

DAVID NOVAK'S ACCOUNTS OF NATURAL LAW

THE SEVEN LAWS OF NOAH OR NOVAK:
AN ANALYSIS OF DAVID NOVAK'S ACCOUNTS OF NATURAL LAW

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Abstract

This thesis identifies two accounts within David Novak's Jewish natural law theory. In the earlier account, Novak locates natural law within the Noahide commandments; in the later account, he also locates it within the reasons for the commandments and rabbinic enactments. The change between these accounts is marked by a shift in his description of rationality. The norms of the Noahide code are originally described as known strictly by reference to themselves. As he begins grounding the norms in the *imago Dei*, that knowledge becomes dependent on a "cultural heritage," by which Novak comes to mean an explanation based on a doctrine of creation. By comparing the original presentation of the later account with its more developed iteration and highlighting the features that are unique to the earlier and later accounts, it becomes possible to identify components of the later account that are added to his subsequent treatment of the Noahide code and facets of the earlier account that are later added to his discussion of the reasons for the commandments and rabbinic enactments. These efforts at reconciliation include the normative content incorporated into the later account, the metaphysical background added to the later treatment of the Noahide code, the mediating concept of personhood, the phenomenological retrieval of the Noahide commandments, and the argument for minimal and maximal claims. Finally, this thesis analyzes the relationship between Novak's natural law theory and his view of redemption. Given that as Novak's natural law theory becomes less dependent on reason and more heavily based on a doctrine of creation, his treatment of redemption changes from being associated with a period of greater human understanding to a time that is characterized by God's accomplishments on humanity's behalf, I argue that there is a parallel between those concepts. I then draw on that parallel to show that Novak's natural law is compatible with, and perhaps inseparable from, his covenantal thought.

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Introduction

1. *Situating David Novak in the Natural Law Tradition*

Cicero, the Roman jurist, writes of an inalienable and unchanging law which is “valid for all nations and for all times.”¹ He defines this law as “right reason in harmony with nature.”²

Explaining what Cicero means, A. P. D’Entreves writes,

Mankind is a universal community or cosmopolis. Law is its expression. Being based upon the common nature of men, it is truly universal. Being endorsed by the sovereign Lordship of God, it is eternal and immutable. The doctrine passed into the *ius naturale* of the Roman jurists as well as into the teaching of the Christian Church.³

Jus naturale is a complex term, sustaining various interpretations. To wit, it is defined by the Roman jurist Ulpian as akin to the instincts of animals, such as the “union of male and female,”⁴ and by the jurist Gaius as “that law which is practised by all mankind.”⁵ Another jurist, Paulus,

¹ Cicero, *De Legibus* 1.7.23, trans. C. W. Keynes (Cambridge: Harvard University Press, 1928), 320-23. Cicero is generally acknowledged to be the founder of natural law theory. See for example Marvin Fox, *Interpreting Maimonides: Studies in Methodology, Metaphysics, and Moral Philosophy* (Chicago: University of Chicago Press, 1990), 125. For the view that natural law was founded by Plato, see Fred D. Miller, Jr. “The Rule of Reason in Plato’s *Laws*,” in *Reason, Religion, and Natural Law: From Plato to Spinoza*, ed. Jonathan A. Jacobs (New York: Oxford University Press, 2012), 31-56; Susan Suave Meyer, “Plato on the Law,” in *A Companion to Plato*, ed. Hugh H. Benson (Oxford: Blackwell, 2006), 373-387. Others argue that Aristotle is the “father” of natural law. Max Shellens, “Aristotle on Natural Law,” *Natural Law Forum* 4 (1959): 72-100. See also Helmut Koester, “Nomos Physeos: The Concept of Natural Law in Greek Thought,” in *Religions in Antiquity*, ed. J. Neusner (Leiden: Brill, 1968), 521-541, where it is argued that Philo is the primary contributor to the school of natural law; Philo, *On Husbandry* 14:66.

² Cicero, *De Republica* 3.33, trans. Niall Rudd (New York: Oxford University Press, 1998), 83.

³ A. P. D’Entreves, *Natural Law: An Historical Survey* (New York: Harper and Row, 1965), 21.

⁴ Dig. I, i. 1 (*Ulpianus Libro Primo Institutionem*), quoted in A. P. D’Entreves, *Natural Law: An Historical Survey* (New York: Harper and Row, 1965), 24-25.

