

Natural Law and the Jewish Hălākâ: Are the Noahide Mitzvot an Example of Reason Revelled Universal Moral Laws in Rabbinic Judaism?

Roberto Ceolin

University of Saint Joseph, Macao

Abstract

This paper will look at the relationship between Natural Law and The Halacha, the moral code of Rabbinic Judaism. Just as it happens with Sunni Islam, the general opinion among scholars is that natural morality is a concept alien to the Judaic religion and its law. However, the most fervent defender of natural morality in Judaism, David Novak, has argued and continues to argue that there is a basis of Natural Law thinking underneath the mitzvot of the Jewish Halacha. In this article, we will look at how some of the language used in the Talmud and in Maimonide's Mishneh Torah corroborates Novak's claims that the Mishnaic Noahite Laws may have a Natural Law a priori motivation.

Keywords: *Halacha, Noahite Laws, Revealed Law, Natural Law, Mishnah, Talmud, Torah, Mishneh Torah, Rabbinic Judaism, Maimonides*

MISE EN SCÈNE¹

When Antigone, the wretched daughter of King Oedipus, told her sister Ismena of her intention to give burial to their brother Polyneices against what their uncle Creon, the new king of Thebes, ruled, she was reminded that death was the penalty for disobeying the king's edict, to which she remarked:²

ANTIGONH

⁷² (...) καλόν μοι τοῦτο ποιούσῃ θανεῖν.
φίλῃ μετ' αὐτοῦ κείσομαι, φίλου μέτα,
ὅσια πανουργήσας, ἐπεὶ πλείων χρόνος
⁷⁵ ὃν δεῖ μ' ἀρέσκειν τοῖς κάτω τῶν ἐνθάδε.
ἐκεῖ γὰρ αἰεὶ κείσομαι.

ANTIGONE

It is an honour for me to die for doing this. I, beloved (φιλῇ) to him, shall lie next to him, beloved (φίλου) to me, having broken this law³, for longer is the time that I will have to please those who are in the underworld than those who are here, for it is there that I shall dwell forever.'

The dialogue from where this passage is taken introduces the two first characters of the play, the two sisters: Antigone, who is unpreoccupied with her destiny in this world, willing as she is to die if necessary, in order to fulfil her sacred duty of honouring that which the gods have established as sacred. On the other side of the picture is Ismena, her sister, who is shy, weak, and afraid to confront the state and stand against a law that she knows is unjust and that affects her directly.

¹ The present article is the result of a series of three papers that I gave in a series of talks on Natural Law at USJ, Macau, in the academic year of 2020/21. Points of the first paper, entitled 'Nómos and Thesmós in Sophocles' Antigone', are recovered here as part of the introduction or Mise en Scène. The other two papers were jammed into a single, nearly two-hour-long public talk. The first of these two papers inspired the main points of this article. As this lecture series was aimed at presenting different themes related to Natural Law to a non-specialised public, I included in my talk then and in this article now some introductory elements related to Judaism and Judaic law. I also added a series of bibliographical references for those unfamiliar with Rabbinic Judaism and the Halacha.

² Translations do not stand for the originals; therefore, I added the texts I commented on in this paper in their original language, even if that makes the paper a bit heavier, and I give the relevant information about the editions they are taken from. I also give terminology and/or phrases which convey concepts in their original language, as the translation of concepts can be controversial.

³ The participle form πανουργήσας[α], from the verb πανουρέω 'to be or act as a villain', is usually interpreted as an oxymoronic expression and translated as 'commit a righteous misdeed'. Here, we translated it closer to the letter leaving the interpretation to the reader.

The notions of *philia* and family immediately emerge from this opening dialogue, the two bounds which tie people together and are not broken even by death. It is not only the obedience to the laws of the gods that moves Antigone but also her *philia* and her faithfulness to her brother, even though now there he lies dead, still unburied.

After spreading a thin layer of dust over the unburied body of her brother, Antigone is brought to the presence of Creon who interrogates her asking whether she was responsible for the deed. She does not deny it and when challenged as to why she chose to disobey his law, she says:

ANTIGONE

⁴⁵⁰ οὐ γάρ τί μοι Ζεὺς ἦν ὁ κηρύξας τάδε,
 οὐδ' ἡ ξύνοικος τῶν κάτω θεῶν Δίκη
 τοιούσδ' ἐν ἀνθρώποισιν ὥρισεν νόμους.
 οὐδὲ σθένειν τοσοῦτον ὥοιμιν τὰ σὰ
 κηρύγμαθ', ὥστ' ἄγραπτα κἀσφαλῆ θεῶν
⁴⁵⁵ νόμιμα δύνασθαι θνητὸν ὄνθ' ὑπερδραμεῖν.
 οὐ γάρ τι νῦν γε κἀχθές, ἀλλ' αἰεί ποτε
 ζῆ ταῦτα, κοῦδεις οἶδεν ἐξ ὅτου 'φάνη.
 τούτων ἐγὼ οὐκ ἔμελλον, ἀνδρὸς οὐδενός
 φρόνημα δεῖσας', ἐν θεοῖσι τὴν δίκην
⁴⁶⁰ δώσειν: θανουμένη γὰρ ἐξήδη, τί δ' οὔ;
 κεῖ μὴ σὺ προὔκηρυξας.

ANTIGONE

'The thing is that these laws were not proclaimed by Zeus, nor was Justice (Δίκη), who dwells amongst the gods in the underworld, the one who established these laws for men to follow, and I have deemed that your decrees, you being a mere mortal (θνηστὸν ὄνθ'), could never override (ὑπερδραμεῖν) the unwritten and unchangeable precepts of the gods (ἄγραπτα κἀσφαλῆ θεῶν νόμιμα), for these [laws] are not from now, nor yesterday, they exist since always (ἀλλ' αἰεί ποτε ζῆ ταῦτα); indeed, no one knows when they came to be! On account of your laws, I wouldn't want to be punished by the gods for being afraid of any man. I've always known that I must die –how could I ignore it? – even if you hadn't published your edict.'

Antigone spells out to Creon without any ambiguity or hesitation that it is not up to a mortal to override (ὑπερδραμεῖν) that which the gods have established from times immemorial –their laws ‘*have existed since always!*’ Antigone has a clear vision of the challenge set before her: ‘*because of your laws, I wouldn’t want to be punished by the gods for being afraid of any man.*’

In Greek tragedy, there is no action, only words. Events are to be understood from what is said. Antigone shows herself as an untamed character, a woman of courage, faithful to her family and fearful of the gods and their judgment, willing to lay her life down for what she knows to be right.

Creon, on the other hand, is the image of the autocratic ruler, the despotic tyrant who thinks he knows what is best for the people to the point of attributing his own positions to the gods. In his arrogance, he accuses Antigone of *hubris* because not only did she disobey his law, but she was also proud of her behaviour.

KPEΩN

480 αὕτη δ’ ὑβρίζειν μὲν τότ’ ἐξηπίστατο,
νόμους ὑπερβαίνουσα τοὺς προκειμένους;
ὕβρις δ’, ἐπεὶ δέδρακεν, ἦδε δευτέρα,
τούτοις ἐπαυχεῖν καὶ δεδρακυῖαν γελᾶν.

CREON

‘She is insolent (αὕτη ὑβρίζειν); she commits an act of insolence when she walks all over the established laws (νόμους ὑπερβαίνουσα τοὺς προκειμένους | ὕβρις δ’). Not only that, she commits a second act of insolence (δευτέρα) when she boasts about her act, saying that she is happy to have committed it.’

Creon cannot accept any challenges to his authority; his law stands as if proclaimed by the gods themselves. Therefore, Antigone must die. And die she will. Sentenced to be bricked alive in a cave, Antigone, sure of having fulfilled her duties towards her family and the gods, kills herself.

Sophocles’s *Antigone* speaks of the conflict between *the obligation to family* and *the obligation to the state*, personified by Antigone and Creon as contrary values. Other conflicts are also present in the play, but one that stands out is the question of the *value of the law*. Antigone speaks of *unwritten, unchangeable* and *standing since ever* laws. These are referred to in Greek as θεσμός *thesmós*, usually translated as *custom*, and understood as moral practices whose origins are ancient and unknown and, therefore, are attributed to the gods. The concept of *thesmós*, a word not present in the play, is close to

what we would today describe as *natural morality*. The play portrays the struggle between *natural moral law* and *human-made law*, or what Greek refers to as νόμος *nomos*, usually translated just as *law*, and how the latter should not, to use Antigone's own words, override the former.

Greek Tragedy might not be the first place one would think to look at for definitions of law or models of behaviour, but that is because our modern idea of tragedy and what tragedy was for the Greeks in the days of Sophocles does not match. For the Ancient Greeks, tragedy, or in Greek τραγωδία *tragōidia*, literally meaning *song of a goat*, was a religious function which all the *politai* had to attend every year during the Great Dionysian Festivals. For three consecutive days, the citizens of Athens reflected upon the destiny of men hoping to achieve *katharsis* as they watched the mighty fall before their very eyes. But more than a religious act, tragedy developed into a form of civic and even political education. So, it is befitting that a question such as this would appear in a tragedy. In fact, tragedy was probably the best place for it to be dealt with as it had the power to integrate such a theoretical matter into the reality of life, making it less of an abstract concept and something ordinary people could relate to. Also, tragedy had the power to bring such social issues before the gaze of the whole population, including the authorities, which every year took the first seats at the *theatron* from where they were watched by the Athenian citizens sitting behind them, watching how this tragedy unfolded.

Sophocles' *Antigone* became a reference text for this subject, so much so that even Aristotle when explaining what Natural Law, or as he puts it, *common law according to nature* (κοινὸν δὲ τὸν [νόμον] κατὰ φύσιν) is, quotes from the answer Antigone gave to her uncle.

ARISTOTLE'S RHETORICS 1373B2-8

ἔστι γάρ τι ὃ μαντεύονται πάντες, φύσει κοινὸν δίκαιον καὶ ἄδικον,
κἂν μηδεμία κοινωνία πρὸς ἀλλήλους ἢ μηδὲ συνθήκη, οἷον καὶ ἡ
Σοφοκλέους Ἀντιγόνη φαίνεται λέγουσα, ὅτι δίκαιον ἀπειρημένου
θάψαι τὸν Πολυνεΐκη, ὡς φύσει ὃν τοῦτο δίκαιον:

(Soph. *Ant.* 456-457)

“οὐ γάρ τι νῦν γε κᾶχθές, ἀλλ’ αἰεί ποτε

ζῆ τοῦτο, κούδεις οἶδεν ἐξ ὅτου φάνη”

‘In fact, there is a general idea of **just and unjust in accordance with nature**, which all men can grasp in some way even if there is neither communication nor agreement between them. As Sophocles' *Antigone* shows when she says that, even though it has been forbidden, it is just to bury Polynices, this ‘just’ being according to nature:

‘They are not from now, nor yesterday; they have existed since always; indeed, no one knows when they came to be.’

1. REVELATION VERSUS REASON

The conflict between *thesmós* and *nómos* in Sophocles’ *Antigone* has at its heart the conflict between tradition and progress, between just and unjust laws, between ancient customs and the need for society to regulate itself as time passes. The fight between Antigone and her uncle Creon is a proxy for the fight between Natural Law and positive law and how the latter often tends to trample over the former in its zeal, sometimes exaggerated or even questionable, to look after the interests of society. Positive law is the law made by the men who, at the steering wheel of the ship of state, are trying to prevent the rocks from damaging the hull and sinking the ship. Natural Law, on the other hand, derives from men’s rational faculties and from that *politiké* or *social nature* of men, which Aristotle talks about, and is necessary for men to co-exist and live in community. In his *Treaty on the State*, Cicero gives what is still regarded as one of the best concise definitions of Natural Law, cf.

DE REPUBLICA 3.33

Est quidem vera lex recta ratio naturae congruens, diffusa in omnes, constans, sempiterna, quae vocet ad officium iubendo, vetando a fraude deterreat; quae tamen neque probos frustra iubet aut vetat nec improbos iubendo aut vetando movet. Huic legi nec obrogari fas est neque derogari ex hac aliquid licet neque tota abrogari potest, nec vero aut per senatum aut per populum solvi hac lege possumus, neque est quaerendus explanator aut interpret eius alius, nec erit alia lex Romae, alia Athenis, alia nunc, alia posthac, sed et omnes gentes et omni tempore una lex et sempiterna et immutabilis continebit, unusque erit communis quasi magister et imperator omnium deus.

‘There is, in fact, a true law, a right reason concordant with nature, existing within everyone, unchangeable and eternal which, compelling their actions, leads men to perform their duties; while deterring, it prevents them from doing wrong. Even though it leads and restrains good men in no light manner, it has no influence over how bad men decide to conduct or restrain themselves. This law cannot be repealed, neither partially nor in its totality, and we cannot be released from it either by political decision (lit. Senate) or by the will of the people. It does not need any explainer nor any interpreter; it is not one law in Rome and another in Athens; it is the same today as in the future, the one law eternal and unchangeable affecting all peoples at all times, a cohesive law shared by everyone which, functioning as both an instructor and a ruler of all, it stands as if it were a god.’

According to Cicero, *Natural Law* could be defined as a theory of morality which states that there are implanted in nature essential moral values discoverable by human Reason, universal and timeless, and compulsory to men because of their rationality. As rules, they *naturally* compel us to act in a particular fashion without the need to be decreed by anyone. No one invents this natural moral law, but it derives from our rational nature which is responsible for revealing it to us.

