

Mendelssohn and the State



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In some ways, Mendelssohn is the classic that modern Jewish philosophy never had. The case of his reception has paradigmatic significance for understanding the limits and challenges faced by philosophy, German Studies, and Jewish Studies. In particular, it raises the methodological question of how to address a body of work that has been systematically marginalized and whose critical significance, rendered largely invisible by traditional scholarship, still awaits recognition. The critical study of Mendelssohn therefore also presents us with the task of recovering, reexamining, and rethinking what research and scholarship have so effectively eclipsed. As the critical edition of Mendelssohn's complete works approaches completion almost eight decades after its first volumes appeared, the completion of the *Jubiläumsausgabe* signals more than anything else the need for a new edition. Ironically, the history of this edition underscores the fate of an author whose claim to classic status has remained, from Mendelssohn's time onward, a matter of denial. In this respect, the Mendelssohn edition has become historical even before its completion and thus serves as a case study of the complicated, if not conflicted, story of the Jewish and German reception of Mendelssohn.

Mendelssohn, however, has always resisted his placement in the world of German and Jewish letters as two separate spheres, but his resistance to this two-world scheme was paid for with an obscurity that seemed curiously at odds with his status as a figure celebrated during his lifetime for the clarity of his thought and exposition. To view him as a messenger between two worlds, as is often argued, is to ignore his critical trajectory as a thinker firmly grounded in different intellectual traditions, which he also helped to shape in no small measure. Mendelssohn's theoretical grasp reaches well beyond

the idea of a separate and distinctly identifiable German and Jewish culture. Both the idea of a “symbiosis”—associated with liberal hope, if not delusion—and its failure—a diagnosis ratified by post-Holocaust hindsight—are based on a two-world theory that ignores the larger historical and cultural contexts in which the German and Jewish traditions developed and interacted in the first place. Critical attention to Mendelssohn instead forces us to see his thought as the intellectual trajectory of an early cosmopolitan citizen who did not shy away from a discourse on national difference because his concerns lay deeper. The title of the book for which he is best known, *Jerusalem, or On Religious Power and Judaism*, signals his approach with eloquent succinctness. With the pointed prophetic reference in its title the book introduces an alternative notion of universalism as a dialogue with alterity, a theory that still awaits recognition. Concluding with the citation of Zechariah 8:19, the book highlights the intertextual reference of the title *Jerusalem* and spells out its alternative approach to universalism. Imagining Jerusalem as a tangible particular that represents the hope for a universal that would not cancel particularity, the passage in Zechariah 8:20–23, to which the citation points, challenges the two-world theory as metaphysical and cultural paradigm.¹ To comprehend Mendelssohn as a man standing between or straddling two worlds is to superimpose an anachronistic schema that describes the problem of German-Jewish relations in the twentieth and twenty-first centuries, but obscures an understanding of the historical Mendelssohn.

Even before Mendelssohn moved to Berlin, he lived in Dessau, which is to say not on a Jewish island in a German world, but in a place where he experienced the vibrant conjunction of cultures intersecting in creative and often inspiring ways. For what else were the “German” and the “Jewish” worlds of the time than highly dynamic signifiers at a

¹ Moses Mendelssohn, *Gesammelte Schriften: Jubiläumsausgabe*, eds. Ismar Elbogen, Julius Guttmann, Eugen Mittwoch in association with Fritz Bamberger, Haim Borodianski, Simon Rawidowicz, Bruno Strauß, and Leo Strauß, continued by Alexander Altmann in association with Haim Bar-Dayan, Eva J. Engel, Leo Strauß, Werner Weinberg. 25 in 38 vols. (1929–32; Berlin: Akademie Verlag; 1938; Breslau: S. Münz; Stuttgart-Bad Cannstatt: F. Frommann, 1971ff) 8:204 (hereafter cited parenthetically in the text and in the notes as Jub A, followed by the volume and page number of the passage in question). “E” followed by page number refers to the English translation Moses Mendelssohn, *Jerusalem or On Religious Power and Judaism*, trans. Allan Arkush (Hanover and London: University Press of New England, 1983).

For a more detailed discussion of the title, see the chapter “An Alternative Universalism: *Jerusalem, or On Religious Power and Judaism*,” in Willi Goetschel, *Spinoza’s Modernity: Mendelssohn, Lessing, and Heine* (Madison: U of Wisconsin P, 2003) 147–69.

historical moment when modern national and religious cultures and traditions were being reinvented? Reducing Mendelssohn's challenge and problematic to a German-Jewish dilemma is not only simplistic but also turns a blind eye to the multifaceted impetus of his whole agenda. Behind the "German" and the "Jewish" labels, however, stand not only the religious and the national problem of self-definition, but also the social, political, cultural, and philosophical differences that the eighteenth century confronted. If one finally understands that the Enlightenment was not just about the claim and status of reason but, more poignantly, about the challenge to move beyond the traditional dichotomies of oppositional constructions into the open space of the new intellectual world, Mendelssohn can be seen as part of the project of addressing the different and conflicting strands of European traditions productively. Seen this way, Mendelssohn's trajectory emerges as a serendipitous success in negotiating innovation and tradition—a project that hinges on the interdependence of the two.²

In 1742, when Mendelssohn moved to Berlin, the city was still a provincial town. It was a long way from becoming the future metropolis of the Prussian Empire and eventually the capital of the German Empire. A far cry from the splendor and sophistication of Paris or London, Berlin was nevertheless the administrative and governmental center of the Prussian kingdom, and if Frederick the Great made a point to reside in Potsdam, the state apparatus—or what amounted to it at that time—was located in Berlin. In addition to the French Calvinist minority, there was also a small Jewish community in Berlin. Prussia welcomed both groups as catalysts for developing the economy, which was still rather dormant at the time. Prussia was also the home of a few Muslims. Since 1732, Potsdam had a mosque established for the purpose of accommodating the Turkish soldiers that the Duke of Kurland had given Frederick Wilhelm I. In 1744 Lieutenant Osman was installed as the first Prussian Imam. Soon, Bosnians were added. As shock troops in the Prussian army, Muslim forces eventually numbered over 1000 troops and were deployed to counter the Tatar battalions in the Saxon and Polish forces.³ Religious difference, Mendelssohn learned upon entering Prussia's capital, did not necessarily pose a

²For a new and outstanding biography that resituates Mendelssohn in the wider context of European modernity, see Dominique Bourel, *Moses Mendelssohn: La naissance du judaïsme moderne* (Paris: Gallimard, 2004).

