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The great medieval Jewish jurist and thinker R. Moses b. Nahman (1194–1270) developed an exceptional legal-theology unprecedented in traditional rabbinic thought. In jurisprudential terms, he reduces the Jewish traditional perception of the Halakhah (ie the Talmudic law) and introduces the view of the divine law as a territorial law. My article suggests reading anew his sayings about the God-law-land matrix against the background of his contemporary European Christendom. Our analysis raises new perspectives on his attentiveness to the conceptual vocabulary of the Crusades’ propaganda and the European legal reality.

During the course of the past two millennia, the desire to resettle the land of Israel has been a consistent component of the Jewish religious mindset. Sometimes, this desire encountered the opposition of pro-exilic ideologies,¹ at other times it remained a sentimental or eschatological fantasy. Various religiously motivated endeavours to settle Zion are documented and studied in contemporary historiography. Nevertheless, unlike the biblical narrative which views the fate of the Canaanites as an inevitable outcome of the Israelite attachment to the Promised Land, most Jewish medieval reflections did not associate these two states-of-affairs. The fate of non-Israelites in the Land of Israel was not seen as connected with the Jewish longing for the Holy Land, nor as an unavoidable outcome of the Israelites’ existence on the land.

In that context, the approach of Robbi Moses ben Nahman (1194–1270; henceinafter, Nahmanides) is exceptional. He considered the fate of the biblical Canaanites illustrative of the fact that the right to a land is not unconditional, but dependent on certain behaviours. On the personal level, Nahmanides left the Iberian Peninsula, travelled to the Holy Land and developed a strong...

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¹ Pro-exilic ideologies are widespread in the Talmudic literature. The self-perception of the Babylonian Geonim demonstrates the metaphoric displacement of Zion from a geographical area to the scholastic institution of the yeshiva. See A Grossmann, The Yeshivah of Eretz-Israel: Its Spiritual Activity and Standing in the Jewish World, in J Prawer (ed), Sefer Yerushalayim: Ha-Tekufah Ha-Muslemit Ha-Kedumah, 638-1099 179–214 (Jerusalem: Yad Izhak Ben-Zvi, 1987). The Jewish Catalan scholar Abu Hambali (ca. 1070–ca. 1140) claimed that the land of Israel would be stretched beyond the historical borders to include the entire world. In fact, Nahmanides’ contemporary, Ezra of Gerona (d 1227), argued that the duty to settle the Land of Israel had been replaced by the ‘suffering of exile’. For an analysis of these Catalan scholars and their contexts, see M Idel, On the Land of Israel in Medieval Jewish Mystical Thought, in M Halamish and A Ravitzky (eds), The Land of Israel in Medieval Jewish Thought 193–214 (Jerusalem: Yad Izhak Ben-Zvi, 1991).

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theological motivation to resettle the Land of Israel. More interestingly, he came up with a new perception of the law and an innovative meaning of otherness applied to the Canaanites.

Nahmanides’ innovative approach can in fact be understood as legal theology. Accordingly, our analysis assesses the basic tenets of his approach which reformulate the traditional relation between law and land. Despite the fact that Nahmanides’ theological innovation is acknowledged both in the traditional and scholarly literature, our analysis offers a new perspective on his conceptual and theological sources. We argue that in parallel to his mystical background, Nahmanides responded to legal and theological doctrines that pervaded contemporary European Christendom. According to our understanding, Nahmanides sought to rearticulate the notion of the halakhah as divine law, according to which it derives from God’s association with His territory in terms of feudal lordship. Nahmanides introduces a spatial, or territorial, notion of the halakhah that stands in opposition to the traditional perception of the halakhah as direct prescription. Consequently, our analysis calls for a reassessment of his approach to the Holy Land and of the inspirational motivation behind his personal voyage to the Holy Land in 1267.

1. Law and Polycratic Lordship

Nahmanidean legal theology is encapsulated in his use of the biblical idiom ‘the law of the land’s Lord’ applied to the fundamental notion of the divine law. This term originates in the biblical tale of the fate of the Samaritans who were initially brought in by Sargon II, King of Assyria, to replace the exiled Israelites (2 Kgs 17:24–30). The Bible narrates that, upon

2 The term ‘legal theology’ indicates an understanding of the law derived from a theological context. Put differently, it is a legal theory that cannot be described independently from theological perceptions. In that respect, many pre-modern legal theories can fairly be considered legal theologies.

3 Ravitzky views Nahmanides’ perception as an evolutionary phase within a long-standing tradition around the idea of ‘Waymarks to Zion’, an idea that originated in the Sifre (see below p. 11.), further developed within rabbinic and antinomian circles, and eventually merged into the Zionist theology articulated by R Abraham Isaac Kook (1865–1935). See A Ravitzky, ‘Waymarks to Zion’: The History of an Idea, in M Halamish and A Ravitzky (eds), The Land of Israel in Medieval Jewish Thought 1–39 (Jerusalem: Yad Izhak Ben-Zvi, 1991). Without denying Nahmanides’ part within this tradition, I wish to portray his input as a radical proposal to modify the fundamental infrastructure of the halakhah, which eventually was not accepted as a plausible alternative. While Ravitzky distinguishes the halakhic aspect from the theological one, I view them as features of Nahmanides’ legal theology.

4 Consider some prominent notions of divine law within the intellectual history of Jewish thought: Philo claims that the notion of divine law is consistent with and even overlaps natural law (JW Martens, One God, One Law: Philo of Alexandria on the Mosaic and Greco-Roman Law 13–30 (Boston: Brill Academic Publishers, 2003)). Maimonides views the divine law as exclusively originating in the monumental revelation at Sinai, and further extended and developed by human reasoning (JE David, Maimonides, Nature, and Law: Refining the Framework. 5 Journal of Law Philosophy and Culture 85–100 (2010)). Nissim Gerondi proposes the divine law as triggering divine plethora (M Lorberbaum, Politics and the Limits of Law: Secularizing the Political in Medieval Jewish Thought 93–149 (Stanford, Calif.: Stanford Univ. Press, 2001)). Yosef Albo views the divine law as a universal vehicle to achieve spiritual success (D Ehrlich, A Reassessment of Natural Law in Rabbi Joseph Albo’s ‘Book of Principles’. 1 Hebraic Political Studies 413–439 (2006)). A common denominator of these distinct notions is the embracing of a subject-addressed notion of the divine law.

5 Halbertal exposes the antinomian aspect of Nahmanides’ halakhic thought through his anti-philosophical approaches to the problem of death and law. See M Halbertal, By Way of Truth, Nahmanides and the Creation of Tradition 117–148 (Jerusalem: Shalom Hartman Institute, 2006).

6 For a challenge to the traditional narrative according to which Nahmanides’ journey was an aftermath of the Barcelona debate, see M Kayserling, The Jews of Spain. 8 Jewish Quarterly Review 480–499 (1896). See also Idel, Land of Israel, 205.
their arrival, the Samaritans were attacked by wild lions for their violation of ‘the law of the land’s Lord’, which they eventually acknowledged with the help of an Israelite priest, and thus survived. This miraculous episode affords Nahmanides the opportunity to reveal the territorial dimensions of the halakhah, valid only within the Land of Israel. For Nahmanides, the biblical idiom מְשִׁיפְתֵּי הַיְּהוּדִים stands not only for the local code of behaviour but also for the fundamental rationale of the divine law as a territory-mediated law. This articulation, not to be taken lightly, has no solid precedent in mainstream rabbinic literature. In that respect, Nahmanides’ legal theology can be taken as a paradigm shift affecting the most fundamental concepts of every legal system—jurisdiction and sovereignty.