For Antigone, Aristotle and Cicero, the ultimate giver of this rational moral law is god—whatever the word *god* meant to each one of them—who are perceived as the justices of morality. Another moral code said to have its origins in god is religion’s moral code. These are often considered directly received from the deity by a process usually called *divine Revelation*. In the case of Antigone, her conflict is between god and man, between man-written laws and traditional customs whose origins are attributed to the gods. When it comes to religions such as Rabbinic Judaism and Islam, the conflict is between *divine law* ‘expressing the structure found in a permanent natural order’ and *divine law* ‘emanating from the deity itself expressing thus his divine will’.⁴ The difference between these two types of *divine law* is the form of their revelation. While Natural Law is extracted from the natural order of the world by human Reason and, therefore, does not need a deity to be discovered, religious moral law is revealed directly by the deity and, often enough, appears to be at odds with human Reason. An additional difference is that reason-discovered laws are universal. In contrast, divinely revealed laws are usually associated with a specific religion and aimed at its followers. Furthermore, religious law is typically written in sacred codes, whereas natural moral law is unwritten but imprinted in social traditions and conventions and engraved in men’s consciences.

⁴ Hayes (2015:3-7)

As religious moral laws are received directly from god without the need for human intermediation –save for the Revelation’s receiver– in the view of Judaism and Islam, Natural Law cannot be permitted to *override* God’s revealed laws. This derives from the fact that these religions see natural morality as depending on the judgment of men. Furthermore, this contention also comes from the fact that it is not uncommon for Natural Law to challenge the rationality and, therefore, the suitability of revealed law, if not in its totality, at least parts of it. As such, Judaism and Islam have often denied the existence of a Natural Law basis for their moral laws, affirming their sole divine origin. For these religions, nothing must rival or stand on an equal footing with divine Revelation. Since natural morality is discoverable through human intervention, they see it as ultimately emanating from men.

In view of this, what follows is an attempt to test whether Natural Law or instances of rational thinking are unfamiliar, or not, to the Rabbinic Judaic religion’s moral laws or if they might have been working together behind the scenes without (almost) anyone noticing.

2. NATURAL LAW AND THE JEWISH *HĀLĀĶĀ*

In Rabbinic Judaism, the word *Halacha*, the usual English transliteration for Hebrew הלכה *hālākā*, technically refers to the *collective body of Jewish religious law texts*. However, more commonly, *Halacha* stands just for *Jewish religious law*.

The Hebrew word הלכה *hālākā* derives from the verbal root הלך/ילך *hlk/ylk* ‘to walk’⁵ and given its structure and the meaning of its root, etymologically, it should mean *walk* in the sense of either *path to walk in* or *way to walk*. From there, it develops its religious meaning of *way* in the sense of *behaviour* or *conduct to follow*.

The origins and sources of the Halacha are various, but its foundational texts are the *Torah* and the *Mishnah*. The *Yehuds* or Jews of the Second Temple had two sets of laws, namely the *written Torah*, more commonly referred to as just *the Torah*

(תורה שבכתב *tôrâ šabbiktāḇ* ‘doctrine/law which is written’), and what is conventionally referred to as the *oral law* or *oral Torah* (תורה שבעל-פה *tôrâ šebbe‘al-pēh* ‘doctrine/law which is spoken’). For the Jews of the Second Temple, according to their tradition, God gave Moses two sets of

⁵ See Gesenius et al. (1968) s.v. הלך/ילך for the different meanings and senses of this root.

In this paper, I will transliterate the *begadkepat* consonants of Hebrew according to Weingreen’s 2nd edition of this *Practical Grammar* (Oxford, 1959), except for פ, which will be transcribed as *ph* due to a typographical difficulty.

laws, one that Moses himself put down in writing and another set kept and transmitted orally. These two sets did not have equal standing as the *oral law* was meant to *explain* the written *Torah*.⁶

Around the start of the third century AD, when Hebrew was on its way out as a spoken language, a rabbi known as Judah, the Prince (יהודה הנשיא, *yəhūdā hannāšī*), who died around 217, compiled and put the *Oral Torah* in writing on the aftermath of the *Bar Kochba* revolt (מֶרֶד בַּר־קֹכְבָּא *mered bar-kōkḇā*) and the expulsion from Jerusalem.⁷ That is the origin of the *Mishnah* (מִשְׁנָה *mišnā* ‘repetition’), which is the chief written collection of the Pharisees’ oral traditions from the Second Temple period.

In the gospels, when Jesus is criticising the excesses of the Pharisees in their zeal and religious fervour, or when He and His disciples are being criticised for neglecting traditional customs, the actual practice described as *prescribed by the law* at the centre of the dispute often refers to something that is not actually to be found in the written *Torah*, but in the *oral law* instead. References to aspects of the *oral law* can indeed be found in the New Testament. In Acts 1.12, after witnessing the *Ascension of Christ*, the disciples are said to have gone back to Jerusalem, which is described as being ἐγγὺς Ἱερουσαλὴμ σαββάτου ἔχον ὁδόν⁸ a ‘*Sabbath’s day journey away*’ from the Mount of Olives. The σαββάτου ὁδός or תַּחֲוֹם הַשַּׁבָּת *təḥûm haššabbāt* refers to the distance that one could walk on the Sabbath. The length of the *Sabbath’s walk* in the days of Jesus, that is, 2000 cubits, should be around one kilometre in modern

⁶ This article’s main point, the *Noahite mitzvot*, is preceded by an introduction to Rabbinic Judaism and the Halacha. This is so because people unfamiliar with Judaism often think that the Judaic religion is similar to Christianity but without Christ and the New Testament; as if Christianity was the continuation of Judaism which Judaism lacks. When Christians hear the word Judaism, they associate it with the Jewish religion in the time of Christ, as it is described in the New Testament. But the truth is that *Rabbinic* Judaism is quite different from the Judaism of the days of Christ and radically different from Christianity. In Rabbinic Judaism, there is no original sin, no concept of sin at all, there is no Heaven nor Hell, no devil nor angels, no punishment nor reward, and it is not clear to what extent Jews believe in the resurrection of the dead or not. The morality of the Rabbinic Judaic religion is based on the practice of traditions, most of which are independent of any ethical or morally positive outcome. Following the general lack of detailed knowledge about the Jewish Rabbinic religion is the general unfamiliarity with its religious law referred to as the *Halacha*. People are usually somewhat more familiar with the Islamic Shariah law because of pieces of news they see on television about women being stoned to death for adultery or people having their hands cut off for stealing, and the like, in countries where the Shariah stands as the law of the land. However, when it comes to the Halacha, many do not even know what the word stands for, and they assume that the phrase the *law (of Moses)* refers to the Ten Commandments or the Pentateuch but would never associate it with the Talmud. People who are horrified by what they (think they) know or hear about Shariah ignore that the Halacha could provoke similar horror were they to know some of its details. This article does not mean to horrify anyone, obviously, but to give a glimpse into some details of the Jewish religion and moral law so as to make the paper’s main subject more understandable for those unfamiliar with Rabbinic Judaism.

⁷ The *Bar Kochba Rebellion*, called in Latin *Expeditio Judaica* ‘Jewish Expedition’, also referred to as the Third Jewish–Roman War, takes its name from its leader Simon Bar-Kochba. This revolt occurred between 132 and 136, and it was harshly punished by the Roman authorities, who were trying to end Jewish nationalism in the rebaptised province of Syria, *Palaestina*. As a consequence of this Jewish uprising, by a decree of Emperor Hadrian (r. 117–138), the Jews were barred from entering the city of *Aelia Capitolina*, formerly known as Jerusalem, and the practice of Judaism was outlawed. According to some testimonies, the Temple to *Iuppiter Capitolium*, whose location is still disputed, might have been placed on the temple mountain, representing the ultimate offence to the Jewish religion; see Eshel (1984) and Mor (2016). The *Bar Kochba Rebellion* and the writing of the *Mishnah* are usually considered the two foundational events of Rabbinic Judaism.

⁸ Passages and other extracts from the Greek New Testament are taken from the 28th edition of the *Novum Testamentum Graece* edited by Nestle-Aland, and passages from the Hebrew Old Testament are taken from the *Biblia Hebraica Stuttgartensia*.

measurements. Even though a *limitation to walking* on the Sabbath can be found in the Torah (Ex. 16:29), the actual distance of 2000 cubits is prescribed in the Mishnah.⁹

Another example can be found in Mt 15:2/Mk 7:2 when the Pharisees rebuke Jesus because his disciples οὐ γὰρ νίπτονται τὰς χεῖρας αὐτῶν ὅταν ἄρτον ἐσθίωσιν ‘do not wash their hand when eating bread’ according to τὴν παράδοσιν τῶν πρεσβυτέρων ‘the tradition of the Elders’. This particular piece of *tradition of the elders* refers to the מִצְוַת נְתִילַת יָדַי *nəṭīlat yādīm* ‘washing of hands’ before eating bread. In the Old Testament, this mitzvah refers mainly to priests at their sacrificial activities in the Tabernacle (Lev. 15:11, Ex. 30:17-20) or the Temple (1 Kings 7:38); it is the Mishnah (cf. *b.Berachot* 53b),¹⁰ or, in the time of Jesus, the *oral Torah*, which extends this practice and makes it compulsory for all Jews.¹¹

The name *Mishnah* derives from the verbal root שנה *śnh*, meaning *to repeat*, and its original meaning *repetition*, most probably meaning to say *study by repetition*, suggests that the Mishnah was initially conceived as a studying tool, probably to be memorised by the students. However, instead of just a study tool, it became a primary authoritative textual source for Rabbinic Judaism. Consequently, for the next few centuries, the Mishnah was commented on by rabbis from both Palestine and Babylon. These commentaries were eventually put down in writing as well and collected in what came to be known as the *Gemara* (גְּמָרָא *gəməārā* ‘study’). While the Mishnah was written mainly in Hebrew, with a few parts in Aramaic, the *Gemara*, in turn, was written in Aramaic.¹² The Mishnah and the *Gemara* were then brought together in the Talmud (תַּלְמוּד *talmūd* ‘instruction’), which is the central text of Rabbinic Judaism and consequently a major, if not *the* major, source of the Halacha.¹³

The *Halachic legal process* has in common with Common Law the *principle of legal precedent* inasmuch as the rabbinic jurisprudence tends to take previous decisions on particular cases and rabbinic commentaries on them to establish new principles and rules. This means that, even though the basis of the Halacha is God’s Law as it was initially given to Moses and crystalised in the Torah and the Mishnah,

⁹ The Acts’ reference to the Sabbath’s day distance limit shows the author’s or authors’ universe of Hebraic references which included the oral law before it had been put into writing in the Mishnah. The Mishnah says that the origin of the Sabbath limit is Ex. 16:29 הַיּוֹם הַשְּׁבִיעִי אִישׁ תַּחֲתֵּי אֶלְיָצָא אִישׁ מִמְקוֹמוֹ בַּיּוֹם הַשְּׁבִיעִי ‘each of you stay where you are; do not leave your place on the seventh day’. This Exodus passage refers to a command given to the Israelites when they were instructed on how to collect the manna. The Talmud itself questions the actual number of 2000 cubits. The *Gemara* to *Eruvin* 51a,7 asks:

הֲנִי אֵלֶּפִים אָמַרְתָּ הֵיכָן כְּתִיב ‘These two thousand cubits, where are they written?’ The same *Gemara* answers by quoting the passage of Ex. 16:29. What follows then is a rather illogical attempt to demonstrate how the 2000 cubits are calculated from what Ex. 16:29 says. There are many instances in the Mishnah (e.g. *b.Eruvin* 56b) concerned with *how to measure* the 2000 cubits so that no one would break the *techum haShabbath*.

¹⁰ Since not everyone may be familiar with the conventions for quoting the Talmud, I will refer to the tractates in full for the first time and use the usual abbreviation system in subsequent quotations. Passages from the Talmud are taken from the Schorr and Malinowitz (1999) edition.

¹¹ The Talmud in the *Gemara* to *Sotah* 4b,4 will go as far as to consider that

כָּל הָאוֹכֵל לֶחֶם בְּלֹא נְטִילַת יָדַיִם כְּאִילוּ בָּא עַל אִשָּׁה זוֹנָה

‘anyone who eats bread without washing his hands is as if he had engaged in sexual intercourse with a prostitute’.

¹² See Strack and Stemberger (1996, 124-138; 149-161).

¹³ There are two main Talmudic traditions, the *Babylonian Talmud* (תַּלְמוּד בְּבִלְי *talmūd bāblī*) and the *Palestinian or Jerusalem Talmud* (תַּלְמוּד יְרוּשָׁלַיִם *talmūd yerūšalmī*). By the term Talmud alone, we usually refer to the Babylonian Talmud, which is considered the default text, even if the Palestinian Talmud represents an earlier compilation; for their origin and development and differences, see Strack and Stemberger (1996, 164-224). For an introduction to the Talmud, see also Mielziner (1894), especially pp. 4-16, 56-62, 61-71, and 103-7). Mielziner (1894) is somewhat old but very comprehensive as an introduction; a more recent and quite comprehensive introduction is Strack and Stemberger (1996), which also explains the origins of the Midrash.

other sources for the Halacha have appeared over the centuries despite the lack of an officially recognised central authority within Judaism.¹⁴

One such source is the *Mishneh Torah* (משנה תורה *mišnēh tōrā* ‘Repetition of the Torah’), sometimes also called *Sefer Yad haHazakah* (ספר יד החזקה *sēpher yad hāḥāzāqā* ‘Book of the Strong Hand’), a code of Rabbinic Jewish law compiled by Maimonides in the 12th century. One of the key aspects of this book is that it details which mitzvot are no longer considered compulsory due to the destruction of the Jerusalem Temple. Another one is the *Shulchan Aruch* (שולחן ערוך *šulḥān ‘ārūḳ* ‘Set Table’) from the 16th century, compiled in Palestine by Joseph Karo in 1563 and published in Venice two years later. Maimonides’ *Mishneh Torah* and Karo’s *Shulchan Aruch* are to this day two of the most important codes of Jewish religious Law and sources of the Halacha.¹⁵

3. THE APPLICATION OF HALACHA AND MODERN JUDAISM

The publication of works such as Maimonides’ *Mishneh Torah* and Joseph Karo’s *Shulchan Aruch*, amongst other post-Mishnah sources of Halacha, respond to the problem of interpreting and adapting the original Mishnaic mitzvot to different times, different geographical surroundings and different social realities than those of the Jerusalem of the Second Temple when the *oral law* at the basis of the Talmud was first composed.

