⁸

In Dohm's *Civic Improvement*, Michaelis found a similar sentiment about the Jews never incorporating, which causes him to consider a type of internal Jewish colony for the Jews of his time: "Do the laws of Moses contain anything that would make it impossible or difficult for the Jews to be completely naturalized and melt together with other peoples? One should nearly think so! Their intention is to preserve the Jews as a people separated from all other peoples ... and as long as the Jews retain the laws of Moses, as long as they for example do not dine with us ... they will never melt together with us—like the Catholic and Lutheran, the German, Wend and Frenchman, who all live in a single state."⁶⁹

Michaelis was even closer to Harrington than Dohm: He connected Jewish separatism to agriculture and proposed settling them in an external colony for economic gain. Michaelis writes: "Such a people can perhaps become useful to us in agriculture and manufacturing, if one manages them in the proper manner. They would become even more useful if we had sugar islands which from time to time could depopulate the European fatherland, sugar islands which, with the wealth they produce, nevertheless have an unhealthy climate."⁷⁰

Both Dohm and Michaelis have been said to have seen the modern inclusive state they imagined as the antithesis of Jewish particularism.⁷¹ Kant, who described Judaism as political and Judaism as "a collection of mere statutory laws,"⁷² shared this particularistic understanding of Judaism, and while some have considered his source to have been Spinoza's reflection on the Hebrew commonwealth as theocracy, recovered here is a greater context in which both Spinoza and Kant took part. Yet there was a crucial difference between early modern and enlightenment thinkers in this discourse: while seventeenth-century theorists who excluded the Jews, such as Harrington, saw the particular Jewish commonwealth as a model for other particular commonwealths, recognized as exclusive, Enlightenment thinkers considered themselves to have surpassed exclusivist Jewish politics and moved toward universalism. The exclusion of the Jews from European societies that understood themselves as inclusive and universalist was, of course, the immediate impetus for the founding of the Zionist movement by Theodor Herzl after the Dreyfus Affair.

When Harrington wrote that the Jews should be settled in Ireland "had it bin [*sic*] thought of in time," he alluded to the fact that by 1656 Oliver Cromwell was in the process of reintroducing Jews to England. Menasseh Ben Israel, whose work would be brought into eighteenth century Germany with Mendelssohn's publication, was instrumental in convincing Cromwell to normalize Jewish presence in England when he was invited by Cromwell for

⁶⁸ James Harrington, "The Order of the Work," in *The Commonwealth of Oceana* (London: George Routledge and Sons, 1887), 11–14, at 13–14.

⁶⁹ Johan David Michaelis, "Dohm über die bürgerliche Verbesserung der Juden" [Dohm on the civic improvement of the Jews], *Orientalische und exegetische Bibliothek* 19 (1782): 1–40 at 11–12, reprinted in Christopher Wilhelm Dohm, *Ueber die bürgerliche Verbesserung der Juden* [On the civic improvement of the Jews] (Hildesheim: Olms, 1973), 2:31–71, at 40–41, as quoted in translation in Jonathan Hess, "Sugar Island Jews? Jewish Colonialism and the Rhetoric of 'Civic Improvement' in Eighteenth-Century Germany," *Eighteenth Century Studies* 32, no. 1 (1998): 92–100, at 92.

⁷⁰ Michaelis, "Dohm über die bürgerliche Verbesserung der Juden," 12, as quoted in translation in Hess, "Sugar Island Jews," 92–93.

⁷¹ Hess, "Sugar Island Jews," 92.

⁷² Immanuel Kant, *Religion within the Limits of Reason Alone*, trans. Theodore M. Greene and Hoyt H. Hudson (New York: Harper Torchbooks, 1960), 116.

consultation during the Whitehall Conference.⁷³ Ben Israel was also a thinker who found wisdom in different religious traditions and made a case for universal foundations of religions. Bringing universalist Judaism into the eighteenth century, as Mendelssohn did, was to counter particularistic claims regarding the Jews and against relegating Jews to “sugar islands.”

Interestingly, from the onset of modernity and particularly in the present day, Mendelssohn’s position is not the general or even the majority Jewish position. With few exceptions, scholars have long noted that rabbinic Judaism does not have a natural law tradition.⁷⁴ In her important work on divine law, Christine Hayes describes the rabbis as deviating from Hellenistic Jewish and early Christian attempts to reconcile Greek universal understandings of divine law with the Hebrew Bible, and developing a Jewish understanding of divine law as particular rather than universal.⁷⁵ Even Spinoza, excommunicated from his Jewish community, did not promote Hebrew tradition as promoting universal reason mentioned above, and this related to his proto-Zionist position framed as a comment that if Jews continued to distinguish themselves by circumcision, they might ultimately deserve separate statehood.⁷⁶ From Herzl’s Jewish State, and certainly since the Holocaust, the necessity of separate statehood to protect the Jews was accepted by many European thinkers and Jews as axiomatic, even when they may have held more universalist and inclusive ideals, such that the need for particularistic politics took on a life of its own. Even Hannah Arendt, who problematized the necessity of statehood, and Gershom Scholem, who worried about the implications for morality, acknowledged the necessity.

Yet the alternative Mendelssohn offered, in line with modern natural law, of inclusive religious pluralism grounded in natural law informed by Hebrew sources, is an important reminder of an alternative history of ideas that may not have triumphed in the case of the Jews in modernity to date—or even in modern political thought—but may still be worth developing. If Judaism can be claimed to add not conflicting obligations but laws and practices that complement existing obligations that are universal, this may contain a model for a shared public sphere in which diverse populations, whether states in an international community or religious and ethnic communities in a diverse polity, could participate. While diversity not envisioned by the architects of the modern state or by enlightenment thinkers has become the norm in today’s world, there is a dearth of theoretical groundwork for truly diverse political entities, particularly as the modern state at its founding moment problematizes religious difference as a cause of war.⁷⁷ Returning to the natural law justification of toleration may be appropriate, and with it Mendelssohn’s encouragement to “go and study” rather than remain within the bounds of existing theoretical models.

⁷³ For more on Ben Israel’s arguments and their indebtedness to the work of Simone Luzzatto, see Benjamin Ravid, “How Profitable the Nation of the Jewes Are: The Humble Addresses of Menasseh ben Israel and the Discorso of Simone Luzzatto,” in *Mystics, Philosophers and Politicians. Essays in Jewish Intellectual History in Honor of Alexander Altmann*, ed. Jehuda Reinharz, Daniel Swetschinski, and Kalman P. Bland (Durham: Duke University Press, 1982), 159–80, at 163.

⁷⁴ One key exception is David Novak, whose works consistently claim a Jewish understanding of natural law. See, for example, David Novak, *Natural Law in Judaism* (Cambridge: Cambridge University Press, 2008).

⁷⁵ Christine Hayes, *What’s Divine about Divine Law? Early Perspectives* (Princeton: Princeton University Press, 2015), 326.

⁷⁶ Benedict De Spinoza, *Theological-Political Treatise*, ed. Jonathan Israel (1670; Cambridge: Cambridge University Press, 2007), 3:12.

⁷⁷ Paul Guyer’s recent work similarly argues that today’s acceptance of religious pluralism as here to stay makes Mendelssohn’s work newly relevant. See Paul Guyer, “Mendelssohn, Kant, and Religious Pluralism,” *Deutsche Zeitschrift für Philosophie*, 68, no. 4 (2020): 590–610, at 609.

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