⁵ Dig., I, i, 9 (*Gaius Libro Primo Institutionem*), quoted in *ibid.*, 24-25.

explains that the term refers to “what in each city is profitable to all or to many.”⁶ If there is nevertheless an organizing theme to these interpretations, it is that *jus naturale* is based on its “intrinsic value” rather than on its “power of compulsion.”⁷ That common idea in the Roman treatment of natural law, which is influenced by Stoic thought,⁸ is useful in highlighting a contrast with a later formulation of natural law given by Thomas Aquinas:

Wherefore, since all things subject to divine providence are ruled and measured by the eternal law, in so far as, namely, from its being imprinted on them, they derive their respective inclinations to their proper acts and ends. Now among all others the rational creature is subject to the divine providence in the most excellent way, in so far as it partakes of a share of providence, by being provident both for itself and others. Wherefore it has a share of the eternal reason, whereby it has a natural inclination to its proper act and end: and this participation of the eternal law in the rational creature is called the natural law.⁹

As D’Entreves explains, there are three new features of natural law in Aquinas’s account.¹⁰ The first is the emphasis on the “dignity and power” of human beings to participate in the universe through their rational thought. The second is that there is a balance between grace and nature, in the sense that revelation is not opposed to reason. Finally, for Aquinas, natural law is not only a foundation of political institutions, but the ultimate standard against which they are judged. Restating this point, one could suggest that Aquinas’s treatment of natural law concentrates on

⁶ Dig., I, i, 11 (*Paulus Libro Quarto De como ad Sabinum*), quoted in *ibid.*, 24-25.

⁷ *Ibid.*, 41.

⁸ Christine Hayes, *What’s Divine about Divine Law* (New Jersey: Princeton University Press, 2015), 81.

⁹ Thomas Aquinas, *Summa Theologiae*, 2/1, q. 91, a. 2, trans. Fr. Laurence Shapcote, in *Basic Writings of Saint Thomas Aquinas*, vol. 2, ed. A. Pegis (Indianapolis: Hackett, 1945), 749.

¹⁰ It is an account heavily ensconced in metaphysics. Augustine, whom Aquinas follows, does not subscribe to a teleology of nature – that only exists in human beings – but he writes about partaking in an eternal peace. Novak, JSE, 54-55; Augustine, *Confessions*, bk. 7.10, trans. E.J. Sheed (Indianapolis: Hackett, 2006), 128-129; Augustine, *City of God*, bk. 19.14, trans. R. W. Dyson (Cambridge: Cambridge University Press, 1998), 941. For Aquinas, one can partake in the eternal law through the exercise of reason. Thomas Aquinas, *Summa Theologiae*, 2/1, q. 91, a. 2, in *Basic Writings of Saint Thomas Aquinas*, vol. 2, 749.

its form rather than its content.¹¹ That is to say instead of focusing on the specific laws associated with natural law, Aquinas's attention is turned to the way in which one arrives at those ideas and to their metaphysical context. As we have seen, that focus includes a notion of human nature and its relationship to the eternal law.

The contrast between these interpretations of natural law is discussed in the work of 16th century jurist Hugo Grotius, who seems to return to the organizing theme of *jus naturale* in the work of the Roman jurists. While he was not the first to argue it,¹² Grotius famously writes that the principles of natural law would be true regardless of a divine source:

What we have been saying would be relevant even if we were to suppose (what we cannot suppose with the greatest wickedness), that there is no God, or that human affairs are of no concern to him.¹³

With this statement, Grotius moves away from nominalism (also known as voluntarism), or the idea that the basis for morality is God's commandment. Instead, Grotius argues that natural law points to principles which are inherently good or evil, rather than to the authority that enforces them.¹⁴ In this way, Grotius's interpretation of natural law paves the road for other thinkers who formulate the concept independently of theology.¹⁵ It is in the other sense in which Grotius was

¹¹ The distinction is found in Petter Korkman, "Voluntarism and Moral Obligation: Barbeyrac's Defence of Puffendorf Revisited," in *Early Modern Natural Law Theories: Context and Strategies in the Early Enlightenment*, eds. T. J. Hochstrasser and P. Schröder (Dordrecht: Kluwer Academic Publishers, 2003), 206.