With the destruction of the second Temple in the year 70 AD and the subsequent outlawing of Judaism in *Aelia Capitolina*, the new Roman city which replaced the old Jerusalem, Judaism lost two of its most important binding core elements, the *sacred* city of Jerusalem and its Temple, the only official place for worshipping the Jewish deity. One of the consequences of the historical, political and theological process of creating a monotheistic national religion totally centred in Jerusalem was that the Temple came to be felt as the actual *dwelling place* of God, and Jerusalem was the sole headquarters of the Judaic religion. As such, this tight centrality had the power to bring and bind together the different religious tendencies, helping thus to warrant a united and cohesive religious system despite the existence of different sects within Judaism, namely the Pharisees, the Sadducees, the Essenes, the Zealots, and to

¹⁴ For a history of the Halacha and its sources, see Elon (2003).

¹⁵ Since 1574, most editions, and from 1578 onwards, all editions of Karo’s *Shulchan Aruch* were printed with the notes or glosses of Moses Isserles included in its text. Moses Isserles (משה בן-ישׂרל איסרל׳ס *mōšeh ben-yiśrā’ēl ‘isserlēs*, 1530-1572) was a Polish Ashkenazic rabbi who wrote the *Hamapah* (המפה *hammāpā*) meaning *The Tablecloth* which serves as a series of glosses to Karo’s *Shulchan Aruch* ‘Set Table’ discussing the differences between the Sephardi and the Ashkenazi traditions and how these may influence the understanding and application of the Halacha.

some extent even the early Christians.¹⁶ Despite their differences, these groups did not threaten the unity of Judaism.¹⁷

The destruction of the Temple, on the one hand, and the subsequent loss of their homeland and the new diaspora, on the other, could have led to the loss of the religious cohesion and unity which Judaism enjoyed during the Second Temple period were it not for the emergence of *Rabbinic Judaism* which was to a great extent the heir of Pharisaic Judaism—the Pharisees being the only sect to survive the expulsion from Jerusalem.¹⁸ The new Jewish diaspora that followed took this new brand of Judaism as far as the Iberian Peninsula to the West and Upper Saxony to the North.¹⁹ Over the following centuries, the various Jewish communities spread around the Mediterranean and incorporated some of the idiosyncrasies of the places where they were stationed, such as the local languages. This gave rise to

¹⁶ Acts 4:6-18 shows that the High Priest and the Sanhedrim had, or thought they had, jurisdiction over the Christians. This suggests that the early Christians were seen by the Jews as another group or sect, often referred to as the Nazarenes.

The Samaritans are a group that needs special attention and, therefore, are not included in this list. Their origins are somewhat obscure; they are possible descendants of the inhabitants of the Northern Kingdom, referred to in the Jewish Bible as Israel, who moved into the Southern Kingdom of Judah after the Assyrian conquest of the Northern Kingdom. After the end of the so-called Babylon Captivity, when the Temple was (re-)constructed in Jerusalem, they built their own temple in Mount Gerizim. They both set themselves apart and were set apart from the rest of the Jews. To this day, the remaining small Samaritan community still considers themselves a separate group. They are not part of Rabbinic Judaism and consider themselves the true descendants and heirs of the ancient Judaic religion. Rabbinic Jews, in turn, do not accept that the Samaritans are Jewish at all. Moreover, in order for the Samaritans to be considered Jews, the minor Talmudic Tractate *Kutim* (2:8) calls them to renounce their Temple in Mount Gerizim and their belief in the resurrection of the dead. The Samaritans are the only ones to keep the ritual of the sacrifice of the Passover lamb at the Pesach festival, among other Second Temple traditions that Rabbinic Judaism has lost; see Anderson (2002).

¹⁷ Their differences could indeed be significant; see Acts 23:5-9, where Paul explores, to his advantage, the difference of opinion between the Sadducees and the Pharisees concerning the resurrection of the dead.

¹⁸ For Ratzinger (2018, 164), Rabbinic Judaism and Christianity are ‘the two responses in history to the destruction of the temple and the new radical exile of Israel’.

The triumph, so to speak, of the Pharisees over the other groups was a process which was far from peaceful. It is difficult to say why they “win” in the end, but the centrality of Phariseism amongst the Jews, as portrayed in the Gospels, suggests that they were one of the most important sects.

¹⁹ The Iberian Peninsula became known amongst the Jews as *Sepharad*, from the Hebrew סְפָרַד *səphārad*. This word appears in Obadiah 1:20, most likely referring to the city of Sardis in Lydia, which would have sounded something like *sphard* in Lydian. As it came to refer to the Iberian Peninsula, the Jews from this area became known as *Sephardim* or *Sephardi Jews*. The North-Central Europe area, modern-day Germany, was called Ashkenaz, from where the *Ashkenazim* or *Ashkenazi Jews* take their name. In Scripture, Ashkenaz (אֲשְׁכְנַז *’aškənāz*) refers to a grandson of Noah (Gn 10:3). The origin of the word is probably Assyrian where it referred to a land or kingdom in the region of Armenia. The spurious association with Germany is probably due to a previous association made by the Talmud (cf. *b.Y.10*) of the name Ashkenaz with the Jews from Persia who, having moved there, brought the name along with them.

particular communities or groups, some of which still exist today.²⁰ However, these groups do not

²⁰ The best-known Jewish communities are, by far, the *Sephardi* and the *Ashkenazi Jews*. The Sephardi, originally from the Iberian Peninsula, were expelled from Spain (1492) and Portugal (1496) and dispersed themselves throughout the Eastern Mediterranean and the Middle East, North Africa, the Low Countries and the New World (mainly South America). The Ashkenazi might have entered Europe through the south of Italy and went north into North Central Europe (modern-day Germany), where they acquired their trademark language, *Yiddish*, a dialect of Middle High German. From there, they went East and settled in the Eastern parts of the Holy Roman Empire and the Western parts of the Russian Empire, from where they picked up their current DNA profile. From there they moved to North America, Australia and Palestine, modern-day Israel. A third important group is the Mizrahi Jews. These are Jews who lived in the Middle East and spoke mainly Arabic or Aramaic. The Mizhari Jews were re-absorbed, so to speak, into the Sephardi Jews when, after the expulsion of the Sephardi from Spain and Portugal, they were welcomed into the Ottoman Empire mainly because of their wealth and business connections. As the Sephardi re-settled in the Middle East, they merged to a great extent with the local Mizhari Jews. Today, the Mizhari Jews are almost indistinguishable from the Sephardi living in Israel as some of their customs, such as their liturgies, are essentially the same.

Apart from these, another well-known group is the Teimanim or Yemenite Jews, for their colourful and cheerful Middle Eastern culture. Many other groups exist, such as the Romaniotes, non-Sephardi Greek-speaking Jews from the Eastern Mediterranean area, Rabbanites from Egypt, the Italkim Jews from Italy, the Bukharan Jews from Tajikistan, Uzbekistan and Northern Persia, the Kavkazi or Gorsky Jews from the eastern and northern Caucasus, mainly Azerbaijan, among many other groups, some even from China, such as the Kaifeng Jews (開封猶太族 *kāifēng yóutàizú*) who were stationed in the Henan province since the days of the Song Dynasty. They no longer exist; see Leslie (1984) and White (1966). All these groups are characterised by how they incorporated the local culture, the vernacular language they speak and the rite they use; for a study on the current state of the Jewish diaspora, see Della Pergola (2005).

Two groups deserve a special mention. The first is the so-called *Beta Israel* (ቤተ ክርስቲያን *beta ʾəsrāʾel*), or *House of Israel Jews* from Ethiopia, known for being the only black race Jews, a fact which brought them some pain once many of them were transferred to Israel between 1963 and 1975. Initially, there were great doubts about whether they were, in fact, Jews or not until the Rabbinic Courts gave their *yes* in the late 1970s. Their origins are covered in mystery and even myth. According to their own traditions, they descend from a portion of the Tribe of Dan, which, instead of heading towards Palestine, was led to Ethiopia by a son of Moses. Another tradition that they share with the Christians of Ethiopia states that they descend from the Jews who came from Israel with the Queen of Sheba and a son that she had had with King Solomon. This son of King Solomon would become Ethiopia's first Emperor Menelik I. However, the origins of this community lie most likely in the migration of Jews around the Middle East and the Arabian Peninsula, which followed the destruction of the Temple in 70 AD and the expulsion from Jerusalem after the Bar Kochba Rebellion; see Abbink (1990). The Beta Israel Jews are *Haymanot* Jews. Haymanot (ሃይማኖት *hāymānot*) is a Classical Ethiopian term which means *faith*, and religiously, the Haymanot do not accept the authority of the Talmud. As such, they, like the Karaite Jews, are not followers of Rabbinic Judaism and given their obscure origins and historical seclusion, theirs is a very sui generis brand of Judaism. See Flad (1869) for an account of the Ethiopian Jews in situ before moving to Israel; see also Corinaldi (1998). (In the bibliography, the Ethiopian Jews are often called *Falasha* or *Falas*, meaning *wanderers*.)

The other group deserving a special mention are the Karaite Jews. They, too, do not belong to Rabbinic Judaism as they do not recognise the authority of the Talmud. Instead, like the Jews of the Second Temple, they recognise only the Torah as *the law*. They are dispersed mainly throughout the Eastern part of the Mediterranean, the Middle East and the Turkestan region of West-Central Asia. Given their rejection of the Mishnah and subsequent Halachic texts, the Karaites consider themselves to be the true descendants of the Second Temple Jews, mainly from the Sadducee sect. However, it is more likely that initially, the Karaites, too, were part of what came to be known as Rabbinic Judaism but later abandoned it.

Anan Ben David (אַנַן בֶּן-דָּוִד *ʾānān ben-dāviḏ*, died ca. 795) is often considered to be one of the founders of the Karaite Jews. After losing the leadership of the local Jewish community of Bagdad to his brother in a dispute, he and his followers broke away from the local community. He became the founder of Ananism, a doctrine which, although different in many aspects from the Jewish doctrine professed by the Karaite Jews, also rejects the authority of the oral law. Around the year 700, Anan published his *Book of the Precepts* (סֵפֶר הַמִּצְוֹת *sēpher hammišvōt*), where he defended and professed many of the anti-rabbinic ideas that were floating around at the time. Among the beliefs of Ananism is *metempsychosis*, commonly referred to as reincarnation, a belief alien to the Karaite Jews (but present in the Kabbalah).

Ananism and Karaitism are probably just two groups, among others, that might have existed at the time and disagreed with the mainstream path Judaism was taking. As Rabbinic Judaism was evolving, it was only natural that counter-movements would have developed. The Ananites were not the only anti-rabbinic group around. The fact that those who accepted the authority of the Talmud in those regions began to be known as Rabbinites suggests that the division went beyond just this small group of eccentric Jews. As the outstanding element of Rabbinic Judaism was the Talmud and the idea that the oral law was as authoritative as the Torah, the most efficacious form of resisting Rabbinism was

represent different denominations or sects within Judaism. They are usually referred to as *edot*²¹ or *regional communities* or *ethnic groups*, though the former is preferred as the latter interferes with the concept of *Jews being one people*. These various regional communities are distinguished by their different *minhags* or customs. A *minhag*²² is a *tradition* or *local custom* which the Halacha does not prescribe as of universal observance but is part of the local traditions adopted, and sometimes adapted, by the different Jewish communities in the regions where they settled. An example of a local minhag would be when members of some Jewish communities in Persia hit each other with green onions during the Pesach festivities. These local communities, especially in Europe, were closed communities with restricted civil rights and were *sui iuris* in their internal structure. Usually, their members were outside the scope of the law of the land and were instead under the jurisdiction of their own Rabbinic laws and tribunals. These Rabbinic tribunals were recognised by the local civil and religious authorities in a quasi-official way so as to keep the Jewish community set apart from the remainder of the population.

These various regional sub-ethnic groups did not threaten the religious unity of Rabbinic Judaism. As Jews did not enjoy the freedoms of other religious groups, the preservation and upkeep of Judaism's integrity was the only way to survive in an often hostile environment. Thus, Judaism was able to survive intact up until the late 1700s when the Jews started to experience their own versions of the Enlightenment and the French Revolution with the so-called *Jewish Enlightenment* movement (ca. 1770s

21 From Heb. עֲדוֹת 'ăḏōt, pl. of עֵדָה 'ēḏā 'community, congregation'. The transliterated form edot reflects Ashkenazi pronunciation.