Nahmanides’ legal imagination is deeply anchored in a heavenly political structure that includes astrological powers governed by celestial constellations created, designed, and designated by God. As he notes, this should be understood against the backdrop of medieval astrology and the parallelism between heavenly and earthly political structures which generated the basileomorphic vocabulary of his legal theology.7

Indeed, among the various ancient representations of God, His image as king is one of the most prominent. Nevertheless, even within biblical basileomorphic imagery there is a clear distinction between two types, or two metaphors, of God as king and as ruler. The most common is the monocratic image according to which God is portrayed as imperial king, enjoying centralized and universal control.9 Nevertheless, the Bible also contains remnants of the polycratic image according to which there are national gods subordinate to God, each administering his own province. Within this metaphoric structure, divine domination upon earth is a distributive power branching through inferior delegations that govern local domains or people. While the deity’s power in the monocratic model is all-encompassing, the polycratic image contains a structured hierarchy10 and divine agency mediating between the supreme deity and His subjects.11

The tension between the monocratic and the polycratic images of God’s kingship is perhaps best demonstrated in the two versions of Deuteronomy

7 In order to explain this episode, in which divine law was directed at and also incumbent on non-Jews, Nahmanides develops a theory of halakhah that transcends the division between Israel and the Gentiles.
9 ‘O clap your hands, all ye peoples; shout unto God with the voice of triumph. For God, Most-High, is terrible; He is a great king over all the earth. . . . For God is the king of all the earth. . . . God reigneth over the nations: God sitteth upon his holy throne.’ (Ps 47:2–3, 47:8–9).
32:8; while the Masoretic version stresses a monocratic representation of God and accordingly the idea that God divided the national boundaries according to His elected people—"the children of Israel"—the versions of the Septuagint and the Dead Sea Scroll copies of Deuteronomy state that divine allocation was made in accordance with the 'angels of God' or 'sons of God'.

In fact, the theology of a polycratic heavenly structure in which divine power is distributed to secondary deities in charge of particular nations or territories is Greek in origin. And the confrontation of the monocratic and the polycratic images stood for opposing theologies in the first centuries of Jewish–Christian and Jewish–pagan polemics and throughout the Middle Ages.

Against the mainstream rabbinic tendency to over-emphasize the monocracy of God's kingship, Nahmanides supports the view of God's kingship as a polycracy. Interestingly, Nahmanides endorses the polycratic image by reference to Deuteronomy 32:8. He does not allude to the different versions of the last part of the verse, but in effect takes a stand in favour of the polycratic reading:

But the secret of the matter is in the verse which states, When the Most High gave to the nations their inheritance, when He separated the children on men, He set people etc. For the portion of the verse states

He allotted to all nations constellations in the heavens, and higher above them the angels of the Supreme One whom He placed as lords over them. Now the glorious name is God of gods, and Lord of lords.

12 The interpretative phrase 'angels of God' (ἀγγέλων Θεοῦ) is found in nearly all the extant LXX manuscripts. However, several earlier manuscripts have instead 'sons of God' (υἱῶν Θεοῦ). This is a literal rendering of the Hebrew phrase יְהוָה בֵּית יִשְׂרָאֵל found in 4Qdeut[j]. Most scholars agree that the Qumran reading has polytheistic overtones that later scribes found unacceptable. As a result, those scribes probably modified the verse to bring it more into line with Israel's monotheistic faith. On a possible Ugaritic background to this problem, see J Joosten, A Note on the Text of Deuteronomy XXXII 8. 57 Vetus Testamentum 548–555 (2007).

13 For Plato the structure of distributed deities enables a stable and peaceful order of the universe:

Then, in the beginning, God ruled and supervised the whole revolution, and so again, in the same way, all the parts of the universe were divided by regions among gods who ruled them, and, moreover, the animals were distributed by species and flocks among inferior deities as divine shepherds, each of whom was in all respects the independent guardian of the creatures under his own care, so that no creature was wild, nor did they eat one another, and there was no war among them, nor any strife whatsoever. (Pol 271d–e).


15 The Roman emperor Julian the Apostate (331–363) confronts the two kingly images by ascribing to Moses the image of God as exclusive sovereign and ascribing the other image to the Romans:

If the immediate creator of the universe be he who is proclaimed by Moses, then we hold nobler beliefs concerning him, inasmuch as we consider him to be the master of all things in general, but that there are besides national gods who are subordinate to him and are like viceroys of a king, each administering separately his own province (Against the Galileans, 148B, in WC Wright (trans), The works of the emperor Julian III 358–359 (Cambridge, Mass: Harvard Univ. Press, 1980)).


18 Deut 32:8–9.


20 Deut 10:17.
Nahmanides, like other medieval thinkers, used esoteric methods to resolve tensions between traditional perceptions and deeper truths. Here too, he avoids the confrontation of the distinct meanings of Deuteronomy 32:8, but rather reorganizes them vertically so the monocratic image is evident exoterically, while the ‘concealed truth’ is polycratic; pure monocracy of God is only a representation, while the divine controlling powers are distributive.

The polycratic image of God’s kingship in fact paves the way for Nahmanides’ reconstruction of the God-land-law matrix. It allows the corresponding individualization of the three components. Thus, in the same manner that the divine land is intimately related to God, so too the divine law is related to the divine land:

And the venerable God is the god of gods and the lord of lords over the whole world. But the Land of Israel, which is the axis mundi, is the inheritance of the Eternal designated to His name (רְשֵׁי אֲדֹנָי). He has placed none of the angels as chief, observer, or ruler over it, since He gave it as a heritage to His people who declare the Unity of His name (זֵכֶר לְעֹנִי). . .

Now He [also] sanctified the people who dwell in His Land with the sanctity of observing the laws against forbidden sexual relationships [תְּזוּר רְשֵׁי], and with the abundant commandments. . . He has set us apart from all the nations over whom He appointed princes and other celestial powers, by giving us the Land so that He, blessed be He, will be our God, and we will be dedicated to His Name. 21

While the major streams of post-biblical Judaism celebrated the monocratic perception of God’s sovereignty and rejected the polycratic theology, as ultimately expressed in the Masoretic version, Nahmanides is much more sympathetic to and consistent with the Christian scriptural version. In fact, it would be no exaggeration to claim his stance as an attempt to revive the biblical option of polycratic theology. Nahmanides’ construction of the God-land-law matrix, therefore, is not necessarily a direct outcome of kabbalic or theurgic ideas. 22 Here again his views appear to be consistent with Christian traditional doctrine. 23 Contrary to the enlightened (philosophical) ethos which states that religious consciousness evolved from polytheism to monotheism,

22 A polycratic theology that ascribes God’s specialized sovereignty both to the People of Israel and the Land of Israel appears in various post-biblical Jewish writings. See Jubilees 15:31–32; Targum Yerushalmi, Genesis 11:8, Deuteronomy 32:8–9; Tanhuma, Re’eh 8; Leqah To‘a, Genesis 9:19; Pirqe de-Rabbi El’azar 24. In Jewish medieval thought this description appears in Zoharic passages, as the following:

Rabbi El’azar said, ‘It is written: A land in which you will eat bread without scarcity, in which you will not lack anything’ (Deuteronomy 8:9). Why this repetition of in which? Because, as has been said, the blessed Holy One apportioned all nations and lands among deputies and envoys, while He has inherited the land of Israel, not granting it to any other envoy or deputy, rather ruling over it Himself alone. Similarly no other angel or deputy rules over the people of Israel, rather He alone. So He brought the people over whom no one else rules into the land over which no one else rules. (Zohar, Va’Yera, 108b).

