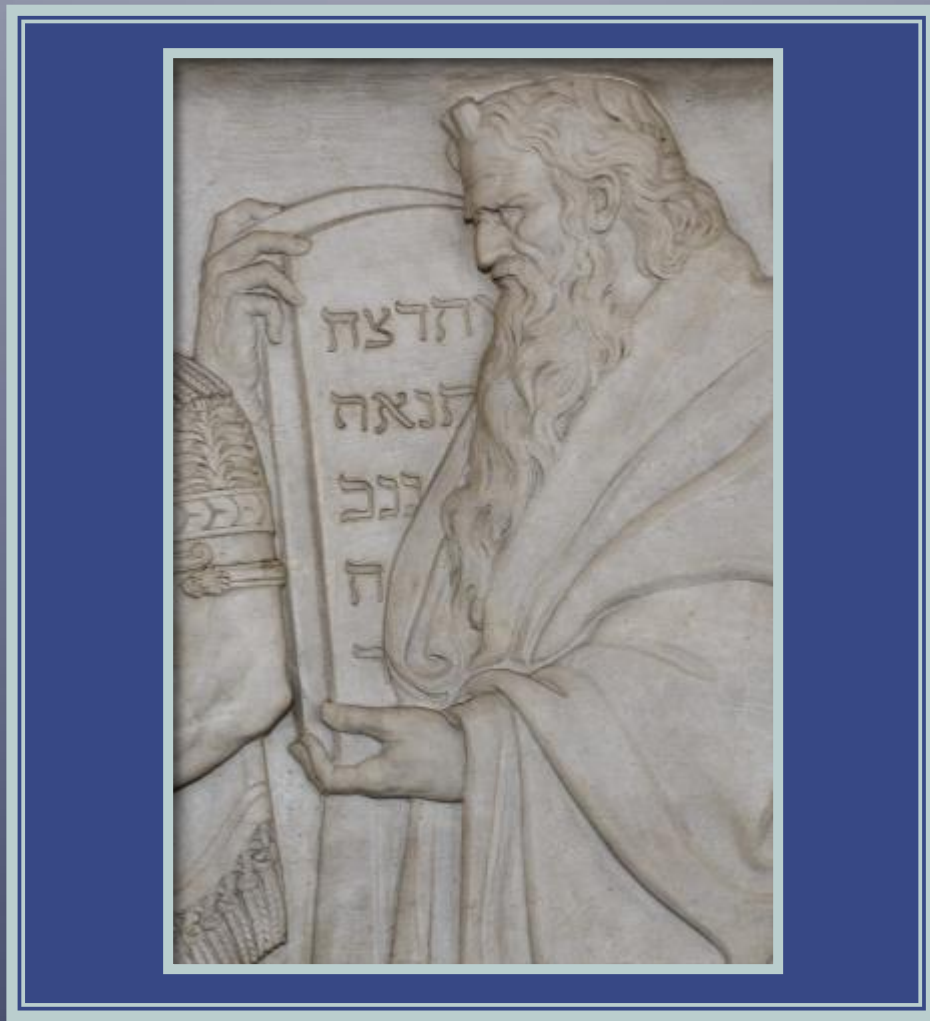




The 2010 Annual Templeton Lecture at the FOREIGN POLICY RESEARCH INSTITUTE



The Religious Origins of Religious Tolerance

By Eric Nelson

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About The Templeton Lecture on Religion and World Affairs

The Templeton Lecture on Religion and World Affairs was established in 1996, with a gift from John M. Templeton, Jr., M.D., president of the John Templeton Foundation. In 1995, Dr. Templeton retired from his medical practice to serve full-time as president of the Foundation. After receiving a B.A. from Yale University, Dr. Templeton earned his medical degree from Harvard Medical School. He trained in pediatric surgery under Dr. C. Everett Koop at the Children's Hospital of Philadelphia. After serving two years in the U.S. Navy, in 1977 he returned to CHOP, where he served on the staff as pediatric surgeon and trauma program director. He also served as professor of pediatric surgery at the University of Pennsylvania. Dr. Templeton has published numerous papers in medical and professional journals, in addition to two books, *A Searcher's Life* and *Thrift and Generosity: The Joy of Giving*.

Table of Contents

The Religious Origins of Religious Tolerance	1
Religious Tolerance	2
Setting the Scene	2
Josephus	4
Erastus	5
Gomarus and Arminius	7
Hugo Grotius	7
English Revolution	13
John Selden	14
Thomas Hobbes	18
John Locke	22
Baruch Spinoza	23
About the Author	27
FPRI Officers and Board of Trustees	28

The Religious Origins of Religious Tolerance

Philosophy is looking for a black cat in a coal mine. Metaphysics is looking for a black cat in a coal mine, but there's no cat. Theology is looking for a black cat in a coal mine, there's no cat, and someone yells out, "Look! There he is!"

This joke seems to epitomize a particular and reputable way of thinking about the trajectory of Western intellectual history, one according to which the West moves from an indefensibly theological frame of mind to a confusedly metaphysical one, and then finally to a respectably rational one. This is the standard story we tell ourselves about the rise of "modernity" and it attaches a particular significance to the period I study—the early modern period, and particularly the sixteenth and seventeenth centuries in Europe. It was at this moment, we are told, that a titanic shift occurred in the way that European Christians thought about moral and political philosophy. In the previous period, they had approached these subjects from a fundamentally theologized perspective: the way you answered questions about how we should live was to ask the question, "How does God wish for us to live?" However, in this period, under the influence of a set of circumstances and events—the rise of the new science, philosophical skepticism, and the carnage of the religious wars—Western theorists turned away from religion, regarding its claims as lacking in authority, and also as being fundamentally dangerous and inimical to peace.

The result of all of this is supposed to have been something called the "Great Separation," a decision made by Western theorists to sequester religion from moral and political theory and to allow those disciplines to get on according to their own rational criteria without any recourse to religious claims. This is an old and established view, but it's one that has been defended recently with a great deal of intensity. In the wake of the September 11, 2001 attacks and the global convulsions that followed, a number of Western scholars have devoted themselves to the task of recovering and highlighting the secular pedigree of our most central moral and political commitments, defending them against what they perceive to be a very different, retrograde and reactionary set of religious impulses which are to be resisted.

For a number of these scholars, this story, this way of cutting the deck, is not just about philosophy, and it's not just about historiography. It's also about politics. Their writings bear the unmistakable mark of the long controversy over the Iraq war, and they invoke the "secularization" narrative in order to insist, not only that we in the West should hold fast to our secularism, but also that because of the secular character of our values, we should not expect them to travel well. If liberal democratic norms depend for their coherence on a secularized world view that assigns religion no role in moral and political philosophy, then these norms will not be able to take root in cultures that have not experienced their own secularizing moment. The West on this account is once again exceptional, but for a new and different reason. As a result of a contingent set of circumstances in early-modern European history, we managed to emerge with a precious, fragile and utterly idiosyncratic moral and

political inheritance. It follows that while we should fiercely defend this inheritance at home, we should emphatically not attempt to export it abroad.

Now, it may or may not be a good idea to try to export our values abroad. That is an argument for another day. But what I want very much to insist on is this: If it is a bad idea to try to do this, it is not because the central commitments of Western modernity emerged out of a secularizing moment. Nothing, I want to suggest, could be further from the truth. Many, if not most, of our most fundamental commitments emerged instead out of a deeply theologized context, and were explicitly justified in the first instance on the basis of religious claims. Today, I want to talk about one of these—religious toleration.