22 From Heb. sg. מִנְהַג minhāg, pl. Cl. Heb. מִנְהַגוֹת minhāgōt, Mod-Heb. מִנְהַגִּים minhāgīm; traditionally Heb. minhāgōt is translated by Lat. mores (cf. Ar. مَنَاج minhaj 'custom, tradition')

- 1880s)²³ and the *Jewish Emancipation* process (1791-1871).²⁴ These led to the secularisation and subsequent reform of part of the Jewish populations of Germany, East Europe and Russia. As forms of more liberal Judaism developed, so did forms of more conservative Judaism and the secularisation of Judaism, on the one hand, and the extra-conservative reaction it caused, on the other, ultimately led to the current situation where three types of Rabbinic Judaism are recognisable, namely Orthodox, Conservative and Liberal Judaism.

The Halacha plays a pivotal role in the distinction between these three categories of modern Rabbinic Judaism. Judaism has no creed or set of precepts to which Jews must adhere. Judaism is not about *believing* but about *keeping the mitzvot* prescribed by the Halacha, and one's attitude towards the Halacha determines to which of the groups above one belongs.

Thus, for the Orthodox Jews, the mitzvot of the Halacha are to be followed to the letter; that is to say, they are *all* compulsory and to be followed *exactly* as prescribed. People can be shunned from their families or their orthodox communities for things such as performing a forbidden action on the Sabbath, such as driving a car, holding hands with someone one is not married to, sending one's children to non-religious schools, etc.

²³ The *Jewish Enlightenment* refers to a social-cultural progressive, and yet revolutionary, movement in Europe between the 1770s and 1882. It is usually referred to by the Hebrew term *Haskalah* (השכלה *haškālā* 'wisdom, erudition'), which was adopted by some revolutionary Jews to describe this movement. The term was taken from the motto of the Ukrainian newspaper *Ha-Melitz*. The Haskalah culminated in, and it was followed by the *Jewish Nationalist Movement*, which started with the publication of the pamphlet *Selbstemanzipation* by the activist Leo Pinsker.

The Haskalah was an intellectual movement within Central and Eastern European Jewish communities often described as the Jewish equivalent of the European Enlightenment. Some within the movement wanted to keep some of the traditional elements of Judaic culture. In contrast, others of a more radical persuasion wanted the complete acculturation of the Jews into the secular societies where they lived.

In language terms, it marks the end of what is usually called the *Medieval period of the Hebrew Language*, where Mishnaic and Talmudic Hebrew prevailed and were used exclusively for religious purposes. Authors connected with the Haskalah movement clearly preferred Biblical Hebrew, which they saw as a purer form of the language. However, they did not consider Biblical Hebrew only as *לשון הקודש* *lešōn haqqōdeš* 'sacred language' but also as a means to communicate contents other than religious or philosophical. In 1819, Joseph Perl published *מגלה תמיין* *məḡalleh tamīrīn*, which literally means *Tamrin reveals* but whose official title in English is 'Revealer of Secrets', the first ever novel in Hebrew and Isaac Erter (1792–1841) used the Hebrew language in his work *חשופה לבית ישראל* *ḥaššophēh ləbēt yiśrā'ēl* to attack Hasidic superstitions and prejudices. The Haskalah pursued the promotion of liberalism, freedom of thought, and the adoption of modern values by the Jews. As such, it was critical of traditional Rabbinic Judaism and came into conflict with the more traditional forces of religious Judaism. The reformers challenged the Elders of the communities, the Rabbinic tribunals, and asked for Jews to give up their traditional clothing and adopt modern local attire, among many other things which for many were scandalous. They were very critical of shunning members of the community for not following the religious authorities, and they were particularly harsh in their criticism of child marriage as prescribed by the Halacha and very common within the closed and, to a great extent, self-governing Jewish communities of the time. They also considered that the Talmud should not be read by children and that the Midrash was a source of superstition.

Zionism, Jewish nationalism, and Jewish socialism, whose final objective became the resurrection of a Jewish state in Palestine, have their deepest roots in the Jewish Enlightenment movement. For an overview of the Haskalah, see Rasplus (2006) and Schumacher-Brunhes (2012), and for the conflict with Hasidism, see Wodzinski (2009).

²⁴ The Jewish emancipation process refers to the gradual elimination of the civil restrictions the Jews were under in many European countries. An important landmark in this process was the publication of the *Über die bürgerliche Emancipation der Juden* by Christian Wilhelm Dohm in 1781, who called for the extension of all civil rights to Jews (Stollberg-Rilinger 2006, 268). The French Revolution also played a pivotal part in the emancipation of the European Jews. The process was gradual and took place in different parts of Europe at different times, e.g. France in 1791 in the aftermath of the French Revolution, Westphalia in 1808, Prussia in 1812, Bavaria in 1813, Belgium in 1830, Greece in 1830, Quebec in 1832, Netherlands in 1834, Hanover in 1842, Denmark in 1849, Norway in 1851, Switzerland in 1856, United Kingdom in 1858, Mexico in 1865, Austria in 1867 and the newly formed German Empire in 1871, the year of its foundation.

Reformed or liberal Judaism, sometimes also called secular Judaism, is on the opposite end of the scale. For Liberal Jews, the mitzvot of the Halacha are not binding; on the contrary, they are perceived as optional and adaptable. Liberal Jews who practice their religion usually refer to themselves as belonging to *Reformed Judaism*. Reformed Jews can go so far as to give presents on Christmas, bless same-sex unions, have transsexual Rabbis, etc. On the other hand, some do not practice their religion at all, except perhaps for the occasional family function; those are referred to as *secular Jews*.

Standing midway between the orthodox and the liberal is Conservative Judaism. Conservative Jews consider that, although the mitzvot of the Halacha are to be observed and, therefore, binding for Jews, they can be adapted to the modern world according to the needs and the social environment of each Jewish community. Conservative Judaism can be quite flexible; some conservative communities have women Rabbis, and some will even accept committed homosexual unions.

It is *how binding* and *how to the letter* the precepts of the Halacha must be followed that differentiates between Orthodox, Conservative, and Reformed Judaism. The gap between them can be such that the only thing holding them together around the concept of *Judaism* seems to be *circumcision*.²⁵

These three streams of Judaism are best represented in the US. Following the emancipation process, between the second half of the 19th century and the first quarter of the 20th century, there were various waves of Ashkenazi migration from Germany, East Europe, and Russia to North America. The first waves in the 19th century (ca. 1840s-1860s) were mostly made of secularised Ashkenazi Jews from Germany. This was followed by new waves of Ashkenazi Jews from East Europe and Russia. It is mainly from these Eastern Jewish communities that the Orthodox communities draw their members in North America.

The problem of interpreting and applying such an ancient moral code as the Halacha and the possibility of adapting either the whole of it or some of its parts to our modern way of life is what is at the heart of these divisions. So, just as Maimonides and others have in the past attempted to come up with answers to such problems, nowadays, too, different organisations were created to shed light on what is expected of one as a Jew and how to act accordingly in the modern world.

One of such organisations is the *Committee on Jewish Law and Standards*²⁶ (CJLS) which was founded in 1927 within the *Rabbinical Assembly*, the latter founded in 1901 by members of the *Jewish Theological Seminary of America*, to be the central body for interpreting Halacha and Jewish customs and traditions within the conservative scope of Judaism. The *Rabbinical Assembly* aims to be the highest institution for Conservative Judaism worldwide (in Israel, it is called *the Rabbinical Assembly of Israel*).

²⁵ It is not secure, though, that all secular Jews practice circumcision as a religious ritual since, in the US, most children are circumcised anyway for health and hygiene reasons independently of their religious background – even Christian children are usually circumcised if they are born in a hospital.

²⁶ See <https://www.rabbinicalassembly.org/jewish-law/committee-jewish-law-and-standards>

The Jewish Theological Seminary of America (JTS) was founded in 1886 by Sephardi rabbis to form American rabbis and became an essential hub for conservative Judaism in America. Initially, the JTS was a breakaway institution from the UAHC because the latter was felt to be too liberal.

The *Union of American Hebrew Congregations* (UAHC)²⁷ was founded in 1873 to represent Jews in the US. Today, it is the organisation in charge of reformed Judaism in North America. It affiliates over 800 congregations, and it represents between one-third and half of the Jews in the US. In 2003, it changed its name to *Union for Reform Judaism* (URJ).

The *United Synagogue of Conservative Judaism* (USCJ)²⁸ prior to 1991, known as the *United Synagogue of America* (USA), was founded in 1913 by the members of the JTS for Conservative Judaism. According to its last financial statement, it counted over 500 affiliated congregations, mainly in North America but also in Israel, where the USCJ takes the name of *Conservative Yeshiva in Jerusalem*.²⁹

Part of the Orthodox Jewish community in the US is represented by the *Orthodox Union* (OU), founded in 1898.³⁰ In its beginnings, the OU cooperated closely with the JTS against the hegemony of liberal Judaism represented by the UAHC. The founder of OU was a JTS alumnus.

Some of these organisations, such as the *Jewish Theological Seminary of America*, go back to the eighteen-hundreds when liberalism and secularism started to shake the roots of traditional Judaism. Although initially defenders of moderate forms of Judaism, the turn of events in Europe in the first half of the 20th century, along with how *liberalism became just too liberal*, turned some of these organisations into the staunch defenders of more conservative forms of Judaism they are today.³¹

Often these institutions, such as the Rabbinical Assembly, publish *responsa*,³² that is, Halachic answers to questions related to modern life. A somewhat interesting movie about problems surrounding Judaism in America a few years ago, namely ‘The Believer’ (2001),³³ begins with one of such questions, namely whether *one could unwrap a chocolate bar on the Sabbath*. Questions such as these might seem very trivial for many outside orthodox Judaism. However, they reflect problems which many Jews from that stream of Judaism come across in their daily life and for which the Halacha needs to be

²⁷ See <https://urj.org/>

²⁸ See <http://www.uscj.org/>

²⁹ See <http://www.conservativeyeshiva.org/>

³⁰ See <https://www.ou.org/>. The remainder of the Orthodox Jews, referred to as *Haredi* or Ultra-Orthodox, are represented by two other organisations, namely the *Agudah Israel of America* (<https://agudah.org/>), founded in 1922 to represent the non-Hassidic Haredi Jews and the *Chabad-Lubavitch* (<https://www.chabad.org/>) which claims to have been founded in 1775 in Liozna, in modern-day Belarus, to represent Hassidic Haredi Jews. These organisations are heavy supporters of Zionism, and they collect money to send to Israel for the creation and upkeep of illegal Jewish settlements in the occupied territories of Palestine.

³¹ There are more recent forms of progressive Judaism. Reconstructionist Judaism, founded in 1955 by Mordechai Kaplan, is ideologically a very liberal movement but quite conservative in its practices (see <https://www.reconstructingjudaism.org/>). The Alliance for Jewish Renewal was founded in 1985 to reinvigorate Hasidic traditions using music, dance, meditation, etc.; members are often described as hippie Jews (see <https://aleph.org/>).

³² The habit of asking halachic questions and getting Rabbinic answers goes back to the 3rd century AD, to the very beginnings of the Halacha. This tradition is referred to as *teshuvot* ‘responsa’ from the phrase שאלות ותשובות *šālōt ūtšūvōt* ‘questions and answers’.

³³ <https://www.imdb.com/title/tt0247199/>

(re)interpreted to find the right answer, the answer which gives the faithful the security of not breaking any mitzvah.

To this day, the question concerning the relation between religious law and civil law is problematic in the state of Israel, which, though a modern state, wants to affirm its Judaic roots, and consequently, it cannot set aside the Halacha as something pertaining to the realm of religion alone. In modern-day Israel, certain aspects of family life and customs come under the rabbinic courts' legal jurisdiction, which take the Halacha as their code of law. This situation can cause problems not only because different Jewish communities within the Israeli state, such as the Sephardi, Ashkenazi, Yemenite or Mizrahi, among others, have and follow different traditions and customs, which will have implications on their particular interpretation and application of Jewish law but also because there is no alternative secular or non-religious means to deal with these questions. Consequently, the Jews who are, if not altogether atheists, at least non-conformists, like the *Hiloni*,³⁴ often struggle to assert some aspects of their citizenship rights. For instance, in Israel, there is no civil marriage for Jews. So if a *modern* couple wants to get married without the father of the bride answering for her during the ceremony and signing a marriage contract with the groom on her behalf, they have to marry abroad, which many do in Cyprus where on account of this, the marriage of Israelis constitutes a profitable form of business.

On the English version of the Rabbinical Courts' page on the government website, it states: '*the Rabbinical Courts are part of the Israeli judiciary and mainly handle issues relating to divorce, property, visitation rights of children, wills and inheritances, approval of Jewish status and conversion. There are 12 regional rabbinical courts across the country, with the Great Court in Jerusalem acting as an appellate court. The President of the Great Rabbinical Court heads the rabbinical court system and serves as chief rabbi of Israel.*'³⁵

This whole situation derives partly from that old conundrum of *what it means to be a Jew*. Traditionally, this question is referred to in Hebrew as מִי הוּא יְהוּדִי *mīhū yəhūdī* whose translation as either *who is a Jew?* or *who is Jewish?* already says something about the problem.³⁶ Although this very complex question is outside this paper's scope (and the space), it is paramount to the relationship between individual Jews, the Jewish religion, and the Halacha. To put things in simple terms, *to be a Jew* is not seen by Jews as a question of religion alone but as a complex question of an ethnic-cultural tradition which expresses itself through a religion or, perhaps better, through a religious tradition. So, Jews who are secular or who do not even believe in God are still expected to follow Jewish religious traditions not

³⁴ Jews in Israel are organised roughly thus: Around half of the population of the modern state of Israel are the *Hiloni*, that is, secular Jews, many of whom do not practice religion; roughly a quarter of the population are the *Masorti*, which are traditional Jews who are only partly observant. The remaining quarter of the population comprises the *Dati*, who are observant or orthodox Jews, and the *Haredi*, who are usually described as ultra-Orthodox.