On the tension between Nahmanides’ theological ideas and those of the Zohar, see: B Huss, The Early Dissemination of Sefer Ha-Zohar. 70 Tarbiz 507–542 (2001).
23 Funkenstein claimed that Nahmanides’ typological hermeneutic was influenced by Christian theological hermeneutical methods. See A Funkenstein, Nachmanides’ Typological Reading of History. 45 Zion 35–59 (1980). Halbertal pointed out that Nahmanides innovatively developed a rabbinic perception of original sin, obviously under the inspiration of the Christian doctrine. See Halbertal, By Way of Truth, Nahmanides and the Creation of Tradition, 121–126.
Nahmanides claims the opposite, that the monocratic deity is only an external cover for the ‘concealed truth’ of the polycratic deity.

The preference for the polycratic over the monocratic model should also be seen in light of the legal and political imagination of the time. More precisely, we might consider relevant the decline of imperial structures in favour of the feudal order. These changes challenged the imperial supremacy of the Holy Roman Empire and replaced it with secondary sovereignties in the form of local and territorial authorities.24

The end of imperial lordship thus promoted a legal theory according to which the universe is a system of mutually independent territorial sovereignties.25 Medieval jurists emphasized the distinction between a de jure overlordship (dominus totius mundi26 or rex universalis) and de facto independent kingships that excluded superior sovereignty (principes superiores non recognentes). The process of change from imperial to feudal structures, from a unitary politics to localized and varietal politics, might bolster the polycratic imagination in the theological realm too. We should not overlook the effects of feudalism and the polycratic imagination on Nahmanides’ construction of the God-land-law matrix and the identification of the Holy Land with the concept of ‘God’s inheritance’.

2. God’s Inheritance

A cornerstone of Nahmanides’ novel thinking is his insistence on the designation of the Holy Land not as the ‘Land of Israel’, (לארשי), but rather as ‘the land of the Lord’ (האר), or alternatively ‘God’s inheritance’ (האר). Indeed, the term ‘God’s inheritance’ appears several times in the Bible. In most instances it refers to the people of Israel, and in fewer cases it carries a territorial meaning referring to a concrete piece of land.27 Nahmanides, however, ignores the ethnic meaning and espouses the territorial meaning. Furthermore, the territorial meaning of ‘God’s inheritance’ becomes the fundamental pillar of the halakhah

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24 The breakdown of the unified concept of universal sovereignty was attributed to two powers. First, the strengthened position of the local kings backed by papal support (such as the declaration of Pope Innocent III that the French kings need not recognize any higher authority). Secondly, the revival of Aristotelian thought on the natural origin of political society (the legitimation of the political life derived from its natural origins and not from its participation in a greater whole).

25 As some scholars have shown, this distinction founded the legal theory upon which the sovereign territorial state of early modern times later developed. See WG Grewe, *The Epochs of International Law*, Michael Byers (trans) 47 (Berlin: Walter de Gruyter, 2000); W Ullmann, *The Development of the Medieval Idea of Sovereignty*, 64 English Historical Review 1–33 (1949).

26 The statement ‘I am master of the world’ (dominus mundi) made by the Roman Emperor Antoninus Pius (86–161) was later adopted to articulate the legal category of imperial sovereignty (Dig 14.2.9). On the development of imperial ideology and jurisprudence of sovereignty during the 12th and 13th centuries see: K Pennington, *The Emperor is Lord of the World: The Bolognese Lawyers and Imperial Ideology*, in: *The Prince and the Law, 1200–1600: Sovereignty and Rights in the Western Legal Tradition* 8–37 (Berkeley: University of California Press, 1993).

27 This is explicitly the case with Jephthah’s speech against the aggressive invasion by the Ammonite king: ‘Will not you possess that which Chemosh your god gives you to possess? So whomsoever the Lord our God shall drive out from before us, them will we possess’ (Judg 11:24). A similar case is David’s pleading while being persecuted by Saul: ‘Cursed are [these men who stirred you up against me], for they have driven me out this day that I should not cleave to the inheritance of the Lord, saying: “Go, serve other gods”’ (1 Sam 26:19). The Talmud favours the territorial reading as it supports the Talmudic celebration of the duty to settle the Holy Land: ‘Whoever lives in the Land of Israel may be considered to have a God, but whoever lives outside the Land may be regarded as one who has no God….Similarly it was said in Scripture in [the story of] David’ (ben Kana 110b).
as territorial law. It illustrates the prioritization of the land’s belonging to the deity, rather than to the people of Israel.

As seen above, the idea of ‘God’s inheritance’ is consequential to the tension between the deity’s totality and particularity. In a New Year’s sermon during his visit to Acre in 1269, Nahmanides reiterated the idea of ‘God’s inheritance’, indicating the independence of God’s two images as creator and as sovereign. These two images, Nahmanides insists, do not overlap; while God undeniably created the entire universe, his lordship is over a concrete territory.28

And what is the meaning of (this phrase): ‘The Land of the Lord’? Isn’t the entire universe ‘The Land of the Lord’? [Behold] He created everything, He formed everything and everything is His…but the Land of Israel is the axis mundi, is God’s inheritance peculiar to his name (םייחפועם לארשי).…He bestowed [the land] upon His people who proclaim the unity of His name (שם ייחפועם).

Here Nahmanides organizes the God-land-law matrix into two phases. In the first, because of the singularity of the land at the centre of the world and connecting heaven and earth, it is God’s special inheritance. Only in the second phase are those who proclaim the unity of God’s name, the people of Israel, bestowed with His inheritance. That Israel belongs to the Holy Land stems from God’s territorial lordship in feudal terms.29

Although identification of the Holy Land and God’s inheritance did not become a widespread concept within mainstream rabbinic thought, it was a vital component of Crusader propaganda and ideology. It gave legal and political justification to the Crusades and motivated Christians to join the Crusades to recover Christian control over Palestine.30 The terminology ‘God’s inheritance’ marks Crusader writings from Pope Urban II’s (late 11th century) sermon at Clermont.31 Furthermore, after the Crusaders’ military defeat in the late 12th century, resulting in loss of control over Jerusalem and much of Palestine, Psalm 79, which opens with a reference to the violation of God’s haereditatem, was introduced for some time into the daily mass.32 Likewise, the rhetoric of the Second Crusade (1197–92), such as the Itinerarium Peregrinorum et Gesta Regis Ricardi includes many references to the identification of the Holy Land as God’s inheritance.33 Accordingly, the believer’s duty to support and

29 See Von Rad’s statement on the independence of the idea of ‘promised land’ and ‘God’s land’ in the Bible:
…the promise of the land is a group of concepts which are completely independent of the concept of Jahweh as the owner of Canaan. Not in a single instance amongst the well-nigh innumerable passages where appeal is made to the promise of the land is this land described as the property of Jahweh – it is rather the land which formerly belonged to other nations, which Jahweh, in making his design in history effective, gave to Israel to possess. (G Von Rad, Old Testament Theology 300 (New York: Harper, 1962), II).
32 ‘O God, the heathen are come into your inheritance; your holy temple have they defiled; they have laid Jerusalem on heaps.’
33 The announcement about the Islamic occupation sent by the Archbishop of Tyre was about the occupation of God’s inheritance by the Gentiles: ‘Fame had carried to the ears of all the kings, and of all the faithful, that the inheritance of Christ was occupied by the heathen’ (haereditatem Christi a gentibus occupatam;
join the Crusades was often conceptualized in terms of feudal responsibility to the Lord's patrimony. Such argumentation can be seen in the way Jacques de Vitry (1160/70–1240) motivates potential Crusaders by describing the duty to crusade as a test of a vassal’s loyalty:

The Lord has indeed suffered the loss of his patrimony and wants to test [his] friends and find out if you are his faithful vassals. He who holds a fief from a liege lord is rightfully deprived of his fief if he abandons him, when he is involved in a war and his inheritance is taken away from him (hereditas sua illi aufertur). You hold your body and soul and all that you have from the highest emperor, who has you summoned today to come to his aid in battle, even if you are not bound by feudal law (iure foedi).