³For a quick overview, see http://www.studiengesellschaft-friedensforschung.de/da_50.htm (accessed August 2006). See also Sabine Kraft, *Neue Sakralarchitektur des Islam in Deutschland* (Münster: Lit, 2002) 46.

fundamental problem for the state, as early modern political theorists would claim. The reality of politics simply spoke a different language. On the other hand, the refusal of a secularizing state to attend to the importance of religion meant that religion would linger on in potentially more harmful, if not more dangerous, ways than if it just maintained the power it had traditionally exercised.

As a perceptive student of Spinoza, Mendelssohn was well aware that the theological and the political spheres were not easy to separate from each other. Spinoza's practice of hyphenating the theological-political complex in the title of his *Tractatus Theologico-Politicus* signals the unfor- giving entanglement of the sacred and the profane at the very heart of the political. For Mendelssohn and Spinoza, Hobbes could not be the answer but represented part of the problem. Reimagining the state as something other than a monolithic Leviathan became Mendelssohn's challenge, requiring him to rethink both the political and the religious spheres of authority from the bottom up. "Religious power" could not simply be reduced to an abstract and pure notion of power in general. Rather, Mendelssohn's analysis of the challenge of "religious power" indicated that "power" always represents a composite phenomenon, which is why it is impossible to reduce the complexity of political life to a mere calculus. To posit the notion of "power as such," as did Hobbes and Locke, entailed the imposition of a metaphysical framework that required examination in the first place. Spinoza's critical notion of power pointed out the direction that Mendelssohn was to take. From this perspective, different forms of authority meant that power was no longer the sole and exclusive attribute that defined the state, its political trajectory, authority, and resolve. As a result, other aspects had to be considered as carrying equal importance in the constitution of the state. Irreducible to a mere mechanics or dynamics of power, the state for Mendelssohn is more than just the sum total of the parts in some power calculus, a model founded on the notion that power is homogeneous and can therefore be quantified.

While *Jerusalem, or On Religious Power and Judaism* received intense attention when it appeared in 1783—Kant and Hegel were among the avid readers⁴—the book has received little attention since outside of the confines of Mendelssohn research. If Carl Schmitt's scathing

⁴For the point that *Jerusalem* is one of the very few books Kant let stand in parts in his 1797 *Doctrine of Law*, see Hermann Klenner, "Rechtsphilosophisches zur Kant: Mendelssohn-Kontroverse über das Völkerrecht," *Moses Mendelssohn im Spannungsfeld der Aufklärung*, eds. Michael Albrecht and Eva J. Engel (Stuttgart-Bad Cannstatt: F. Frommann, 2000) 101–18.

attack on the Jewish trinity of political theorists Spinoza, Mendelssohn, and Stahl has not helped much, Schmitt's attitude was more an effect than a cause of those received ideas in political theory that have not only marginalized Spinoza but also ignored Mendelssohn's important contribution to political liberalism and emancipation.⁵ On the other hand, Mendelssohn's political theory is so different from the mainstream of political thinking that it barely comes as a surprise that most readers would find it difficult to appreciate the critical significance of his ideas. While his view of the state may pose a challenge, Mendelssohn's differentiated approach to power and authority challenges the deadlocked oppositions that still shape current theories of the state.

For Mendelssohn, the state is neither the secularized derivative of the church nor its simple alternative. Rather, church and state represent different institutional spheres of human existence, which remain irreducible to each other. As a consequence, neither state nor church can lay claim to the universal validity of the principles of their *opus operandi*. Unlike its classic conception in political thought, the foundation of a state for Mendelssohn does not constitute an absolute sphere of sovereignty. In other words, the mandate of the state cannot be described in absolutist terms. The same is true of the church. The notion that the state by definition entails an absolute claim to sovereignty, including the authority over the individual's natural and human rights, is starkly absent in Mendelssohn. His thinking articulates a critical alternative to the sovereign-based theory of the state. Instead he focuses on the in-between space of critical exchange—giving special attention to the question of how the conflicting claims between different kinds of rights can reach a just adjudication. The relationship between church and state is neither antagonistic nor completely complementary. Rather the two exist in a complex arrangement that provides a feasible framework for human existence.

The shift in accentuation comes to the fore in Mendelssohn's particular version of contract theory. Whereas the usual versions of contract theory understand a contract as a formal negotiation of claims, rights, and duties, Mendelssohn's is distinctly different.⁶ He defines

⁵Carl Schmitt, *Der Leviathan in der Staatslehre des Thomas Hobbe: Sinn und Fehlschlag eines politischen Symbols*, ed. Günter Maschke (Cologne: Hohenheim, 1982) 92–93, 106–10. For a critical commentary on and exposure of Schmitt's occasionally opportunist attitude with regard to Mendelssohn, see Raphael Gross, *Carl Schmitt und die Juden: Eine deutsche Rechtslehre* (Frankfurt am Main: Suhrkamp, 2000) 268–69.

