The status of natural law in Judaism, and in the halakhic context in particular, has long been a concern of scholars in the field of Jewish studies. Some categorically deny that Judaism could ever recognize a doctrine of natural law. For instance, in his classic, often quoted study, Marvin Fox argues that “in Judaism there is no natural law doctrine, and in principle, there cannot be.” Other scholars, such as Harry A. Wolfson, point to a tradition stretching from rabbinic times to Maimonides, which recognizes the binding power of natural law.

This dispute has far-reaching implications because, as will be shown below, different views of the status of natural law entail different perceptions of the essence of Halakhah, and specific theories of Halakhah tend to be associated with specific views of natural law. For instance, Yeshayahu Leibowitz views Halakhah as a normative system exclusively concerned with the worship of God. This approach can hardly be reconciled with support for a natural law doctrine, which seems to have no bearing on worship; in contrast, advocates of a different perception of Halakhah may take another view of the status of natural law. To some extent, then, the dispute concerning the status of natural law in Judaism operates as a mirror, reflecting underlying theories of Halakhah. Hence, attempts to examine...
this question must also be concerned with those elements that are central to any theory of Halakhah.

Discussions about natural law have traditionally hinged on the analysis of halakhic and philosophic texts. Although not surprising, since texts and their interpretation are the raw material of Judaism, this methodological approach may neglect critical analysis of the arguments per se. The parties to the controversy have tended to seek out texts that appear to support their view, shifting the focus from a rigorous consideration of the claims to an attempt to accumulate relevant sources. In contrast, the aim of this paper is to concentrate on the arguments explicitly or implicitly suggested in the sources, assess them on their own merits, and present them systematically.

This approach, however, requires a more precise formulation of the problem and of two questions in particular: (1) what do we mean by “natural law”? (2) Who is the subject bound by natural law?

“Natural law” is a problematic concept, as it does not point to a specific legal theory but to a family of theories. Thus, for instance, Thomas Aquinas endorses a theory of natural law, but so does H. L. A. Hart, and they can hardly be said to resemble each other. Aquinas assumes that norms are valid because of their universal rationality, which is embedded in nature and conveys the rationality of God; hence, norms need not be justified through a legislative act.4 In contrast, Hart’s positivist theory of law assumes that only an act of legislation grants norms legitimacy. Yet even Hart adopts a “minimalist” version of natural law, arguing that all civilized societies must enforce a series of norms meant to assure their continuity. The legitimation of these norms, however, is predicated neither on nature nor on a necessary metaphysical order.5

Can we broach the question of natural law in Judaism while disregarding these differences between the various versions of the theory? Fox, for instance, examines the status of natural law only in reference to Aquinas. Even if, like Fox, we deny natural law any status in Judaism, we cannot assume that this conclusion extends to all versions of this doctrine, including, for example, that espoused by Hart. We might expect the definition

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