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# Freedom and the Construction of Europe

VOLUME I  
*Religious and Constitutional Liberties*

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 CAMBRIDGE  
UNIVERSITY PRESS

## From Selden to Mendelssohn: Hebraism and religious freedom

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A standard view of the development of religious freedom in early modern Europe attributes its origins to the phenomenon of secularisation and associates it above all with the separation of church and state.<sup>1</sup> This chapter proposes a rather different lineage: one that is religious in character and Erastian in structure. This Erastian defence of religious freedom depended on a particular understanding of what early modern Europeans referred to as 'the Hebrew republic' – the constitution that God had established for Israel on Sinai, as described in the Hebrew Bible and illuminated in the writings of the rabbis.<sup>2</sup> Following the ancient Jewish historian Josephus, Erastians characterised this perfect *politeia* as a 'theocracy': a regime in which God himself was the civil sovereign. This arrangement recognised no distinction between civil and religious law, and acknowledged no independent ecclesiastical jurisdiction. Rather, God as sovereign was the source of all law, both civil and religious, and had assigned supreme jurisdiction in all cases to the highest civil magistrate (namely Moses, and later to Joshua, the Judges, kings and Sanhedrin).<sup>3</sup> In doing so, his intent had been to model the proper structure of godly politics for future generations. It followed, therefore, that

1. I have benefited from many conversations with Edward Breuer about Mendelssohn's political thought. I am also indebted to him for offering helpful comments on this chapter.
2. Studies of the 'Hebrew republic' constituted perhaps the dominant genre of political writing in the Protestant world between 1574 and 1700. Imbonati's *Bibliotheca latino-hebraica* lists over one hundred such volumes published before 1694 – and his census is conservative, in that it lists only those texts which include the phrase *respublica hebraeorum* (or some variant thereof) in their titles. It therefore does not include texts such as Book II of Harrington's *The Art of Lawgiving* (1659) or Part III of Hobbes's *Leviathan* (1651), which are organised to a great degree around an analysis of the Mosaic constitution. See Imbonati 1694. All translations are my own, unless otherwise noted.
3. Whether this account is faithful to Josephus's own views is a complicated question. It suffices for my purposes that Josephus was read in this manner by early modern Erastians.

Christians should adopt this Erastian paradigm, according to which the civil sovereign is the exclusive source of valid religious law.

This position, in turn, carried with it profound implications for the issue of religious freedom. For why, these Erastians asked, would a civil sovereign make religious law in the first place? Why would such laws be part of a *politeia*? Their answer: for *civic* reasons. But what sorts of religious practice and observance have important civic consequences? Which were truly vital to the commonwealth, and which actually incompatible with its goals? These became the only relevant questions, and as early modern authors scrutinised the records of the Hebrew republic in order to answer them, they concluded that God as sovereign of Israel had construed 'civic reasons' quite narrowly. Only the demands of civil peace had justified religious coercion in God's commonwealth, and these demands turned out to be minimal indeed. The result is that, for Hebraic Erastians, the set of religious matters deemed worthy of civil legislation grew steadily smaller – until at last it was virtually empty.

This tradition of thought was powerfully present in the writings of Thomas Erastus himself in the sixteenth century, and it was deployed with increasing sophistication by Hugo Grotius, Peter Cunaeus and other Remonstrants during the Dutch Arminian controversy in the 1610s and 1620s.<sup>4</sup> But there is no doubt that its great flourishing occurred during the ecclesiological debates surrounding the English Revolution.<sup>5</sup> When the Westminster Assembly of Divines convened in July 1643 (in defiance of Charles I) to debate the proper form of the Church of England, the three most prominent Erastian spokesmen were all eminent Hebraists – Thomas Coleman (nicknamed 'Rabbi Coleman'),<sup>6</sup> John Lightfoot and John Selden.<sup>7</sup> Indeed, in the English context, one can say without much exaggeration that to be a Hebraist was to be an Erastian, and vice versa.<sup>8</sup> Debate within the assembly quickly focused on the question of the relationship between civil and ecclesiastical jurisdiction, and discussion turned predictably to the Hebrew commonwealth. As

4. The remainder of Section 1 relies heavily on material from Nelson 2010: ch. 3.
5. For an important account of the Arminian influence in England during the Civil War, see Worden 1984: 199–233.
6. See Lamont 1969: 115.
7. An important fourth was Bulstrode Whitelocke, also an accomplished Hebraist. As Gerald Toomer reminds us, Selden disliked the label 'Erastian', on the grounds that he did not endorse all of Erastus's theses (although he did share Erastus's crucial commitments concerning the ecclesiastical authority of the civil magistrate and excommunication), and on the grounds that others had held some of these views before Erastus. See Toomer 2009, II: 569.
8. The most important exception (in this as in so many other respects) is John Milton. For the tellingly ambiguous case of Marchamont Nedham, see Worden 2007: 249–54.

one of the first historians of the Assembly, John Strype, put it in 1700, 'these Divines in their Enquiries into the Primitive Constitution of the Christian Church, and Government thereof in the Apostles Days, built much upon the Scheme of the *Jewish* Church; which the first Christians being *Jews*, and bred up in that Church, no question conformed themselves much to'.<sup>9</sup> John Lightfoot, who took careful notes on the proceedings, reports that one of the Presbyterian ministers, Joshua Hoyle of Dublin, 'fell to speake of the layelders among the Jews in their Sanhedrim [*sic*]: to which I answered they were their highest civil magistrate; and that the Houses of Parliament judge in ecclesiastical matters, and yet were never yet held lay-elders'.<sup>10</sup> That is, in response to the claim that the Sanhedrin was itself a kind of independent ecclesiastical authority, Lightfoot reminded the Assembly of its civil role in ancient Israel, likening it to Parliament. The ensuing debate was so fierce that it occupied an entire day of deliberation, 11 December 1643. Lightfoot summarises the day's discussion by announcing that 'our business was upon the elders in the Jewish church'<sup>11</sup> – and notes that when one of the discussants, Sir Benjamin Rudyerd, complained that 'it would prove but weak ground' to build the Church of England 'upon the Jewish', no one came to his defence.<sup>12</sup>

The first sustained intervention of the day was by Thomas Coleman, who undertook to brief the Assembly on the function of 'elders' in the Hebrew republic.