Religious Tolerance

I've chosen to focus on religious tolerance not only because of its obvious importance, but also because there's a good intuitive reason for supposing that it does indeed rely on secularization, or at least on religious skepticism. If one is certain of the truth of a particular religious belief, then surely one is more likely to be intolerant toward those who don't conform to it. Conversely, if one has doubts or is convinced that the whole religious enterprise is nonsensical in the first place, then surely one will be more likely to tolerate religious diversity. As I say, there's a surface plausibility to this view, but it doesn't take all that much to see through it.

As we well know, it certainly does not follow that because one is skeptical about religious truth, or denies the religious perspective outright, one is, therefore, committed to toleration. History provides far too many counter-examples. Indeed, in the early modern period religious skeptics were often the least interested in tolerating religious dissent. If the whole business is nonsense anyway, why not pick one politically useful sort of nonsense and insist that everyone subscribe to it to maintain the peace? It was not an uncommon argument. But I'm more interested in why committed early modern Christians found themselves arguing in favor of religious toleration, and doing so on religious grounds.

I want to focus on one of their arguments in particular—the one that I take to have been the most important and influential. It's a strange argument to modern ears, not only because of its explicitly religious character, but also because it understood toleration to require not the separation of church and state, but rather their union. In order to set the stage, I first have to say a bit about the cultural and intellectual phenomenon out of which it emerged: the "Hebrew Revival" of the sixteenth and seventeenth centuries.

Setting the Scene

When we look at Renaissance political thought, or the way that the humanists—Petrarch, Bruni, Machiavelli, Guicciardini, the famous Italian humanists—thought about political

science, what we encounter is actually a very secular way of approaching the discipline. These people were, after all, reviving the inheritance of Greek and Roman antiquity. Greek and Roman antiquity was pagan, and although many of these people, if not most, were committed Christians themselves, they emerged with the view that political science could get on pretty well without recourse to revelation. You studied your Cicero, your Aristotle, your Livy and your Tacitus, you studied your ancient history and moral philosophy, you learned from the past and from the wise, and you proceeded without much difficulty.

What changes all of this is the Reformation. Martin Luther's clarion call of *sola scriptura* made the study of the Bible a Christian duty and led Protestants back to the original texts of the Hebrew Bible and the New Testament to an unprecedented degree. Readers began to see in the five books of Moses, not just political wisdom, but a political constitution. No longer regarding the Hebrew Bible as the Old Law—a shadowy intimation of the truth, which had been rendered null and void by the New Dispensation—they increasingly came to see it as a set of political laws which God himself had given to the Israelites as their civil sovereign. Moses was now to be understood as a "lawgiver," as the founder of a *politeia* in the Greek sense. The consequences of this reorientation were staggering, for if God himself had designed a commonwealth, then the aims of political science would have to be radically reconceived. Previous authors had sought guidance in political affairs from ancient philosophers or from the schoolhouse of human history; now, however, they would have to look elsewhere—to the perfect constitution designed by the omniscient God. It became the central ambition of political science to approximate, as closely as possible, the paradigm of what European authors began to call the *respublica hebraeorum*, the "republic of the Hebrews"; to compare it both to ancient and modern constitutional designs, and thereby to see where the latter were deficient.

Yet, given the parameters of this mission, a deep problem remained. How was one to know and understand the political constitution sketched out in the Hebrew Bible? The Biblical text itself gave notoriously fragmentary and inexact (not to say contradictory) details about its operation. Where could one turn for guidance? The new cadre of Christian Hebraists had a ready answer to this fundamental question: in order to understand the Hebrew Bible, they insisted, one should consult the full array of rabbinic sources which were now available to the Christian West. One should turn to the Talmud and the midrash; to the Targums and the medieval law codes. It may be that these texts were written by deicides who had fallen from God's grace (to be a Hebraist, we should recall, was rarely to be any kind of philo-semite), but, as Henry Ainsworth put it in his *Annotations upon the five bookes of Moses* (written c.1611-1622), one must consult "Hebrew doctors of the ancients sort, and some later of best esteeme for learning" if one wishes "to give light to the ordinances of Moses touching the externall practice of them in the commonwealth of Israel, which the Rabbines did record, and without whose helpe, many of those legall rites (especially in Exodus and Leviticus) will not easily be understood." The Jews may be "for the most part blinde," but they understand their own commonwealth. Accordingly, we see in the late sixteenth century the birth of what would become perhaps the most dominant genre of European political writing over the next century: texts which set themselves the task of studying the *respublica hebraeorum* in light of the vast continent of newly recovered rabbinic materials.

Josephus

At the center of this story stands the figure of Josephus, a wealthy Jew of the priestly class who defected to Rome during the Jewish War (66 to 73 CE), and then, as a favored member of the Flavian imperial household, attempted in a series of works to explain his own people to the Hellenized world. It was Josephus who first suggested to Europeans that Israelite society could be regarded as a *politeia*—a political constitution of the sort familiar to Greek philosophy—and that Moses could be understood as its lawgiver (*nomothetes*). But if Israel had a *politeia*, of what sort was it? Greek constitutional analysis had identified a limited set of possibilities: the rule of one, the few, or the many, each having correct and deviant forms. Did the Israelite constitution fit one of these paradigms? Josephus's answer, offered in the second book of his *Against Apion*, was revolutionary:

There is endless variety in the details of the customs and laws which prevail in the world at large. To give but a summary enumeration: some peoples have entrusted the supreme political power to monarchies, others to oligarchies, yet others to the masses. Our lawgiver, however, was attracted by none of these forms of polity, but gave to his constitution the form of what—if a forced expression be permitted—may be termed a “theocracy,” placing all sovereignty and authority in the hands of God. To him he persuaded all to look, as the author of all blessings, both those which are common to all mankind, and those which they had won for themselves by prayer in the crises of their history.

For Josephus, Israel had a unique *politeia*, one in which God himself was the civil sovereign. Josephus further develops this view in Book Six of the *Jewish Antiquities*, where he narrates the rise of Israelite kingship. Josephus's Samuel reproaches the people for having “deposed God from his kingly office” in requesting a mortal king. The Israelites of the time were “unaware that it was their highest interest to have the best of all rulers at their head and that the best of all was God; nay they chose to have a man for their king, who would treat his subjects as chattels of his will...one who, not being the author and creator of the human race, would not lovingly study to preserve it.” God had been their civil sovereign, but, in their folly, they had ejected him from his throne.

What has all of this to do with toleration? The connection must at first appear strange. After all, Josephus himself highlights the “unity and identity of religious belief” and the “perfect uniformity in habits and customs” which characterized Israelite theocracy. Why for early-modern thinkers would such a model have suggested that religious non-conformity should be tolerated? The answer comes when we reflect on what it *means* to say that God was the civil sovereign of the Israelite *politeia*. As Josephus is anxious to point out, the law code that God gave to his people through Moses contained legislation pertaining to every facet of life, from the punishment of crime, to the regulation of temple cult and the observance of the Sabbath. That is, the Mosaic law regulated both what we would regard as civil matters and what we would regard as religious affairs. No distinction between them

was recognized. Yet God gave all of these laws as *civil* sovereign, and entrusted the administration of both sets of laws to his highest civil magistrate, namely Moses (and later to Joshua, the Judges, kings, and Sanhedrin).

