

Robert Gibbs 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 casuistical 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 manslaughterer. 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*.

So you see that the gospel is really not a book of laws and commandments which requires deeds of us, but a book of divine promises in which God promises, offers, and gives us all his possessions and benefits in Christ. [...] We see too that unlike Moses in his book, and contrary to the nature of a commandment, Christ does not horribly force and drive us. Rather he teaches us in a loving and friendly way. He simply tells us what we are to do and what to avoid, and what will happen to those who do evil and to those who do well. Christ drives and coerces no one. Instead he teaches so gently that he entices rather than commands.

A Brief Instruction on What to Look for and Expect in the Gospels, 1521
WA 10.I, 1, 8-18/Eng Vol 35, 120-21²

One can contrast the required deeds with gentle instruction; the force with the enticing, and see a close parallel with Mendelssohn. But Mendelssohn held that religion does impart commands, and that the commands are persuasive and not coercive. Still, the question that I will circle back to is, *How can the laws themselves rise beyond this intrinsically violent image?*

The irony for those who know their Kant – where *sollen* implies *können*, even we might say *müssen* – is that Luther’s argument is that *sollen* implies *nicht können*. That the importation of so many *sollens*, so much *Thou Shalt*, is meant to break down the addressees of the divine legislation. Because the Hebrew so often has no need of *sollen*, his importation crystallizes the imposition and irritation that laws engender, as we await redemption from such commandedness. I believe that once all of these norms have become *sollen*, then it is only a short step to see them all as coercive and as ruling with the *müssen* that Mendelssohn restricts to the legal impersonal penalty.

But if one can distinguish between the necessity and coercion of *müssen* and the work of a normativity in a command as *sollen*, then we may see Mendelssohn’s rehabilitation of *sollen* as the linguistic marker of the distinction from Section I. Moreover, we can see if this opens a path from the complexity of the Biblical Legislation to a resurgence of commands. Even in Section I, there is a recognition that states (and not only religion) may reduce the role of coercion – may focus more on *sollen* than *müssen*.

Under all circumstances and conditions, however, I consider as one infallible measure of the excellence of the form of government, the more it achieves through morals and convictions, and thus governs though education itself. 111/42

By distinguishing the role of coercion and its *müssen* from education in norms with its *sollen*, we can frame the role of education as the core of

sollen. But we also begin to see a way to find the possible expansion of a non-coercive aspect of law.

3. *The Written Teaching and the Oral Teaching*

When we follow Mendelssohn's history of the Jewish polity, a parallel argument about the Biblical legislation emerges, where education seems required. The Jewish tradition occurs in three historical phases. First, the full range of the capacity for education and persuasion emerges in the Mosaic constitution. With the rule of Kings in the second phase, religion and state are separated, and then in the third phase, after the destruction of the Temple, there is religion without a state. While there are complicated motives and tactics at work especially in his account of this third phase, I extract a sense of how education can accomplish what coercion cannot: the appropriation of norms as the formation of a subject. That is, in actions and the discussion of actions, people can learn from others, and in learning embrace a norm. Thus, while coercion is combined with education in the first phase and separated from education in the second, it is altogether extinguished in the third.

Moreover, as the rabbis expressly state, *with the destruction of the Temple, all corporal and capital punishments and, indeed, even monetary fines, insofar as they are only national, have ceased to be legal*. Perfectly in accordance with my principles, and inexplicable without them! The civil bonds of the nation are dissolved; religious offenses were no longer crimes against the state; and the religion, as religion, knows no punishment, no other penalty than the one the remorseful sinner voluntarily imposes on himself. It knows of no coercion, *uses only the staff of gentleness*, and affects only mind and heart. 195-96/130

Mendelssohn did note that even in the time of its applicability, Biblical law itself restricted coercion, and so created, for instance, the sense of community bound by the *sollen* of judgement on the manslaughter. But it is the dissolution of state authority after the second destruction of the Temple in 70 CE that fundamentally transformed Judaism: all coercion was now impossible. The rabbis had an interest in portraying themselves as not mucking about in politics (although at times they did revolt). They wanted to justify a certain sort of ongoing legal social practice that would not look like it was in competition with the Roman (and later) political authorities. They recognized that the political law is the law of the land,

but that their own law governs within the community in this non-coercive manner. The actual history is a bit more complicated, but in the main not only does Mendelssohn portray the reality, he also portrays the general account the rabbis used.