³⁵ https://www.gov.il/he/departments/the_rabbinical_courts/govil-landing-page. The *Rabbinical Courts* are not to be confused with the traditional *Rabbinical Court of Judaism* or *Beth Din* (בֵּית דִּין *bēt dīn* 'house of judgment'), which takes care of religious problems, such as interpretation of Jewish Law, in the various Jewish communities. The *Rabbinical Courts* at stake here are part of the State of Israel legal system.

³⁶ The question of who is a Jew is not only a question of identification but often a question of self-identification; an interesting article about this is '*How Do You Prove You're a Jew?*' by Gershom Gorenberg – in the New York Times Magazine (March 2, 2008)

<https://www.nytimes.com/2008/03/02/magazine/02jewishness-t.html>

because of any belief but solely because they are Jews. It is not entirely clear how practising Jews look at non-practising Jews, but on account of the ethnic element, they do not see them as non-Jews. This raises the question of when *individual action* is a question of tradition or when it is a question of moral obligation and which of the two is religiously motivated, if either one actually is, within Rabbinic Judaism.

Dorff (1977, 193), in a book about conservative Judaism, states: '*Judaism historically has centered on action rather than faith, and Conservative Judaism does so likewise (...) while matters of belief are discussed thoroughly within the classical Jewish sources, and while we could probably even describe a mainstream Jewish position on many issues, Judaism has largely left it to the individual to decide the particular form of belief which he will adopt, as long as he continues to observe the Jewish law. Under pressure from Christians and Moslems, there were some attempts to define a set of Jewish dogmas during the Middle Ages, but no such formulation ever became authoritative- a clear indication of how deeply freedom of thought is engrained in Judaism.*'

Written from a conservative outlook, this text spells out that tradition, that is, *practice*, is more important than *belief*. According to this view, to *observe Jewish law* is totally independent of any personal or individual belief. In theory, one could believe in nothing but still be a Jew or Jewish, perhaps even an ultra-orthodox Jew, as long as one observed Jewish religious law in the *correct* fashion. From a different angle, it also means that one practises for being a Jew or because one wants to affirm oneself as a Jew and not because the practice has any particular moral or eschatological value.

This is very different from what is found in other religions, where it is *belief* or *faith* which prompts one to follow a religious code. In Christianity, for instance, being Christian means to be baptised and to practice one's religion with its traditions. However, practice, which will ultimately lead to *Salvation* as its eschatological reward, implies belief, on the one hand, and moral motivation, on the other. In Christianity, in Islam, as well as in other religions, practice without belief makes no sense; one only observes one's religion's precepts because one is impelled by one's belief and perhaps too by one's fear of the consequences of not complying (but even this fear implies that one believes). For Jews, however, the practice of the Judaic precepts serves no other purpose than that of affirming one's own Jewish identity, no other profit, spiritual or moral, deriving from it. Also, in Judaism, there is no punishment, divine or otherwise, for those who do not keep the traditions of Judaism, except for shunning in the (ultra-)orthodox communities.

The question of whether Jews need to believe or not, especially if we took Dorff's words to the last consequences, raises some interesting questions concerning the Halacha, namely *if one does not need to believe, is the Halacha really a religious law at all?*, and, if the obligation to observe it has no other consequences except that of affirming one's Jewishness, *can the Halacha stand as a code of moral conduct? Or is it just a manual of ethnocultural forms with a particular religious expression, a sort of guidebook of Jewish etiquette?*

Even in our modern world, the Halacha continues to be regarded as a religious code of moral law and not just as an ethnic-cultural code for a group of people who identify themselves under the designation of *Jew* or *Jewish* because, first, the Halacha is considered by the Jewish religious establishment to be of direct divine origin which presupposes the existence of a deity, even if some amongst its followers were not to believe in the source of that Revelation (not to mention that non-believing Jews are a relatively recent addition to traditional Judaism). Secondly, the Halacha is not only concerned with particular aspects of the Jewish religious tradition, such as dietary law, rituals, festivals, etc., but also with moral issues of a universal nature, such as questions related to life, death, family, justice, etc. which the Halacha relates directly to God and, to a great extent, to the moral distinction between right and wrong. Moreover, *the need to believe in God* is such basic a tenet that it dispenses being stated; it is presupposed. Many would say that the only tenet of the Judaic faith is what is stated in the *Shema Yisrael* “prayer” which says: ‘Hear, O Israel: the Lord our God, is the only God’ (Dt. 6:4).³⁷ Stemming from this, for the Jewish believer, the practice of Judaism with its traditions is in itself a form of worshipping.

4. THE RATIONALITY OF JEWISH RELIGIOUS LAW?

Whether Judaism recognises a *natural morality* independent from Revelation is a question that stems from the old tension between *Reason* and *Revelation*. In the case of the Halacha, the relation between the two can be seen from two perspectives: the first is to verify if *there is within the Halacha a set of laws which could be recognised as having their origin in Reason alone* and the second, is to see *what role Reason plays or may play in the interpretation and application of divinely revealed laws*. The relation between Reason and Revelation is contentious from the onset, as Reason is often seen as a hindrance, for many even contrary, to Revelation as a source of social and moral norms, and vice versa. In the end, the question is about the very origin of Jewish moral rules and the justification for having such rules.

In view of this problematic rapport, Jewish scholars have tried to make sense of what part, if any, Reason plays in Jewish religious law as either a foundational element or as an interpretative tool trying, thus, to reconcile the essentials of *natural moral law* with divine Revelation.

One such scholar is David Novak, an American Conservative rabbi, Jewish theologian, and expert on Jewish law who has postulated that Jewish ethics derives from both Natural Law and Revelation and has argued that the incompatibility between Natural Law and religious law within the Halacha is merely apparent. As an example of the rational foundations of Jewish law, he calls to mind the dialogue between God and Abraham before the destruction of Sodom and Gomorrah (Gn 18:16-33), part of which is transcribed below:

³⁷ The Haredi Jews usually consider Maimonides’s *thirteen principles* as a basic set of tenets for Judaism. These include the resurrection of the dead (art. 13) and the punishment of transgressors of the law (art. 11). The Karaite Jews also have a set of ten basic tenets, which include the belief in resurrection, which will happen with the arrival of the Messiah (art. 8) and final judgment (art. 10).

GENESIS 18:23-25

וַיָּגֶשׁ אַבְרָהָם וַיֹּאמֶר הֲאֵנִי תִסְפָּה צָדִיק עִם־רָשָׁע: ²³

אוֹלֵי יֵשׁ חַמְשִׁים צָדִיקִים בְּתוֹךְ הָעִיר הֲעִיר תִּסְפָּה ²⁴

וְלֹא־תִשָּׂא לַמָּקוֹם לְמַעַן חַמְשִׁים הַצָּדִיקִים אֲשֶׁר בָּקָרָהּ:

חֲלֹלָה לָךְ מַעֲשֵׂתוֹ בְּדַבָּר הַזֶּה לְהַמִּית צָדִיק עִם־רָשָׁע וְהִנֵּה ²⁵

כַּצָּדִיק כָּרָשָׁע חֲלֹלָה לָךְ הַשֹּׁפֵט כָּל־הָאָרֶץ לֹא יַעֲשֶׂה מִשְׁפָּט:

²³ Then Abraham came near and said, ‘Will you indeed sweep away the

righteous with the wicked? ²⁴ Suppose there are fifty righteous within

the city; will you then sweep away the place and not forgive it for the

fifty righteous who are in it? ²⁵ Far be it from you to do such a thing,

to slay the righteous with the wicked, so that the righteous fare as the

wicked! Far be that from you! Shall not the judge of all the earth do

what is just?’³⁸

David Novak³⁹ argues that this episode is ‘*the most unambiguous example of Natural law-type example position in scripture*’ as Abraham appears to try to hold God accountable to a pre-existing concept of justice by which even God as judge must abide.

On the other side of the scale is Marvin Fox⁴⁰ who considers that the Torah and the Mishna are not universal because they are aimed at the Jewish people alone, to whom they were revealed within the context of their historic relation with God. He further says that since moral law is not demonstrable, Jewish moral law is not independent of its divine Revelation source.

Yet, David Novak is not alone in trying to see the hand of Reason behind the Halacha. Others before him had tried to do the same, although not from the same perspective, as they might not have had a very clear concept of what Natural Law theory stands for. Medieval Halacha scholars who have postulated the rationality of the mitzvot do not speak of a *Natural Law theory* in the sense that it was used in medieval Europe. Instead, they simply try to grasp underlying elements of rationality in the mitzvot. To a certain extent, they seem unsatisfied with the idea that all the law is revealed and, in their attempt to bring the law up to date, that is to say, to make the Halacha applicable to the social reality of their own time, they need the help of Reason to circumvent some of the limitations embedded in the Halacha by its

³⁸ Translations from the Scriptures are taken from the NRSVACE.

³⁹ Novak (1998, 39-41).

⁴⁰ Fox (1990, 199-226).

old age. Some of these scholars left written works that are still pertinent in Jewish jurisprudence today for their law postulates and methodology, which is where the role of rational thinking can be better understood.

One of the first scholars to talk about rationality in the law was Sa'adiah Gaon.⁴¹ Never mentioning *Natural Law*, he distinguishes between two types of mitzvot: *rational*, those whose rational basis can be understood, and *traditional*, referring to rituals and ceremonial rules. When it comes to questions of morals, he adopts a similar attitude, classifying moral precepts as either *rational*, those whose moral motivation can be understood through reason, or *revealed*, those which are imposed by God independently of any rationality, e.g. the dietary prohibitions.

Maimonides⁴² too makes a distinction between two types of mitzvot: the *laws* that are understandable by all and the *statutes* that are understandable only to the learned. The laws refer *grosso modo* to Sa'adiah's rational commandments and the statutes to the revealed commandments. However, for Maimonides, all the mitzvot are rational; *attributing non-rational acts to God would be blasphemous*. If the law is rational, Maimonides concludes that its authority must be absolute and universal.

Though not recognised as a particularly important scholar, Joseph Albo⁴³ deserves a special mention for being the first medieval Jewish scholar to use and explicitly discuss the phrase *Natural Law*. Under the influence of Aquinas, Albo differentiates between three kinds of law, namely *natural*, *conventional* and *divine*, and he distinguishes them on the basis of both *their origin* and *their object*. The following passage registers the first-ever occurrence of the phrase טַבֵּי תִבֵּי תַדֵּי *tāḏ tīb 'iyā* 'Natural Law' in Hebrew.⁴⁴

⁴¹ Sa'adiah Gaon was born in Egypt between 882 and 892 and died in Sura (now in modern-day Iraq), probably in 942. This 10th-century scholar has tried in this work *The Book of Beliefs and Opinions* (סֵפֶר הָאֱמוּנוֹת וְהַדְּבָרִים *sēpher 'ēmōnōt wəḏē'ōt*; كتاب الأمانات والاعتقادات *kitāb al-amānāt wa l-i'tiqādāt*), to adapt into Jewish theology elements of Greek philosophy and to explain the underlying rationality of the mitzvot. See Friedländer (1893).

⁴² The medieval Jewish scholar commonly known as Maimonides was really called Moshe ben Maimon (מֹשֶׁה בֶּן מַיְמוֹן *mošeh bēn maymōn*). He was a medieval Sephardic Jewish philosopher, born in Córdoba, then a city of Al-Andaluz, between 1135 and 1138, and died in Egypt in 1204. Along with Avicenna and Averroes –and Al-Gazali, to some extent– he is one of the non-Christian medieval philosophers known in Europe in the 13th century. Amongst his writings are several works on Medicine. His written production is so vast and important as to have gained him the title of הַגָּדוֹל הַנֶּשֶׁר *hammešer haggādōl* 'The Great Eagle'. Maimonides is still a significant name in Jewish scholarship and Halacha jurisprudence; see Jacobs and Broydé (1906); two recent studies on Maimonides and his works are Davidson (2005). and Halbertal (2013).

⁴³ Joseph Albo (יוֹסֵף אֶלְבֹּי *yōsēph 'albō*) lived in Christian Spain during the fifteenth century. He is best known for his 'The Book of Principles' (סֵפֶר הָיְקָרִים *sēpher hā'ikkārim*), which came to be a classic work on the fundamentals of Judaism. He was born in Monreal del Campo, a town in Aragon, in 1380. We also know that he completed his *Book of Principles* in Soria in 1425, and that he died in Castille in 1444, probably in Soria; see Kohler and Hirsch (1906), Bobichon (2015, 11-25) and Heinemann (2008, 141-148).

⁴⁴ The phrase טַבֵּי תִבֵּי תַדֵּי *tāḏ tīb 'iyā* used for the first time by Albo in his *The Book of Principles* is coined from Aquinas's phrase *lex naturalis*. The word used for *lex* is תַּדֵּי *tāḏ* which is a term used for *law* in Hebrew from the Persian period onwards. As for the adjective *naturalis*, the Hebrew adjective טַבֵּי *tīb* used to translate it is coined from the Arabic adjective طَبِيعِي *ṭabī'iy* 'natural'. A Hebrew word for 'nature' is never mentioned in the Hebrew Bible nor in the Mishnah, and the word טֶבַע *teba* only came to develop the meaning of *nature* when the translator Judah ibn Tibbon (1120–90) started to use it as a translation of the Arabic etymologically related noun طَبِيعَة *ṭabī'a* 'nature'.