I beseech you, brothers... that you come... to the aid of the Lord, who has been deprived of his inheritance, like faithful vassals and liege men, but also to your own aid, and that you may not receive such great grace in vain.

The Holy Land is considered God’s patrimony of which He was also deprived. Therefore the Crusaders, as loyal vassals, are called upon to recover the Lord’s inheritance. Nahmanides’ feudal imagery was not used to rationalize the establishment of political and armed powers or to recruit battlers for a long journey; instead it served to articulate his legal theology and accounted for his relocation to the Holy Land.

We have emphasized the extra-Jewish backdrop of Nahmanides’ legal theology; now we turn to the intra-Jewish aspects. Perhaps the most dramatic point here is the fact that Nahmanides advocates the trope of divine sovereignty rather than the traditional image of God as the supreme legislator. As we shall see, the move from God the legislator to God the sovereign stands at the core of Nahmanides’ reductive claim that the halakhah should be taken as territorial law.

3. Land Dependency

There (in the Holy Land) is the place for fulfilling the commandments and receiving upon oneself the Kingdom of Heaven. Our worship there is acceptable, for there is the House of our God and the Gates of Heaven.

The candor of a 13th-century Spanish Jew who took a vow to immigrate to the Holy Land outlines the importance of physical attendance in a concrete place

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34 Jacques de Vitry toured France and Germany recruiting crusaders and eventually became the Bishop of Acre (1216).
36 This allegory was later adopted by Gilbert of Tournai. See CT Maier, *Crusade Propaganda and Ideology*, 186–187, 250–263.
37 Nahmanides’ use of the term ‘God’s inheritance’ vis-à-vis the Crusades might be seen as latent polemics with Christian self-identity as the true offspring of God and thus the legitimate inheritors of God.
for the complete performance of religious duties. Indeed, the reference to
Jacob's reaction to the revelation at Beth-el (בֵּית-אֵל; literally, 'God's
residence'), in his escape to find refuge in Aram, encompasses the two features
emphasized in Nahmanides' arguments: belief in the Holy Land as God's
residence and its being the location at which heaven and earth meet.39 These
features, he adds, make it strategic in terms of religious worship.

The Nahmanidean reduction of the entire law to territorial law can be
understood by tracing the conceptual evolution of the Talmudic category of
Mitzvot Hateluyot Bearetz (מִצְוֹת חֲטֵלָוִיָּת בְּאֶרֶץ; literally, 'land-dependent
commandments'). In fact, the categorization of the commandments accord-
ing to their dependence on the land may be understood in various ways
arising from the ambiguity of the term land, which could be understood
generally to denote the earth or ground, or particularly to mean the Holy
Land, that is, the Land of Israel. This dual meaning entails two notions of
territorial dependency:

(i) Laws whose practice is restricted to a designated territory, that is, the
Land of Israel (Land-dependent commandments).
(ii) Laws which apply to a land with no concrete territorial limits (land-
dependent commandments).

In fact, these two notions originate in the Talmudic literature in various
contexts and produce different intersections between law and territory. The
pre-eminence of the latter notion is well exemplified in the following midrash,
which acknowledges both notions but subordinates the notion of Land-
dependency to land-dependency:40

Ye shall utterly destroy all the places [wherein the nations served their gods]: just as [the
annihilation of] idolatry is singled out as being a corporal-duty41 and not dependent
on the land, and is obligatory both within and without the Land, so everything which
is a corporal-duty and not dependent on the land is incumbent both within and
without the Land.

Other Talmudic sources, mainly those ascribed to the school of R Shimeon
ben Yochai, highlight the notion of Land-dependency:42

R. Eleazar son of R. Shimeon said: All precepts which the Israelites were commanded
[to practice] before their entry into the Land are operative both within and without
the Land; [Precepts which they were commanded] after their entry into the Land, are
operative only within the Land.

39 The biblical association of God's residence with the gates of heaven appears to be among the motives of
the Crusades, as can be seen in another sermon of Jacques de Vitry: ‘The cross is the key that opens the gates of
paradise [reservat portas paradise]... as the house of God is recognized by the cross on top of it, so a man of the
house of God [homo dignoscitur domus Dei] is recognized by the cross put on his shoulders’ (CT Maier, Crusade
Propaganda and Ideology, 106–107).
40 Sifre, 12:59.
41 'Corporal duty: ie not land-dependent. Not imposed on the ground and its fruits, but rather on an
individual's body. For instance: [wearing] phylacteries, [struggling against] idolatry...[practising] circumcision,
[avoiding] incest and so on.' (Rashi, t Qidd. 38a)
42 t Qidd. 1:12.
The nomenclature of territorial–corporal duties echoes the typological contrast between territorial jurisdictions and personal jurisdictions. However, against the Talmudic legal tendency to view the corporal–territorial dichotomy as reflecting a reasonable taxonomy of the divine commandments, Nahmanides associates the dichotomy with rabbinic esotericism and the need to bury cryptic truths in abstruse categorizations. Thus, the dichotomy does not reflect types of law, but rather a covert truth that the halakhah is a territorial law, while its external appearance is as corporal law. The above doctrine of מְשִׁפְּטָאָלוֹהַּ הַדָּרָרִים is in fact the raison d'être of the divine law, an explosive truth that cannot be disclosed to a wide audience and is thus presented as corporal law.

Commenting on the background of Abraham’s blessing, Nahmanides suggests viewing the corporal–territorial taxonomy as a constructed conundrum between the essence of the law as territorial and one hidden under an external image of corporal duties:

Although the commandments had been decreed to us as corporal duties [being valid] at any place, they are the law of the god of the land. And our rabbis hinted this secret and I will note on it with God’s help.

The need to conceal this explosive truth is understandable. Its disclosure would subvert the traditional conception of the divine law and risk undermining practical commitment to the halakhah. The antinomian aspects in Nahmanides’ thought and writings have received attention in modern scholarship. Halbertal writes that Nahmanides’ antinomian perception is evident in his historiosophic picture and notion of ‘the period of the Torah’. The antinomian nature of the above account is even more pronounced and thus more hazardous.

Nahmanides’ reference in other contexts to the corporal–territorial taxonomy is also antinomian in outlook. The biblical restrictions on sexual conduct listed in Leviticus 18 provide him with an opportunity to re-address the corporal–territorial taxonomy and fulfil his earlier promise to expand on this hinted secret. For Nahmanides, the scriptural narrative that attributes the Canaanites’ expulsion from the land to their sexual behaviour supports viewing the entire body of the halakhah as territory-dependent and advocating the general doctrine of מְשִׁפְּטָאָלוֹהַּ הַדָּרָרִים. This scriptural statement together with the

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43 Both above notions of territorial dependency can make sense of the territorial–personal (ie corporal) dichotomy.
44 ‘Because Abraham obeyed my voice, and kept my charge, my commandments, my statutes, and my laws’ (Gen 26:5).
46 The term ‘the period of the Torah’ for Nahmanides illustrates the idea according to which the validity of the Torah is temporal and applicable only to the pre-messianic period in which there is a gap between human will and the divine law. In the future messianic period, by contrast, there will be no autonomous human will, no imposed law and thus no individualization and human death. See Halbertal, By Way of Truth, Nahmanides and the Creation of Tradition, 117–148.
47 See below.
48 ‘And the land is defiled: therefore I do visit the iniquity thereof upon it, and the land itself vomits out its inhabitants’ (Lev 18:25).
midrashic notion of the nullity of the commandments in exilic circumstances furnishes Nahmanides with solid grounds for his legal theology.