1. Elders were not chosen purposely for ecclesiastical business. There were four sorts of officers in Israel: 1. *zekenim* 2. *rashei avot* 3. *shofetim* 4. *shoterim*. The *zekenim* [elders] were the gravest and wisest men in country, city, or calling; and they were not assistant to the priest, for there is mention of *ziknei kohanim* [priestly elders] Jer. xix. 1, 2 Kings xix.
2. Their election by the people, Num. i. 16.3. They were the representative body of the whole congregation for all business ecclesiastical or civil. Lev. xiv. 15, Ezra x.14.
3. They were messengers of state, Judges xi.1.
4. They were messengers of any public contract.
5. They were to be present at the public courts of judicature.

9. See Lightfoot 1700: viii.

10. Lightfoot 1824, 13: 76. It is worth recalling that, by this time, the Talmudic tractate *Sanhedrin* had been completely translated into Latin. See Coccejus 1629.

11. Lightfoot 1824, 13: 77. 12. Lightfoot 1824, 13: 78.

The lxx senators in the Sanhedrim were civil officers, Deut. 1. assisters to Moses, not to the priests: 'Regibus assidere soliti' ['they were accustomed to sitting with the kings'] Philo. Jud.<sup>13</sup>

Coleman's intention, of course, was to establish the civil jurisdiction of the Sanhedrin and to deny the existence of any independent ecclesiastical authority in God's commonwealth.<sup>14</sup> When a Presbyterian critic, George Gillespie, attempted to answer Coleman by arguing that the Jews 'had two sorts of consistories in every city, one in the gates, and the other in the synagogue' – and, accordingly, that 'elders [read: church governors] are distinct from rulers' – Lightfoot himself rose to the challenge: 'Here I spake, That the two sanhedrims and the two consistories in every city are not owned by the Jewish authors:– and for that I alleged Maimonides at large, and proved three courts in Jerusalem, and yet no difference of one ecclesiastical and the other civil; and that there was but one court or consistory in every city.'<sup>15</sup> The elders in the Sanhedrin were, he insisted, 'civil magistrates, as our Parliament', and yet they had jurisdiction over 'blasphemy, idolatry, false doctrine, &c.', for which 'the censure was civil, being capital'.

The other primary defender of the Erastian case at Westminster, as Lightfoot makes clear, was 'Mr. *Selden*', who introduced an extended discussion of the Jewish law of excommunication in order to establish the civil character of the punishment (Selden would later describe Erastus as 'another Copernicus').<sup>16</sup> Selden was the most famous English Hebraist of the seventeenth century, and had been deeply influenced by Grotius (he owned two manuscript copies of the latter's *De imperio*).<sup>17</sup> Already in his 1618 *Historie of Tithes* (for which he was excoriated by clerical opponents), Selden had insisted that the *respublica hebraeorum* bestowed supreme jurisdiction over ecclesiastical matters on the civil magistrate. The payment of tithes, Selden argued, was a *civil* obligation in ancient Israel, regulated and supervised by the civil magistrate. Early in the text, he offers an example:

13. Lightfoot 1824, 13: 78.

14. Lamont rightly emphasises Coleman's central role in 1640s English Erastianism, and is also right to stress that 'the Erastian revival, far from being a reaction against the ideal of "Godly Rule," is a continuation of it in a different form' (Lamont 1969: 121). It seems to me, however, that his attempt to distinguish 'true Erastians' (e.g. Coleman) from 'cynics' masquerading as Erastians (e.g. Grotius, Selden and Hobbes) obscures more than it illuminates.

15. Lightfoot 1824, 13: 78.

16. Lightfoot 1824, 13: 106, 164–7. For the comparison of Erastus and Copernicus, see Selden 1726, 1: 1076.

17. On this, see Tuck 1993: 210.

How the payment of these Tenth was either observed or discontinued partly appears in holy Writ, partly in their institution of more trustie Ouer-seers (whom they called *ne'emanim*) for the true payment of them. For after the new dedication of the Temple by Iudas Machabaeus, untill his fourth successor Ioannes Hyrcanus (being neer thirtie yeers) all duly paid their first fruits and Therumahs, but the first or second Tithe few or none iustly; and that through the corruption of those Ouerseers. Whereupon their great Sanhedrin, or Court of seuentie Elders (that is, the *bet din ha-gadol*, the greatest Court, that determined also, as a Parliament, of matters of State) enacted, that the Ouerseers should be chosen of honester men.<sup>18</sup>

In other words, the fact that the selection of 'over-seers' was left to the Sanhedrin (the 'Parliament') demonstrates that this crucial religious practice was firmly within the purview of the civil magistrate in the Hebrew republic.

Selden would return to this theme throughout his life, eventually producing his massive study of ancient Jewish jurisprudence, the *De synedriis et praefecturis iuridicis veterum Ebraeorum liber* (1650–5), which likewise aimed to vindicate the authority of the civil magistrate over religious affairs.<sup>19</sup> But it was in an earlier work that Selden explored the consequences of his Hebraic Erastianism for the question of religious freedom. This work, the *De iure naturali et gentium iuxta disciplinam Ebraeorum* (1640), was published three years before the convening of the Westminster Assembly and contained Selden's derivation of a universal morality from a set of commandments putatively given to Noah and his children after the flood – the so-called *praecepta Noachidarum*, the Noachide laws (*Mitzvot Bnei Noach*). These laws included a prohibition of idolatry and blasphemy, a commandment to establish courts and laws, and a ban on murder, theft, sexual immorality, and the cutting of meat from live animals (the first six were, on the rabbinic account, also given to Adam).<sup>20</sup> The enumeration of these seven laws does not appear in the Bible itself, nor does the idea that they constitute a minimal standard of sufficient moral behaviour for non-Jews. Selden owes all of this to rabbinic literature – specifically, to the canonical account in BT Sanhedrin 56a–b, and its elaboration in Maimonides's *Mishneh Torah*. Grotius had made some use of the *praecepta Noachidarum* in the *De iure belli ac pacis* (1625),<sup>21</sup> but

18. Selden 1618: 18.

19. For an important article on Selden's use of Jewish history and his impact on other Erastian authors, see Sommerville 2000.