THE BOOK OF PRINCIPLES, 1,7.2

והדת על ג' פנים, אם טבעית, ואם נימוסית, ואם אלהית. והטבעית היא שוה בכל אדם ובכל זמן ובכל מקום. והנימוסית היא מה שתסודר מחכם או חכמים לפי המקום ולפי הזמן וכפי טבע המונהגים בה (...). והאלהית היא מה שתסודר מהשם על יד נביא (...) כתורת משה

‘There are three kinds of **law**: **natural**, conventional [i.e. positive], and divine. Natural law is the same among all peoples, at all times, everywhere. Conventional is a law ordered by a wise man or men according to the place and the time and the nature of those who are to be controlled by it (...). Divine law is what is ordered by God through a prophet (...) like the law of Moses.’

Albo describes this *natural law* as something universal because it ‘*is the same among all peoples, at all times, everywhere*’. In contrast, conventional law varies depending on place and time and is promulgated by men, and divine law derives directly from god. Albo’s conventional law is somewhat analogous to Aquinas’s *human law*.

His description of Natural Law is close enough in its main points to the Ciceronian definition. Albo goes as far as to consider Natural Law a by-product of men’s social nature, necessary to maintain social order and justice.

THE BOOK OF PRINCIPLES, 1,5.2

ול להיות הקבוץ וההתחברות מצטרך למין האדם לצורך חיותו והתקיימו, הוא מה שאמרו החכמים **שהאדם מדיני בטבע**, ירצו בזה כי כמעט שהוא הכרחי לאדם מצד טבעו שיהיה דר במדינה עם קבוץ רב מן האנשים כדי שיוכל למצוא המצטרך לו לצורך חיותו והתקיימו. ובעבור זה הוא מבואר שראוי שימצא לכל הקבוץ אשר במדינה או לכלל הקבוץ אשר במחוז אחד או באקלים אחד או לכלל האנשים אשר בכל העולם סדור מה בו יתנהגו לשמור היושר בשלוח ולהסיר העול, כדי שלא יתקוטטו האנשים בהתחברם יחד מתוך העסק והמשא והמתן אשר ביניהם, והסדור הזה יכלול על השמירה מן הרציחה והגנבה והגזל ודומיהן, ובכלל כל מה שישמור הקבוץ המדיני ויתקן אותו אל שיחיו האנשים באופן נאות. והסידור הזה קראוהו החכמים בשם **דת טבעית**, רוצה לומר שהיא מצטרכת אל האדם מצד טבעו, הן שתהיה מסודרת מחכם או מנביא.

‘It is because association and aggregation are necessary for the existence and support of the human species that **the sages said that man is social by nature**. They mean to say that this [association] is almost indispensable for man by his nature to live in a city (state) with a large group of people so that he may be able to obtain what he needs to live and support themselves. It is clear consequently that all groups residing in a city, or a district, or a region, or all men in the entire world must find some order by which they will behave so as to preserve justice in general and to suppress wrongs, so as to keep men from quarrelling in their transactions and business relations with one another. This order would include protection against murder, theft, robbery and the like, and in general, all those measures which are calculated to maintain the political group and enable the people to live in welfare. **This order the wise men call natural law, meaning by natural that it is necessary for man by his nature**, whether set up **by a sage or a prophet.**’

This passage is particularly interesting. Albo might have been aware of Aristotle’s definition of man as a *social being* as his phrase **הָאָדָם מַדְיִנִּי בְטֵבָע** *hā’ādām mādīnī bəṭēḇa* ‘man is social by nature’ echoes Aristotle’s *ὁ ἄνθρωπος φύσει πολιτικὸν ζῷον* ‘man is by nature a social animal’. The adjective **מַדְיִנִּי** *mādīnī*, which he uses to describe man, obviously intends to replicate the meaning of *πολιτικός* in

Ancient Greek⁴⁵ to describe man as *a being which does not live alone because of its own nature* (בְּטֵבָה *bəṭēḇa*).⁴⁶ That same nature demands that men should live in an organised community, that is, a מְדִינָה *məḏīnā* 'city', which here means to correspond to Aristotle's *polis* or State. The need to live together is what lies behind the creation of social and moral rules which are necessary for men to maintain order and manage their own welfare while living together in an organised social structure which Albo describes with the word *məḏīnā*.

The last sentence of this passage, while reaffirming that this law responds to a need imbedded in men's own nature, also says that this law can be provided by either a חָכָם *hākām* 'wise man', presumably someone as Aristotle or Aquinas or a good law-maker, or by a נָבִיא *nābī* 'prophet', someone such as Moses. After having differentiated in §1,7.2 between conventional law, which is *ordered by a wise man* and divine law, which is *ordered by God through a prophet*, by saying that Natural Law הוּא שְׁתִּיחָהּ הַזֶּה *hēn šetihyeh məsūdāraṭ mēhākām 'ō minnābī* 'it may be set up by either a wise man or a prophet', Albo seems to suggest that Natural Law, which derives from man's own nature, could be either discovered by man or revealed by God through a prophet. The logical implication deriving from

⁴⁵ This particular piece of text by Albo is quite remarkable in some of its details. Thomas Aquinas is considered his primary source, but from his use of language, one could believe that he has had some degree of contact with Aristotle's works. Aristotle's famous sentence ὁ ἀνθρώπος φύσει πολιτικὸν ζῷον is often mistranslated as *man is by nature a political animal*. This is because the adjective πολιτικός is taken as meaning *political*, a word which etymologically does go back to πολιτικός, but in Greek πολιτικός means *social* in the *sense of living in society* in opposition to *living alone or isolated* as some animals do. The adjective πολιτικός is derived from πόλις, meaning *city*. However, the city described by the word πόλις is different from the one described by Gr. ἄστυ. This word also means *city*, insofar as the former describes a city's *human or institutional element* (equivalent to Lat. *civitas*, responsible for Eng. *civilisation*). The latter describes the *physical* aspect of the city (equivalent to Lat. *urbs*, from where Eng. *urbanisation* ultimately derives). So, πολιτικός describes *what is proper of the πολιτής or citizen* (Lat. *civis*), that is to say, *to live communally in society*. Before its conquest by Philip of Macedonia in 338 B.C., Greece was organised in *poleis* or independent *city-states*, so the word *polis* is often translated not just as *city* but as *State*, and it is in this sense that Aristotle uses it in his treaty on Politics (1.1253a).

Albo seems to have tried to find similar terms to those used by Aristotle. He described the city where men live in community with the word מְדִינָה *məḏīnā* instead of the classical *עִיר* 'city'. The word מְדִינָה *məḏīnā* is of Aramaic origin, and it was used in ancient Hebrew to describe a *province*. However, originally Aramaic מְדִינָה *məḏīnā* meant *city* just as its Arabic cognate مَدِينَة *madīnah* 'city'. Hebrew then appropriated this word to refer to a place administratively bigger than a city, such as a *province*. (In modern Israeli Hebrew מְדִינָה means *State*, thus מְדִינַת יִשְׂרָאֵל *məḏīnā yiśrā'el* means the *State of Israel*.) So, in order to describe an equivalent of Gr. πολιτικός Albo uses the adjective מְדִינִי *məḏīnī* which functions as a morphemically and semantically equivalent to πολιτικός. The adjective to πολιτικός is derived from πολιτής (which is, in turn, derives from πόλις) employing the adjectival morpheme -אִי/-י which denotes *what is characteristic of something*. Albo's מְדִינִי is an adjective derived by the so-called *nisbeh* derivational process. This process, used in the classical language to create demonyms, became quite productive in Medieval Hebrew. It is following this same process that Albo derives adjective טְבֵּעִי *ṭib'ī* meaning *natural* (coined from Arabic طَبِيعِي *ṭabī'ī*) on the basis of the root of the noun טְבֵּעַ *ṭēḇa* 'nature'. (This derivational process is also found in Arabic.) However, the Greek adjective πολιτικός is derived from the word for *citizen* or *inhabitant of a polis*, and Hebrew had no such word derived from מְדִינָה. However, if Albo had derived it directly from מְדִינָה 'city', the result would have been מְדִינָתִי *məḏīnāṭī* meaning 'that which belongs to or is proper of the city'. So, instead of deriving the adjective from the noun מְדִינָה *məḏīnā*, he chose to derive it from the word's root -מְדִין *məḏīn*- as he was trying to describe something as *socially interdependent* and he probably considered that the social element was present in the root of the word as it happened in Greek. Thus, מְדִינִי is used by Albo as an equivalent of Gr. πόλις and מְדִינִי as an equivalent of Gr. πολιτικός. Given Albo's choice of מְדִינָה instead of עִיר and how the adjective מְדִינִי is derived, it does look like he is trying to replicate Aristotle in some way, suggesting thus that perhaps he did have some degree of contact with Aristotle's texts; this could hardly be a coincidence. Albo refers to חֲכָמִים *hākāmīm* or *wise men* as sources or revellers of Natural Law. He also calls *wise men* those who describe this type of law as *Natural Law*; could these *wise men* in the plural stand for both Aristotle and Aquinas? Similar to when Aquinas refers to Aristotle in the *Summa* as just *philosophus* 'the philosopher'.

⁴⁶ Albo describes man's nature and Natural Law with two words derived from the same lexeme, namely the noun טְבֵּעַ *ṭēḇa* 'for nature' and the adjective טְבֵּעִי *ṭib'ī* 'natural'. In contrast, Aristotle uses two unrelated words, namely κοινός to describe law and φύσις to describe man's nature. Had he used the adjective φυσικός to describe law, that would mean natural law as in the laws which govern nature, i.e. the laws of physics.

this statement is that laws that have been revealed by god through a prophet could be considered Natural Law, too, instead of divine.

5. THE NOAHIDE LAWS

Though many medieval and contemporary scholars consider that Jewish religious law is not incompatible with Reason, there appears to be a consensus that a fully developed Natural Law theory is something alien to Judaic law tradition. Still, the possibility exists that Rabbinic Judaism does have a set of core laws that could be considered an actual example of Natural Law. These are the *Seven Laws of Noah* or *The Noahide Commandments* (שבע מצוות בני נח *šeba' mišvôt banê nōah*) which are taken from the Mishnah (*b.Sanhedrin* 56a-60) and are commented by Maimonides in his *Mishneh Torah* (*Melachim uMilchamot* 8:10-10:12).⁴⁷ They are 1. the positive injunction to set up courts of law to apply justice; 2. the prohibition of blasphemy; 3. the prohibition of idolatry; 4. the prohibition of sexual license (specifically incest, homoeroticism, adultery, and bestiality); 5 the prohibition of homicide (including the prohibition of abortion); 6. the prohibition of robbery, and 7. the prohibition of eating a limb torn from a living animal.⁴⁸ The shortest enunciation of these seven Noahide laws is found in the Midrashm,⁴⁹ cf.

⁴⁷ The Mishnah is divided into *sedarim* (סדרים *səḏārīm*) or *orders*, and these orders are divided into *masekhtot* (מסכתות *massekhtot*) or *tractates*. The *Sanhedrin* (סנהדרין *sanhēdrīm*) is one of ten tractates of *Seder Nezikin* (סדר נזיקין *sēder nəzīqīn*) ‘order of damages’, the fourth order of the Mishna, which deals largely with criminal law and the court system.

The *Melachim uMilhamot* (מלכים ומלחמותיהם *məlakīm ūmilḥāmôtēhem*) ‘Kings and their Wars’ is the fifth tractate of the *Seder Shophtim* (סדר השופטים *sēder haššōphəṭīm*) ‘order of judges’ of Maimonides’ *Mishneh Torah*. Maimonides explains in *Melachim* 9.1 that six commandments were given to Adam, the first man, and the mitzvah about forbidding *to eat flesh torn from a living animal* was then given to Noah. Passages from the *Mishneh Torah* are taken from the Frankel (1975) edition.

The Noahite Laws are also found in the *Tosefta*, *Avodah Zarah* 8.4. The *Tosefta* (Aramaic תוספתא *tōseftā* ‘supplement, addition’) is a compilation of the Jewish oral law dating back to the late 2nd century AD. It is often seen as a supplement to the Mishnah. Like the Mishnah, it is also divided into *sedarim* and *masekhtot*. It is written mainly in Hebrew, with some Aramaic. The tractate *Avodah Zarah* (עבודה זרה *‘ăbôḏā zārā*) ‘foreign worship’ is a name shared with a tractate in the *Seder Nezikin* of the Mishnah.

⁴⁸ There are many formulations of the Noahite Laws, often in a different order because these mitzvot were not crystalised in the same way as the Ten Commandments did; I use here the formulation found in Novak (2014, 31).

⁴⁹ The term *Midrash* (מדרש *midrāš* ‘interpretation’) refers to a type of Rabbinic interpretation or exegesis of Judaic texts. There are different types of Midrash. The *Midrash Rabbah* (מדרש רבה *midrāš rabbā*) ‘Great Midrash’ is a collection of ten *midrashim* on the five books of the Torah and the five Megillot. The passage here presented is taken from the *Bereshith Rabbah* (בראשית רבה *bərē'šīt rabbā*), the Midrash on the Book of Genesis.