⁶Mendelssohn still follows the conventional definition of contract in "Über vollkommene und unvollkommene Pflichten" (1770), Jub A 3.1:280–82. Michael Albrecht

contracts as the legal instrument that entrusts arbitration to a third party in the case of conflicting claims that are transferable, i.e. that are not derived from natural right, and are therefore inalienable rights. What is contracted, in other words, is the authority and competence to decide such cases, which effect the regulation of the *modus vivendi* in all of its socio-political ramifications. This unusual approach to contract has some profound implications. First, Mendelssohn's definition means that a contract is limited to the terms under which there exist justified claims and conflicts between parties. Where there are no justified claims, the grounds for joining a contract do not exist. Mendelssohn formalizes the distinction into that of imperfect and perfect, i.e. enforceable and non-enforceable, rights and obligations, viz. rights and obligations that can or cannot be contracted. Second, contracts do not set agendas, parties do. As a result, sovereignty is not simply transferred or entrusted to one institution or single holder of this title. Rather, the very notion of sovereignty is redefined if not, to be more precise, replaced by a different paradigm that resists the collapsing of different kinds of power into one undifferentiated, amorphous whole. This approach to sovereignty explains why someone like Carl Schmitt considered Mendelssohn's political thought anathema. It runs counter to the axiomatic and apodictic mode of thinking that defines Schmitt's theory. This emphasis at the same time explains the attraction that his contemporaries and many in the next generation, like Hegel, felt for Mendelssohn's approach, as well as the sheer incomprehension that informs conventional political thought with regard to his work. His contract theory deserves closer examination.

Mendelssohn defines contracts as "nothing but the *cession*, by the one party, and the *acceptance*, by the other party, of the right to decide cases of collision involving certain goods which the promising party can spare" (E 54f.) ("nichts anders, als von der einen Seite die *Uebersassung* und von der andern Seite, die *Annahme* des Rechts, in Absicht auf gewisse, dem Versprecher entbehrliche Güter, die Collisionsfälle zu entscheiden" [Jub A 8:123]). While conventional contract theories define contracts as a formalized account of an exchange of claims,

ignores Mendelssohn's change from 1770 to 1782 when he wrote *Jerusalem* and does not discuss the different contract theory of the later phase in M. Albrecht, "Nunmehr sind Sie ein preussischer Unterthan"—Moses Mendelssohns Staatstheorie," *Philosophie und Wissenschaft in Preußen*, eds. Friedrich Rapp and Hans-Werner Schütt (Berlin: Technische Universität Berlin, 1982) 23–47. Also unsatisfactory on this count is Nathan Rotenstreich's argument in "On Mendelssohn's Political Philosophy," *Leo Baeck Yearbook* 11 (1966): 28–41.

titles, or rights in legal terms, Mendelssohn frames the contract as a transfer or surrender of claims for the purpose of arbitration. Designing the contract as an asymmetrical transaction of cession and acceptance rather than a symmetrical exchange, Mendelssohn's contract does not entail the surplus of the creation of a third institution that resides above the two contracting parties, but strictly limits the contract to a bilateral transaction. This definition precludes the kind of alternative most contract theories deploy whether by glossing over the second step, which they have already tacitly presupposed, or by stipulating it *expressis verbis*. Lacking sufficient grounds, they go on to present the concept of the sovereign as a necessary and logical conclusion.⁷

Hobbes represents the first version, i.e., the view that the state, if constituted by contract between the people, inevitably requires the institution of a sovereign who alone can govern the contractual interaction between two parties. Hobbes does not provide any justification for this position other than to claim that the enforcement of a contract requires a power external and superior to the power of the contracting parties, i.e. a sovereign body. The second step is therefore implied or folded into the first one. Rousseau, on the other hand, posits the sovereign as the will of all into which everyone contracts his or her voice. Steps one and two are therefore addressed as two separate but necessary parts of the original contract. As a result, Hobbes comes down on a more individualistic side and Rousseau on a collectivist one. Both stipulate sovereignty, however, as the ground, and the contract turns out to carry hidden ramifications that are spelled out only a posteriori. Both Hobbes and Rousseau grant axiomatic validity to the idea that a contract requires or implies a third party to validate and uphold it. Furthermore, this third party is imagined as sovereign without any particular accountability to the contracting parties but only a general accountability to the state as a whole. If Mendelssohn's contract theory seems more complicated at first, its actual design is simpler and more transparent, as it protects against the kind of systemic ramifications inherent in classical contract theory.

Mendelssohn's point seems at first glance a technical intervention whose niceties may be more academic than practical. But examination shows that Mendelssohn's contract theory carries momentous consequences for the conception of the state. Redesigning the contract as

⁷I am indebted to David Suchoff for pointing out that Mendelssohn's conception of the contract shares key aspects with the Talmudic tradition.

a legal instrument for arbitrating rather than transferring or engaging in transactions about claims or rights themselves, Mendelssohn defines the state as the interface rather than the foundation for the interplay of political forces. The result is a concept of the state that no longer relies on monolithic or hegemonic notions but instead views the state as a framework for political life, which thrives on rather than excludes difference and alterity. This emphasis was indeed an innovation, running contrary to the tradition of Enlightenment political philosophy. Before Mendelssohn, classical political theory had been unable, if not unwilling, to address the state as anything other than a set of institutions designed to enforce compliance with the privileged form of identity. But Mendelssohn does more than simply steer clear of a state predicated on the pressures of identity and assimilation. He also challenges the conventional view of the sovereign as a figure of circuitous self-referentiality, a paradox at the heart of the state posited by traditional theory and political practice before Mendelssohn. Though one might argue that Mendelssohn's own concept of the state eventually falls short of offering a feasible alternative, it nevertheless provides a fruitful critique of the hidden assumptions that inform the way that we conceive the state, including our attempts at reimagining it. With Mendelssohn, the opportunity arises to take a fresh look at the problematic of the discourse in which our notion of the state has developed.