Nahmanides begins with a rhetorical questioning of the biblical consequential logic: 49

Scripture was very strict in forbidding these sexual relationships on account of the Land which becomes defiled by them, and which in turn will vomit out the people that do [these abominations]. Now, forbidden sexual relationships are matters [are in fact] corporal-duties, and do not depend on the Land [so why should the Land be affected by these personal immoral acts]?

Nahmanides further argues that the Canaanites’ sexual misconduct is judged not as a corporal sin, but rather as a sin against the environment, prompting their removal from the land. For the sake of grounding the unintuitive statement that even sexual behaviour should be seen as violating land-dependent commandments, Nahmanides embraces a midrashic account of the different meanings of obedience to the halakhah within and outside of the Land: 50

And ye perish quickly from off the good land. 51 Although I banish you from the Land to outside the Land, make yourselves distinctive by the commandments, so that when you return they shall not be novelties to you. This can be compared to a master who was angry with his wife, and sent her back to her father’s house and told her, ‘adorn yourself with precious things, so that when you come back they will not be novelties to you.’

The midrash introduces an optimistic sense of exile by comparing it with a family crisis that ends well. Within this allegory, the restoration of family harmony is envisaged even during the darkest moment when the couple separates and the wife is sent back to her father’s household. The expulsion of the wife is accompanied by the husband’s allusion to a possible reunion in the future. Concerned about the prospect of reuniting with his wife, the husband urges her to continue wearing her special garments while separated from him.

The midrashic allegory outlines a rich imagery of relations between the divine law and the land using the metaphor of the household. The image of the commandments as garments is significant as it calls attention to the functionality of the law in the bonding of God and Israel as husband and wife. 52 On the one hand, when the couple lives together at home, the garments are assigned to the husband and are intended to keep his wife attractive to him. On the other hand, during their separation and her stay with her father, wearing the garments will remind her of him and make her desirous to return to him. The divine law, therefore, has a different role within the divine space

49 Nahmanides, Commentary on the Torah, Lev 18:25, 268.
50 Sifre, Eikev, 43.
51 Deut 11:17.
52 While this perception is consistent with the spousal image of relations to the deity, it stands apart from traditional images of the divine law. A prominent image is built on the pharmacological metaphor originating in Greek legal and political thought (Plat. Stat. 293b-c) the image of the divine law as light (see Thomas, The Summa Theologica of Saint Thomas Aquinas I: II, 91, 3, 209-210 (Chicago: William Benton, 1952)), or as a botanic organism (see WB Hallaq, A History of Islamic Legal Theories : An Introduction to Sunni Usul al-fiqh 153 (Cambridge; New York: Cambridge University Press, 1997)).
and outside of it: inside the home the purpose of the commandment is to maintain an attraction between the two, while outside the home it is designed to preserve a living memory of their coupling.

Clearly, Nahmanides finds the twofold aspect of the commandments coherent with the territorial image of the law. Accordingly, while on home territory, the fulfilment of the divine laws is part of a vital relationship with the deity, outside it is merely a reminder of such a relationship. Therefore, the corporal-territorial dichotomy does not reflect an essential typology within the halakhah, but rather two spatial contexts, or two legal modes—exile and homeland—for which the law has different ends. In exilic circumstances, only corporal commandments that function as self-referential reminders are obligatory. Within the Land, the commandments play a different role within the intimate relationship with God in accordance with the doctrine of

\[\text{משפט אלוהים האור}^{53}\]

Now the verses which state and ye perish quickly… and ye shall lay up these my words etc. make obligatory in the exile only corporal-commandments, such as the [wearing of] phylacteries and [placing of] mezuzah, and concerning them the rabbis explained [that we must observe them] so that they shall not be novelties to us when we return to the land, for the main [fulfilment] of the commandments is [to be kept] when dwelling in the Land of God.

The Nahmanidean reading of the midrash introduces a new apparatus of the halakhah as divine law; accordingly, the concepts of sovereignty, legal authority, jurisdiction and being subject to the law are redefined.\(^{54}\)

### 4. Universality and Changeability of the Divine Law

The same law at all times and all nations and eternal and unchangeable (\textit{et omnes gentes omni tempore una lex et sempiterna et immutabilis})\(^{55}\)

Differences between various conceptualizations of the divine law can be measured against the famous Ciceronian notion of natural law.\(^{56}\) Some conceptualizations view the divine law as intelligible, corresponding to nature and introspective, some stress its universality and eternal nature, while others embrace only one of these features. Certainly, some inter-religious attitudes towards the divine law can be outlined against the question of its universality and eternal nature.\(^{57}\)

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\(^{54}\) Stern points that the territorial dimension of the halakhah, according to Nahmanides, is coherent with his perception that the 'reasons-for-the-commandments' (\textit{Ta’amei Ha-Mitzvot}) are theocentric by their essence. (J Stern, \textit{Problems and Parables of Law} 85–86 (Albany: State University of New York Press, 1998)).

\(^{55}\) Marcus Tullius Cicero, \textit{De republica}, 3.22

\(^{56}\) 'True law is right reason in agreement with nature; it is of universal application, unchanging and everlasting; it summons to duty by its commands, and averts from wrong-doing by its prohibitions…We cannot be freed from its obligations by senate or people, and we need not look outside ourselves for an expounder or interpreter of it…one eternal unchangeable law will be valid for all nations and all times' (\textit{idem}).

\(^{57}\) While both Christian and Islamic approaches endorse the changeability of the divine law, either by a ‘New Covenant’ or by a doctrine of abrogation (\textit{Qur’an} 2: 106; 16: 101), Jewish approaches tend to stress the eternity of the Mosaic Law. Likewise, while universal relevance of the divine law is consistent with Christian and Islamic theologies, the mainstream rabbinic view asserted ethnic relevance.
Nahmanides’ view of the halakhah as territory-mediated law gives new form to its features and jurisdictional limits.\textsuperscript{58} Traditionally, the determinants of halakhic jurisdictional boundaries correspond to the nature of the halakhah as a personal, non-territorially defined law designed in reference to the sources of the halakhah and its addressees. Yet, already within the Talmudic literature we acknowledge a stream of thought that systematically approves the universal relevance of the Torah, both legally and scholastically.\textsuperscript{59} For medieval thinkers, the universality of the divine law was mainly formulated in regard to the universal aspect of its sources. Two possible sources of the halakhah were thus at stake—autonomous and heteronomous—and consequently, two epistemological approaches to its potential addressees. Some thinkers held that in principle the halakhah was comprehensible autonomously as well as heteronomously. For them, reasoning, contemplation and introspection were considered valid sources of comprehending the divine law. Other thinkers insisted on epiphany as the sole valid source of halakhic knowledge.

Biblical stories about the patriarchs’ deeds provide test-cases for the different approaches. Cases in which the patriarchs, \textit{prima facie}, observe the not-yet-revealed laws counter the heteronomous approach, while their conduct, in explicit contrast with these laws, challenges the autonomous assumption.