Thus, despite the boldness of the claim that Divine Legislation holds everything together, both laws and commands, coercion and persuasion – in practice for much of Jewish history, the staff of coercion is broken. The Biblical text about the staff of gentleness from Zechariah, and its rabbinic interpretation, is much more fraught – but our interest is to see how Mendelssohn interprets the rabbinic view that coercion is disagreeable. The core of this claim was tied together with the claim that the Torah was double: a written law and an oral law. We are also facing a doubleness of translation here: for the Hebrew word *Torah* is often translated as *law*, beginning with the Septuagint, but also is more literally, *teaching*, which could also lead to *doctrine* – which Mendelssohn is very keen to avoid in relation to revelation. The oral law, say the rabbis, was also revealed to Moses, but was transmitted without inscription for generations. Mendelssohn readily distinguishes the two laws and offers his version of the rabbinic account: that it was inscribed only in a time of crisis.

While I will not provide Mendelssohn's full argument about the emergence of signs, hieroglyphic writing, and then alphabetic writing, nor his robust lament of how writing produced a deep gap between people, and between life and thought; it is interesting to see that his challenge to the written draws heavily on the doubling of the Jewish law into a written and an oral. He rehearses this change twice (like so much else in *Jerusalem*). The first version comes amidst a discussion of how God's revelation of eternal truths is not in written words nor any kind of written text.

Doctrinal concepts and laws, convictions and actions were not bound to words nor to written signs which always remain the same for all men and times, under all revolutions of language, mores, ways of life and relations. For us these words and written signs should always present the same rigid forms, into which we cannot force our concepts, without smushing them. 168-69/102

The whole of the original constitution was not to be confined in written media. It seems that Mendelssohn is attacking the textuality of the tradition from the 10 Words on Stone, through the Torah scrolls, but the task is a bit more complex. In his Protestant context, he is struggling to legitimate the Jewish oral Torah, a move that had also been particularly explicit in

rabbinic texts. One can begin to see that this move is to elevate the oral Torah above anything written, especially the inscribed letters of the written Torah – which is not the whole or the leading mode of teaching. Instead, the oral works as a living Torah or instruction.

They were entrusted to living, spiritual instruction, which keeps pace with all changes of the times and circumstances, and can be molded and altered according to the needs, according to the student's capacities and power of grasping. One found the prompt for this paternal instruction in the written book of the law and the ceremonial acts which the confessing Jew incessantly had observed (ibid.).

The oral took the written as its *prompt*, and we will see that living instruction will depend more and more on actions and not texts in Mendelssohn's account. Of course, Mendelssohn cannot dismiss the written Torah. But he takes up the prohibition to write more of the Torah – to insist on oral transmission of what was oral. This prohibition, too, was part of the oral law, and so we can *read* it, because the oral law was *also written down*. I won't go too far into the dialectics: but consider this preservation and destruction:

It was at first expressly forbidden to write more about the law than God had let Moses record for the nation. "What has been transmitted orally," say the rabbis, "you are not allowed to write down." The heads of the synagogue decided with much reluctance in later times and gave the permission which had become necessary to write about the law. They called this permission a destruction of the law, and said with the Psalmist, "there is a time when one *must* destroy the law for the sake of the Eternal will." But according to the original constitution it should not be so (ibid.).

We see here two moves: that the original (and perhaps ideal goal) was to have a non-written tradition of teaching. And when tradition – the oral law – was written down, the key question becomes: Did it cease to be living, retaining the power to change with the times and to educate? Later I will return to this specific hope – but we can already readily see that animating the law goes beyond recording it. And if the doubling of the law reflects rabbinic *writing*, for until then the oral law would not be a second text or a law like the written one, then as written it still seeks to be living instruction.