Historically, Mendelssohn formulates his political theory at a moment when the concept of the state is still in flux as far as the German-speaking countries are concerned. While the historical developments in the south and west of Europe and in England led to the emergence of pre-modern notions of the state as the seat of sovereignty at an early point, this conception arrives in the territories of the Holy Roman Empire of the German nation only after considerable delay, which is, no doubt, a result of its historically complex and often opaque system of interdependencies, feudal claims, and obligations. There is, in other words, simply no state to turn to as an example of what the concept of the state might mean in the eighteenth century. In the German lands, modern theories of the state do not begin to emerge until the end of the eighteenth century, when the debates surrounding the Prussian legal reforms introduced in 1793 are in full swing and the after-effects of the French Revolution begin to make themselves felt. Mendelssohn's intervention thus comes at a time when German political thought finds itself struggling to articulate a theory of the state able to make the historical transition to a new sense of political order and

organization. Mendelssohn's *Jerusalem* comes on the scene at a crucial moment when the modern secular nation state was emerging as the key organizing principle over and against the traditional authorities of the church and the throne. Writing on the eve of what Reinhart Koselleck describes as the moment of transition when the word "state" rises to semantic independence and is no longer used only in combinations like *Fürstenstaat*, *Hofstaat*, *Civil-Staat*, and *Kirchen-Staat* or relies on the context to derive precise semantic meaning, Mendelssohn uses this space as an opportunity to articulate his political vision.⁸ The lucky coincidence of this historical moment thus allows him to approach the question of the state creatively. While concurring with the emerging tendency to construct the state as an independent and autonomous institution, Mendelssohn carefully describes it as part of a division of labor, placing the state over and against the realm of the church. In such a manner, Mendelssohn describes the relationship between the political sphere and religion or, as he writes, "the civil and ecclesiastical constitution" (E 33/Jub A 8:103) from the start as the constitutive moment for the state. Pointedly, this is already asserted in the way Mendelssohn notes his idea in the draft for *Jerusalem*: "Kirche u. Staat" (Jub A 8:95/E 247). Church and state, that means neither the church nor the state nor the church versus the state. The precision of the German "u." for "and" is of crucial significance here. As a result of it, the conundrum that the eighteenth century inherited from the early modern period of how to figure the relationship between state and sovereignty could be approached in a different way. Once the state was no longer seen as claiming exclusive sovereignty—which it might or might not achieve—but was regarded instead as a part of civil society which provides the framework for the individual's civil and political rights and obligations, "religious power" could be reconceived. Instead of a threat to secularism, religion was seen as an equal but challenging sphere that helped determine the constitutional limits of sovereignty in the modern state. The claim to sovereignty presented a problem, not a solution for Mendelssohn and thus represented a liberating moment. The move away from identifying the state with the sovereign

⁸ Otto Brunner, Werner Conze, and Reinhart Koselleck, eds., *Geschichtliche Grundbegriffe: Historisches Wörterbuch zur politisch-sozialen Sprache in Deutschland*, 8 vols. (Stuttgart: Klett-Cotta, 1972–1997), s.v. "Staat und Souveränität." See also Werner Conze's contribution to the same entry. Koselleck and Conze flesh out the historical development of the problematic brilliantly exposed in Jacques Derrida, *Rogues: Two Essays on Reason*, trans. Michael Naas and Pascale-Anne Brault (Stanford: Stanford UP, 2005).

opened the way to rethinking the state as a constitutive but not exclusive source of legitimacy. Disentangling religious from political power without eclipsing the former would give the state, in Mendelssohn's view, all the legitimacy and power it needed. And no more.

Mendelssohn's short intervention "On the Question, What Does It Mean To Enlighten?" provides a striking analogy to this notion. Just as the Enlightenment and culture are set against each other as the two constituents of *Bildung* (Jub A 6.1:115), the state and the church are regarded in *Jerusalem* as the two "öffentliche Anstalten zur Bildung des Menschen," the church with regard to the relationship of man to God, the state with regard to the relationship between human beings (Jub A 8:110). The next sentence provides a definition of *Bildung* that highlights both the religious and political aspects embraced in Mendelssohn's scheme:

Unter Bildung des Menschen verstehe ich die Bemühung, beides, Gesinnungen und Handlungen so einzurichten, daß sie zur Glückseligkeit übereinstimmen; die Menschen *erziehen* und *regieren*. (Jub A 8:110)

Mendelssohn's notion will assume seminal importance for Goethe, Humboldt, and Hegel among others. Unlike the later variety of *Bildung* that means aesthetic self-cultivation and gains wide currency with Schiller and in post-classicism, Mendelssohn's notion has a clear political and religious dimension to it that complements culture and enlightenment rather than opposes or excludes them. *Bildung* stands for Mendelssohn at the intersection of individuality, state, and society but is more than simply the cultural byproduct they produce. By making *Bildung* the constitutive ground on which the state and enlightenment depend as much as religion and culture, Mendelssohn radically revises the relationship between the state and sovereignty through his theory of different spheres of authority.

As a result, Mendelssohn's state assumes a more active but also more responsible role that requires the sharing of power. In Mendelssohn's concept of the state, there is no room for a single arbiter or institution with the final say on power. Broken down into its constituent components, power ceases to be thought of as an ontologically continuous entity, and can therefore no longer be imagined to be subject to the control or authority of a single "sovereign"—an assumption that in Mendelssohn's and also Spinoza's view would imply questionable metaphysical consequences. In resisting the temptation of a problematic reductionism, Mendelssohn complicates power. He highlights the specificity that informs the challenge of the political, or to be more

precise, the theologico-political landscape of modernity, namely, the fact of the existence of political and religious power as different and often contradictory forces. But while the two are potentially opposites—certainly their difference requires philosophical attention—they are also the two forces that build the foundations of civil society. We can now recognize the critical impulse within the subtle nuance of Mendelssohn's argument in the opening line of *Jerusalem*:

Staat und Religion—bürgerliche und geistliche Verfassung—weltliches und kirchliches Ansehen—diese Stützen des gesellschaftlichen Lebens so gegen einander zu stellen, daß sie sich die Wage halten, daß sie nicht viel mehr Lasten des gesellschaftlichen Lebens werden, und den Grund desselben stärker drücken, als was sie tragen helfen—dieses ist in der Politik einer der schwersten Aufgaben, die man seit Jahrhunderten schon aufzulösen bemühet ist, und hie und da vielleicht glücklicher praktisch beygelegt, als theoretisch aufgelöset hat. (Jub A 8:103)