20. See Rosenblatt 2006: 135–57, 161; Rosenblatt 2004; Toomer 2009, 2: 490–562.

21. See, e.g., Grotius 2005, 1: 169.

Selden went much further than his teacher in suggesting that the Israelites had *equated* these laws with the laws of nature; that is, he attributed to them the view that natural law was not grounded in reason alone, but was instead the result of divine legislation.<sup>22</sup>

For Selden, the fact that the Hebrew commonwealth regarded observance of these Noachide laws as morally and religiously sufficient for non-Israelites demonstrated God's embrace of broad toleration. The Mosaic law, Selden explains, allowed non-Jews of various sorts to reside among the Israelites, and did not require all such persons to observe the full array of biblical commandments. The rabbis explained this state of affairs by invoking the post-biblical conceit of the Noachide laws: the 'sons of Noah' (the rabbinic idiom for non-Jews) were to be judged in ancient Israel solely on the basis of their degree of fidelity to these universal commandments given by God to all men. Selden elaborates as follows:

There were two classes of men from the Noachide peoples or Gentiles who were permitted to reside in Israelite territory. The first of these comprised those who completely converted to the rite of the Hebrews, or who, having been admitted in the manner shortly to be indicated, openly acknowledged the authority of the body of Mosaic law. The second of these classes included those who were permitted to reside there without any profession of Judaism.<sup>23</sup>

Following the rabbis, Selden refers to the first class as 'proselytes of justice' (*proselyti iustitiae*; Heb. *gerei tzedek*<sup>24</sup>), and the second as 'proselytes of the dwelling-place' (*proselyti domicilii*; Heb. *gerei toshav*<sup>25</sup>). The existence of the second category – sojourners who were allowed to live within the Hebrew republic even though they did not acknowledge or abide by the full Mosaic law, and were not subject to punishment for refusing to participate in public worship – proves, for Selden, that Israelite theocracy practised toleration.<sup>26</sup>

Selden gives two broad explanations for this state of affairs. The first is to be found in the rabbinic maxim that 'the righteous among the gentiles will have a share in the world to come' (BT Sanhedrin 105a).<sup>27</sup> Once again following the rabbis, Selden insists that the biblical God looked with favour on those 'sons of Noah' who observed the seven post-diluvian laws. It was not

22. Selden 1640: 95–108. 23. Selden 1640: 141.

24. Also referred to as *gerei emet* ('true proselytes') or *gerei ben br'it* ('proselyte children of the covenant').

25. Also referred to as *gerei ha-sha'ar* ('proselytes of the gate').

26. For an earlier discussion of this crucial distinction, see Godwyn 1685 [1625]: 9–10.

27. Selden 1640: 833.

necessary to their salvation to abide by any additional strictures, or to hold any additional beliefs – although it was necessary to observe the Noachide laws for the right *reason*, namely out of a belief that God had commanded them. Accordingly, one explanation for Israelite toleration can be found in the rabbinic conviction that there was no theological reason to compel ‘sons of Noah’ to observe the Mosaic law. Adherence to the Noachide laws, along with the simple affirmation that God exists, that he cares for the affairs of men, and that he has legislated the law of nature, is sufficient to ensure all non-Jews a place in the world to come.<sup>28</sup>

But Selden promptly adds a second explanation. The general observance of these Noachide precepts, and acceptance of the minimal religious maxims upon which they depend, he argues, is sufficient to ensure civil peace – and the Erastian framework of Israelite theocracy will not allow additional religious laws that serve no civic purpose. Indeed, Selden insists that even the demands of the Noachide laws themselves were less exacting than usually supposed. Turning once again to the rabbis, he points out that the ‘blasphemy’ criminalised in the Noachide laws was to be understood quite narrowly: it referred only to the act of publicly and brazenly defaming or denying ‘the holiness, power, truth, or unity of the Divinity’, and transgressors were not to be put to death unless they had actually cursed God’s name.<sup>29</sup> Moreover, the view of previous Christian Hebraists that this law constituted a requirement for ‘sons of Noah’ to join in the public worship of God was simply erroneous: these Hebraists had misconstrued the law (*al birkat ha-shem*) as a command to ‘bless God’, whereas in fact it is an injunction not to ‘curse God’ (the Hebrew root, as Selden explains, can carry both meanings).<sup>30</sup>

Even in the case of idolatry, Selden is anxious to inform us (here echoing Grotius) that the Israelites were only required to remove all traces of pagan religion from within their borders – they were not required to eliminate idolatry elsewhere.<sup>31</sup> As Selden’s energetic follower Henry Stubbe would put it in 1659, the requirement to banish idolatry ‘was not ever extended to the *Gentiles* living separate from the *Jews*: for the *Israelites* were not hereby obliged

28. Selden’s characterisation of this minimal religion was clearly indebted to Grotius. See, e.g., Grotius 2005, 2: 1032.

29. Selden 1640: 254, 262–3. This was important, as it was commonplace for opponents of toleration to equate the ‘blasphemy’ criminalised in the Mosaic law with heresy in general (and particularly with forms of anti-Trinitarianism). On this, see for example Marshall 2006: 211. Selden also discusses the crime of *hilul ha-shem* (profaning God’s name), which Jews commit when they publicly violate a provision of the Mosaic law in order to avoid martyrdom.

30. Selden 1640: 310. On this, see the able summary in Toomer 2009, 2: 519.

31. Selden 1640: 139. Maimonides MT, *Avodah Zarah* 7.

to destroy all their Neighbours that were Idolators, they never practised such a thing’.<sup>32</sup> The requirement was, rather, to be understood as ‘part of the *Political Law of Moses*’.<sup>33</sup> And while the Israelites did indeed understand the prohibition of idolatry to require veneration of the true God, Selden eagerly points out that even those proselytes who lived among them were not punished by the civil law if they refused to join in public worship – their punishment, rather, was expected to come ‘from the hand of heaven’ (*mi-yad shamaim*), since their non-participation posed no civic threat.<sup>34</sup> On Selden’s Erastian reading of Israelite theocracy, God endorses compulsion in matters of religion only when it is necessary to secure the health of the politeia.<sup>35</sup>

Selden’s Hebraic scholarship inspired an entire generation of political writing, and his disciples eagerly explored and developed the implications of his arguments. One such disciple was Thomas Hobbes, whose strident Erastianism has never been in doubt, but whose commitment to religious freedom has only recently begun to be explored.<sup>36</sup> In *Leviathan*, after all, Hobbes vests the sovereign with the exclusive right to legislate in matters of religion and emphatically denies that any subject or group of subjects has standing to challenge or resist his decisions. Yet Hobbes is equally clear that the rights of the sovereign flow from the laws of nature, and that the laws of nature aim at peace. The sovereign should therefore stand ready to make all laws that are necessary for the preservation of peace, but none besides.<sup>37</sup> It follows that, although the sovereign can never be guilty of ‘injury’ (that is, violating the rights of his subjects), he can indeed be guilty of ‘iniquity’ – that is, violating the law of nature. And, like Selden before him, Hobbes insists that most religious laws will count as ‘iniquitous’ in this sense – as unnecessary for the maintenance of peace.