Israelite religious laws, in short, were *part* of the Hebrew politeia; they were, on this account, only law in virtue of having been promulgated by the civil sovereign. But this, as Josephus goes on to insist, is not simply or exclusively a fact about ancient Israel—the practice of a defunct republic, without any wider potential application. Rather it stands as a central feature of God’s own authoritative constitutional design, and, as such, commands universal deference and emulation. “The original institution of the Law,” Josephus writes, “was in accordance with the will of God.” As a result, “what could one alter in it? What more beautiful one could have been discovered? What improvement imported from elsewhere? Would you change the entire character of the constitution? Could there be a finer or more equitable polity?” The structure of the Israelite commonwealth is perfect, because God is its architect. In this commonwealth there is only one source of law (the civil sovereign) and only one jurisdiction (that of the civil magistrate). God, therefore, endorses this arrangement and commends it to those who would pursue a godly politics.

For a great many early-modern Hebraists—who used Josephus’s analysis as a prism through which to view the full range of Hebrew sources (from the Talmud itself to midrashic works and later rabbinic commentaries)—the notion that God instructs the faithful to lodge plenary power to make all law, both civil and religious, in the hands of the civil sovereign would serve as a royal road to toleration. For why, they 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 scrutinized the records of the Hebrew republic in order to answer them, the set of religious matters deemed worthy of civil legislation grew steadily smaller—until at last it was virtually empty. The emptying of this set did not, however, reflect an emerging conviction that religion ought to have no role in political argument. Quite to the contrary, it proceeded under the fervent belief that God himself required the emptying.

Erastus

The central role of the Hebrew revival, in the articulation of this Erastian case, is evident in its very origins. The Swiss theologian Thomas Lüber (Erastus), who gave his name to the position with which we are concerned, authored the 1568 *Explicatio gravissimae quaestionis utrum excommunicatio...mandato nitatur divino, an excogitata sit ab hominibus*, published posthumously in 1589, and later translated into English in 1659. A Zwinglian who opposed the effort to establish Calvinist church discipline in Heidelberg, Erastus wished to vindicate the claim that the Church lacks any independent power of excommunication. He begins his 75 *Theses* by announcing that, in considering the question

of the relative power of church and state, “I returned to the holy Scriptures: and in my reading I diligently noted, according to my understanding, what was consonant or dissonant to the received opinion.” In particular, he continues, “the consideration of the Jewish Republick and Church did not a little help me. For I thought thus with my self: The Lord himself doth testifie, *Deut.* 4. that his people hath Statutes and Laws so just and wise, that the Institutes of no people, that the Sanctions of no Republick, that no Ordinances, however, wisely constitute, were able to compare with them.” Erastus turns to the commonwealth of the Hebrews for guidance on this crucial matter because he regards it as the authoritative expression of God’s own political preferences. Accordingly, he announces that “that Church is most worthily and wisely ordered, which cometh nearest to the constitution of the Jewish Church.”

But how should we understand the relationship between civil and ecclesiastical authority in ancient Israel? Here is where the Josephan story comes in. Erastus insists that “in this the matters were so ordered by God, that we find not any where two divers Judicatories concerning manners, the one Politick, and the other Ecclesiastick... we did not find either under *Moses*, or under the Judges, or Kings, or under the Government of these that were called Rulers, such two discrepant Judicators.” Of particular importance to Erastus is the claim that the Jewish Sanhedrin (“the *Jewish* Magistracy or Senate”) had jurisdiction over religious matters as well as civil affairs. In order to defend this claim, Erastus argues, one need only point out that the Sanhedrin retained religious jurisdiction even under Roman rule. “The *Romanes*,” he writes, “permitted all people but namely the *Jews* living within and, without *Judea*, to use their own Laws in matters belonging to Religion, as so freely according to the Law and rites and manners as *Josephus* witnesseth.” Thus, while we should “not doubt but that the Romans had taken to themselves either all or most part” of the Sanhedrin’s power in “politick matters, and in cases of wrong,” we find that the council retained the right to punish crimes “against their Religion.” After all, as Erastus argues, in the case of Jesus (who “did not innovate the forme of Judicatories, and government which were administered according to the Laws”), the Sanhedrin sent “armed men to apprehend [him]; it examineth witnesses against him, as it would have it so seem, commandeth Christ to be brought before it,” and so on. In short, from the time of the Mosaic revelation through to the final collapse of Jewish sovereignty, God’s people observed no distinction between civil and religious law.

Since this is so, Erastus reasons, “I see not why the Christian Magistrate ought not to do the same at this time [as] in the *Jewish* Common-wealth, he was commanded by God to do. Do we think that we can constitute a better form of Church and Common-wealth?” After all, “in the 4. Chapter of *Deuteronomy*, we read that for the judgment and statutes which God had given to the people of *Israel*, that all Nations should admire and praise their wisdome and understanding.” If we take this imperative seriously, we will replicate the Israelite system, according to which “the power of restraining unclean and criminall persons was in the Magistrate, whose duty it was not only to punish these men according to the Law of God, but likewise to constitute all the externall Religion, for not *Aaron* but *Moses* did this: God so commanding.” The last sentence, in turn, reveals the extent to which Erastianism found itself linked to toleration, even at this foundational moment. Here Erastus reminds his readers that the whole point of his discourse had been to argue that ancient Israel “wanted

[i.e. lacked] this Excommunication.” Although the Israelites could, of course, punish those who had committed civil offences, there was no *spiritual* sanction for errors in doctrine or belief: “verily we do not read that any Person at any time amongst the *Jews*, was for the aforesaid cause [impiety], forbid by the Priests, Levites, Prophets, Scribes, or Pharisees to come to the Sacrifices, Ceremonies, or Sacraments.” In a politeia where the only binding law is civil law, intrusions of this sort upon the private conscience will not occur. While “externall Religion” falls within the purview of the magistrate (because it can affect civil peace and order), internal religion does not. For, as Erastus asks, “who judgeth the heart but God?”

Gomarus and Arminius

These arguments were taken up and then substantially broadened by Dutch theorists during the first two decades of the seventeenth century. At this moment the infant Dutch republic found itself embroiled in a fierce controversy over the creed and authority of the Calvinist Reformed Church. Orthodox Calvinists, led by the Leiden theologian Franciscus Gomarus, insisted that belief in predestination (that is, the notion that God foreordains which human beings will be granted salvation), along with a corresponding denial of any human freedom to cooperate with divine grace, was a non-negotiable aspect of Protestant faith. They also argued that the Church possessed independent power to enforce uniformity in this and other respects. Gomarus’s chief opponent was the second professor of theology at Leiden, Jacobus Arminius, who dissented from the Calvinist orthodoxy on predestination, and held the Erastian view that the civil magistrate ought to be sovereign in religious affairs (Arminius had studied with Erastus). Like the sixteenth-century Erastians, Arminius also argued for broad toleration of doctrinal differences, denying the right of magistrates to compel adherence to any particular set of credal propositions. Arminius had been nominated to his Leiden chair thanks to the support of Johan van Oldenbarnevelt, the Advocate of the States of Holland (effectively chief magistrate of the United Provinces), whose own Erastianism and Arminianism would eventually lead to his fall from power and execution in 1618. Before he fell, however, Oldenbarnevelt patronized a remarkable circle of Arminian theorists (also known as “Remonstrants,” after the 1610 *Remonstrantie* drafted by one of their chief advocates, Jan Uytenbogaert), whose meditations on the relationship between Erastianism and toleration would prove enormously influential in the later seventeenth century. The first and most famous of these theorists was Hugo Grotius.