Given Mendelssohn's experience as a statesman, his reference to praxis is anything but the self-erasing glorification of a recluse suffering theory fatigue. On the contrary, Mendelssohn's motivation is based on more than just an academic commonplace. His motivation to go public with his political philosophy is the result of his continuing work as a public figure or *shtadlan*, i.e. an advocate and spokesperson on behalf of Jewish communities. The tradition of the *shtadlan* goes back to the middle ages, when prominent Jews would be appointed representatives of German Jewry at various courts. In the eighteenth century, *shtadlans* were no longer officially appointed but instead held an honorary office that continued to play an important role in the political life of Jewish communities. Mendelssohn's international stature and his irrefutable integrity made him one of the most prominent and effective advocates and representatives of Jewry in his time. Representing the interests and concerns of Jewish communities to different governments in a number of cases gave Mendelssohn an intimate knowledge of political life that is clearly registered in his approach. More than wary of blindly following conventional political thought, Mendelssohn goes on to express the implications of modern political philosophy fleshed out by Hobbes and Locke. Mendelssohn suggests that the situation at the end of the eighteenth century calls for a critical rethinking of the principles of political philosophy from the ground up. The opening pages of *Jerusalem* signal precisely this agenda: to depart from Hobbes and Locke who were instrumental in breaking the ground for modern political theory, but who did not respond to the challenge of religion that Mendelssohn confronts.

With this opening gambit to directly address the challenge of rethinking the theologico-political question, Mendelssohn undertakes to demonstrate Hobbes's and Locke's limits. Coming full circle in following Hobbes's and Locke's logic, Mendelssohn argues for a rethinking of the groundwork of political theory. While recognizing Hobbes's and Locke's foundational importance to the development of modern political thought, Mendelssohn shows that its progress had been mortgaged by their failure to recognize the fundamental importance of religion. For Mendelssohn, this unwillingness to acknowledge religion becomes the defining limitation of their political thought. With skewering irony, *Jerusalem* notes that Locke's plea for tolerance did little to discourage the powers that be from intolerance or to encourage them to resolve the systemic problem that political philosophy faces in modernity. Locke, for instance, found himself a political exile many times. Neither Hobbes nor Locke, Mendelssohn points out, provide a satisfactory answer to the question of how to resolve the theologico-political knot. Instead they only made the matter worse, according to his analysis.

To clarify the limits and reciprocal relationship between state and religion, Mendelssohn revisits the founding narrative of the origins of civil society. His account of the transition from the state of nature to a civil state is notably different from those given by Hobbes, Locke, and Rousseau. If securing rights and adjudicating competing claims serve in most accounts as the driving force behind the establishment of a civil state, Mendelssohn takes a distinctly different route. He introduces the concept of duty as something that precedes any legal framework and stresses the pre-legal, distinctly ethical meaning of duty and obligation. Mendelssohn's version of the narrative gives the ethical notion of duty and obligation its critical specificity:

Ich habe mir die Begriffe von Staat und Religion, von ihren Gränzen und wechselweisem Einfluß auf einander, sowohl, als auf die Glückseligkeit des bürgerlichen Lebens, durch folgende Betrachtungen deutlich zu machen gesucht. So bald der Mensch zur Erkenntnis kömmt, daß er, ausserhalb der Gesellschaft, so wenig die Pflichten seines Daseyns, als die Pflichten gegen sich selbst und gegen den Urheber seines Daseyns, als die Pflichten gegen seinen Nächsten erfüllen, und also ohne Gefühl seines Elends nichts länger in seinem einsamen Zustande bleiben kann; so ist er verbunden, denselben zu verlassen, mit seines gleichen in Gesellschaft zu treten, um durch gegenseitige Hülfe ihre Bedürfnisse zu befriedigen, und durch gemeinsame Vorkehrungen, ihr gemeinsames Beste zu befördern. (Jub A 8:109)

With obligations introduced in terms of one's relation to oneself and to God as the point of departure for rethinking the social "contract,"

Mendelssohn avoids the conventional dialectic of “give and take” that exchanges duty and obligation for rights in conventional contract theories. By refusing to “lock into” an arrangement whose fine print is yet to be spelled out in detail, Mendelssohn’s narrative remains both open and secured against preconceived teleological expectations, as he makes clear in his comment on the “common good”:

Ihr gemeinsames Beste aber begreift das Gegenwärtige sowohl als das Zukünftige, das Geistliche sowohl als das Irdische, in sich. Eins ist von dem andern unzertrennlich. Ohne Erfüllung unserer Obliegenheiten ist für uns weder hier noch da; weder auf Erden, noch im Himmel, ein Glück zu erwarten. (Jub A 8:109)

In other words, instead of cutting the Gordian knot of the theologico-political complex, Mendelssohn underlines the impossibility of separating the future from the present, the spiritual from the material, and heaven from earth. This refusal to divide the scope of human existence between the two spheres, however, not only retains its immunity against any sort of crude materialism, but also shows equal reserve against the temptation of idealism. Mendelssohn takes the inseparability of human existence at face value. State and religion must be distinguished conceptually from each other, but their division forces them at the same time to acknowledge and communicate with each other. Theorized this way, secularization means not the complete abandonment of religion as an obsolete institution but, instead, the challenge to understand religion’s continuing significance in modernity. As a consequence, the state’s claim to sovereignty is checked by the claims of “religious power,” which Mendelssohn describes as a non-compulsory but persuasive force. Religion, in other words, is instrumental for the *Bildung*—i.e., formation, education, and development—of modern individuality. Mendelssohn will introduce his modern concept of religion and modern Judaism in particular in the second part of *Jerusalem*.⁹ But what is important for our discussion is that he introduces at this early point the notion of religion as a civil institution that originates with the state. In other words, the institution of a state is necessarily accompanied by religion. Constitutive for political life, the theologico-political complex is not what political theory is supposed to abstract from or purge from itself, but what political praxis is prompted to recognize as a problem as well as an opportunity. Successful politics, Mendelssohn suggests, consists in prudently negotiating the relation-

⁹For a discussion of Mendelssohn’s modern concept of Judaism and the relevant literature, see the chapter on *Jerusalem* in Willi Goetschel, *Spinoza’s Modernity*.

ship between state and church, whereas any privileging of one over the other impairs individual autonomy and self-determination.

