JUDAISM AND NATURAL LAW*

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During the seventeenth and eighteenth centuries a number of Christian scholars, including the prominent Dutch scholar Hugo Grotius, sought to demonstrate that a concept of natural law might be traced to the Pentateuch. If so, the doctrine of natural law might be regarded as part of the Jewish contribution to Western thought. The Cambridge Hebraist, John Selden, developed a much more elaborate and sophisticated argument in a work entitled De Jure Naturalis et Gentium Juxta Disciplinam Ebraeorum, in which he advances the thesis that the Seven Noahide Commandments constitute, in effect, a highly developed doctrine of natural law. The Noahide Code, he argued, is regarded by Judaism both as predating the Sinaitic revelation and as binding upon gentile nations which did not participate in the Sinaitic experience. Accordingly, he maintained, the content of the Noahide Code must be regarded as universally binding on the basis of reason alone.1

On the surface, this thesis presents many features auguring in favor of acceptance. The basic proscriptions of the Noahide Code, homicide, theft, sexual licentiousness, etc., involve acts universally viewed with opprobrium.2 Judaism teaches that all gentiles are bound by the provisions

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1 This position is also espoused by R. Chaim Hirschensohn, “Sevarah,” Otzar Yisra’el, ed. J. D. Einstein (New York: Hebrew Publishing Co., 1906), VII, 136; idem, Malki ba-Kodesh (St. Louis, 5679), I, 21; and idem, Eleh Diverei ha-Brit (Jerusalem, 5686), I, 5f. Cf., however, R. Eleazar Meir Preil, Ha-Ma’or (Jerusalem, 5689), no. 80.

2 The Roman legal system similarly contained a corpus of law, the ius gentium, which governed cases in which one of the litigants was not a Roman citizen or in which both litigants were resident aliens. Gaius apparently took the ius gentium as the model of a law practiced by all mankind and dictated to all men by natural reason as distinct from the ius civile or system of law which each nation gives itself. Selden apparently perceived a similar division in Jewish law.
of the Noahide Code and are to be punished for infractions thereof. Since the nations of the world were denied the benefit of direct divine revelation, the binding nature of these commandments can only be rooted in reason.

This thesis is, however, difficult to substantiate in terms of the legal traditions of Judaism. Nowhere in the vast corpus of rabbinic, legal, or philosophical literature is there to be found a fully-developed doctrine of natural law; nor, as Marvin Fox has pointed out, is the term natural law used by any Jewish philosopher or legal scholar prior to Joseph Albo in the fifteenth century. Of course, as Norman Lamm and Aaron Kirschenbaum have argued, “Ideas may be implicit in a text or body of literature, and receive their formulation in sophisticated terminology much later” and undoubtedly “concepts, like people, have an existence independent of their names.” Nevertheless, it is remarkable that a philosophical doctrine which may be traced back as far as Cicero and which played a major role in the Latin tradition should not receive explicit reference, not to speak of detailed analysis, in Jewish philosophical or legal writings. Any argumentum ad silencium is weak at best, yet in the present instance silence with

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3 M. Fox, “Maimonides and Aquinas on Natural Law,” Diné Israel V (1972), xi. The term is also used by a later fifteenth-century scholar, R. Shem Tob ben Shem Tob, Derashot ha-Torah (Venice, 5307), 25a, as a synonym for mitzvot sikhliyot; see below, note 36.


5 Ibid., p. 112.

6 There are revered latter-day rabbinic scholars who recognize other normatively binding halakhic prescriptions based upon considerations other than revelation. Mishneh le-Melekh, Hilkhot Melakhim 107, s.v. shuv ra‘iti, questions the purpose of the covenants entered into by Abraham and Isaac with Avimelech, the oath of Esau to Jacob and of Eliezer to Abraham in light of the fact that fulfillment of an oath is not included in the Seven Noahide Commandments. Avnei Nezer, Yoreh De‘ah, 11, no. 306, further questions the purpose and validity of the oath sworn by Jews at Mount Sinai to uphold the commandments since that oath preceded acceptance of the Torah and of the commandments contained therein prohibiting violation of an oath. Avnei Nezer responds that an oath binding oneself to another person is valid on the basis of reason alone. A commandment, he asserts, is necessary only to assure performance of an oath that is entirely personal in its effect. Since the obligation to abide by an oath affecting others is the product of reason it was binding even before Sinai. That concept is quite similar to the contention of Thomas Hobbes, Leviathan, Part I, chap. 15, “That men performe their Covenants made.”

P’nei Yehoshu‘a, Berakhot 35a, contrary to the consensus of rabbinic decisors, maintains that pronouncement of blessings before partaking of food constitutes a biblical obligation because such blessings are described by the Gemara as predicated upon sevarah. Cf. Tzelah, loc. cit., who disagrees and distinguishes between different types of sevarah.

R. Moses Samuel Glazner, in his commentary on Hullin, Dor Revi‘i (Jerusalem, 1938), Petihah Kelalit, and in his comments on Hullin 89b, regards, for example, public nudity, despite the absence of a direct biblical prohibition, as constituting a transgression even more severe in nature than violation of a negative commandment. Consumption of human flesh and of rancid carrion are categorized by this scholar in a similar manner. The concept