Hugo Grotius

As a client of Oldenbarnevelt, it is hardly surprising that Grotius should have endorsed the broad nexus between Erastianism and toleration. But Grotius is far more explicit than even most Dutch Arminians about the degree to which the example of the *respublica hebraeorum* was responsible for producing that nexus. Grotius first broaches this subject in the *De republica emendanda*, a manuscript treatise he composed sometime between 1600 and 1610. Here Grotius offers his proposals for a much-strengthened Dutch Council of State— independent of the States-General—which could serve to unify the fractious federation of

the United Provinces. As he begins his analysis, however, he pauses to consider the standard of evidence we ought to employ in political argument. Which institutions and practices should we hold up as exemplary? Which texts should we regard as authoritative? Men are fallible, and, as a result, even their best efforts need not carry any normative force. Yet there is, Grotius firmly believes, a way out of this uncertainty: "If, however, there is somehow to be found a republic which could rightly point to the true God as its founder, then this must clearly be the one that all other ones should set themselves to imitate and seek to resemble as closely as they can." If God himself had designed a commonwealth, then the constitution of that republic would be perfect and authoritative. And, as Grotius promptly adds, God *did* design such a commonwealth: the republic of the Hebrews.

If the Israelite example is to teach us anything, however, we must first know what sort of arrangement it embodied, what sort of politeia it was. Accordingly, Grotius next inquires, "Of what kind then, should we say, was this Hebrew state? For of course we fully appreciate the different types of government distinguished by the philosophers, and the names put to them." At this point Grotius expresses a familiar reservation:

But perhaps we had better not after all rely too much on these men who, to be perfectly honest, could not make head or tail of this field of civil arts and who in fact understood just as little as the man who has decided to compete in a race without proper knowledge of the location of the starting-boxes or finishing-post. For what else are people doing who put human intelligence in the place of divine providence and merely praise the usefulness of a work instead of, as they ought to, glorifying its author?

The philosophers who have taught us about the different types of government (chiefly Aristotle) were laboring in the dark; they did not know God's providence, and so they could not understand the proper goal of political science: namely, to approximate as closely as possible God's own perfect constitutional design. Having rejected the civil science of Greek philosophy, Grotius turns to the obvious alternative:

I think therefore that to this matter, which was in fact unknown to these men of old, we should rather apply a new term, one which was actually coined most appropriately by Josephus, a man who was knowledgeable in the history of his native country as he was intimate with the fineness of a foreign language. Josephus was the first to call this form of government 'theocracy', to denote, no doubt, that in this state the highest and only authority belonged to God, to whose worship all other things were made subservient.

The last sentence of this passage might seem to suggest that Grotius drew a deeply anti-Erastian lesson from the example of Israelite theocracy. That is, the claim that "all other things" in ancient Israel were made subservient to God's worship might seem to be an argument for giving full civil authority to priests, rather than full religious authority to kings. But Grotius promptly clarifies the Erastian direction of his thoughts. The point, once again, is that the Josephan model makes God himself a civil sovereign, and demonstrates that all Israelite religious law was civil law. "The Hebrew nation," Grotius insists, "received from God laws which concerned both his worship and their secular lives." The Hebrew

republic offers no example of independent ecclesiastical jurisdiction—all laws were given by God as civil sovereign.

Furthermore, as Grotius goes on to argue, God placed both civil and religious authority in the hands of his chief civil magistrate: first the judges, then the kings, and finally in the Sanhedrin. Grotius is particularly anxious to establish this final point. Citing the Talmudic tractate Sanhedrin, he notes that “the learned interpreters of the Talmud understood the powers of this council [Sanhedrin] to mean that it was authorized to interpret divine laws and enforce new laws and that it was this body that in fact exercised control over public affairs, not only in the days of kings and rulers, but also when there was no king or ruler...” Arguing, as many early-modern Hebraists did, that the Sanhedrin was coeval with Biblical monarchy, Grotius insists that this supreme civil authority also possessed supreme religious jurisdiction. He defends this claim by invoking the power of the Sanhedrin to suspend various religious obligations, and to offer absolution:

That the right to pardon and administer justice against the rigidity of the highest law was also one of this council's prerogatives, I conclude from the fact that they had the right to discharge men of oaths and vows. Indeed the Jews state expressly in the explanation of the imperative precepts of the law that the Sanhedrin could in fact allow the temporary dispensation of something prohibited if there was good reason.

For Grotius, the Sanhedrin's authority to suspend religious law proves its ecclesiastical supremacy, and vindicates the Erastian conviction that a well-ordered republic will assign religious jurisdiction to the civil magistrate.

Grotius expanded on these ideas considerably in his great treatise on church government, the *De imperio summarum potestatum circa sacra*, completed in 1617, but not published until 1647 (two years after his death). His thesis, once again, is that the example of the Hebrew republic teaches Christians to be Erastians, and he makes this case by surveying Israelite history and arguing that, in each of its phases, no distinction was made between civil and ecclesiastical jurisdiction. In order to show that the early Israelite kings possessed supreme authority in religious affairs, he elaborates on a central argument of the *De republica emendanda*.

The Hebrew kings even exempted, as it were, some actions from God's law; for although it was the law that nobody shall eat of the sacrifice of the Lord's peace offerings while an uncleanness is on him [Lev. 7:10 and 22], yet Hezekiah, having poured forth prayers to God, granted an indulgence to the unclean to eat from the sacrifice [2 Chron. 30:18]. It was also the law that sacrificial animals should be slain by the priests [Lev. 1:5]; and yet we read that twice under Hezekiah the Levites were brought in to perform that priestly duty, for lack of priests [2 Chron. 29:34 and 30:17]. This is not to say that the kings released anyone from the bond of God's law, for no man can do that: they gave in to equity (the best interpreter of divine and human law), and declared that by God's own intention God's law lost its obligation in such situations.

While fully acknowledging God's status as civil sovereign in Israel, Grotius once again highlights the prerogative of Hebrew kings to suspend or amend various religious obligations arising out of the Mosaic law. God gave this authority to the civil magistrate, and to no one else.

Grotius then turns his attention to the Second Temple period, following the Babylonian Captivity. Here too, he wants to argue, Israelite government preserved the religious authority of the civil magistrate. In respect of "criminal jurisdiction," which applies to "those who commit a crime in sacred matters as well," the authority of the Hebrew kings was transmitted first to Ezra (mediated by the authority of the Persian kings), and then to the Sanhedrin. Grotius writes, "For just as Ezra possessed all kinds of jurisdiction granted him by the Persian king, so the Sanhedrin of the Jews, by permission of the Roman people and afterwards of the emperors, kept this part of that jurisdiction together with the right of detention and flogging." Perhaps the most important aspect of this religious jurisdiction—one which, as we have seen, had always occupied a central place in Erastian argument—concerned excommunication. Grotius makes his case by offering a somewhat confused typology of the different levels of excommunication discussed in the Talmud and later rabbinic sources (chiefly Maimonides).

The Hebrew masters [i.e. rabbis] teach us that there were three degrees of expulsion from the synagogue; the first of these is called *nidduy*: this punishment meant that the man in question had to stand in the synagogue, on his own and in a humiliating place; the second was the *herem*: it was unlawful for someone notified of this to appear in the synagogue; the others did not use his services for anything, and he received only the bare minimum to keep him alive. The third degree is called in Aramaic *shammata*; it is applied to someone who would have been condemned to death by Mosaic law, but could not be killed since the authority of imposing capital judgment had been taken away; his company and touch were shunned by everyone.

In fact, the Talmud uses the Aramaic term "shammatha" as an equivalent for *nidduy* and (according to some) *herem* as well, not to identify a yet more severe form of excommunication. Nonetheless, Grotius's interest in this final form is quite understandable: the fact that it stands in for a capital sentence makes clear, on his account, that excommunication in the Hebrew republic was part of criminal jurisprudence. That is, it was emphatically within the authority of the civil magistrate, and its object was the punishment of crime, not impiety.

