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Living Script and Law

If the living script is the answer, then what is the question? Or, perhaps we need to recognize a series of questions. Indeed, we should, for living script itself prompts a script of questions. What is the place of writing in a religious community? is one question I will explore. A second question is no easier, which is, What is place of force in Jewish law? This second question emerges quite readily throughout *Jerusalem*, in part because of the move, reputedly apologetic, to defend Judaism from accusations of being coercive. Thus, while the first question is deferred to later in this essay, even though it seems to be a good prompt for the answer: *living script*; the second, where I will begin, will only appear to require *living script* as its answer in the final reflections of the essay.

Of course, one recognizes that a traditional form of Jewish commentary is to take a statement in a text and ask, What is the question to which this is the answer (Rashi as *Jeopardy*)? In re-reading texts in this essay, I participate in that form of commentary – helping Mendelssohn’s text (and sometimes, even Luther’s) stay alive. Those texts can act as living script in this work of study, and that will be, I hope the activity that will engage and become enlivened for you, too, in this essay.

1. Law and Command

The second question, What is the role of force in religious law? seems to lead directly into a clear distinction in the first part of *Jerusalem*. Mendelssohn proposes a typical separation of church and state, even the heavy lifting here is ever so subtle. I begin with a rather straight-forward distinction:

Here we already see an essential difference between State and Religion. The state orders and coerces; religion teaches and persuades. The state imparts *Laws*; religion *Commands*. The state has physical dominion [*Gewalt*] and uses it where it is necessary; the power of religion is *love* and *beneficence*. Bd. 8, 114/Eng 45¹

The answer is almost too easy: law seems in Mendelssohn to be enforced with coercion and domination while religious commands are in the realm of love and beneficence. It is as though I am only muddying clear waters by dwelling on this question. Most of *Jerusalem*, however, is dedicated to recasting the relations of command and love (as well as that of the state and religion). Not that, at the end of the day, Mendelssohn is not interested in this division between coercion and persuasion, but his goals are somewhat obscured by the clarity of this initial opposition.

He does achieve one goal here, and it is the hallmark of his enlightenment theory: religion should have no coercive authority. That is, the commandments of religion are free from compulsion. “Religious society makes no claim to the *right of coercion* and cannot obtain any right of coercion by means of any contract at all” (ibid). But just what makes religious commands command is less clear. One might have thought that it is in the nature of the command that there would be an imperative, and indeed, the very demand for obedience that characterizes the *Do* and *Don't*. But there is no place for compulsion in the commands of religion; instead, they arise from love. Clearly this restriction excluding coercion is aimed to prevent majority or dominant religious communities from using force (torture, imprisonment, fines, exile ...) to govern a minority religious community. For a Protestant community, this might well seem to be a post-Westphalian solution: it prevents the Catholics from forcing Protestants to convert as well as gesturing to a space for Jewish existence in modern Europe.

Still this marked distinction is almost obliterated by the discussion of the Jewish legislation in Part II (a point that Altmann himself notes in his footnote: “He distinguishes there [pp. 44-45] between laws [the province of the state] and commandments [the province of religion]. *This particular differentiation is not upheld in Section II.* [italics mine]”, p. 220).

The Israelites have a divine *legislation*. Laws, commandments, ordinances, rules of life, instruction in the will of God, as to how they should behave to attain temporal and internal blessedness. The very propositions and prescriptions were revealed to them by Moses in a miraculous and supernatural manner. But no dogma, no saving truths, no universal rational propositions [were revealed thus]. These the eternal reveals to us, as to all the other people, at all times through *nature* and *thing* but never through *word* and *script* ... 157/90

To be clear, this passage has its specific goal: to insist that for Judaism there is no special revelation of doctrine, of beliefs that one should hold.