Autonomous approaches appear in various periods within different intellectual contexts. They begin in the Hellenic period with Philo’s identification of the Torah with \textit{nomos physeiōs}.\textsuperscript{60} Later, scholars who flourished in Islamic intellectual milieus followed the \textit{Mua’tazili} distinction between rational and revelatory commandments\textsuperscript{61} and celebrated reasoning-based jurisprudence; against the backdrop of 14th-century canonists, R Yosef Albo (1380–1444) embraced the threefold structure of the law (natural, human and divine) in his theory of the halakhah.\textsuperscript{62}

At the same time, the heteronomous approach was also advocated by prominent thinkers. For example, Maimonides, the great supporter of rational-based jurisprudence, independently campaigned for the heteronomous approach by stressing that nothing but epiphany could validate the halakhic norms and that, therefore, halakhah addressed the Jewish people exclusively. From the Maimonidean perspective, pre-Sinaic (Noahide\textsuperscript{63}) laws preserved by

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\textsuperscript{58} Etymologically, \textit{jurisdiction} for the Romans was the speaking of the law (\textit{juris dicere}), or the gift of the law given by \textit{dike} (\textit{dikiaoqasia}, \textit{diken idonan}). By \textit{jurisdiction} here I mean the extent to which the law is in force or valid. See B Tierney, \textit{Origins of Jurisdiction}.

\textsuperscript{59} See MG Hirshman, \textit{Torah for the Entire World: A Universalist School of Rabbinic Thought} (Tel-Aviv: ha-Kibuts ha-meuhad, 1999).


\textsuperscript{63} The initial concept of Noahide laws is based on Gen 9:4–6. Accordingly, Noahide laws are a list of several moral imperatives that, according to the Talmud, were given by God to Noah as a binding set of laws for all humankind. On the Talmudic origins of this category in its relations with the early schools of thought see Hirshman, \textit{Torah for the Entire World}, 90–105.
non-Jews (Righteous among the Nations\textsuperscript{64}) are meaningless unless they accept the Sinaic epiphany as the sole source of the law.

Another theoretical point on which the two approaches differ is whether the promulgation of the divine law is a necessary condition for its being imperative. The autonomists would argue that the law is obligatory independent of its promulgation, while heteronomists would deny the validity of non-promulgated laws. Thus, for example, Maimonides denies any obligatory content of pre-Sinaic revelations, even those that appear to be original commandments, such as circumcision and the prohibition on eating the sciatic nerve.\textsuperscript{65}

In that regard, Jacob’s marriage to two sisters is a well-known test case, as it stands in explicit contravention of prohibited intercourse as detailed in Leviticus 18.\textsuperscript{66} Rabbinic reactions to this inconsistency vary from pure apology to full justification. Apologetically, the liability of Jacob is waived on account of his lack of knowledge\textsuperscript{67} or by a re-telling of the factual circumstances.\textsuperscript{68} Alternatively, it is argued that pre-Sinaic misconduct is not to be judged or evaluated against the Sinaic decrees; Jacob was thus officially exempt from the laws later to be revealed. Accordingly, fulfilment of the commandments in pre-Sinaic contexts is a voluntary rather than an obligatory act.

The Ciceronian standards of ‘universality’ and ‘eternity’ in the above-mentioned motto are more detailed than their surface meaning suggests. The law’s universality crosses periodic and national contexts, and its eternity means both that the law is unchangeable and unceasable. Nahmanides adheres to the autonomous approach and accordingly approves the universal relevance of the Torah. Contrary to Maimonides, he does evaluate the patriarchs’ fulfilment of the law independently of the future revelation at Sinai.

\textsuperscript{64} This category is hardly recorded before Maimonides, who in fact rooted this concept in the rabbinic literature. Its origins in the Talmudic literature denote non-Jews who were considered pious, such as Job (ben B Bat 15a–16b), or the wise or helpful among Roman officials such as Antoninus (b. Sanh. 91a–b). A heathen who accepts the seven commandments and observes them scrupulously is a ‘righteous heathen’ and will have a portion in the world-to-come, provided that he accepts and performs them because the Holy One, Blessed Be He, commanded them in the Law and made it known through Moses, our teacher, that the observance thereof had been enjoined upon the descendants of Noah even before the Law was given. But if his observance thereof is based upon a reasoned conclusion, he is not deemed a resident alien, or one of the Righteous among the Nations, but one of their wise men. (Maimonides, Mishneh Torah, Melakhim, VIII: 11 230 (trans AM Hershman, Yale Judaica Series (New Haven: Yale University Press, 1949)). This stipulation was a source of Spinoza’s attack on Maimonides for his alleged illiberal view. See B. De Spinoza, Theological-Political Treatise, in Jonathan Israel (ed), M Silverthorne (trans) 79 (Cambridge; New York: Cambridge University Press, 2007); L Strauss, Spinoza’s Critique of Religion, EM Sinclair (trans), 154–155 (New York: Schocken, 1965). Mendelssohn in his defence of Judaism in the famous polemics with Johann Caspar Lavater emphasized the universalistic-humanism of the Jewish Law by referring to the rabbinic dictum that assigns to the Righteous among the Nations a share in the world-to-come. His dissatisfaction with the Maimonidean ‘restricted tolerance’ stated in this article, as it contradicts his emancipatory ideology, is well expressed in his correspondence with R Jacob Emden (1697–1776). See A Altman, Moses Mendelssohn 217–218, 294–295 (Tuscaloosa: University of Alabama Press, 1973).

\textsuperscript{65} ‘And you should know that everything that we now days do, or avoid from doing, is done only for God had commanded us by Moses, and not for [the fear] that God commanded the prophets that preceded him... accordingly we are not practicing circumcision because Abraham had circumcised himself and his household, but rather because God had commanded us by Moses to circumcise like Abraham, peace on him, did’ (Maimonides, Commentary to the Mishnah, m. Hulin 7:6).

\textsuperscript{66} ‘Neither shall you take a wife to her sister, to vex her, to uncover her nakedness, beside the other in her life time’ (Lev 18:18). For a comparative anthropological analysis of this type of incestuous relationship, see P Hertier, Two Sisters and Their Mother: The Anthropology of Incest 129–197 (New York: Zone Books, 1999).


\textsuperscript{68} This option is presented in the Abraham Ibn Erza commentary. Another interpretation argues that since Leah and Rachel converted and were practically reborn with Jewish identity, they were not considered siblings.
Nevertheless, his universalistic approach is still framed within a concrete territorial jurisdiction.\(^{69}\)

And it seems to me, according to our rabbis, that Abraham learned the entire Torah by the Holy Spirit... and observed it all voluntarily. Though his observance took place only at the land. And Jacob’s marriage to two sisters was only out of the land. And so is the case with Amram [who married Jochebed]. For although the commandments had been decreed to us as corporeal-duties [being valid] at any place, they are the law of the land’s lord.

The universality of the halakhah is a possibility, though the validity of the halakhah is still subordinated to the spatial criterion. The jurisdiction of the halakhah for Nahmanides is limited to the geographical domain of God’s land, and for this reason the patriarchs’ deviations from the law are in fact cases of exemption from the law.

Nahmanides’ radical deviation from mainstream rabbinic views is also discernable in regard to the meaning of the eternity of the Torah. His insistence on the territoriality of the halakhah in fact allows him to claim the abeyance of the Torah as divine law. Such a claim is radical within post-Talmudic discourse, although it does account for Nahmanides’ strict esotericism on the one hand, and the harsh criticism of his legal theology on the other.

The cessation of the halakhah is an obvious outcome of the territorial reduction Nahmanides advocates. It is even possible that he made this point in his exposition of the God-law-land matrix. Further on in his commentary on Leviticus 18:26 he mentions the possibility of the discontinuation of the halakhah as a commonsense outcome endorsed in the midrashic tale:

This in fact was the thought of the wicked ones who said to the prophet Ezekiel: ‘our master Ezekiel, if a servant is sold by his master, does the master still have claim to him?’...