BEREISHIT RABBAH 34,8

על שבעה דברים נצטוו בני נח על עבודת כוכבים, ועל גלוי עריות,
ועל שפיכות דמים, ועל ברכת השם, ועל הדין ועל הגזל, ועל אבר מן החי.

‘The children of Noah were enjoined concerning seven things:
idolatry, incest, murder, cursing the Divine Name, civil law, and
[eating] a limb torn from a living animal.’

David Novak⁵⁰ recognises that amongst the Jewish scholars, those who believe that natural law operates within Jewish tradition are a minority. Yet, he goes on to affirm that *‘there is enough of a tradition of natural law thinking in Judaism for any contemporary Jewish thinker to continue it and even develop it’*. For Novak, *‘Natural law type thinking (whether it actually used the term *dat tiv* ‘it or “natural law” or not) has operated as an important criterion in Judaism for attempts to formulate the “reasons of the commandments” (*ta’amei ha-mitsvot*), both commandments derived from the words of Scripture (*mitsvot de-oraita*) and commandments devised by the rabbinic Sages (*mitsvot de-rabbanan*)’*. He argues that those *ta’amei ha-mitsvot* are the result of a *priori natural law type of thinking* which is imbedded in the law. He goes on to affirm *‘that even though we have to keep the commandments of the Torah with the reasons for them being affirmed only a posteriori, those commandments that have already been manifest as natural law have reasons that can be affirmed a priori’*. By introducing this concept of a *priori vs a posteriori reasons*, what Novak is trying to do is to open the door for the possibility that underneath (some of) the *mitsvot* lies a rational motivation which, once a *mitzvah* was created and finally became crystallised as part of the law, was “forgotten” and needs to be rediscovered a posteriori. The rational motivation embedded in the *mitsvot* would represent the original human or social reasons for creating each particular *mitzvah*. He seems to suggest that before being considered divinely revealed laws, the *mitsvot* were created as rational, moral or practical rules and only afterwards were taken as being God-commanded or *revealed mitzvot*.

In the case of the Noahite Laws, what Novak argues is that these laws were originally not aimed at the Jews but at the resident-aliens (גר תושב *gēr tōšāb*) living in Judah/Israel before the Assyrians/Babylonian conquest. But these laws were not invented *ex nihilo* by the Jewish authorities, instead, they gave to *‘what is morally valid universally a particular political location’*. He goes on to say that the Noahite *‘commandments are not binding because they have been introduced by Jewish authorities; rather, the Jewish authorities make what is originally a universal moral requirement into their own particular political requirement’* not aimed at the Jews, for whom there was already a legal framework, but to foreigners living in their territory who, on account of not being followers of Judaism, would not be

⁵⁰ Rudasky (2019, 130) describes David Novak as *‘perhaps the strongest champion of natural morality (...) who has offered a number of arguments in support of natural law theory in Judaism in general, and in Maimonides in particular’*. David Novak (2014, 4) himself writes at the beginning of his article, *‘for over thirty years I have been formulating and reformulating a theory of natural law.’* Indeed, his list of publications on the matter is extensive, including three books on Natural Law in Judaism. In this article (Novak 2014), he presents eleven propositions, all of which he describes as *‘controversial and (...) disputed by both Jewish and non-Jewish thinkers’*.

under the jurisdiction of the Jewish religious laws. What Novak means to say is that before the Noahite laws became the commandments that were later attributed to God, they were recognised as *universal moral requirements* and adopted into their laws as a minimal legal framework for those who were not under the revealed Judaic law. Also, the fact that six of the seven Noahite laws, although not prescribed in Scripture, seem to be already operating in the book of Genesis shows them to be ‘*evident to universal valid moral or practical reason*’. For Novak, the fact that Maimonides distinguishes between the commandment of *not eating flesh from a living animal* (Gn 9:6) and the remaining six, which were given to the *first man*⁵¹ clearly indicates ‘*his [i.e. Maimonides’s] acceptance of basic natural law reasoning*’ behind these six mitzvot.

Novak (2014, 30-34) himself recognises that ‘*to designate Noahide law as the Jewish version of natural law is highly controversial*’, something which ‘*has been disputed in ancient, medieval, and modern Judaism*’. Though not alone, Novak is within the minority of scholars who advocate that the Noahite Laws represent an actual example of Natural Law within Rabbinic Judaism.

On the other side of the fence, Hayes (2015, 46-8), who, based on Cicero, defines Natural Law as ‘*moral goods embedded in nature, rationally accessible and universally obligating*’, disagrees with Novak’s positions pointing out that ‘*Pre-Sinai norms including the Noahide laws, are not represented in rabbinic literature as invariable laws of universal application embedded in nature and discoverable by human reason, or as objectively valid moral goods that obligate us*’.⁵² For Hayes, the main objection is that within Judaism, the Noahide laws are not perceived as universal nor as *discoverable by reason*. However, a close reading of the Talmud may prove Hayes wrong as some texts could suggest that the Noahite mitzvot are of universal application and that they could be *discoverable by human reason* and still be considered mandatory as if they had been revealed.

6. ARE THE NOAHITE LAWS UNIVERSAL?

For the Noahite Laws to be considered even as an embryonic piece of natural moral law within Judaism, the principle that they must *obligate all men* must be embedded in them.

In the sequence of Sanhedrin 58b,15, where the question of whether there ‘*is any action for which a Jew is not deemed liable, but a gentile is*’⁵³ in the context of unnatural sexual intercourse between husband and wife,⁵⁴ a discussion starts about the different degrees of liability or obligation between Jews and Gentiles.

⁵¹ Cf. *Melachim* 9.1. הָרִאשׁוֹן נִצְטָוָה אָדָם *niṣṭawwā ’ādām hāri’šōt* ‘the first man was commanded’.

⁵² Hayes (2015, 370)

⁵³ Cf. *b.S.* 58b,15. מִי אֵיכָא מִיּוֹדֵי דִּישְׂרָאֵל לָא מִיחֵיב וְכוּתִי מִיחֵיב.

⁵⁴ Cf. *b.S.* 58b,15. שָׁבָא עַל אִשְׁתּוֹ שְׁלָא כְּדַרְכָּהּ ‘one who comes upon his wife in an unnatural manner’, here *unnatural manner* stands as an euphemistic reference to anal sex.

The Talmudic treatise Sanhedrin, where the Noahite Laws are discussed, makes a distinction between the Jews, who are referred to as just **יִשְׂרָאֵל** *yisrā'el* 'Israel', sometimes in the plural **יִשְׂרָאֵלִים** *yisrā'elīm*, and the Gentiles who are described as

עוֹבְדֵי כּוֹכָבִים *ōbēd kōkābīm* 'worshiper of stars'. This opposition between Jews and Gentiles is at the heart of this discussion, and it is expressed in different manners, for instance, as a distinction between 'us' and 'them' (cf. *b.S. 59a,2* לָנוּ 'to us' vs. לָהֶם 'to them').

A different opposition also occurs between Jews and the *Sons of Noah* (**בְּנֵי נֹחַ** *bənê nōah*) when it comes to determining which commandments are mandatory to the Jews and which are to be followed by the Gentiles. The Gentiles, on the other hand, are never mentioned in opposition to the Sons of Noah. From the discussion, it becomes evident that the *Sons of Noah* refer to mankind as a whole.

B.SANHEDRIN 59A,13

אמר מר כל מצוה שנאמרה לבני נח ונשנית בסיני לזה ולזה נאמרה אדרבה מדנשנית
בסיני לישראל נאמרה ולא לבני נח

'Mishnah: The Master said: Any mitzva that was stated concerning the descendants of Noah and was repeated at Sinai was stated for this [Jews] and for that [Sons of Noah].

Gemara: On the contrary, from that it was repeated at Sinai, it was stated for the Jewish people and not for the descendants of Noah.'

According to the Gemara's answer of Rabbi Yosei Ben Hanina, mitzvot given to the Sons of Noah had to be repeated at the Sinai to be mandatory for the Jews too.

The argumentation and counter-argumentation that follows are far from straightforward, and it becomes especially tricky when it comes to the question of circumcision, which is a pre-Sinaitic mitzvah and yet not compulsory to all mankind. However, despite the many apparent contradictions in the opinions given by the rabbis in the Gemara, it seems clear enough that by the expression *Sons of Noah*, the Mishnah refers to *mankind* as a whole, which should include both Jews and Gentiles. The opposition that the Sanhedrin treaty sometimes makes between Jews and the Sons of Noah in this discussion derives from the fact that usually, the mitzvot of the Mishnah apply only to the Jews. So, in this case, it is necessary to determine if mitzvot, which are intended for the remainder of mankind, should include the Jews as well or not. In the end, this opposition has no consequences as the mitzvot given to the Sons of Noah were afterwards repeated in the Sinai, so they are compulsory to the Jews, too.

It appears, therefore, that according to the Talmud, the Seven Noahite Laws are addressed to all men, referred to by the phrase *Sons of Noah* and not aimed at the Jewish people alone. As such, they could be considered of *universal application*, something that clearly does not apply to the rest of the Law; no other Jewish law is aimed at the whole of mankind. Jewish law is a privilege solely intended for the Jews and perceived by them as the visible seal of their covenant with God. Its obligation stems from the fact that they, and they alone, have been selected as God's chosen people.

The universal character of these laws also follows from the symbolism attached to those receiving them, namely Adam, the first man and father of all men, whose very name is the Hebrew term for man(kind), and Noah, who, after the Deluge '*when he and his family became humankind redivivus*'⁵⁵ becomes the new Adam whose sons were to repopulate the earth. From a biblical standpoint, all men are sons or descendants, in Hebrew בְּנֵי *bənê*, first of Adam and, after the Flood, of Noah.

7. ARE THE NOAHITE LAWS DISCOVERABLE BY HUMAN REASON?

Apart from being of *universal application*, the Noahite Laws would need to be *discoverable by Human Reason*, to use Hayes's own words, so as to be considered an actual example of natural moral law. Although, according to tradition, these laws were revealed by God himself to Adam and then to Noah, the Talmud puts forward the possibility that these laws could be *discoverable by Reason*.

The Gemara to Yoma 67b,⁵⁶ suggests that these mitzvot *would have been made mandatory even if they had not been revealed*.

B.YOMA 67B,8

תנו רבנן, "את משפטי תעשור" — דברים שאלמלא לא נכתבו דין הוא שיכתבו, ואלו
הן: עבודה זרה, וגלוי עריות, ושפיכות דמים, וגזל, וברכת הש

*'The Sages taught "You shall do My ordinances, matters that, **had**
they not been written, they would be written out of logic. They are
[the prohibitions against] idol worship, prohibited sexual relations,
bloodshed, theft, and blessing the name of God'*

The operational concept here is *written law* and what is meant by it. In order to fully understand the reach of this passage, it is necessary to keep in mind the concept of *law* that the Jews have had since the early rabbinic period; for the followers of Rabbinic Judaism, *the law must be written*.

⁵⁵ Novak (2014, 31).

⁵⁶ *Yoma*, from the Aramaic יוֹמָא *yōmā* 'day', is the fifth tractate of *Seder Moed* (מִוֶּעֶד סֵדֶר *sēder mō'ēḏ*) 'order of festivals', the sixth order of the Mishnah, which deals mainly with the rules regarding the Jewish festival of *Yom Kippur* 'day of atonement', in which Jews atone for their sins from the previous year.

After the destruction of the Second Temple, the so-called *oral* Torah was put down in writing, and from then on, its commentaries and interpretations were also put down in writing. Before that, the law and opinions about the law could take oral format, but in Rabbinic Judaism, the law must be written; it is *being written* what gives the law its authority and makes its observance compulsory. The very origins of the Talmud bear witness to this concept.

So, in the phrase *לֹא נִכְתְּבוּ* *lō' niktəbū* 'had they not been written', *written* means to say *revealed*, the idea being that *had they not been revealed* and eventually *put down in writing*, then they would not be mandatory. Now, in the phrase *שִׁינְתָּבוּ דִּין הוּא* *šeyyikkātəbū dīn hū* 'they would be written out of logic', *written* here means to say *discovered* by logic, and subsequently *put down in writing* so as to become mandatory. In this passage, the two different meanings of *written* derive from how Judaism sees the law; whatever its source, the law must be written down in order to become mandatory. Thus, what *b.Y.67b,8* is saying is that, even though the Noahite mitzvot were revealed by God, had they not been, these mitzvot would still be mandatory because men would have been able to realise them by themselves through their own rational capacity or *דִּין* *dīn*. This means that the Talmud acknowledges men's rational ability to grasp moral principles without the need for Revelation and that they are able to perceive rules as compulsory based on their intrinsic moral value alone. This highlights the role of *דִּין* *dīn* as responsible not only for leading men to discover basic moral principles but also to impel them to obey such principles.

When commenting on these same laws, Maimonides, too, recognises the role of reason in the perception of these mitzvot as compulsory.

MELACHIM 8,11

כל המקבל שבע מצות ונוהר לעשותן הרי זה מחסידי אמות העולם. ויש לו חלק לעולם הבא. והוא שיקבל אותן ויעשה אותן מפני שצוה בהן הקדוש ברוך הוא בתורה והודיענו על ידי משה רבנו שבני נח מקדם נצטוו בהן. אבל אם עשאו **מפני הכרע** **הדעת** אין זה גר תושב ואינו מחסידי אמות העולם ולא מחכמיהם.