32. Stubbe 1659: 106. Stubbe makes clear that he is simply paraphrasing the relevant passages from the *De iure*. On Stubbe as a reader of Selden, see Rosenblatt 2006: 182–201.

33. Stubbe 1659: 115. 34. Selden 1640: 308.

35. It should be noted in this connection that Selden explicitly argued in favour of toleration for Catholics during the Westminster Assembly, and denied that they should be regarded as idolators. See Toomer 2009, 2: 574–5.

36. Another disciple was James Harrington, who likewise claimed that ‘it is a tradition with the Rabbins, that there were seven precepts delivered to the children of Noah: 1. concerning judicatories: 2. concerning blasphemy: 3. concerning perverse worship: 4. concerning uncovering of nakedness: 5. concerning the shedding of man’s blood: 6. concerning rapine or theft: 7. concerning eating of things strangled, or of a member torn from a living creature. This tradition throughout the Jewish government is undoubted: for to such as held these precepts, and no more, they gave not only (as I may say) toleration, but allowed them to come so near unto the temple as the gates, and called them “proselytes of the gates”.’ See Harrington 1977a: 713.

37. Hobbes 1996: 239.



Hobbes's argument proceeds in three main stages. He begins by accepting the fundamental tolerationist piety that, although subjects 'ought to obey the laws of their own Sovereign, in the externall acts and profession of Religion', when it comes to 'the inward *thought* and *beleef* of men, which human Governours can take no notice of, (for God only knoweth the heart) they are not voluntary, nor the effect of the laws, but of the unrevealed will, and of the power of God, and consequently fall not under obligation'.<sup>38</sup> But Hobbes goes very much further than this, and the vehicle for his argument is once again the example of the Hebrew republic. His strategy is to exploit an opening left by Selden's analysis of the Israelite prohibition on idolatry. Recall that Selden had been anxious to use rabbinic sources to demonstrate that, even in the case of idolatry (a behaviour prohibited under the universally binding Noachide laws), the Mosaic law did not require Israelites to enforce conformity beyond their borders. Hobbes, for the first time, supplies a *reason* for this forbearance: in God's own commonwealth (and only there), idolatry counts as an act of treason:

For God being King of the Jews, and his Lieutenant being first Moses, and afterward the High Priest; if the people had been permitted to worship, and pray to Images, (which are Representations of their own Fancies,) they had had no farther dependence on the true God, of whom there can be no similitude; nor on his prime Ministers, Moses, and the High Priests; but every man had governed himself according to his own appetite, to the utter eversion of the Common-wealth, and their own destruction for want of Union. And therefore the first Law of God was, *They should not take for Gods, ALIENOS DEOS, that is, the Gods of other nations, but that only true God, who vouchsafed to commune with Moses, and by him to give them laws and directions, for their peace, and for their salvation from their enemies.* And the second was, that *they should not make to themselves any Image to Worship, of their own Invention.* For it is the same deposing of a King, to submit to another King, whether he be set up by a neighbour nation, or by our selves.<sup>39</sup>

On this revolutionary line of argument, idolatry is criminalised within the Hebrew republic, and not outside of it, because the practice only takes on *civic* significance when God himself is the civil sovereign.<sup>40</sup>

Hobbes places this claim about idolatry at the centre of a broad reconsideration of religious laws in the Hebrew republic. His basic argument is

38. Hobbes 1996: 323. 39. Hobbes 1996: 446.

40. This was, in effect, to challenge the anti-tolerationist view that all heresy, idolatry, etc. constituted *crimen laesae-majestatis divinae*. See Marshall 2006: 214.

that the large number of these statutes in ancient Israel is to be explained by the unique character of that politeia. Where God is the civil sovereign, a substantially greater number of religious matters will acquire civic significance. What follows is that very few religious matters will take on such significance when God is *not* civil sovereign. Hobbes is perhaps most explicit on this point in his discussion of the Decalogue. While the second table of the law (containing the prohibitions on theft, murder, adultery, etc.) specifies the 'duty of one man towards another' under the law of nature, the first is a very different matter:

Of these two Tables, the first containeth the law of Sovereignty: 1. That they should not obey, nor honour the Gods of other Nations, in these words, *Non habebis Deos alienos coram me; that is, Thou shalt not have for Gods the Gods that other Nations worship, but only me:* whereby they were forbidden to obey, or honor, as their King and Governour, any other God, than him that spake unto them by Moses, and afterwards by the High Priest. 2. That *they should not make any Image to represent him;* that is to say, they were not to choose to themselves, neither in heaven, nor in earth, any Representative of their own fancying, but obey Moses and Aaron, whom he had appointed to that office. 3. That *they should not take the Name of God in vain;* that is, they should not speak rashly of their King, nor dispute his Right, nor the commissions of Moses and Aaron, his Lieutenants. 4. That *they should every Seventh day abstain from their ordinary labour,* and employ that time in doing him Publique Honor.<sup>41</sup>

Hobbes was by no means the first to distinguish the first table from the second and to suggest that, while the latter summarised universal laws of nature, the former contained positive laws given only to the Israelites. But Hobbes is saying a good deal more than this. He is arguing that the laws against idolatry, blasphemy and Sabbath violation are themselves to be understood as *political* laws that only make sense in a commonwealth governed by God as civil sovereign. This argument about the Sabbath had likewise been made by Selden, who used rabbinic sources to argue that Sabbath observance was *not* a universal commandment.<sup>42</sup> In God's commonwealth idolatry is treason and blasphemy is sedition. In all other commonwealths, however, the case is fundamentally different. The laws of the Hebrew republic do not bind Christians, and Jesus 'hath not subjected us to other Laws than those of the Common-wealth; that is, the Jews to the Law of Moses, (which he saith