4. *The Living Script*

This contrast of written and oral sets the stage for a third and more challenging concept of law: the living script. The ceremonial law is a series of pro-scribed actions and a pedagogy of everyday actions. These actions are not semantic signs, but rather performative instruction. We are now introduced to interpersonal learning: following someone around, asking questions, copying actions.

The ceremonial law itself is a kind of living script, rousing the mind and heart, full of meaning, which without interruption awakes to reflection and gives the occasion and opportunity for oral instruction. What the student did and saw done from morning to evening was an indexical [Fingerzeig] to religious doctrines and convictions, driving him to follow his teacher and to observe him, to note all of his actions and through his aptitude getting the instruction that was possible and through his conduct made him worthy. 169/102-3

Here we begin to see the possibility that scripture might not be a mere text, for which the actions are a reading, but that the actions themselves have become a kind of scripture or text. It is at this moment, when the actions themselves become a kind of script that we see how the medium of inscription makes its contribution. Legislation's task is to lead us from good actions to good convictions, and prescriptions of actions can induce the social reflection that allows for the adaptation of the truth as a conviction – but that is using one kind of script to allow the heart to gain insight into the truth. And the second text from later in *Jerusalem*, repeats and expands how this scripture teaches:

But the unwritten laws, the oral tradition, *the living instruction* from man to man, from mouth to heart, should explain, enlarge, limit and more precisely determine what, from wise intentions and with wise measure, remains undetermined in the written law. In everything that a youth saw, in every private as in every public action, on all the doors and all gateposts, to which he turned his eyes or ears, he found cause to inquire and reflect, cause to follow an older and wiser man in all his steps, to observe his smallest actions and tasks with childlike care and with childlike eagerness to imitate them, to inquire for the spirit and the purpose of these tasks, and to take in the instruction which his master held him able to grasp. Thus teaching and life, wisdom and activity, speculation and company were most intimately bound ... 185/119

Unwritten laws, the oral Torah, engages in a jurisprudential set of activities (*explain, enlarge, limit*) because the written laws must be general. But

almost seamlessly, Mendelssohn then defines the work in its social context, as a child follows an older person and observes and asks questions, seeking instruction. Thus the jurisperit determinations of general law by oral law shift to the pedagogic instruction for a living script. One does not act (or inscribe) in private, and that interpreting (or reading) is specifically asking questions of the elders who are doing the script. One imitates their actions, learning the script. And one thinks and talks with the elders, for whom the answers are not “just do it” but who are trying to instigate questions, inquiry, reflection, speculation. Curiosity is enhanced; teaching and life bound together.

We are, it seems, very far from a coercive law with punishments and threats. But we are also several steps away from mere doctrinal instruction. What we are seeing, however, is something that Mendelssohn calls a script. Given an extensive argument against writing, and the very displacement of the written Torah by the oral one, why does Mendelssohn opt to call this living instruction a *kind of script*? Why not call it a language, or even a practice, a system of pedagogy? Why script?

There is an illuminating parallel attack on writing in Plato’s *Phaedrus*, which culminates in the claim that true rhetoric *writes words on the soul* (276a). Again, the critique of writing is somehow in the service of something that is metaphorically termed *writing*. Of course, the inversion is part of the point: real writing would be inward in Plato (and in the words written in the heart in Jewish Scriptures), and would be an embodied series of actions for Mendelssohn. Both elevate oral, living instruction. But why is this *script*?

We have arrived at the first instance of what I termed the first question: What is the place of writing in a religious community? The answer is *the living script* – but this is an embrace of script at just the point where Mendelssohn has made his clear opposition to writing. Lest we think that the role of writing should be reduced or even canceled, it now appears as the focus of the community and in this script there is life.

While writing in general creates something that withstands change (and so is not flexible and alive), this writing of living people in action seems to be living writing, changing with the times. When writing changes as it goes, what does calling it ‘writing’ add? It seems to require a performativity, but that could be sheer orality. It is somehow fixed *and* alive – and that contrast is what Mendelssohn is pursuing. We could reduce this simply to an attack on a Pauline/Augustinian/Lutheran letter and spirit opposition;

or we could locate this in the Jewish debates about the status of the oral Torah and rabbinic authority, but the philosophical issue seems still more promising. For somehow this *living script* is the genre of the ceremonial law: here is a claim about a possibility of law itself. Is its character as script what allows it to overcome the opposition of coercion and education?