Mendelssohn's insistent reliance on natural right is thus the theoretical hinge on which his theory of the state, religion, and the individual turns. But while Mendelssohn's concept of natural rights owes much to the rich and inspiring tradition of Stoic, neo-Stoic, and Enlightenment thought, there is also a distinct Spinozist moment at the heart of his conception of natural rights. Unlike the Stoic and neo-Stoic conceptions and the Enlightenment notions that followed, Mendelssohn envisions human growth and development as constitutive for the modern concept of the individual. Not unlike Rousseau,¹⁰ but with a stronger accent on the differential character of individuality, Mendelssohn understands human nature as defined by its determination to form and unfold its potential. His rationalism is thus complemented by the recognition of the dynamic aspect of the affective dimension and its constitutive moment in the formation of the self. Natural right then stands for Mendelssohn as a claim that points beyond strictly juridico-political limits. This dynamic concept of individuality is grounded in the insight of the differential character of modern individuality. As such, the individual's differential specificity remains irreducible to the conditions and claims of the state. While Mendelssohn leaves no doubt that the state has the right and justification to enforce the law, and that compulsory laws are the defining moment of the state, individual rights remain untouchable. Mendelssohn concedes to neither the state nor the church the right to sit in judgment on matters of religion, "denn die Glieder der Gesellschaft haben ihnen durch keinen Vertrag dieses Recht einräumen können" (Jub A 8:130), a point convincingly argued if Mendelssohn's conception of the contract is considered. More radically, Mendelssohn rejects any form of state-enforced convictions, a point not all that different from some of the practical conclusions of Hobbes's otherwise resolute absolutism:¹¹

[W]as hat der Staat für Recht in das Innerste der Menschen so zu wühlen, und sie zu Geständnissen zu zwingen, die der Gesellschaft weder Trost noch Frommen bringen? Eingeräumt hat ihm dieses nicht werden können;

¹⁰For Rousseau's affinity with Spinoza, see Walter Eckstein, "Rousseau and Spinoza: Their Political Theories and Their Conception of Ethical Freedom," *Journal of the History of Ideas* 5 (1944): 259–91 and Paul Vernière, *Spinoza et la pensée française avant la Révolution*, 2nd ed. (Paris: Presses universitaires de France, 1982).

¹¹For Mendelssohn's expression of partial sympathy for Hobbes, see *Jerusalem*, Jub A 8:105.

denn hier fehlen alle Bedingnisse des Vertrags, die im vorhergehenden ausgeführt worden. (Jub A 8:132)

As for Spinoza, natural rights play a constitutive role for Mendelssohn beyond the moment of the transition from the natural to the civil state, a transition that for Mendelssohn renders natural rights in no way obsolete.¹² Rather, they continue to serve as the foundation on which the civil state is erected and the platform in which its legislation is carried out. Unlike Hobbes's notion that natural rights are superseded by the state and resume their authority only when a crisis signals the return to a state of nature, Mendelssohn views natural rights as the necessary foundation for a state built on reason's grounds. As a result, natural rights remain the guiding principle for all legal and political concerns and keep the state's potential for overreaching itself in check. For a proper appreciation of Mendelssohn's significance, it is crucial to grasp this consistent emphasis on the individual, the third and coequal power that gives validity and legitimation to the state and religion. Even Humboldt, his most prominent student, seems at moments to pale in comparison to Mendelssohn's unflagging accentuation of the individual's role, significance, and rights.

What at the outset may have seemed to be disparate objections and minor corrections to traditional political theory emerges in Mendelssohn's thought, considered in its entirety, as a consistent political argument for the individual as the very *raison d'être* of the state if not sole *raison d'état* compatible with natural rights. More than just a compelling champion of human rights, Mendelssohn is also their most sophisticated theorist. If his argument has traditionally been understood as a plea for human rights, delivered with an eloquence that still resonates today, justice still needs to be done to its theoretical importance.¹³ For Mendelssohn's natural rights position on the individual is

¹²For the significance of natural rights for Mendelssohn, see Stephen Schwarzschild's excellent essay "Do Noachites Have to Believe in Revelation?," *The Pursuit of the Ideal*, ed. Menachem Kellner (Albany: SUNY P, 1990) 29–59, Alexander Altmann, "Prinzipien politischer Theorie bei Mendelssohn und Kant," *Die trostvolle Aufklärung. Studien zur Metaphysik und politischen Theorie Moses Mendelssohns* (Stuttgart-Bad Cannstatt: F. Frommann, 1982), and Albrecht, "Nunmehr sind Sie ein preussischer Unterthan," *op. cit.*, 23–47.

¹³See Altmann, "Prinzipien politischer Theorie." Cord-Friedrich Berghahn's study *Moses Mendelssohns 'Jerusalem': Ein Beitrag zur Geschichte der Menschenrechte und der pluralistischen Gesellschaft in der deutschen Aufklärung* (Tübingen: Niemeyer, 2001) presents Mendelssohn's project as an eloquent plea for tolerance and human rights but ignores the larger theoretical implications of the critical philosophical impetus of his political theory.

unique in making the individual's inalienable rights the precondition for the modern state. The significance of this stance consists less in the *parti pris* than in Mendelssohn's theorization of the issue, i.e., not in ontological, metaphysical, or anthropological terms, but as a strictly political matter that avoids the Scylla of false individualism and the Charybdis of misguided collectivism. For Mendelssohn, the individual cannot be reduced to a given identity or a set of properties. Neither can he or she be considered a simple extension of the function of the state. Rather, Mendelssohn's placing of the individual squarely at the interface of state and church underlines the constitutive role of the individual for the construction of political authority. Framing the state in this way exposes the problematic convention of positing the state as the unquestionable source of rights and duties and delimits the state's claim to exclusive sovereignty.