41. Hobbes 1996: 356.

42. See also Hobbes 1996: 234-5. For Selden's argument about the Sabbath, see Selden 1640: 344-457.

(*Mat.* 5) he came not to destroy, but to fulfill); and other Nations to the Laws of their severall Sovereigns, and all men to the Laws of Nature'.<sup>43</sup> The result, as Hobbes makes clear, is that very few religious laws will be required in his Christian Commonwealth. At the end of *Leviathan*, he famously praises the 'Independency of the Primitive Christians to follow Paul, or Cephas, or Apollos, every man as he liketh best', because 'there ought to be no Power over the Consciences of men, but of the Word it selfe, working Faith in every one, not alwayes according to the purpose of them that Plant and Water, but of God himself, that giveth the Increase'.<sup>44</sup>

We find this distinctive, Hobbesian elaboration of Selden's position faithfully reproduced in Spinoza's *Tractatus theologico-politicus* (1670).<sup>45</sup> A committed Erastian, Spinoza likewise relies on the Josephan understanding of the Hebrew republic in order to argue for toleration. 'In the [Mosaic] law', he tells us, 'no other reward is offered for obedience than the continual happiness of an independent commonwealth and other goods of this life; while, on the other hand, against contumacy and the breaking of the covenant is threatened the downfall of the commonwealth and great hardships'.<sup>46</sup> Accordingly, 'the only reward which could be promised to the Hebrews for continued obedience to the law was security and its attendant advantages, while no surer punishment could be threatened for disobedience, than the ruin of the state and the evils which generally follow therefrom'.<sup>47</sup> Like his Erastian predecessors, Spinoza then has to confront the question of why so many religious laws existed in ancient Israel – many of which bear no obvious relation to civic peace. Here Spinoza straightforwardly reproduces Hobbes's idiosyncratic argument:<sup>48</sup>

God alone . . . held dominion over the Hebrews, whose state was in virtue of the covenant called God's kingdom, and God was said to be their king; consequently the enemies of the Jews were said to be the enemies of God, and the citizens who tried to seize the dominion were guilty of treason against God; and, lastly, the laws of the state were called the laws and commandments of God. Thus in the Hebrew state

43. Hobbes 1996: 360. 44. Hobbes 1996: 479–80.

45. We also find it reproduced in Locke's *Letter Concerning Toleration* (1689). On this, see Nelson 2010: 135–7.

46. Spinoza 1951: 47. Translations from this text are taken from Elwes's version (occasionally modified).

47. Spinoza 1951: 47.

48. Spinoza certainly read Hobbes's *De cive* (1642) long before composing the *Tractatus theologico-politicus* (1670); moreover, although he did not read English – and therefore could not have read *Leviathan* in the original – he was close friends with Abraham van Berkel, the man who translated it into Dutch (1665–7), and may have read the Latin version (1668) in time to incorporate its arguments into the TTP. See Malcolm 2003: 47, 390–2.

the civil and religious authority, each consisting solely of obedience to God, were one and the same. The dogmas of religion were not precepts, but laws and ordinances; piety was regarded as the same as justice, impiety as the same as crime and injustice. Everyone who fell away from religion ceased to be a citizen, and was, on that ground alone, accounted an enemy: those who died for the sake of religion, were held to have died for their country; in fact, between civil and religious law and right there was no distinction whatever.<sup>49</sup>

Spinoza, in short, follows Hobbes in arguing that the Hebrew republic had so many religious laws because God was regarded as its civil sovereign. Accordingly, actions which would ordinarily have no civic import took on a very different character in that particular state. Where God is king, idolatry is treason, and religious martyrdom a kind of patriotic virtue. The strong implication, once again, is that in all other commonwealths the legal regulation of such matters has no place.

For Spinoza this argument was fundamentally linked to an emphatic rejection of the biblical God and a corresponding denial of Scripture's special authority in constitutional matters. But it is vital to recall that, by the time he published the *Tractatus* in 1670, the *respublica Hebraeorum* genre was already one hundred years old. For the vast majority of those who embraced a 'political reading' of the Mosaic law in the sixteenth and seventeenth centuries – including Selden and his many disciples – the aim was not to deflate and 'normalize' the biblical example, but rather to establish a pious foundation for political science. Spinoza's *Tractatus* thus stands in much the same relation to the *respublica Hebraeorum* tradition as Machiavelli's *Prince* does to the *speculum principis* tradition.<sup>50</sup> Both texts aim to subvert the established genres in which they are written, and, as a result, neither is remotely representative. It was therefore entirely possible for subsequent writers to absorb Spinoza's arguments about the Hebrew republic while rejecting his metaphysics and his demolition of Scripture. In doing so, they were casting their lot with a long line of more pious Erastian authors.

## II

Having taken this brief tour through the seventeenth-century canon of Hebraising, Erastian defences of religious liberty, we are now in a position to notice a deep irony in their eighteenth-century reception – one that

49. Spinoza 1951: 219–20. 50. On the latter relation, see Skinner 1978, 1: 113–38.

is personified by the figure of Moses Mendelssohn.<sup>51</sup> We are accustomed to regarding Mendelssohn as an Enlightened saint, the model for Lessing's *Nathan the Wise* and an esteemed interlocutor of Kant and Herder, who made Judaism safe for modernity. In particular, his late work *Jerusalem, or On Religious Power and Judaism* (1783)<sup>52</sup> has been understood as a heroic, if slightly disingenuous, reconstruction of traditional Judaism in light of fundamentally alien European commitments to the liberty of conscience and the separation of church and state. According to this familiar story, Mendelssohn's signal achievement was to have rescued Judaism by denaturing it – by transforming it into a 'religion' in the Enlightened, European sense of the term. Mendelssohn's Judaism was a purely private affair, a voluntary set of ritual practices annexed to a generic, minimal cluster of universal ethical commitments. His utter rejection of coercion in religious matters, and his corresponding insistence that state and church should be quarantined from each other – two commitments that were, on this account, completely foreign to traditional, rabbinic Judaism – both facilitated Jewish emancipation and made possible the integration of Jews into European civil society. He is therefore to be understood as the gentilising founding father of an Enlightened, tolerant Jewish modernity.<sup>53</sup>

What this standard account misses is that Mendelssohn was at his core a disciple of the very same Hebraising Erastians we have been studying, and of John Selden in particular. At least two important consequences follow from this fact. The first is that we must part with the traditional belief that Mendelssohn linked his defence of religious liberty to a defence of the separation between church and state. As we shall see, he most certainly did not. But the second consequence is equally important: while Mendelssohn did indeed summon the resources of the European Erastian tradition in order to usher in a fundamentally new understanding of Judaism, we must recognise that this European Erastian tradition was *itself* a product of the Protestant encounter with rabbinic Judaism. What we have here, then, is not a simple story of fundamentally foreign, European commitments being grafted onto a pristine, unspoiled Judaism, but rather a much more subtle and ironic story in which the intellectual resources of rabbinic Judaism,

51. For Mendelssohn's subtle engagement with seventeenth-century contractarianism, see Avi Lifschitz's contribution to these volumes.