[...] the lawgiver gave this nation the *Ceremonial law*. Religious and moral knowledge should be bound with what people do everyday. The law of course did not compel one to reflection, prescribing for them mere actions, for their everyday deeds. The great maxim of this constitution seems to have been: *people must be forced to actions and only induced to reflection*. 184/118-19

The everyday deeds do not coerce thought. Their *must* leads to a *should* of thinking. But the everyday deeds are unlike both the hieroglyphic script, which seduces one to idolatry, and the alphabetic script, which leads to isolation and abstraction.

They should be bound with actions and practices, and these were to serve in place of signs without which they cannot be maintained [*erhalten*]. The actions of people pass, have nothing lasting, nothing enduring, which like hieroglyphs could lead to idolatry through misuse or misunderstanding. They also have the advantage over alphabetic script that they do not isolate people, not making one to be a solitary creature brooding over writings and books. 184/119

So here a living medium – human everyday actions – averts the temptation of the written text as such. Those actions can be required, but their meaning will depend on social interaction. And again, the actions themselves become a kind of writing, as they give a sign over to another for interpretation, but in their everydayness, the signs repeat and indeed, one can see that they in some way write on the sheet of everyday existence. The norms enacted in every interaction become self-reflective. Laws seem to merge into norms here.

5. *Oral Teaching Heard and Performed*

Let Luther again serve as a marker, as he negotiates between scripture and oral teaching (Christ's gospel). Luther is engaged both in distinguishing the new teaching from Mosaic law and also in offering a way to re-read the old Scripture, from the perspective of a non-scripture. He recognizes

a false objection, that if Christianity only heard gospels, one might ignore scriptures. But his reply also accentuates the realm of oral teaching.

What a fine lot of tender and pious children we are! In order that we might not have to study in the Scriptures and learn Christ there, we simply regard the entire Old Testament as of no account, as done for and no longer valid. Yet it alone bears the name of Holy Scripture. And the gospel should really not be something written [*Schrift*], but a spoken word which brought forth the Scriptures, as Christ and the apostles have done. That is why Christ himself did not write anything but only spoke. He called his teaching not Scripture but gospel, meaning good news or a proclamation that should be spread not by pen but by mouth ... Op Cit. E 123

At first this is a striking claim: that the gospels are not scripture, not properly written. They teach in hearing the good news, not by study. But the gospel itself is also now written, not unlike the Oral Torah for the rabbis. It should be oral, though now written down. How do we return the orality of the text?

Luther grasps that the task for reading scripture is to find myself called in, to see that the 'you' is really addressing me. The book gains its full potency to be more than dead letter, more than abstract doctrine: it *acts*. First you are to read or hear (leaving aside the role of preaching for Luther). In this way the text does not narrate an event external to the reader, but rather reaches you and us, acting upon us.

When you open the gospel book and read or hear how Christ comes here or there, or how someone is brought to him, you should perceive [*vernehmen*] through the sermon or the gospel that he is coming to you, or you are being brought to him. For the preaching of the gospel is nothing else than Christ coming to us, or we being brought to him. (Ibid. E 121)

The written comes alive, in the reading of hearing, and allows you to be brought near. But even as he qualifies how it is a script, he sees it asking you to let it work on you. This passivity is remarkable, speaking of the grace in reading.

The heard text gives you grace, the passive reception of redemption. And then afterwards, well, one shall go out and do, imitating. As you have received a gift, so you can become a gift. The transformation of yourself into a gift is the consequence of the working of the gospel heard.

Then Christ is yours, given to you as a gift. And after that it is necessary that you make this into an outward example and thus also help and do for your neighbour. Be to him also as a gift and give an example. (Ibid.)