Whether this is adequate to the Jewish tradition and its own interest in beliefs I leave aside. Rather, what is obtrusive here is that the Hebrew Scriptures are more like the laws of the state than like the commands of religion. Jewish laws concern behaviours and only address the matters of religion in a way that all religions can. Religion as a set of teachings about God seems to be primarily rational and accessible to all people at all times; and the impact of Spinoza (as well as Maimonides) has cast Judaism as a legislative reality – but still we then worry whether it must be coercive (as the original opposition had held).

What emerges in Section II will be a transformation of this Divine Legislation into a Ceremonial Law which becomes the “living script” that is the “answer.” That transformation is historically negotiated through the loss of political sovereignty, but it also depends on an interpretation of the doubling of the law as both *written* and *oral*. But we would miss a level of Mendelssohn’s text if we do not recognize that the more complicated and interwoven nature of laws and commands in Section II should lead us to rethink laws and commands in their relations in Section I – the rethinking of law and coercion shows us a different version of enlightenment and emancipation from the more blunt views with which Section I flirts.

2. *Müssen and Sollen*

The translation of Martin Buber and Franz Rosenzweig alerted me to the different modality of laws and commands captured by the differentiated forms of verbs used to express duties. While the Hebrew text uses both imperatives and indicative with much variation, meeting somehow in the nature of imperfect verb forms, the German translations descended from Luther were bound up with the modal *sollen*, reducing the variety in order to capture a specific violence of law. Buber and Rosenzweig stripped out many of those *sollen*, replacing them with simple imperatives without any modal supplement (e.g. *You shall not murder* becomes *Don’t murder*). In this context I ask, how did Mendelssohn translate laws and commands in his translation of Scripture? Mendelssohn’s translation from 1783 came to distinguish the modalities of force with a use of *müssen* that contrasts with the *sollen*. The first captures a necessity, a place for coercion even, while the latter seems more like a norm that is not intrinsically coercive.

Usually legal codes are written in the third person. They are prescriptive

but not imperative. Laws do not usually come in the form: “Do This!” Much less do they appear as: “You shall do this!” Laws are also usually written, and written texts oblige in a different way than oral communication – but that is jumping ahead to later in this essay. Laws are often embodied in casuistical language: articulating different kinds of cases and punishments. They are often impersonal. But what do we make then of the commandment form as in the Ten Commandments?

Exodus 20:13: Don’t murder.

Is that also law? The command addresses me directly, binds me at once and urgently. The insights of dialogical thinkers recognize this singularizing force of a command. But if a law is general and impersonal, how am I supposed to receive it? A command tells *me* what to do; a law seems to describe what has to be done, provided we can judge the circumstances. In their form, the laws call for judgement – not only in the juridical sense, but also in the epistemological sense. By providing details and cases, the laws train the mind to discriminate and to decide whether a particular incident fits under a concept. Grammatically speaking a command requires obedience; a law judgement. So, a look at the difference between commands and law in the translation of Scripture might help complicate and clarify the initial opposition.

I will begin with the command version prohibiting murder from the 10 Commandments.

(Exodus 20:13) [Don’t murder.]

Mendelssohn translates: *Du sollst* nicht morden.

Rosenzweig/Buber: Morde nicht.

Luther: *Du sollst* nicht töten.

The Hebrew *lo tirzah* is an imperative, but with the negative particle *lo*. The Hebrew frames this as an imperative, needing no separate modal and no separate personal pronoun. A commandment, for Mendelssohn, seems to require a specific relation to *du* that imperatives don’t quite capture.

Next, a paradigmatic version of the prohibition on murder in casuistic law. Here the modalities and the absence of imperatives in the Hebrew makes everything much more complex.