52. The German title is *Jerusalem, oder über religiöse Macht und Judentum*.

53. See, for example, Green 1992. For a more nuanced version of this account, see Morgan 1989; Goetschel 2004: 147–169; 2007. For the argument that Mendelssohn's 'liberalism' reveals his Judaism to have been insincere, see Arkush 1999.

transfigured by their seventeenth-century European expositors, find their way back 'home' in the works of an eighteenth-century Enlightened Jew.

The occasion for this homecoming was a specific predicament in which Mendelssohn found himself in 1783. The previous year he had published his Preface to Menasseh ben Israel's *Vindiciae Judaeorum*, in which he had defended toleration and fiercely attacked the practice of excommunication, as employed both by churches and by Jewish communities in Europe.<sup>54</sup> This essay, in turn, provoked a polemical reply entitled 'The Searching for Light and Right in a Letter to Mr. Moses Mendelssohn',<sup>55</sup> published anonymously, but now known to have been the work of the Berlin essayist August Friedrich Cranz. Cranz's argument, in essence, was that Mendelssohn's rejection of coercion in the life of the spirit was incompatible with his profession of Judaism. 'Reason may agree that all ecclesiastical law and the power of an ecclesiastical court by which opinions are enforced or constrained is absurd', Cranz conceded, 'but as reasonable as everything you [Mendelssohn] say on this subject may be, it directly contradicts the faith of your fathers in the strict sense, and the principles of the [Jewish] church, which are not simply assumed by the commentators, but are expressly laid down in the books of Moses themselves'.<sup>56</sup> The Mosaic law, he pointed out, criminalises a whole host of religious practices and inflicts draconian penalties on violators. How then could Mendelssohn claim with a straight face that his Enlightened commitments were remotely compatible with rabbinic Judaism? The obvious way out of the impasse, Cranz suggested, was for Mendelssohn to do the sensible thing and convert to Christianity – to escape the bondage of the law and embrace the freedom of the Gospel.<sup>57</sup>

*Jerusalem* constitutes Mendelssohn's answer to this criticism. The first section sets out an account of 'religious power' and the proper role of religion in civic life more broadly, while the second aims to establish that, *pace* Cranz, this account is entirely in harmony with the underlying principles of 'the Mosaic constitution' – and in fact follows from those principles. The

54. For an excellent analysis of Mendelssohn's views on excommunication (and one that notes their Erastian character), see Altmann 1981 (reprinted in Altmann 1982a). The Preface was meant as a 'friendly amendment' to Christian Wilhelm Dohm's 1781 treatise 'On the Civil Improvement of the Jews' (*Über die bürgerliche Verbesserung der Juden*).

55. The German title is *Das Forschen nach Licht und Recht in einem Schreiben an Herrn Moses Mendelssohn*.

56. Mendelssohn reproduces this passage. See Mendelssohn 1983: 84. Translations from *Jerusalem* are taken from Arkush's version.

57. For an important analysis of Cranz's argument and the strategy behind Mendelssohn's reply, see Breuer 1992. See also Avi Lifschitz's contribution to these volumes, where Cranz's essay is referred to as 'an anonymous pamphlet'.



essential fact to recognise about Part I is that it offers a comprehensive rejection of the separation between church and state. Any attempt to separate out the temporal from the spiritual, on Mendelssohn's view, raises the dangerous spectre of an independent ecclesiastical jurisdiction. If the state is not going to look after 'eternal felicity', then someone else will – and that rival power will prove dangerous and ungovernable. This, Mendelssohn explains, was the crucial fact that Locke failed to take sufficiently seriously in his *Letter Concerning Toleration* (1689).<sup>58</sup> He himself much prefers the approach of Hobbes, whose absolutism he deplores, but whom he nonetheless recognizes as a tolerant Erastian – one who was 'less indulgent to the gods of the earth than his system would lead one to expect'.<sup>59</sup> Mendelssohn quickly proceeds to sketch out his own, amended version of the Erastian settlement: one in which the state appoints and pays ministers and regulates their preaching, leaving the 'church' with no temporal reality of any kind. He insists, for example, that churches should not be regarded as ordinary private corporations capable of owning property.<sup>60</sup> His Erastian state would not resort to coercion in matters of doctrine – it would, crucially, make no use of excommunication – nor would it be empowered to assign privileges or penalties on the basis of religious dogma. But it would nonetheless undertake to nurture and preserve a familiar kind of minimal religion. As Mendelssohn explains,

The state, to be sure, is to see to it from afar that no doctrines are propagated which are inconsistent with the public welfare; doctrines which, like atheism and Epicureanism, undermine the foundation on which the felicity of social life is based . . . It is a question only of those fundamental principles on which all religions agree, and without which felicity is but a dream, and virtue itself ceases to be virtue. Without God, providence, and a future life, love of our fellow man is but innate weakness, and benevolence is little more than a foppery into which we seek to lure one another so that the simpleton will toil while the clever man enjoys himself and has a good laugh at the other's expense.<sup>61</sup>

58. See the wise remark on this topic in Altmann 1982b: 56.

59. Mendelssohn 1983: 37. Mendelssohn's natural jurisprudence was also deeply influenced by Christian Wolff. On this, see Sorkin 2008: 193–206.

60. For an acknowledgment of this striking fact, see Rosenbloom 1972: 483. Rosenbloom nonetheless argues that Mendelssohn's goal was 'the transformation of the State into a religiously neutral zone' – a claim I dispute.

61. Mendelssohn 1983: 63. It is therefore somewhat surprising to encounter the claim that Mendelssohn wished to criticise Locke's intolerance toward atheism. See, for example, Guttman 1981: 378.