Thus, while Luther will insist that the Gospel is not *schrift*/written but only spoken word, what interests me is that the text performs its giving and teaching in a gentle way that redeems and entices you to do likewise. This teaching practice is very close to Mendelssohn's account of the children – except that the oral teaching of Jesus is not an everyday example. That is, the ceremonial law is a series of everyday actions that are not themselves the deeds of the divine, but lead or induce one to think and discern the eternal truths. It is not from a passive listening that the writing comes alive, but from the daily activities and the social interaction. The grace of teaching requires action in the reception, and not only afterwards – the meaning is not simply heard, but is performed. The teaching arises from this interaction, in a form of thinking which arises from the commanded actions.

What emerges in Mendelssohn's account is that the opposition of written and oral is overcome by a kind of writing that is freed from the mere fixedness, leading to idolatry and in some cases to abstraction. The writing can live between people. Especially in the relation between generations. But once we see that as a kind of living script, we can see that the holy scripture itself can be animated – can serve as a pretext for social teaching and learning. But for Luther, the gospel can be animated only by listening. The word must be animated aloud, losing its own written quality.

6. The Written Made Oral: Translation and Study

Luther's translation project is animated by this interplay of reading and the word heard. Salvation comes through the word speaking to you, and it reaches you not by pen (or by printed page, or on your screen) but by mouth. This is one of the most profound reasons why the Bible needs to *speak* in the vernacular, in an everyday language. It must speak to you in your own tongue to speak to you at all. The norm for his translation must be oral German, that the text might deliver its gift. And so the translator does not only need to know Greek, Hebrew, and Latin, but also must learn how the audience talks.

One does not have to ask about the letters [*Buchstaben*] in the Latin language or how we should speak German – as these asses do. Rather one must ask the mother in the home, the children on the street, the common person in the market about this. We must be guided

by their mouth, how they talk, and translate accordingly. Then they will understand it and recognize that one talks German to them.

On Translating: An Open Letter, 1530
(WA 30.II, 632-646) (Eng Vol 35, p. 189)

This open letter on translation is embroiled in a quarrel, as often is the case, and the “asses” offered an alternate translation against Luther’s own. But we are interested in the contrast of letter-based translation and oral language talking. It seems a simple point to remember that literacy was not so wide-spread, and that scholars conducted much of their study in a non-vernacular language. Women, children, and common men did not speak the scholarly languages – more relevant, they would not hear them as their own language. If the task with the gospel is to hear the word that reaches specifically you, then the gift of grace must be given in your own language, must sound like the words you speak. We are now winding our way back from the true speaking of the word to what needs to be written.

I do not claim Luther has the concept of Mendelssohn’s living script which is our focus. But it is challenging to see how a written text can be part of the living script, and translation offers something further to our inquiry. We briefly need to consult Mendelssohn’s own preface to the translation project into German which he led to see something about the orality of the written Torah.

We have already seen that the living script is an intergenerational means of teaching and leading. The practices are commanded, yielding insights are prompted through a dialogue between parents and children. Thus, the life in the living script comes from questioning and interaction. But it is also worth noting that the written Torah also has this intergenerational quality – specifically a command to teach your children, and indeed, to teach your children’s’ children. More, that teaching is oral. Thus Mendelssohn thinks about how the text, like the everyday living script of actions, teaches from parents to children, and it leads him back to the giving of the written Torah. Moses did not receive merely a written text from God, but rather a recitation, a hearing of it, and so the word speaking is characteristic of the *written Torah* (not mere Scriptures as in Luther’s account). The challenge is that the written Torah lacks vowels, punctuation, and the marks for incantillation. Like many languages, the consonants are written, the vowels – the sounds that are made by breath, that are the voice – are

absent. In the Torah scrolls, and often in later Hebrew texts, there is no *written* notation for the voicing. So how did one learn that?

Thus no doubts can exist that Moses, our teacher, Peace be upon him, was made to hear all the words of the Torah from the mouth of the All, with all their splendour and accuracy of the vowels and the accents that belong to them, with all of the details of the connection, so that nothing was lacking from it. And thus he delivered it to Joshua, and Joshua to the elders, and so propagated the chain of the tradition, from generation to generation.