Mendelssohn reflects on the tension between the modern state's declared mission of governing the people according to law and the dynamics that drive the state to manipulate, if not control, the law that it is supposed to follow. Mendelssohn's attention to this challenge—rarely heeded by the architects of modern conceptions of the state—shields his theory from unthinking compliance. It receives its critical edge from the pointedly differential, anti-essentialist impulse that guides Mendelssohn's approach, which does not theorize the state as the ring for playing out the power struggle of opposed parties, but as an involved party that needs to negotiate its way with another party, religion. This implies a different notion of power from the one current in modern political thought that features power as a common denominator, a kind of ontological universal, shared wittingly or unwittingly by all parties. If Hobbes's notion is that the "mortal God" assumes its own dynamics of domination and power, Mendelssohn avoids the logical hitch required to tie the state to a power that establishes itself on the back of its subjects, whose rights it usurps. Critical of Hobbes's bold affirmation of the quasi-divine human ability to create the body politic, Mendelssohn chooses to follow the logic of humanity instead, as he deems the state to remain meaningful and functional only as long as the rights of the individuals comprising it remain intact.

We can now understand what Mendelssohn had in mind when he wrote that Hobbes's claims contain a great deal of truth, and his merit in moral philosophy equals that of Spinoza in metaphysics. But Hobbes's thought also contains the justification for rejecting the conclusions he draws (Jub A 8:105f.). Mendelssohn thus highlights the fundamental tension in Hobbes who, on the one hand, can be

considered the founder of modern natural rights as his rational grounding boldly breaks with the theological tradition, but who, on the other hand, suggests that natural rights have only moral consequences. This tension is explored and liberated in Mendelssohn's thought.¹⁴

This gives rise to the apparently powerful liberal impulse in Mendelssohn. But liberalism is an inadequate description of the critical impulse that motivates his political thought. If Mendelssohn seems too compliant, his pointedly autonomist views make it impossible to place him squarely in the camp of early liberalism. The Jewish experience of the middle ages and early modernity envisioned liberalism only for those prepared for complete assimilation, which was a vision impossible to realize until the rise of the modern nation state with its corresponding pressure for cultural homogeneity. Mendelssohn's nuanced approach to the state can thus be grasped more clearly if we attend to the specific Jewish tradition that informs his particular theory of natural rights. Besides Hobbes, Spinoza, and Pufendorf, the Halakhic principle *dina de-malkhuta dina* plays a central role in Mendelssohn's thought. *Dina de-malkhuta dina*, which literally translates as "the law of the state decides," means that the law of the state is decisive in questions of civil law, and therefore must be recognized by religious authorities. It is a principle that guides Halakhic considerations when religious laws and practices may conflict with those of the state. Contrary to what the literal translation may suggest, however, the Halakhic position is not that state law could simply overrule religious law. Rather, the principle means that all laws pertinent to the state's mission remain within the purview of the state. Addressing the boundaries of both Halakha and the state, the principle embodies an ongoing Talmudic tradition, or more precisely, discussion on how to draw the lines between religious and political authority.¹⁵ A telling example of how Mendelssohn's use of the principle figures in *Jerusalem* is his example of a divorce case. A husband converts and expects his wife and children to follow his life-change. Mendelssohn introduces the issue of *dina de-malkhuta dina* in a long footnote that runs over a page and contains an additional note that refers to the pamphlet that provoked Mendelssohn to respond with *Jerusalem*. The anonymous pamphlet *Das Forschen nach Licht und Recht* cites a Viennese

¹⁴Mendelssohn's view on Hobbes concurs with Karl-Heinz Ilting's account of Hobbes's theory of natural rights in *Geschichtliche Grundbegriffe*, s.v. "Naturrecht."

¹⁵See Gil Graff's study, *Separation of Church and State: Dina de-Malkhuta Dina in Jewish Law, 1750–1848* (Tuscaloosa: U of Alabama P, 1985).

Jewish divorce case to argue for the supremacy of state over religious law, praising Joseph II's wisdom for ruling that religious law is not to interfere with social ties, i.e., that conversion to another religion does not represent the breaking of the original marital contract.¹⁶

The sheer length of the footnote and its *renvoi* distinguishes it from a mere annotation and signals its particular position in the text. Running along the main text for over three pages, the footnote opens the text to a subtext that serves as a critical reminder of the need to attend to a different mode of reasoning if this case is to receive due consideration. Significantly, this note occurs in the first part of *Jerusalem*—Mendelssohn's *strictu sensu* political philosophy—while the second part articulates his religious philosophy. In other words, the text makes this long note on the status of Jewish matrimonial law in the modern state a cornerstone of its argument. The argument that the valid terms of a contract must be those to which the contracting parties originally agreed, rather than those of the state, is Mendelssohn's powerful attempt to protect Jewish and other families from arbitrary state intervention. But its critical impulse is more comprehensive, since it probes the limits of state power in the starkest terms. Mendelssohn's note demonstrates the significance of *dina de-malkhuta dina* as a principle for political philosophy as a whole, providing a kind of autonomy and self-determination that had been unavailable to conventional political theory. While Mendelssohn insists on the difference between religious and political power, his critical use of *dina de-malkhuta dina* argues unapologetically for religious tradition as a progressive force that does not challenge the state, but makes it richer and more differentiated. In short, with this footnote Mendelssohn demonstrates that *dina de-malkhuta dina* has to be recognized as a crucial principle in modern political theory.

If Mendelssohn has for too long been considered a figure caught between two worlds—the Jewish and the German, the religious and the secular, or whatever other binary scenario one may use to script his biography—it should by now be obvious that his own textual strategies challenge just such a view. Mendelssohn's response to the problematic of the state instead consists in a critical rethinking of the restrictive framework of a political theory that forces absolute and unconditional surrender to its terms. Against the self-proclaimed independence of the absolutist Enlightenment state, which as a paradigm has not

¹⁶For the significance of Mendelssohn's divorce case, see also Susan Shapiro's discussion in her forthcoming article on *Jerusalem*.

changed significantly in modernity, Mendelssohn reasserts the state's interdependence with a constituency that can no longer simply be determined by theoretical decree. As his reference to matrimonial and family law reminds us, there are fundamental limitations to the reach of the state. These are not domains beyond the reach of law, but legally well-ordered areas of human experience crucial to the foundation of the state itself.