Like Grotius, Selden and Hobbes before him, Mendelssohn identifies a core set of religious beliefs which are necessary for 'the public welfare', and which the state must accordingly insist upon. But since these beliefs are *sufficient* as well as necessary, they establish the limits of state intolerance.

All of this, as Mendelssohn explains in Part II, follows from the underlying principles of the Hebrew republic, as the Erastians had reconstructed them – and explains why Judaism rightly understood is compatible with Enlightenment. What we most urgently need to recognise about the revelation at Sinai, Mendelssohn argues, is that it was not a revelation of *doctrines*. It added nothing to the set of 'eternal truths about God and his government and providence, without which man cannot be enlightened and happy'. These principles 'are not founded upon the faith of the nation under the threat of eternal or temporal punishments, but, in accordance with the nature and evidence of eternal truths, recommended to rational acknowledgment. They did not have to be given by direct revelation.' Rather, 'the Supreme Being has revealed them to all rational creatures through *things* and *concepts* and inscribed them in the soul with a script that is legible and comprehensible at all times and in all places'.<sup>62</sup> These universally accessible truths are sufficient for 'eternal felicity', which explains why, according to the Mosaic law, non-Jews are under no obligation to become Jews. Mendelssohn had begun to explore this idea two decades earlier in his public response to the proselytising efforts of the Swiss pastor Johann Kaspar Lavater (1769). There, he had argued for his position in extremely revealing terms:

According to the principles of my religion, I should not attempt to convert anyone not born under our law. Some would like to attribute the origin of this spirit of conversion to the Jewish religion, but it is [actually] diametrically opposed to it. All our rabbis are in agreement in teaching that the written and oral laws that make up our revealed religion are binding only on our nation. Upon us Moses bestowed the law, the inheritance of the tribes of Jacob. All the other nations of the earth, we believe, are commanded by God to observe the law of nature and the religion of the patriarchs. Those who live according to the laws of this religion of nature and reason are called 'righteous men of other nations,' the children of eternal blessedness. Our rabbis are so far removed from all desire to convert others that they even enjoin us to offer serious counter-arguments to dissuade anyone who presents

62. Mendelssohn 1983: 126.

himself [for conversion] on his own accord. We are supposed to give him pause because the step, though voluntary, entails a very arduous burden. In his current state he need only observe the Noachide laws to achieve eternal bliss.<sup>63</sup>

This is a straightforward paraphrase of Selden's argument from the *De iure naturali* (a copy of which Mendelssohn had in his library).<sup>64</sup> It is worth noting that this account, although taken quite seriously in the seventeenth century, had fallen sharply out of favour with eighteenth-century writers on natural law. Most mentioned it only to reject it, as in the case of Johann Gottlieb Heineccius, who took pains to insist in his *Elementa iuris naturae et gentium* (1737) that 'the law of nature is not derived from the sacred writings, nor from any divine positive laws, such as the seven precepts given to Noah, of which the Jews boast so much' – and then dropped the following footnote: 'How the Hebrews derive the law of nature and nations from the seven precepts given to Noah, is shewen by Jo. Selden'.<sup>65</sup> Yet Mendelssohn here adopts Selden's view in all its particulars, not only as a philosophical account of natural law, but also (even more remarkably) as an authoritative exposition of rabbinic Judaism.<sup>66</sup> Only the Noachide laws are binding on humanity as such; indeed, as Selden had insisted, they constitute the 'law of nature' itself, given by God in an act of legislation. Observance of these laws, in turn, presupposes only the minimal 'religion of the patriarchs' – the conviction that God exists and that he cares for the doings of men. These are the 'eternal truths' on which our 'eternal felicity' depends.

The Mosaic law, on Mendelssohn's account, acknowledged and illuminated these fundamental principles, but added nothing to their number. The revelation at Sinai was, instead, civic in character. It declared not doctrines, but rather 'laws, precepts, commandments and rules of life, which were to be peculiar to this nation and through the observance of which it should

63. Mendelssohn 1930: 7–17. The English translation is Richard Levy's.

64. So far as I can tell, the only scholar to note this deeply important fact is Alexander Altmann in his excellent biography (Altmann 1973: 217). For a further suggestive remark on the subject (indebted to Altmann), see Bourel 2004: 238. It is, however, necessary to offer one important correction to Altmann's account. Mendelssohn and Selden did not equate the 'Noachian laws' with the 'religion of the Patriarchs' (p. 217); rather, they sharply distinguished between the two. For both men, the latter term referred to the set of minimal religious *beliefs* which allow us to recognise the Noachide laws as commands. For the presence of Selden's *De iure naturali ac gentium* among Mendelssohn's books, see Meyer 1926: 6.

65. 1.16. The translation is taken from the first English edition; Heineccius 1763.

66. Another roughly contemporary author who likewise endorsed Selden's account of natural law was the Deist Hermann Samuel Reimarus. Yet Mendelssohn did not see the unpublished manuscript of Reimarus's *Apologie oder Schutzschrift für die vernünftigen Vereher Gottes* until 1770 – a year after the letter to Lavater was published. See Altmann 1973: 253.

arrive at national felicity, as well as personal felicity for each of its individual members'. The Josephan lawgiver who spoke on that day was 'God not in his relation as Creator and Preserver of the universe, but God as Patron and Friend by covenant of their ancestors, as Liberator, Founder and Leader, as King and Head of this people'.<sup>67</sup> This divine legislator had demanded *deeds*, not beliefs; he had given a code of laws, not a creed. Cranz was therefore incorrect to claim that the Mosaic law was incompatible with religious freedom. As Mendelssohn announces with evident delight, the Law had punished 'not unbelief, not false doctrine and error, but sacrilegious offences against the majesty of the lawgiver, impudent misdeeds against the fundamental laws of the state and civil constitution'.<sup>68</sup>

Fair enough, Cranz might counter, but even if we were to concede that the Mosaic law did not criminalise *belief* per se, it clearly did not hesitate to apply coercion to an abundant variety of religious activities (say, observance of the Sabbath and the purity laws). Yet, on Mendelssohn's account, such actions and behaviours are never to be coerced because they bear no obvious relation to the demands of civil peace and well-being. So once again we seem to have reached a contradiction. But Mendelssohn is able to answer this objection precisely because he has studied his Selden, his Hobbes and his Spinoza so carefully. The Hebrew republic, he argues, is certainly an authoritative political model, but it is also in one sense unique: as he puts it (in a striking echo of Spinoza<sup>69</sup>),

in this original constitution, state and religion were not conjoined, but *one*; not connected, but identical. Man's relation to society and his relation to God coincided and could never come into conflict. God, the Creator and Preserver of the world, was at the same time the King and Regent of this nation; and his oneness is such as not to admit the least division or plurality in either the political or metaphysical sense.