Introduction to all Five Books, 25a³

Moses heard the speaking word. He heard it from God directly. He did *not* inscribe the breathing, the vowels, accents, the phrasing. The written script lacked its breathing, but God spoke all these words to Moses. And Moses spoke these words to Joshua. One sees in this a familiar account of the promulgation of the law from the Mishnah, from Moses to Joshua, to the elders – but now we see that what is being taught are the *unwritten* sounds, the breathing, the voiced and phrased words. Not a written text; not a body of doctrine; no, the sounding words. And now we shift again to the later generations, indeed, to the teaching of parents and children we know:

The son who learned it from the mouth of his father, of the pupil who heard it from the mouth of his teacher, heard from him the phrases in their complete accuracy of pronunciation, which they had heard, and just so they inculcate it in their sons and students. Thus reads the command:

“You shall inculcate it in your children;” [Deut 6.7] that these words are sharp [einschärfen/geschärft].

You shall not merely give your sons or students the holy scriptures in order to read from the scripture; because then it would be like a sealed book. Rather you should read aloud to them and repeat aloud with them the words with melody and song. Thus will the words be sweetened, so that they enter into the heart and be there “like goads and nails that are fixed.” (Eccles. 12.11)

I will not hide the difficulty that the mother tongue here is the father’s mouth – that Mendelssohn is sustaining a patriarchy of languages and writes almost always of sons and fathers. Despite this, we still have the words from the mouth, something that we saw in Luther. And now we have the animation, the sounding of the written word, itself being the core of the teaching. Hence Mendelssohn’s interpretation of Deuteronomy 6.7 is specifically that the sounds, the pronunciation, are what allows the words to penetrate the children. How sharp this is: do not give your child the Torah

to read, as a book! Rather, read it aloud and repeat it so that they learn the *melody and song*. Such words become sweet, and so we can redeem the written Torah from its potential for coercion and force. The words are incised in the child; and fixed on the heart.

So here is the soul for the written Torah, the breath itself as a living tradition, that animates the written letters. But what then of a translation? The answer lies in the purpose of translating the Torah into German. Mendelssohn was attempting to provide access to the written law for his community. He is not translating Mishnah nor Talmud, nor Shulchan Aruch (a central Jewish code). Other scholars have examined his purpose, and I will not focus my comments upon it. Clearly his translation into German (not *taytsh* nor Yiddish) was not for the Christian community, for it was printed, transliterated, into the Hebrew alphabet. Rather, we see in Mendelssohn's act of translation a pursuit of the notion that the scripture read aloud could contribute to the interpersonal education that the original relation with the teacher produced. The reading of this text, and most of all, with an awareness of the richness of the textual annotation (that is, directions for performance) could become again a way of receiving the laws.

Mendelssohn justifies the status of translations in his introduction. Indeed, translation is an old project characteristic of Jewish communities, who regularly appropriate the language of those around them. I would even suggest that the orality of a text depends on setting it to the local music, to the language of the place. The sound is recognizable to those who hear it read aloud, if it is in the vernacular language. Here we see recognizability, or intelligibility as key to the social education we have been pursuing. Thus the need for new translations in different communities. Hearing in a language that is familiar to your ear is key to allowing the word into the heart, to the reflection that can produce the conviction.

But the Jewish laws and customs about translations also have a requirement about the inscription of a translation: that it should be in Hebrew script. Mendelssohn respects this rule and creates a transliteration of German into the Hebrew script. Moreover, in his introduction he elaborates on the relation of this alphabet to the older Hebrew alphabet, for the familiar and requisite one is itself a loan alphabet from the Assyrians. Thus, one hears it in a familiar language (German), but sees it in the Hebrew alphabet – this tension between seeing and hearing, between languages and scripts, repeats at a higher order the earlier tension between oral and written teaching. Ironically, the text remains illegible if one cannot read

Hebrew – and so the challenge of these transliterated translations is that they assume that the familiar alphabet is Hebrew and that other scripts (or Greek or Aramaic or ...) are unfamiliar. But perhaps it is not the written language simply. Perhaps the insight is that the sound of the new vernacular is familiar, while the sight (alphabet) and perhaps even the words of the Hebrew are known. Thus, again the written familiarity is used to *prompt* an audible oral instruction, which is prioritized. That is, the written form is meant to become mobile in oral instruction.