Now Grotius is fully aware that "some men assign to it [the Sanhedrin] a double structure: one civil, the other ecclesiastical," and that "they have authorities for their view who are great but recent." But Grotius insists that their arguments are "unsound." To begin with, "who are more fit to believe in a historical question regarding the Jewish state than the Jews themselves?" Having argued that the testimony of Jewish sources is to be privileged when it comes to the deciphering of Israelite governance, Grotius then notes that "the Jewish rabbis, not to be despised as authorities in such matters, say that this great Sanhedrin did render judgment in all cases put before them," both civil and religious. The Sanhedrin was entrusted with "God's affairs," and "it is more in agreement with Scripture

to understand by 'God's affairs' everything which is defined by God's laws and which is to be judged from God's law." Grotius concludes, therefore, that "it has been proved that jurisdiction in sacred affairs belongs to the supreme powers as a part of their authority in the broad sense... No jurisdiction naturally belongs to priests, that is no coercive or imperative judgement, since their whole function by its nature includes no such thing."

Grotius, then, fully embraced the Erastian commitment to civil supremacy, and, like his predecessors, derived his arguments for that position from the authoritative example of the *respublica hebraeorum*. It is by no means coincidental that he also emerged as an important defender of religious toleration. Already in the *De imperio*, Grotius had begun to sketch the implications of his ecclesiology for the question of religious non-conformity. In legislating religious matters, Grotius argued, the supreme magistrate ought to be motivated by the need to foster "harmony," order, and civic peace, not the desire to impose doctrinal uniformity (an effort which, on his account, tends to the disturbance of commonwealths). That is, religious laws ought to be made for civic reasons—and God cannot intend the civil sovereign to legislate that which threatens civic upheaval. It is, however, in the *De iure belli ac pacis* of 1625 that Grotius makes fully explicit the direction of his thoughts. He broaches the subject in Book II, chapter 20, in the midst of an expansive discussion of the right to punish. The question is: what sorts of religious errors are punishable by human, civil law? In formulating the question this way, Grotius has, of course, already advertised his Erastian commitments: he clearly assumes from the beginning that religious errors cannot be punishable on earth by anything *other* than civil law.

Indeed, Grotius immediately acknowledges that, in asking whether a given religious practice or belief ought to be criminalized, he will simply be considering "its peculiar effects" on "human society." Religious belief itself, Grotius proceeds to argue, is useful for civil society, in that it encourages private morality and the cultivation of civic virtue—and "the Usefulness of Religion is even greater in that great Society of Mankind in general, than in any particular Civil Society," because it compensates for the absence of coercive law in nature. As a result, it becomes immediately apparent that Grotius's civil sovereign will have *some* interest in religious affairs, because certain features of religious belief and observance do have important civic consequences. The question remains: which?

In venturing an answer, Grotius returns to an argument he had first developed in a short, unpublished 1611 manuscript on theological disagreement, entitled *Meletius* (named for Meletius Pagas, the late sixteenth-century patriarch of Alexandria, who had attempted to unite the various Christian denominations in common cause against the Turks). He posits the existence of a "true Religion, which has been common to all Ages"—one which forms the foundation of all human religions—and argues that it rests on four "fundamental Principles":

the first is, that there is a GOD, and but one GOD only. The second, that GOD is not any of those Things we see, but something more sublime than them. The third, that GOD takes Care of human Affairs, and judges them with the strictest Equity. The fourth, that The same GOD is the Creator of all Things but himself.

These four principles, on Grotius's account, comprise the basic human religious sensibility, and they have profoundly important civic consequences. The first two establish the existence of an authoritative divinity; the third "is the Foundation of an Oath, in which we call GOD to witness what passes in our Hearts, and at the same Time submit to his Vengeance; whereby we likewise acknowledge his Justice and Power"; and the fourth, in identifying God as the creator of the world, offers "a tacit Indication of his Goodness, and Wisdom, and Eternity and Power." For Grotius, "these Truths lead to Virtue." The general belief in a God who cares about human affairs is a necessary condition of effective civil society. As a result, Grotius is happy to concede that "those who first attempt to destroy these Notions, ought, on the Account of human Society in general, which they thus, without any just Grounds, injure, to be restrained, as in all well-governed Communities has been usual."

When it comes to other sorts of beliefs, however, Grotius draws a very different conclusion. In addition to arguing that belief in the four foundational principles is necessary for civic life, Grotius also wants to establish that it is sufficient. On his account, no additional doctrinal views are required in order for men to be good citizens; the politically necessary "Sort of Religion" can "be kept up" without them. The result is clear enough: the civil sovereign will have no reason to legislate belief in these extraneous doctrines, and broad toleration will be the rule. Grotius's example is once again ancient Israel.

The Law of GOD, tho' delivered to a Nation [Israel], which by the concurrent Proof of Prophecies and Miracles, either seen or transmitted to them by uncontested Authority, was infallibly assured of the Truth of these Notions, tho' it utterly detested the Adoration of false Gods, did not sentence to Death every Offender in that Case, but such only whose Crime was attended with some particular Circumstance; as, for Instance, one who was the Ringleader and Chief in seducing others, *Deut. xii.1*, or a City that began to serve Gods unknown before, *Deut. xiii.12*, or him who paid divine Honour to any of the Host of Heaven, hereby cancelling the whole Law, and entirely relinquishing the Worship of the true GOD, *Deut. xvii.2*... Nor did GOD himself think the Canaanites, and their neighbouring Nations, tho' long addicted to vile Superstitions, ripe for Punishment, till by an accumulation of other Crimes they had enhanced their Guilt, *Gen. xv.16*.

Grotius's argument is straightforward. Even in the case of ancient Israel, which had received the law as a direct and unimpeachable revelation (so that there could be no question of its authenticity), heterodox beliefs about the deity were not regarded as criminal, unless they were employed to disturb the peace, or to question the politically necessary belief in the four fundamental principles.

Within the Hebrew republic itself, as Grotius had pointed out in the very first chapter of *De iure*, "there always lived some Strangers...in the Hebrew, *hasidei ummot*, *Righteous among the Gentiles*; as it is read in the *Talmud*, *Title of the King* [sic]... These, as the *Hebrew Rabbins* say, were obliged to keep the Precepts given to *Adam* and *Noah*, to abstain from Idols and Blood, and from other Things, which shall be mentioned hereafter in their proper Place; but not the Laws peculiar to the *Israelites*." Those who did not abide by the Mosaic law were allowed to live amongst the Israelites unmolested, provided that they observed a minimal

standard of general morality. The Canaanites, for their part, had been punished by God, not for holding false beliefs about the divine, but on account of manifest crimes. Grotius concludes from all of this that one may not make war on non-Christian peoples as a punishment for their denial of Christ, and that it is illicit to punish Christians (like Arminius and his followers) “because they are doubtful, or erroneous as to some Points either not delivered in Sacred Writ, or not so clearly but to be capable of various Acceptations, and which have been differently interpreted by the primitive Christians.” This latter point, like the entirety of Grotius’s Erastian politics, is established “from the standing Practice of the Jews.”

English Revolution

This troika of Hebraism, Erastianism, and toleration, forged so powerfully by Grotius and his fellow Remonstrants, would resurface almost identically in the ecclesiological debates surrounding the English Revolution. When the Westminster Assembly of Divines convened in July of 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”), John Lightfoot, and John Selden. Indeed, in the English context, one can say without much exaggeration that to be a Hebraist was to be an Erastian, and vice versa.

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 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.” 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.” That is, in response to the claim that the Sanhedrin was itself a kind of independent ecclesiastical authority, Lightfoot reminded the Assembly of the Sanhedrin’s civil role in ancient Israel, likening it to Parliament. The ensuing debate was so fierce that it occupied an entire day of deliberation, December 11, 1643: Lightfoot summarizes the day’s discussion by announcing that “our business was upon the elders in the Jewish church”—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 defense.