Anyone who accepts upon himself and carefully observes the Seven Commandments is one of the Righteous of the Nations of the World and has a portion in the World to Come. This is as long as he accepts and performs them because (he truly believes that) it was the Holy One, Blessed Be He, who commanded them in the Torah, and that it was through Moses, our teacher, we were informed that the Sons of Noah had already been commanded to observe them. However, if he observes them **because he convinced himself logically**, then he is not considered a Resident Convert and is not of the Righteous of the Nations of the World, but merely one of their wise.

This passage, already a classic in the discussion about Natural Law in Judaism, whenever discussed, the focus is always put on the last sentence. Scholars are primarily concerned about how restrictive Maimonides's views are regarding the Gentiles who abide by these laws: are they *righteous of the nations of the world, or just wise men or not even that?* The discussion then necessarily turns to an editorial problem, which allows for two alternative readings of this passage. Rudavsky (2019, 126-7) summarises the whole question quite well: *'Maimonides appears to distinguish between those (gentile) individuals who accept and perform righteous actions because God commanded them, and those who perform those commandments on the basis of 'a reasoned conclusion'. But Maimonides' text on this point is ambiguous, and subsequent editions have incorporated different variations (differing in one letter only) of the last sentence'.⁵⁷*

However, here we want to focus on Maimonides's phrase מִפְּנֵי הַכָּרַע הַדַּעַת *mipnê hekēā' hadda'at* 'on account of a decision of knowledge' which corroborates the interpretation we made of the Gemara to Yoma 67b,8.

The term דַּעַת *da'at* 'knowledge' is a feminine noun derived from יָדַע *yd'*, a verbal root meaning *to know or to perceive*. In his dictionary, Gesenius considers this Hebrew root 'obviously corresponding to Greek εἶδον, οἶδα'.⁵⁸ This etymological association of a Semitic and an Indo-European root would not stand today, but back in the enthusiastic days of the 1800s, etymological associations such as this were

⁵⁷ The discussion is about the last sentence of which there are two possible versions, namely

אֵין זֶה גֵּר תוֹשֵׁב וְאֵינוּ מִחֲסִידֵי אֲמוֹת הָעוֹלָם וְלֹא מִחֲכָמֵיהֶם

'this one is not a resident alien and is not one of the righteous among the nations **and not** one of their wise men' and

אֵין זֶה גֵּר תוֹשֵׁב וְאֵינוּ מִחֲסִידֵי אֲמוֹת הָעוֹלָם אֶלָּא מִחֲכָמֵיהֶם

'this one is not a resident alien and is not one of the righteous among the nations **but** one of their wise men'

The first version is how this passage reads in the great majority of printed editions of Maimonides's *Mishneh Torah*, including the *editio princeps* published in Rome in 1478. The second version is how this sentence reads in the Yemenite manuscripts; see Korn (1994). Both Frankel's 1975 edition and the 25 volumes commented edition based on ancient Yemenite manuscripts by Yosef Qafih prefer the אֶלָּא 'elā' reading. A consensus has not yet been reached, while Frankel, who has come under some criticism for basing his critical edition mostly on older printed editions, says that all manuscripts he has had access to had the form אֶלָּא 'elā'. Bleich (1988, 9), in turn, argues in favour of וְלֹא *wəlō* for textual cohesion, attributing the reading אֶלָּא 'elā' to the Bodleian manuscript. Rapoport (2005, 41), who favours the אֶלָּא 'elā' reading, describes וְלֹא *wəlō* as 'the result of a scribal or printing error. Somehow, the alef of *ela* was mistaken for a vav, making the word read as *velo*. It is indeed quite conceivable that the configuration of the alef in *ela* became defaced or worn away and appeared as a vav'.

The difference between the two versions is that 'on the former, more inclusive reading, a person who does not recognise the divine authority of the Noahide commandments is still considered a wise man, while on the latter, more restrictive reading, it is not enough simply to recognise and abide by these seven Noahide commandments. A truly righteous gentile must obey them out of acknowledgement that they were divinely revealed. The second interpretation of this passage is less supportive of a natural law reading, suggesting that ethical norms are not natural, but must be embedded in a theological framework. In other words, even one who does recognise the wisdom of Torah is not (ve-lo) necessarily wise.' in Rudavsky (2019, 127). For the interpretative implications of the two readings, Kellner (2006, 247-64), and Schwarzschild (1962).

This text is known by Spinoza, who criticises Maimonides for his narrow and particularistic views, in the אֶלָּא version. The Bodleian manuscript can be seen and consulted here: <https://digital.bodleian.ox.ac.uk/objects/60f5a5d4-8e17-457a-8280-0e0fdd43a1b6/surfaces/273da409-4897-4a16-8da2-206d0ae3e2a8/>

⁵⁸ See Gesenius (1979 s.v. יָדַע). Gr. εἶδον is the aorist associated with the present ὁράω 'to see' and οἶδα is morphologically a perfect derived from the same root but means 'I know'. Forms derived from the IE *[?]e[?]d- (cf. Rix (2001) s.v. *[?]e[?]d- 'erblicken') have the meaning of either 'to see', such as Lat. *video*, -ere, Ved. वेद *vēda*, OAv. AdEaV *vaēdā*, or 'to know', such as OEngl. *witan* *wītan*, Goth. *witan*, MEngl. *wit*. The root has been reconstructed as meaning 'to catch sight of something', which would account for both meanings. Ved. वेद *vēda*, OAv. AdEaV *vaēdā* forms are perfect morphological matches to Gr. οἶδα.

being considered.⁵⁹ Having said that, the *semantics* of ידע *yd'* are indeed close to those of Gr. εἶδον and οἶδα, despite the words being totally unrelated. The root responsible for Greek εἶδον and οἶδα is *weyḏ- 'to see', also responsible for Lat. *videre* 'to see', but while the aorist εἶδον means 'I saw', the form οἶδα means 'I know' in the present despite being morphologically a perfect. The reason for this is that the perfect tense in Greek *reports the continuing results in the present of an action which began in the past*, so οἶδα means 'I know now because I saw' or 'having seen, I now know'. The association of *knowing* with *seeing* is obviously consequential, as *one knows what one has seen*.

Verbal forms derived from the root ידע *yd'* can be found associated with verbs meaning *to see*, as in Is 6:9 וְרָאָה וְלֹא יִבְיֹן וְלֹא יִשְׁמָע *ûrā'û rā'ôw wā' al-tēdā'û* 'seeing, you shall see, but you will not understand', or *to hear*, as in Is. 40:21 הֲלֹא תִדְעוּ הֲלֹא תִשְׁמָעוּ *hālô' tēdā'û hālô' tšmā'û* 'Don't you know? Do you not hear?'. In these instances, Heb. ידע *yd'* seems semantically comparable to Gr. οἶδα as the meaning of *knowing* comes associated with verbs that can explain the source of knowledge, that is, *knowledge acquired as the result of having seen or heard something*. Consequently, the Hebrew verbal root ידע *yd'* means 'to know' in the sense of *to understand* or *to (have) perceive(d)*. Accordingly, the Hebrew noun דַּעַת *da'at* deriving from this root carries the semantics of *knowledge* but in the sense of *understanding* or *discernment* which one has out of experience'; knowledge as a faculty. As such, it can stand as a synonym of דִּין *dîn* in b.Yoma 67b,8 referring to *rational capacity* or *human Reason*. Thus, Maimonides' phrase מִפְּנֵי הַדַּעַת הִקְרַע הֶקְעָא *mipnê hekēā' hadda'at* can be understood as meaning *because he chose out of his own discernment*.

Another passage in Maimonides, only a few paragraphs below, confirms these findings.

MELACHIM 10,1

אף על פי שכלן הן קבלה בידינו ממשנה רבנו. והדעת נוטה להן. מכלל דברי תורה יראה שעל אלו נצטווה.

'Although we received all of them in our hands from Moses, our master, **and reason is prone to them**, all the words in the Torah will show that these were ordained.'

This passage follows the enumeration of the six commandments which God gave to Adam. The phrase וְהַדַּעַת נֹטָה לָהֶן *wəhadda'at nôṭâ lāhen* meaning '*discernment* or *reason is inclined to them*' reaffirms the principle that men need no Revelation to discover these mitzvot. Our rational faculties, here represented again by the word דַּעַת *da'at*, are naturally inclined (*inclinatio rationalis*) to discover moral

⁵⁹ In Earlier versions of his Hebrew dictionary, Gesenius (1979) relates the Tetragrammaton יהוה *yhwy* and the name of God in Hebrew to the Latin name *Iuppiter* gen. *Iovis*. He later retracted himself, considering that this association had been a 'waste of time and labour'. Nevertheless, this is very demonstrative of what was going on in 19th-century philology. These etymological associations between Indo-European and Semitic roots do not appear in Brown, Driver and Briggs, cf. Gesenius (1968 s.v.).

principles like these. *Melachim* 8,11 and 10,1 uphold the idea that *men are able to convince themselves out of their own discernment* (תַּעֲטִי *da'at*) of the value of these moral rules to the point of bringing themselves to obey them impelled only by their תַּעֲטִי *da'at*.

It is also interesting to note that in both passages תַּעֲטִי *da'at* is preceded by the definite article, something that reinforces the idea that we are dealing here with *the* knowledge, that is *the capacity of knowing*, and not just with *some* knowledge of something. Neither the Mishnah nor its commentators, except for Albo, were aware of any Natural Law theory or of any natural-law-type of language that went with it and that they should use. So, it is up to us to try and understand their language use and the meanings behind it.

To sum up, even if we were to accept that for Maimonides, only those who observe these laws *because they were commanded by God* are *pious amongst the nations*, that does not contradict, in fact, it affirms that Maimonides acknowledges that people *can* observe these rules for rational motives only, those whom he calls *wise men*, and not because they have been commanded by a deity. From this, we can conclude that Maimonides agrees with the Gemara of Yoma 67b,8 states.

12. SOME CONCLUSIONS

The main question stemming from the relation between the Halacha and Natural Law is *what role Reason plays in Jewish religious law, if any*. According to Jewish tradition, the Torah and the Mishnah, the two main pillars of Judaic law, were revealed to Moses by God himself. Accordingly, in the eyes of Rabbinic Judaism, Revelation stands at a higher ground than human Reason. This makes it hard for Judaism to accept that (some of) its moral laws derive from men's rationality because, ultimately, this would mean that they emanated from men, which could lead to the idea that men can discern moral values by themselves without the need of God('s Revelation).

Despite that, within Rabbinic Judaism, there have been attempts to reconcile revealed moral laws with natural morality by trying to see if there are traces of rational thinking underneath some of the mitzvot. Jewish scholars, medieval and contemporary, have embarked on a quest for hints of rationality in the law as they tried to update some of the old rules to the social circumstances of their own times. In this process, rationality proved to be a powerful ally, but in the end, Revelation could have no rival, and natural moral law was, for the most, set aside as a source for the Halacha.

David Novak, the most enthusiastic defender of a natural morality as the basis for the mitzvot of the Halacha, talks about a *Natural Law way of thinking* which, according to him, underpins many parts of the Jewish law even if this Natural Law substratum is only perceivable a posteriori. This concept of seeing traces of natural morality underneath the mitzvot of the law finds an echo in what some medieval Jewish scholars had to say about the rationality of the commandments. Maimonides, in particular, goes as far as to say that denying the rationality of the law would be blasphemous towards God, its author.

Novak thinks that the Noahite Laws are the best example of a set of laws within Rabbinic Judaism inspired by natural morality. The Noahite mitzvot would have begun by being a form of civil law based on universal rational principles aimed at non-Jews living in Israel, which later became compulsory to Jews as well and considered as revealed by God.

Looking closely at the discussion about these Noahite mitzvot in the Talmud, we can see how a close analysis of some of the language used suggests that Jewish tradition itself considers that these mitzvot could have been *discovered by Reason*, which is in the texts referred to as דין *din* ‘logical reasoning’. This דין *din* would also be responsible for making their observance *obligatory*, which in the text is described as *written*, to those who discovered them. That seems to be the understanding of Maimonides, too, who uses the term דא *da* ‘*al*’ to describe men’s rational capacity.

Furthermore, the text also suggests that the Noahite mitzvot are not aimed at the followers of Judaism alone but at the whole of mankind described in the Talmud as the *descendants of Noah*.

This suggests that at a deep structure level, the Talmud itself acknowledges that the Noahite mitzvot are of *universal application*, that is, they are aimed at men in general and not only at Jews and that, even if these mitzvot were not discovered by Reason according to Jewish tradition, they could have been. This makes the Noahite mitzvot the best candidate for the example of a piece of Natural Law within the Jewish Halacha. However, even though the Noahite laws can be considered *rational* and *universal*, this single case is probably not enough to prove that the Halacha has an underlined natural law thinking element and that the conflict between Judaism and Natural Law is only apparent, as Novak defends. The main problem seems to be that in the end, affirming the *Natural Law a priori motivation* of Jewish law as a whole would imply the negation of Revelation as the source of the mitzvot which, given the origins and the nature of the Torah and the Mishnah, would undermine them in their roles of codes of religious law. From the point of view of Rabbinic Judaism, this would disfigure the Halacha as God’s communicating vehicle to his people, especially if we take into consideration that Rabbinic Judaism does not really have a basic set of tenets of faith to which the Jews must adhere and that the practice of the traditions prescribed by the Halacha is what, to a great extent, determines what to be Jewish is.

τὸ τέλος τὸ δεῦτερον. τῷ Θεῷ δόξα πάντως.

13. BIBLIOGRAPHY

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