Instruction is also key to the visuality of the page of the *Be'ur*. Mendelssohn, following traditions in printing running back almost 300 years, set the Hebrew text next to his transliterated German text, with a commentary in Hebrew and a set of scribal variants. And so the assumption is not only literacy of the Hebrew alphabet, but also knowledge in reading it (the commentary was type-set in Rashi script). Two languages in two scripts combined in various ways: the page is a juxtaposition of the senses. It begins to require a transformation of what we mean by written law.

Ultimately, the study of the law is the key to the receiving of it. Study, however, is not a solitary activity. In the first instance there is an interplay between the text blocks. Mendelssohn realizes that he will not translate word-for-word into German, so there will be juxtapositions between the German and the Hebrew, to say nothing of the other sorts of texts. For the commentary itself is another voice and plays off the text in unexpected ways. The reader reading such a page joins a conversation, and like the child questioning the elder, the reader learns by querying the complex page, and needs a teacher. Much as the living script prompted inquiry, the complex translation page also prompts inquiry. It is not a book that is read alone, but a book that animates a specific part of the living script, by requiring actions of study, and its play of languages and alphabets welcomes new forms of study.

7. *Law as Study (Talmud Torah)*

Let me come to rest then with a final revision of the initial opposition of State and Religion, coercive law and normative commands, and to that second question: What is the role of force in religious law? While it is true that Mendelssohn does not revoke the license of the state to use laws in a coercive function, it also is true that the more important role is to use

education to lead people to truth, and even to moral action. If we follow the emergence of the oral law as oral instruction and its path to the living script of ceremonial law, then we can also see that the goals and educational practices of Jewish society can inform the possibilities of how to animate and make written laws entice and encourage questioning and study. The ideal would be to be able to keep the commandments, by doing the actions and returning to the original legislative intention. That intention, however, might exceed itself – that is, it might call forth translations, transliterations, and even the transformations that await a law with only a staff of gentleness.

Instead of that original legislation in action, we have it reanimated in study. For through two connected arguments, we have seen that the *sollen* of commandments allows for external legislation to engender conviction through its regulating of actions and performances. Law's external force can be elided by the study of those laws, and the social insights that bind the individual to the community can be achieved by the minimal level of violence and force. Thus the norms engendered in the realm of *sollen* serve a higher insight of conviction, without compelling assent. One receives the law in an interpersonal relationship, by learning a script of action, perhaps through studying an alphabetically inscribed set of laws for actions, and joins in a community of obligation (*sollen*). This is not the law of force itself, but a law that has had its staff broken. And yet, for Mendelssohn it is still law. And for the other question: What is the place of writing in a religious community?, we see how the task of the translator is to re-dramatize or re-score the music of the language of the orality of the written law, allowing us to arrive at the answer: *living script*. The study of the law can make one proficient in the scripts, and incite one to question and learn from others the task of righteousness.

Notes

- 1 The first number refers to Alexander Altmann's edition in volume 8 of Moses Mendelssohn, *Gesammelte Schriften. Jubiläumsausgabe*, ed. in association with Fritz Bamberger, Haim Borodianski, Simon Rawidowicz, Bruno Strauß, Leo Strauß, started by Ismar Elbogen, Julius Guttmann, Eugen Mittwoch, and continued by Alexander Altmann with Haim Bar-Dayyan, Eva J. Engel, Leo Strauß, Werner Weinberg (Berlin 1929-32, Breslau 1938. Stuttgart-Bad Cannstatt: Friedrich Frommann-Günther Holzboog, 1974-2022), vol. 8, 169. References to this edition will be Jub A followed by volume and page number. The second page number refers to Moses Mendelssohn,

- Jerusalem or on Religious Power and Judaism*, trans. Allan Arkush (Hanover and London: University of New England Press, 1983).
- 2 Citation: German Weimar Ausgabe 10.1, 1, 8-18, English, Fortress Pres. Translation adjusted by me.
 - 3 Jub A, 15 and 9, 25a *Moses Mendelssohn's Hebrew Writings*, trans. Edward Breuer (New Haven: Yale University Press, 2018), 253.