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.
- The lxx senators in the Sanhedrim were civil officers, Deut. 1. assistants to Moses, not to the priests: "Regibus assidere soliti" ["they were accustomed to sitting with the kings"] Philo. Jud.

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. 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." 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."

John Selden

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"). 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*). Already in his 1617 *History 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. He would return to this theme throughout his life, culminating in his massive study of ancient Jewish jurisprudence, the *De synedriis et praefecturis iuridicis veterum Ebraeorum* (1650-5), which likewise aimed to vindicate the authority of the civil magistrate over religious affairs. But it was in a different, earlier work that Selden, like Grotius before him, explored the consequences of his Hebraic Erastianism for the question of toleration.

This work, the *De jure 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). 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 behavior 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*. As we have seen, Grotius had made some use of the *praecepta Noachidarum*, but Selden went much further than his teacher in suggesting that these laws were *themselves* to be understood as the laws of nature: that is, Selden rejected the notion that natural law was accessible to the unaided reason of human beings, and argued instead that it was the result of divine legislation.

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.” Following the rabbis, Selden refers to the first class as “proselytes of justice” (*proselyti iustitiae*; Heb. *gerei tzedek*), and the second as “proselytes of the dwelling-place” (*proselyti domicilii*; Heb. *gerei toshav*). 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 practiced toleration.

Selden gives two broad explanations for this state of affairs. The first is found in the rabbinic maxim that “the righteous among the gentiles will have a share in the world to come” (BT Sanhedrin 105a). Once again following the rabbis, Selden insists that the Biblical God looked with favor on those “sons of Noah” who observed the seven post-diluvian laws. It was not 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 is to be found in the rabbinic conviction that there was no theological reason to compel “sons of Noah” to observe the Mosaic law. The second explanation is far more familiar, in that it closely approximates the one offered by Grotius. The general observance of these precepts, for Selden, 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 goes a good deal further than Grotius by insisting that even the demands of the Noachide laws themselves were less exacting than usually supposed. Turning once again to the rabbis, Selden points out that the “blasphemy” criminalized 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. 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).

Even in the case of idolatry, Selden is anxious to inform us (again 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. As Selden’s energetic disciple Henry Stubbe 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 to destroy all their Neighbours that were Idolators, they never practiced such a thing.” The requirement was, rather, to be understood as “part of the *Political Law of Moses*.” 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 shammaim*), since their non-participation posed no civic threat. On Selden’s Erastian reading of Israelite theocracy, God only endorses compulsion in matters of religion when it is necessary to secure the health of the politeia.

Selden’s Hebraic scholarship inspired an entire generation of political writing, culminating in the work of England’s two most prominent Interregnum Erastians, James Harrington and Thomas Hobbes. Harrington, for one, announces his Hebraic Erastianism at the very outset of *Oceana* (1656). In the Hebrew republic, “the government of the national religion appertained not unto the priests and Levites, otherwise than as they happened to be of the Sanhedrim or senate, to which they had no right at all but by election... in Israel the law ecclesiastical and civil was the same; therefore the Sanhedrim, having the power of one, had the power of both.” Hebrew theocracy recognized no distinction between civil and religious law; both had a common source in the will of the civil sovereign (God), and both fell within the jurisdiction of the civil magistrate. This was certainly true in the case of Moses, “nor, after the institution of the Sanhedrim, was the high priest other than subordinate unto it, whether in matters of religion or state. Nay, if he had given them just

cause, he might be whipped by the law, as is affirmed by the Talmudists.” As Harrington would put it later in *The Art of Lawgiving* (1659), “between the law and the religion of this government there was no difference; whence all ecclesiastical persons were political persons, of which the Levites were an entire tribe, set more peculiarly apart unto God, the king of this commonwealth, from all other cares than that only of his government.” One can therefore say without hesitation that the sort of “civil power” that “cometh nearest unto God’s own pattern, regards as well religion as government.”

Harrington likewise follows Grotius and Selden in insisting that the pristine, Erastian Hebrew republic had broadly tolerated diverse religious practices and commitments. Like his predecessors, he grounds this conviction in an interpretation of the Noachide laws:

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’.

Like Grotius and Selden, Harrington uses this aspect of the rabbinic tradition to assert that, in God’s commonwealth, observance of a minimal standard of universal religious and moral behavior was regarded as politically sufficient. No further coercive religious law was promulgated because there was no civil reason for it—and in the Hebrew republic, religious law was a matter for the civil magistrate alone.

When the Anglican divine Henry Ferne penned his critique of Harrington’s *Oceana*, he declared that “what is said in relation to the church, or religion in the point of government, ordination, excommunication, had better beseemed Leviathan and is below the parts of this gentleman.” At first glance, this will appear to be a remarkably perverse claim. Harrington and Hobbes, one might suppose, could not have been more different: the former, after all, was a republican Platonist who hailed from the gentry, while the latter was a materialist defender of absolute monarchy whose father had been a drunken curate. But Harrington himself was happy to admit that, when it came to questions of ecclesiology, he was an ally of “Mr Hobbes.” The reason is that Harrington found in Hobbes’s works a thoroughgoing defense of precisely his own brand of Hebraic Erastianism (the more remarkable, since Hobbes seems to have known no Hebrew at all). Harrington also recognized, as did several acute seventeenth-century readers, that Hobbes’s political science offered a surprisingly sweeping endorsement of toleration—and that these two facts were closely related. Although it has become commonplace to suggest that Hobbes’s Erastianism was rather tepid in *De cive* (1642), and only emerged fully in *Leviathan* (1651), the former text in fact contains an explicit derivation of Erastian politics from the model of Josephan theocracy.

Thomas Hobbes

Hobbes begins this discussion by distinguishing, very much as Grotius had, between two types of divine law: “*naturall* (or *morall*) and *positive*.” Natural law “is that which God hath declared to all men by his *eternall word* borne with them, to wit, their *naturall Reason*.” These laws are universally binding on men as such. Divine positive law, on the other hand, refers to “the Lawes which he [God] gave to the Jewes concerning their government, and divine worship, and they may be termed the *Divine civill Lawes*, because they were peculiar to the civill government of the Jewes, his peculiar people.” This second category includes only the laws which God gave the Israelites as their civil sovereign. The covenant at Sinai, Hobbes reminds us, transformed Israel into the “Kingdom of God” (*regnum Dei*) a fact established, on Hobbes’s Josephan account, by the fact that I Samuel 8 describes the election of Saul as a rejection of God’s kingship.

For further support, Hobbes turns explicitly to Josephus: the character of Israelite theocracy is demonstrated by “the doctrine also of *Judas Galilaeus*, where mention is made in *Ioseph. Antiq. of the Iewes*, 18. *Book, 2. Chap.* in these words: *But Judas Galilaeus was the first authour of this fourth way of those who followed the study of wisdom. These agree in all the rest with the Pharisees, excepting that they burn with a most constant desire of liberty, beleiving God alone to be held for their Lord and Prince, and will sooner endure even the most exquisite kinds of torments, together with their kinsfolks, and dearest friends, than call any mortall man their Lord.*” The God of Israel, as civil sovereign, gave laws concerning both “government” and “divine worship,” both civil and ecclesiastical affairs. From this authoritative example, we should learn that the civil magistrate is the only legitimate source of law; that “all *humane law* is *civill*” and that “*civill Lawes* may be divided according to the diversity of their subject matter, into *sacred*, or *secular*.”