Mendelssohn's footnote thus captures the book's argument in a nutshell. Concluding with the punch line that someone as wise and just as Joseph II would hardly wish to allow the violent usurpation of religious authority in his state, the note makes it clear that a misguided effort at secularization will eventually backfire and return power to the church itself: "Ein eben so gerechter als weiser Joseph wird sicherlich diesen gewaltsamen Misbrauch der Kirchenmacht in seinen Staaten nicht zulassen" (Jub A 8:121). In other words, a kind of absolutist secularization threatens a hidden return of religious violence, which, in the modern state, is all the more insidious precisely for its unacknowledged hold. If, however, we recognize religious freedom and self-determination as legitimate concerns that require the acknowledgment of the church and state alike, we can move towards a truly secular state that no longer remains under the repressive hold of a secularism gone halfway. This, one could say, is Mendelssohn's line of argument, standing on one foot.

In this concern with religious freedom, Mendelssohn's footnote identifies the problematic of "the system of freedom" (*System der Freyheit*), a term he uses critically, providing an anticipatory critique of German idealism to come. Mendelssohn points out, as does August Friedrich Cranz, the anonymous author of the pamphlet *Das Forschen nach Licht und Recht*, that to follow Joseph II's view means to decide the case according to the system of freedom which, in the final analysis, is vulnerable to being exploited for the purpose of repression and violence (Jub A 8:119). The problematically gendered construction of the state and its asymmetric recognition of natural rights create a vicious dilemma, whose structural violence exposes the limits of modern political liberalism: "Muß die Frau Gewissenszwang leiden, weil der Mann Gewissensfreyheit haben will?" (Jub A 8:121).

The opposition of compulsion versus freedom of thought and conscience is thus the result of a political theory unable to address religious freedom as anything other than a state-sponsored privilege. Against the compulsive force of "the system of freedom" that inevitably

locks us into the opposition of “freedom” and “compulsion,” Mendelssohn argues for a different approach. If we consider marriage to be a civil contract—and Mendelssohn suggests that marriage between Jews is, even according to Catholic principles, to be considered nothing else—marriage is constituted by the terms agreed to by the parties involved. The contract must therefore be interpreted on the basis of the concepts, intentions, and convictions (*Begriffe und Gesinnungen*) of the contracting parties rather than those of the state. The fact that the state has entirely different views (*Gesinnungen*) on the matter cannot have any bearing on the interpretation of the contract (Jub A 8:120). In other words, Mendelssohn makes the claim for religious (and moral) self-determination on the very grounds, and in the very terms, of the foundation of civil society: the civil contract. And he does so by addressing the civil contract as the site to affirm religious and cultural particularity. If religion is to have an acknowledged place in civil society, Mendelssohn argues that it must be maintained in the same manner in which contracts are sealed. Adopting a Jewish approach contrary to the conventions of political thought, Mendelssohn suggests that religious concerns need not remain outside civil arrangements, and need not be quarantined in the construction of a private sphere. Instead, religion belongs at the heart of civil life and must be recognized for its fundamental significance. Mendelssohn’s ultimately progressive and liberating position is based on the recognition of this insight. Law and jurisdiction that mistake abstraction from the particular terms on which civil contracts are built for the condition of the modern state create a secularism, whose silencing of religion can have violent consequences as the return of the repressed makes its call with potential vengeance.

Such recognition of religion is not just Mendelssohn’s position in political thought, but a view that fully resonates with his whole philosophical stance, which ironically has often been mistaken for a mere extension of German school metaphysics. But in his prizewinning essay *Abhandlung über die Evidenz in Metaphysischen Wissenschaften* (*On Evidence in the Metaphysical Sciences*), Mendelssohn concluded the second section, “On Evidence in the Foundation of Metaphysics,” with a reminder that calls for our undivided attention. While anarchy in philosophy, morals, and politics may be regrettable, he argues, it is unavoidable if we do not wish to submit to despotism and its fatal consequences:

In jeder Republik ist der Geist des Widerspruchs nicht nur eine nothwendige Folge, sondern öfters auch eine heilsame Stütze der Freyheit und des allgemeinen Wohlstandes. (Jub A 2:296)¹⁷

Both the mature statesman of *Jerusalem* and the young metaphysician of two decades earlier display a challenging insistence on the productive moment of anarchy, i.e. the lack of any form of rule and domination that is not constituted through civil contract. *On Evidence* already remarks on the systematic, philosophical importance of this point. While not every republican has the ability to run the state or advise the pilot of a ship, freedom still requires everyone to express their opinions. Not least, Mendelssohn slyly insists that opinions that are publicly expressed must stand the test of debate whereas their suppression lends privately expressed opinions a kind of sanctimoniousness immune to critical examination:

Dieselbe Beschaffenheit hat es mit der philosophischen Freyheit. Da nicht jeder die Fähigkeit hat, die Lehrsätze der Weltweisen zu prüfen; so ist es besser, daß er seinen geringen Einsichten gemäß urtheile, als daß er einen philosophischen Pabst erkenne, und blindlings nachgehe, wohin ihn jener führen will. Wer sich über diese Freyheit beklagt, der hegt despotische Absichten, und ist ein gefährlicher Bürger in der Republik der Weltweisheit. (Jub A 2:296f.)

Similarly, any “system of freedom” is a potentially serious threat to freedom; Mendelssohn in this way finds all the more justification for his notion of civil society, whose foundation is the civil contract. Mendelssohn’s political theory is thus not an exception from his “metaphysical” thought but consistent with it. This consistency, of course, does not require us to embrace his metaphysical vision. But we would be well advised to heed his alternative. The call to recognize the spirit of contradiction in its own right as the opportunity for a critical opening, rather than the state’s—and philosophy’s—closure, allows his philosophy to proclaim an imperative that has become central to the trajectory of modern Jewish thought.

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¹⁷For the importance of this passage for the history of the concept of anarchy, see *Geschichtliche Grundbegriffe*, s.v. “Anarchie.”