Numbers 35: 16-26 (first in the Buber/Rosenzweig, and then a rough version of theirs in English by me)

Hat er ihn aber mit einem eisernen Gerät erschlagen, dass er sterb,
 ein Mörder ist er: sterben *muss*, sterben der Mörder;
 hat mit einem handgerechten Stein, wodurch einer sterben kann, er ihn geschlagen, dass
 er starb;
 ein Mörder ist er: sterben *muss*, sterben der Mörder;
 [...]
 richte die Gemeinschaft zwischen dem Schläger und dem Bluteinlöser nach diesen
 Rechtsgeheissen,
 die Gemeinschaft rette den Mörder aus der Hand des Bluteinlösers,
 die Gemeinschaft lasse ihn zurückkehren in die Stadt seines Unterschlupfs, wohin er floh,
 darin sei er ansässig, bis der Grosspriester starb, den man mit dem Öl der Heiligung salbte.

If he has struck him with an iron tool, so that he died: a murderer is he: he must die, the
 murderer die;
 If he has struck him with a stone in hand, with which one can die, he struck him so that
 he died: a murderer is he: he must die, the murderer die;
 [...]
 The community judges between the striker and the blood-redeemer in such legal procedures:
 The community saves the murderer from the hand of the blood-redeemer.
 The community lets him return to the city of his asylum, to which he fled.
 He resides in it until the High Priest dies who one has anointed with the oil of holiness.

Now I focus on specific verses where we see a variation in three translations: Mendelssohn, Rosenzweig/Buber, Luther.

Numbers 35: 16

Mendelssohn: Der Mörder *mus getödet werden*.
 Rosenzweig/Buber: Ein Mörder ist er. *Sterben muss*, sterben der Mörder.
 Luther: und *soll des Todes sterben*.

But in Verse 24 we see a subtle matching of the various translations:

The community judges

Mendelssohn: *So soll die Gemeinde ... den Ausspruch thun*.
 Rosenzweig/Buber: *die Gemeinschaft rette den Mörder*
 Luther: *so soll die Gemeinde richten*

In verse 16, Mendelssohn lines up with Rosenzweig/Buber in translating *mot yamut* as *he must die*. Luther sticks to his preference and has *soll*. Thus Luther is able to translate everything from a direct imperative to a casuistic third person law as a matter of *shall*. Laws and commands have the same grammar for Luther, and in both cases the auxiliary *shall* loads a burden on the addressee. What do we make of Mendelssohn's own use of *sollen* in the commandments and now in the judging community?

Let me begin by suggesting that we can recognize his *müssen* as the expression of law from Section I of *Jerusalem*. It is coercive, even violent. It compels even when a person disagrees. Such is the fate of the murderer – to be killed. The law obliges a death, and the agent is not named. His use of the passive voice hides the agent, and does not address the murderer or the one who will execute him. *You* are not the one who *must* kill him. Society must kill, but the *must* if anything accentuates that there may not even be a desire to kill.

The contrast then with the *du sollst* could not be more dramatic. For his *sollen* creates just the persuasion that marks non-coercive law. There is then, on the one hand, an appeal to you to make this norm your own (*you shall not murder*) and, on the other, a claim for an impersonal judgement that exacts punishment on a murderer. The address of the Numbers passage remains steadfastly in the third person, but Mendelssohn still does shift to *sollen* when it characterizes the task of the community. Capital punishment is such a fixed and necessary sort of thing that the formation of a community is needed *to* suspend it, rescuing the manslaughter. And that community acts, in Mendelssohn, bound by the *sollen*. In contrast, Luther shows his basic move throughout. All is *sollen*: the command not to murder, the laws of capital punishment, the laws of forgiveness and asylum, even the command to love.

Luther's theology of law and its failure to provide justification leads him to hide the role of grace in laws of asylum, and even more in the commands to love. His *sollen* is associating all law and all commands in his Old Testament with the inexorable (and non-salvific) experience of legality and being bound by imperatives. To receive the law for Luther is to be under duress, which illuminates how the gospel is not a law book: *not* a book that coerces. A brief passage from his essay *A Brief Instruction on What to Look for and Expect in the Gospels* serves as a close parallel and contrast with the opposition from Part I of Mendelssohn's *Jerusalem*.