Hobbes maintains course nine years later in *Leviathan*, while intensifying his polemical assault on independent Episcopal authority. The chief ground of the argument is, once again, “the Kingdome of God, (administered by *Moses*,) over the Jewes, his peculiar people by Covenant.” Indeed, Hobbes’s meditation on Israelite theocracy occupies such a large proportion of Part Three (“Of a Christian Common-wealth”) that it would not be unreasonable to describe this section of *Leviathan* as Hobbes’s own contribution to the *respublica hebraeorum* genre. Hobbes repeats his conviction that “by the *Kingdome of God*, is properly meant a Commonwealth, instituted (by the consent of those which were to be subject thereto) for their Civill Government and the regulating of their behaviour, not only towards God their King, but also towards one another in point of justice, and towards other Nations both in peace and warre; which properly was a Kingdome, wherein God was King, and the High priest was to be (after the death of *Moses*) his sole Viceroy, or Lieutenant.” God as civil sovereign handed down both civil and ecclesiastical laws, and instituted as subordinate magistrates first *Moses* and then the high priest. While *Moses* held this office, “neither *Aaron*, nor the People, nor any Aristocracy of the chief Princes of the People, but *Moses* alone had next under God the Sovereignty over the Israelites: And that not only in causes of Civill Policy, but also of Religion.” Moreover, “from the first institution of God’s Kingdome, to the Captivity, the Supremacy of Religion, was in the same hand with that of

the Civill Sovereignty; and the Priests office after the election of Saul, was not Magisteriall, but Ministeriall.”

Having offered this analysis of God’s politeia, Hobbes is quick to draw the standard Erastian conclusion. Because Moses enjoyed both civil and ecclesiastical jurisdiction, “we may conclude that whosoever in Christian Commonwealth holdeth the place of Moses is the sole messenger of God and interpreter of His commandments.” The Christian commonwealth should model itself on the Hebrew republic, assigning complete jurisdiction over religious affairs to the civil magistrate. There can be no independent ecclesiastical authority. Like Selden (whom he seems to have befriended at around the time he published *Leviathan*), Hobbes insists that contemporary clerics make a grave mistake in supposing that they have an independent “divine right” to tithes; such offerings were simply “Publique Revenue” in “the Kingdom of the Jewes, during the Sacerdotalle Reigne of God,” and as such were collected under the authority of the civil sovereign. Hobbes likewise follows his Erastian predecessors in arguing (again based on Israelite practice) that excommunication is “without effect” when “it wanteth the assistance of the Civill Power.”

Legitimate coercion can only arise from the civil law. “A Church,” Hobbes insists, “such a one as is capable to Command, to Judge, Absolve, Condemn, or do any other act, is the same thing with a Civil Common-wealth, consisting of Christian men; and is called a *Civill State*, for that the subjects of it are *Men*; and a *Church*, for that the subjects thereof are *Christians*. *Temporall* and *Spiritual* Government, are but two words brought into the world, to make men see double, and mistake their *Lawfull Sovereign*.” There is, as Hobbes delights in arguing, “no other Government in this life, neither of State, nor Religion, but Temporall; nor teaching of any doctrine, lawfull to any Subject, which the Governour both of the State, and of the Religion, forbiddeth to be taught: And that Governor must be one; or else there must needs follow Faction, and Civil war in the Common-wealth between the *Church* and *State*; between *Spiritualists* and *Temporalists*; between the *Sword of Justice*, and the *Shield of Faith*.” Here the law of nature joins the law of the Hebrew republic in proclaiming the ecclesiastical supremacy of the civil magistrate—which is hardly surprising, since, according to Hobbes, God is the author of both.

Given the force of these arguments, Hobbes’s Erastian credentials have never been in doubt. It is only recently, however, that scholars have begun to take seriously the seventeenth-century view that Hobbes should also be regarded as an advocate for toleration. This revisionist account of the Hobbesian project initially invites a degree of understandable skepticism. It is undeniable, after all, that Hobbes gives his sovereign extremely broad powers to shape religious life in the commonwealth: the Hobbesian sovereign has the right to establish the ceremonials of public religious worship; to determine which Biblical books are to be regarded as canonical; to interpret scripture on behalf of the commonwealth as a whole; to excommunicate subjects; to regulate which books may be printed and which opinions publicly uttered; and to compel subjects to perform even those actions which they regard as contrary to the dictates of their conscience.

But, as several scholars have pointed out, Hobbes was equally explicit about the *limits* placed by his political science on the right of sovereigns to dictate doctrine and belief. The more cynical may observe that Hobbes's most extensive attacks on the criminalization of doctrinal non-conformity (the *Historical Narration Concerning Heresy*, the *Dialogue between a Philosopher and a Student of the Common Laws of England*, and the *Historia Ecclesiastica*) all date to the period in the late 1660s during which he himself was under investigation for heresy. Yet Hobbes had already insisted in *Leviathan* 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 necessary for the preservation of peace, but none besides. And, like Grotius and Selden before him, Hobbes argued that most religious laws will be excluded by this reasoning.

Hobbes 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." 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 behavior 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.

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

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

Hobbes was not, of course, the first to distinguish the first table from the second, and to suggest that, while the latter summarized 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 which only make sense in a commonwealth governed by God as civil sovereign. 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 (*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.” 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.”

John Locke

This precise argument strikingly reappears in John Locke's *Letter Concerning Toleration* (1689), Locke follows his Hebraic Erastian predecessors in analyzing the religious law of the "commonwealth of Israel." Like Grotius and Selden, he stresses that the Hebrew republic practiced broad toleration, welcoming residents who did not obey the Mosaic law—and even tolerating idolatry outside its borders:

Amongst so many captives taken, so many nations reduced under their obedience, we find not one man forced into the Jewish religion and the worship of the true God and punished for idolatry, though all of them were certainly guilty of it. If any one, indeed, becoming a proselyte, desired to be made a denizen of their commonwealth, he was obliged to submit to their laws; that is, to embrace their religion. But this he did willingly, on his own accord, not by constraint. He did not unwillingly submit, to show his obedience, but he sought and solicited for it as a privilege. And, as soon as he was admitted, he became subject to the laws of the commonwealth, by which all idolatry was forbidden within the borders of the land of Canaan. But that law (as I have said) did not reach to any of those regions, however subjected unto the Jews, that were situated without those bounds.

Locke then follows Hobbes in arguing that the criminalization of idolatry *within* the Hebrew republic is to be explained by the fact that "God being in a peculiar manner the King of the Jews, He could not suffer the adoration of any other deity (which was properly an act of high treason against Himself) in the land of Canaan, which was His kingdom." God's rule over his peculiar people was "perfectly political," and, as a result, the "acknowledgment of another god" implied the acknowledgment of "another king." In all other republics, however, this is simply not the case.

Where God is not the civil sovereign, Locke argues, the number of religious matters worthy of legislation is vanishingly small, confined to "civil concerns" understood quite narrowly. Locke's magistrate has no business establishing forms of public worship by law, and his purview does not include "the salvation of souls." For this reason, it might seem strange to describe the Locke of 1689 as any kind of Erastian—indeed it has become commonplace to draw the sharpest of lines between the self-evident Erastianism of Locke's early *Two Tracts on Government* and his later commitment to broad religious liberty (reflected in the 1667 *Essay Concerning Toleration* and in the three subsequent *Letters Concerning Toleration*). To be sure, this picture is not wholly false: the Locke of 1689 is anything but a traditional advocate for the ecclesiastical jurisdiction of the civil sovereign. But he does nonetheless explicitly defend the legitimacy and importance of the national church, and also retains the two most basic Erastian convictions: that all binding religious law is civil law, and that the civil sovereign should only make religious laws that are politically necessary (but *must* make those). Locke certainly regards far fewer religious laws as politically necessary than did many of his predecessors, but the reasoning is the same. Variety in public worship may not threaten civil order, but "that church can have no right to be tolerated, by the magistrate, which is constituted upon such a bottom, that all who enter into it, do thereby, ipso facto, deliver themselves up to the protection and service of another prince." Likewise, "those are not at all to be tolerated who deny the being of

God” because “promises, covenants, and oaths, which are the bonds of human society, can have no hold upon an atheist.” For Locke, atheism and (perhaps) Catholicism endanger the state, and therefore should not be tolerated. Behind these claims lurks the shadow of Israelite theocracy, as the Erastians understood it.