Where God is the civil sovereign, a whole series of religious matters take on civic significance:

67. Mendelssohn 1983: 126–7. 68. Mendelssohn 1983: 130.

69. For Mendelssohn's complex interaction with Spinoza's TTP, see Guttman 1981: 361–86. This is an astute analysis, but it makes the mistake of supposing that the 'political' reading of the Mosaic law (that is, the discourse of the 'Hebrew republic') was inherently and exclusively 'Spinozist'. This is misleading for two reasons. First, as we have seen, this tradition of thought was already a hundred years old when Spinoza published the TTP; and second, Spinoza's rejection of the biblical God was utterly aberrant within this tradition. The Hebraic Erastian tradition, in short, was predominantly a 'pious' one – and this is the tradition that Mendelssohn wished to rescue from Spinoza.

Every sacrilege against the authority of God, as the lawgiver of the nation, was a crime of lese majesté, and therefore a crime of state. Whoever blasphemed God committed lese majesté; whoever sacrilegiously desecrated the Sabbath implicitly abrogated a fundamental law of civil society . . . Under this constitution these crimes could and, indeed, had to be punished civilly, not as erroneous opinion, not as unbelief, but as misdeeds, as sacrilegious crimes aimed at abolishing or weakening the authority of the lawgiver and thereby undermining the state itself.<sup>70</sup>

These arguments, as we have seen, have simply been lifted from the writings of Selden's Erastian disciples.

Before concluding his discussion, however, Mendelssohn adds a final touch taken from Selden himself. Even in the unique case of the Hebrew republic, he now informs us, the laws governing religious behaviour were far less coercive than usually supposed. Like Selden before him, he sustains this claim by reading the Hebrew Bible through the lens of rabbinic literature and emphasising the many respects in which the latter had softened the draconian character of the former. Thus, although he is forced to concede that offences such as blasphemy had indeed been punishable by death under the Mosaic law, he immediately exclaims:

Yet, nevertheless, with what leniency were even these capital crimes punished! With what superabundant indulgence for human weakness! According to an unwritten law, corporal and capital punishment could not be inflicted unless *the criminal had been warned by two unsuspected witnesses with the citation of the law and the threat of the prescribed punishment*; indeed, where corporal or capital punishment were concerned, the criminal *had to have acknowledged the punishment in express words, accepted it and committed the crime immediately afterwards in the presence of the same witnesses*. How rare must executions have been under such stipulations.<sup>71</sup>

These two requirements – that, in order to be liable for the death penalty, perpetrators must be ‘warned’ in advance that they are about to commit a capital offence, and that they must acknowledge the warning before committing the crime – appear nowhere in the biblical text; they are purely rabbinic,

70. Mendelssohn 1983: 129.

71. Mendelssohn 1983: 129. Selden had likewise highlighted the importance of the ‘warning’ (*hatra'ah*) in rabbinic capital jurisprudence. See Selden 1653: 531–2. Unlike Mendelssohn, however, Selden had been explicit about the fact that the ‘warning’ requirement did not apply to certain capital crimes (e.g. those involving idolatry).

as Mendelssohn acknowledges when he traces their origin to an ‘unwritten law’. He underscores the point further by citing the rabbinic dictum that ‘any court competent to deal with capital offences and concerned for its good name must see to it that in a period of *seventy* years not more than one person is sentenced to death’.<sup>72</sup>

What Mendelssohn offers us here is, thus, the standard Hebraic Erastian case in all its particulars. He argues first that the Hebrew republic had practised religious toleration, modelling it for subsequent generations; second, that all instances of religious coercion within the Hebrew republic had only been licit because God was its civil sovereign (that is, they were not properly speaking ‘religious’ at all); and third, that even *within* the Hebrew republic, coercion in such matters was employed far less frequently than we tend to suppose. It follows *a fortiori* that no religious coercion whatsoever would be licit in any other commonwealth, which explains why Cranz was incorrect to accuse Mendelssohn of inconsistency. The very same principles which allowed *some* religious coercion (although not much) in the Hebrew republic absolutely forbade it in all other polities. As Mendelssohn announces triumphantly (and, alas, not quite accurately), ‘as the rabbis expressly state, *with the destruction of the Temple, all corporeal and capital punishments and, indeed, even monetary fines, insofar as they are only national, have ceased to be legal*. Perfectly in accordance with my principles, and inexplicable without them!’<sup>73</sup> With the collapse of God’s pristine republic, ‘the civil bonds of the nation were dissolved; religious offences were no longer crimes against the state; and the religion, as religion, knows of no punishment or penalty other than the one the remorseful sinner *voluntarily* imposes on himself. It knows of no coercion, uses only the staff [called] gentleness and affects only mind and heart’.

It is, then, the Erastian account of the Hebrew republic which explains, for Mendelssohn, why post-exilic Judaism must become a ‘religion’ in the modern sense. The Mosaic law had lost its rationale for coercion when Jerusalem fell. To be sure, it did not follow from this that Jews were no longer obliged to observe the Mosaic law, as Spinoza had erroneously supposed. Mendelssohn believed emphatically that the obligation remained intact and

72. Mendelssohn 1983: 130.

73. Mendelssohn 1983: 130. Mendelssohn is bringing together two rabbinic pronouncements: one on capital punishment (BT *Sanhedrin* 40a, Maimonides MT *Sanhedrin* 14: 11–14) and a second on monetary fines (Maimonides, MT *Sanhedrin* 4: 11–14; *Kiddush ha-Hodesh* 5: 3). In neither case does the rationale for suspension of these forms of punishment have anything to do with their ‘national’ character.

unalterable. But this obligation had become 'imperfect' rather than 'perfect', moral rather than legal – a yoke which each individual had to accept voluntarily, and a discipline for which he was answerable to God alone. In Mendelssohn's *Jerusalem*, a principle of religious freedom that had been forged in the encounter between European Protestants and their Jewish sources finally comes to transfigure Judaism itself.