Here again Nahmanides’ esotericism is apparent in his elusive reference to Talmudic sources. He is in fact probably referring to the following midrash:\(^{70}\)

...As the people of Israel said to [prophet] Ezekiel...if a servant is sold by his master, hasn’t he disposed of his possession? He said, yes. They said to him since God has sold us to the nations, we disposed of his possession. (הוהיא שמכרבו המקוה לאמות תומלת ינאית מראות). He said:...As I live, says the Lord GOD, surely with a mighty hand, and with an outstretched arm, and with fury poured out, will I rule over you.\(^{71}\)

The midrash addresses two opposing perceptions as to whether exilic existence affects loyalty to God. The elders argue that since they disposed of God’s possession, they are also released from his commandments; while God, represented by Ezekiel, claims rulership over everything. The above midrash

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69 Nahmanides, Commentary on the Torah, Gen 26:5.
70 Sifre, Shelach, 115.
tackles the tension between territorial versus universal jurisdiction of God’s commandments, and favours the latter. The way Nahmanides represents the midrash is much more ambivalent. On the one hand, he creates the impression that he condemns the view of the elders by labelling them ‘wicked ones’. On the other hand, the elders’ argument is completely consistent with his articulation of the halakhah as territory-based law. Perhaps Nahmanides was much less identified with the universal jurisdiction of the halakhah and more sympathetic towards the elders’ argument. His dissatisfaction with the Talmudic stance is, however, concealed by his apparent condemnation of the elders as ‘wicked ones’.

Nahmanides’ prestige and esotericism probably account for the relative lack of criticism of his legal theology. The 16th-century thinker Judah Loew ben Bezalel of Prague (1520–1609) did, however, harshly criticize Nahmanides for the doctrine of #rah yhla ~p?m. His criticism alluded to the resemblance of the Nahmanidean doctrine and the Christian conception of New Covenant. But if the praised Lord didn’t prescribe the commandments to be observed outside the Land equally as within the Land, then their future return to the Land would be considered a new giving (הנאה דולח) for the [original] commandments had been abolished God forbid. [Nay] there is no new giving here... for the ‘Torahs was given only once by the praised Lord, not twice... and there are no new commandments and the original obligation never abolished...

Indeed, the cessation of the Torah or the exemption from the divine law is perhaps the clearest expression of Nahmanides’ antinomianism. This view, similar to the stance later adopted by Spinoza, displays his radicalism.

72 In fact, the common version of the Sifre lacks this epithet. Perhaps Nahmanides had a different version, or he added this attribute to his reading which diametrically differed from the rabbis’ reading. 73 Judah Loew Ben Bezalel of Prague, Gur Aryeh (on Deuteronomy) 54–55 (Jerusalem, 1972). On various occasions, he speaks strongly against the Nahmanidean doctrine: ‘this thing is implausible, for being in the Land or outside the Land does no effect [the validity of] corporal-duties.’ (Tiferet Yisrael vol I, 286 (Jerusalem, 2000)); ‘... and I am astonished with Nahamanides’ sayings... Nahamanides’ interpretation according to which the patriarchs observed the laws only at the Land of Israel is implausible and intolerable. (Gur Aryeh (on Genesis) 237 (Jerusalem, 1972)). 74 The view of the exile as released from the divine law is also argued by Spinoza, though for Spinoza the release is not from territorial-dependence, but rather from a dependence on governmental power (ex jure imperii): On the same grounds, revealed religion no longer possessed the force of law after the destruction of the Hebrew state. For there can be no doubt that as soon as the Hebrews transferred their right to the king of Babylon, the kingdom of God and the divine law immediately ceased to be effective. For, by that very fact, the covenant with which they undertook to obey everything that God ordained, and which had been the foundation of the kingdom of God, was utterly abolished. They could no longer continue to observe it since from that moment onwards they were no longer under their own jurisdiction (as when they were in the desert or in their own country) but under that of the Babylonian ruler whom they were obliged to obey in everything (Spinoza, Theological-Political Treatise, 240–241).

Spinoza’s view might be inspired by St Thomas discussions about the relations between the Old Law and the New Law: ‘The judicial precepts ordained by men bind for ever, so long as the regimen remains the same (manente illo statu regiminis); but should the state or the agent pass over to a different one, then the laws have to be changed.... Consequently once the state of that people (mutato statu illius populi), the judicial precepts had also to be change.’ (The Summa Theologica, 29 The Old Law (Ia2ae. 98–105), introduction and notes David Bourke and Arthur Littledale (Cambridge: Cambridge University Press, 2006), I: II, 104, 3, p. 261. On the Aristotelian–Thomistic notion of the state as regime and its contribution to the theory of the state see: H Alan, Aquinas and the Legislators, in: Théologie et droit dans la science politique de l’État moderne. Actes de la table ronde de Rome (12–14 November 1987) (Rome, 1991), 51–61. (Publications de l’École française de Rome, 147).
5. The Fate of the Canaanites: Between Identity and Otherness

In the same city there are two peoples under the same king, and with the two people two ways of life, and with two ways of life two dominions, and with two dominions a double order of jurisdiction emerges (duplex iurisdictionis ordo procedit).... The two dominions are the institutional Church and secular government; the double order of jurisdiction (duplex iurisdictio) is divine and human law. (Stephen of Tournai)²⁷⁵

The tension between territorial jurisdiction (i.e. laws that govern all relationships within a geographical area) and personal jurisdiction (applied to individuals based on their identity and belonging) is well apparent in the late ancient times. Broadly thinking, these two types of jurisdiction should not be taken merely as principled implementations of the law, but rather as formative factors in the shaping of cultural identities. Hence, for example, there was the ambivalence of early Christians who identified with the Roman laws on certain occasions and were alienated from the very same legal system on other occasions.²⁷⁶ Likewise, the two types of jurisdiction exemplify the complex relationship between religious nomoi based on an ethnos or populous on the one hand, and imperial nomos that transcends these entities on the other. Accordingly, Saint Paul, born a Roman citizen, escaped a scourging from the Jewish authorities of Jerusalem by claiming a personal jurisdiction which exempted him from Judean territorial jurisdiction.²⁷⁷ Moreover, since the religious message is taken to be universal and without borders, the jurisdiction of the divine law is expected to be independent of locality and personal.²⁷⁸

For Stephen of Tournai (1128–1203), jurisdiction was indeed personal in its essence; for this reason a duplex iurisdictio, or even many jurisdictions in the same location, were possible. Similarly, mainstream rabbinic thought adhered to personal jurisdiction and acknowledged the possibility of ‘double order of jurisdiction’ for people in the same place. This is best demonstrated by the Talmudic category of Noahide laws, which are designated for all humankind in contradistinction to halakhic commandments, which address only the Jews. Thus, while Jews, as Bnei Brith (בְּנֵי בָּרִית; literally, ‘people of [the] covenant’), are obliged by their covenantal relationship to observe all the commandments, all of humankind who are Bnei Noah (בְּנֵי נוֹחָה; literally, ‘descendants of Noah’) are obliged to observe only few commandments defined as the Noahide laws.

Interestingly, Nahmanides’ notion of territorial jurisdiction leads him to challenge the Talmudic division between the Noahide laws and the entire body


²⁷⁶ See AS Jacobs, ‘Papian Commands One Thing, Our Paul Another’: Roman Christians and Jewish Law in the Collatio Legum Mosaicarum Et Romanarum, in: C Ando and J Rüpke (eds), Religion and Law in Classical and Christian Rome 85–99 (Stuttgart: Steiner, 2006).


of halakhah. Loyal to the rabbinic tradition, Nahmanides is cautious when criticizing the Talmudic conception of the Noahide laws, which he does by stating its inconsistency with the biblical description:79

Now scripture mentions that the people of the land of Canaan were punished on account of their immoral [sexual] deeds. And our rabbis have said that they were warned about these matters from the time of creation, when these laws were declared to Adam and Noah, for He does not punish unless He admonishes first. Scripture, however, did not state the admonition, but instead said that the Land would vomit them out, for the Land abhors all these abominations.80 Now the Canaanites were not the only ones who were admonished about these matters, and the scriptural section mentions specifically, After the doing of the land of Egypt, wherein ye dwelt, shall ye not do,81 which proves that the Egyptians also did all these abominations, and yet the land of Egypt did not vomit them out, nor did the lands of other nations vomit them out! Rather, this whole subject shows the distinction of the Land [of Israel] and its holiness [so that it alone is unable to retain sinners].