Baruch Spinoza

I have now reached the end of my story for today, but I would be remiss if I did not close by offering a few remarks about the comparison between Locke and the very different figure of Spinoza. The comparison is revealing because, at first glance, Spinoza’s use of the Israelite example in his *Tractatus theologico-politicus* (1670) bears remarkable similarities to that of Grotius, Selden, Harrington, and Locke. Like them, he treats the Hebrew constitution as an embodiment of the Erastian ideal. Reason teaches us, on Spinoza’s account, that the “sovereign power” should “have supreme authority for making any laws about religion which it thinks fit.” Moreover, “religion acquires its force as law solely from the decrees of the sovereign.” It is therefore both a necessary and sufficient condition of valid religious law that it be promulgated by the civil sovereign. Spinoza has nothing but contempt for those who attempt to prove the contrary from the example of the Hebrew republic:

I do not pause to consider the arguments of those who wish to separate secular rights from spiritual rights, placing the former under the control of the sovereign, and the latter under the control of the universal Church; such pretensions are too frivolous to merit refutation. I cannot, however, pass over in silence the fact that such persons are woefully deceived when they seek to support their seditious opinions (I ask pardon for the somewhat harsh epithet) by the example of the Jewish high priest, who, in ancient times, had the right of administering the sacred offices. Did not the high priests receive their right by the decree of Moses (who, as I have shown, retained the sole right to rule), and could they not by the same means be deprived of it? ...This right was retained by the high priests afterwards, but none the less were they delegates of Moses—that is, of the sovereign power.

For Spinoza, as for the other Hebraist Erastians, the Mosaic constitution placed full religious authority in the hands of the civil magistrate. Also like them, he emphasizes the point that God himself was regarded as the civil sovereign of Israel, and, as such, gave both civil and religious law. “For this reason,” he notes, “the government could be called a Theocracy, inasmuch as the citizens were not bound by anything save the revelations of God.”

Spinoza is equally conventional in developing his Erastian commitment into a defense of toleration. If all valid religious law is civil law—and if all legitimate civil law aims at civil peace and prosperity—then, Spinoza tells us, we can identify two familiar limitations on the category of permissible religious law. The first states that, while “the rites of religion and the outward observances of piety should be in accordance with the public peace and well-being, and should therefore be determined by the sovereign power alone,” personal

religious beliefs are quite another matter. As Spinoza puts it, “inasmuch as [personal religious conviction] consists not so much in outward actions as in simplicity and truth of character, it stands outside the sphere of law and public authority.” He offers two reasons for this exclusion. The first is that “simplicity and truth of character are not produced by the constraint of laws, nor by the authority of the state, no one the whole world over can be forced or legislated into a state of blessedness...” Here we have the familiar view that private belief should not be legislated because it cannot be coerced. But, like his Erastian predecessors, Spinoza then offers a second consideration: “The only reason for vesting the supreme authority in the interpretation of law, and judgment on public affairs in the hands of the magistrates, is that it concerns questions of public right. Private belief per se has no important civic consequences, and therefore ought to stand outside the sphere of public law.

This last point leads straightforwardly to Spinoza’s second Erastian proviso, which states that laws regulating outward religious observance should themselves only be adopted if they serve an important civic purpose. Spinoza makes this point by invoking the example of the Hebrew republic once again. “In the 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.” 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 there from.” 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 distinctive argument:

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 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.

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.

Yet, however consistent Spinoza's deployment of the Hebrew example may be with the standard presentation of Hebraic Erastianism and toleration, his distinctive, radical vision of the Hebrew Bible places him outside this tradition. For Spinoza, the God of the Hebrew Bible simply does not exist. To be sure, Spinoza acknowledges the existence of something called "God," but he makes clear in the *Ethics* (1677) that this thing is identical with the underlying order of the natural world (which he calls "substance"). Such a God does not "talk" to anyone, nor can he (or, better, "it") have constitutional preferences (except in the remote, metaphorical sense that he/it can be said to "recommend" those policies which reflect a correct understanding of how the world in fact works). The result is that Spinoza cannot endorse the form and practices of the *respublica hebraeorum* on the grounds that they express the divine will. Quite to the contrary, he makes clear that they have no special authority of any kind:

We must say of Moses that from revelation, from the basis of what was revealed to him, he perceived the method by which the Israelitish nation could best be united in a particular territory, and could form a body politic or state, and further that he perceived the method by which that nation could best be constrained to obedience; but he did not perceive, nor was it revealed to him, that this method was absolutely the best, nor that the obedience of the people in a certain strip of territory would necessarily imply the end he had in view. Wherefore he perceived these things not as eternal truths, but as precepts and ordinances, and he ordained them as laws of God, and thus it came to be that he conceived God as a ruler, a legislator, a king, as merciful, just, &c., whereas such qualities are simply attributes of human nature, and utterly alien from the nature of the Deity.

The laws of Moses were simply prudential maxims arising out of the particular situation of the Israelites at a crucial moment in their national history. They have no universal force, and the notion that they were "given" by God is merely an anthropomorphizing illusion. The Hebrew republic was simply one ancient politeia among others, and its distinctive laws "were only valid while that kingdom lasted."

This is, indeed, a radically different approach to the Israelite example. Its intention is to remove the aura of authority that accompanies the Biblical text, in the service of an avowedly secular politics. If, as Spinoza declares, the Hebrew republic is not authoritative for moderns, and if Jesus gave no laws, then religion truly has been banished from political life. The deflationary use of the Hebrew republic is, then, a real and important dimension to the story of political Hebraism. But what I want very much to deny is that it characterizes the story as a whole, or even that it constitutes the most important and influential chapter of that story. As we have seen, the vast majority of Hebraists who deployed the Israelite example to defend Erastianism and toleration did *not* take Spinoza's path. They regarded the Hebrew republic as an authoritative expression of God's

constitutional preferences, and fervently believed that, in asserting the religious supremacy of the civil magistrate and in arguing for limits on the scope of religious legislation, they were doing His will.

Indeed, Spinoza's use of the Hebrew republic could not be more different from, for example, Locke's. While Spinoza's God is simply nature itself, and his Israel just one ancient commonwealth among many, Locke's God is the God of both testaments, and his Israel is God's kingdom. To put it another way, Spinoza's politics is secular because, for him, the Biblical God does not exist; Locke's politics is secular because, on his account, the Biblical God who sent us into the world "by his order, and about his business" wants it that way. Both thinkers endorse toleration, but only Spinoza does so for secular reasons. The result is a deep ambiguity in the character of the political ideas we have inherited from this crucial period. The same institutions and practices (representative government, toleration, etc.) have historically been justified in two very different ways: as politics in the absence of God, or as what Godly politics requires. The question of which predominates in the modern West must remain open, but, given the force of the story we have been telling, we might well wonder whether God remains our sleeping sovereign after all.

About the Author

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