Nahmanides does not ignore the contrast between the Talmudic construction of the Noahide laws and the scriptural descriptions. As a matter of fact, he stresses the gap between them as a way of criticizing the Talmudic concept. The presumptions of this concept are: (i) personal jurisdiction and (ii) the necessity of admonishment of the law82—two of which are inconsistent with Nahmanides’ doctrine of ‘the law of the land’s Lord’. In fact, his autonomist approach leads him to acknowledge the universality of the divine law as seen above. Nevertheless, the sense of the law’s universality for Nahmanides is in its being not-tribal, not in the sense of its being valid and binding everywhere. His insistence on a territorial jurisdiction, in fact, saves him from a universal perception of the law in the latter sense.

The fate of the Canaanites in the biblical narrative indicates these two aspects. First, Nahmanides accentuates the fact that the Canaanites were punished even though they were never warned or notified about their wrongdoings. Secondly, it emphasizes that the law is considered binding not only on the Israelites, but also on the Gentiles while in the land. Nahmanides focuses our attention on the difference in punishment of transgressions committed by the Egyptians and by the Canaanites. This difference demonstrates the extent to which territoriality is a crucial condition of the applicability of the divine law. For the same transgression of incest laws, the Canaanites and the Egyptians were treated differently. While the Canaanites were severely punished and eventually vomited from the land, the Egyptians suffered a different fate. While the Talmudic rabbis would have endorsed Stephen’s

80 Lev 18: 27.
81 Lev 18: 3.
82 The question whether a laws being binding was dependent on its promulgation was debated among medieval jurists. On the one hand, Gratian records that ‘a law is not really law until it has been made known’ (Leges instituuntur, cum promulgantur) (Gratian, Decretum Gratiani, D.4.c.3.1.). On the other hand, naturalist jurists emphasized that ‘the natural law needs no promulgation’ (lex naturals non indigent promulgatione). (Thomas, The Summa Theologica of Saint Thomas Aquinas., I: II, 90, 4, 207–208). On incidences of these two principles in the Tannaitic literature, see M Hirshman, Torah for the Entire World, 90–113.
heterogeneous description, Nahmanides would see it as misconception of the divine law as territorial law.

6. Conclusion: The Otherness of the Canaanites

While difference is a matter of fact, otherness is a matter of discourse. More precisely, otherness is the result of a discursive process by which a dominant in-group (us/the self) constructs dominated out-group (them, other) by stigmatizing a difference—real or imagined—presented as a negation of identity and thus as a motive for potential discrimination.

In the context of biblical tradition and post-biblical religious milieus, we can observe three meanings of otherness. The first meaning denotes estrangement from God and the refusal to adhere to the order which He has given. It is something evil, to be avoided at all costs. ‘Thou shalt not have strange gods (לָוָיְרָא אֶלְיוֹן; deos alienos) before me’ Exod 20:3. Further on, terms of otherness such as ἀλλότριος, alienus, or רַחַק signify Satan and other competing gods.

The second meaning is estrangement from common worldly matters. While the first meaning of otherness is charged with negative value, otherness as disengagement from ordinary existential circumstances is of ambivalent value. A good example of this meaning can be seen in the Hebrew word qodesh (קדש), very much like the ancient Roman word sacer, which basically means anything that is ‘set apart’ from ordinary life. In fact, this meaning of otherness corresponds to the biblical idea of Israel as the elected son, or chosen people, distinguished from other peoples on earth. Likewise, Christian monasticism, and especially desert monasticism, was about being other to worldly life in order to achieve an intimate and abiding knowledge of God. Being a monk demanded renunciation and detachment, the cutting of ties to habitual ways of living, including to certain places, and in certain instances withdrawing to a marginal existence in the desert. Later on, the medieval ideal...
of the absence of a sense of belonging, of being landless—*homo viator*—was another expression of otherness as estrangement from the world.\(^{88}\)

The third meaning of otherness is a horizontal estrangement among human beings. In that sense, otherness and identity mutually define and exclude each other. Otherness in this sense signifies estrangement from ‘us’ or ‘our-selves’. As Carl Schmitt and other modern thinkers emphasize, ‘otherness’ and ‘identity’ are in fact two sides of the same coin, as the other exists relative to the self and vice versa. Moreover, some argue that the creation of this type of otherness (i.e., othering) is deeply linked to asymmetric power relationships and to the principle that allows individuals to be classified in two hierarchical groups: ‘them’ and ‘us.’ The cohesion of the out-group results from its opposition to the in-group’s identity. In other words, only a dominant group is in a position to impose the value of its particularity (its identity) and to devalue the particularity of others (their otherness).

The biblical descriptions contain two distinct images of the Canaanites as others, which accordingly reflect two competing accounts of the Israelite identity.\(^{89}\) The Canaanites in the book of Genesis are depicted as decent hosts who pose no threat to the identity of the ancestors. They are not described in opposition to the Israelites’ existence or faith, nor are they an object of polemical attack. On the other hand, in other books, mainly Leviticus and Deuteronomy, the Canaanites as a group are stigmatized as horrendous sinners, justly dispossessed from the Promised Land. They are portrayed as sexually and religiously perverse.\(^{90}\) Later on they are described as practising child sacrifice, necromancy, resorting to soothsayers and diviners\(^ {91}\) and worshippers images at hilltop fertility shrines.\(^ {92}\)

Nahmanidean legal theology transcends the discourse of otherness. Because the law is binding on residents of the Holy Land, regardless of their religious or ethnic identity, the distinction between Jew and non-Jew in that regard is blurred. Accordingly, the biblical fate of the Canaanites is not a result of their faith or religious status, nor an outcome of their otherness, but rather a direct consequence of their practical behaviour. Nahmanides concurs more with the image of the Canaanites in the book of Genesis than with their image as ultimate others. Rather than considering them impure or immoral others, Nahmanides views the Canaanites as residents living under the divine law and hence natural inhabitants of the Promised Land.

A further radical aspect of Nahmanides’ legal theology based on the *God-land-law* matrix: in the sacred order of God’s inheritance, the Canaanites are not strangers and therefore not essentially others. The territorialization of the divine law together with the mystification of the Holy Land neutralizes the

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\(^{90}\) Lev 18: 3, 24–30.

\(^{91}\) Deut 18:9–14.

\(^{92}\) Deut 12:2–3.
otherness of the Canaanites and undermines the implication of the ‘us–them’
dichotomy within the jurisprudential perspective. In Nahmanides’ eyes, the
fate of the Canaanites is the same as that of the biblical Samaritans\textsuperscript{93} and
Sodomites\textsuperscript{94}—vomited from the land for their conduct. The fate of the
Canaanites is not the result of the Israelite conquest, but rather of their
violation of ‘the law of the land’s Lord’. In that respect, the fate of the
Canaanites according to Nahmanides illustrates their belonging to the Land of
Israel, and Canaanite–Israelite coexistence under the laws of the land’s Lord
would definitely have been conceivable.

\textsuperscript{93} See above p. 2–3.
\textsuperscript{94} Nahmanides, Commentary on the Torah, Gen 19: 5.