¹² Michael Bertram Crowe, *The Changing Profile of the Natural Law* (The Hague: Martinus Nijhoff, 1977), 223-228; A. P. D'Entreves, *Natural Law: An Historical Survey* (New York: Harper and Row, 1965), 52.

¹³ Hugo Grotius, *The Rights of War and Peace*, prol. xi, xxiv, trans. John Morrice, ed. R. Tuck (Indianapolis: Liberty Fund, 2005), 38, 41.

¹⁴ A. P. D'Entreves, *Natural Law: An Historical Survey* (New York: Harper and Row, 1965), 71.

¹⁵ Such as Samuel Pufendorf, *De Iure Naturale et Gentium* [1672] (London: Clarendon Press, 1943); Jean Jacques Burlamaqui, *Principes Du Droit Naturel* [1747] (Paris: Warée, 1820); Emer de Vattel, *Droi des Gens ou Principes de la Loi Naturelle* [1758] (Buffalo: Hein, 1995). A. P. D'Entreves, *Natural Law: An Historical Survey* (New York: Harper and Row, 1965), 52.

influential, however, that the contrast with Aquinas's emphasis on form is evident. D'Entreves explains this other aspect of Grotius's influence thusly:

If natural law consists in a set of rules which are absolutely valid, its treatment must be based upon an internal coherence and necessity. In order to be a science, law must not depend on experience, but on definitions, not on facts, but on logical deductions.¹⁶

Both features of Grotius's treatment of natural law are seemingly in evidence when the Dutch jurist associates the Noahide code – the rabbinic legal framework intended for non-Jews, the prohibitions of which forbid murder, adultery, theft and such – with natural law:

Among those Commands of God to the Sons of Noah they say this was one, that not only Murders, but also Adulteries, Incests, and Rapines should be punished with Death, which the Words of *Job* seem to confirm; and even the Law of *Moses* gives Reasons for these capital Punishments, which Reasons suit no less with other Nations, than with the *Hebrews* themselves.¹⁷

Grotius notes that these prohibitions are commanded by God, but his emphasis is on the reasonableness of the laws. For instance, on the basis of the reasoning behind the prohibition of murder, and not God's direct command to the Israelites, Grotius sees the law as applying to other nations. By associating natural law with the Noahide code, Grotius also limits the scope of the idea from one overarching law to specific principles, or commands. That change in the formulation of natural law is another way in which Grotius turns the focus from its source to its precepts.¹⁸ The distinction between the two types of natural law theories is well captured by Jonathan Jacobs:

¹⁶ Ibid., 53.

¹⁷ Hugo Grotius, *The Rights of War and Peace*, 2.2.5, trans. John Morrice, ed. R. Tuck (Indianapolis: Liberty Fund, 2005), 68.

¹⁸ Grotius describes mankind as having a "*faculty of knowing and acting, according to some general Principles.*" Hugo Grotius, *The Rights of War and Peace*, prol. vi, trans. John Morrice, ed. R. Tuck (Indianapolis: Liberty Fund, 2005), 37. Thomas Hobbes, a contemporary of Grotius, similarly emphasized the basic principles, formulated by reason, that defend human life and property, in order to avoid the default state of nature, a war of all against all. Thomas Hobbes,

Typically, a theory of natural law explicates moral universality either through a conception of an intrinsic end for human nature (and related principles of right action or conceptions of intrinsic human goods) or through rational principles that can be ascertained by any rational agent (with basic principles being fully evident upon consideration), even if the account does not involve a *telos* of human nature. Universality is, as it were, built-in, in one of those ways or the other.¹⁹

While Jacobs reverses the order in which I have presented the interpretations of natural law, the corresponding formulations are not difficult to identify. Aquinas's notion is based on a teleology of human nature, so his view corresponds to what Jacobs calls "intrinsic ends for human nature." The account of the Roman jurists and the early modern account of Grotius both relate to "rational principles."²⁰ This distinction is useful in looking at natural law within the Jewish tradition. Those that argue in favour of a concept of natural law in Judaism typically formulate a universal morality by using Jacob's first category, namely, "rational principles." Philo of Alexandria is credited as being the first Jewish figure to mention natural law. His account of natural law, not unlike the *jus naturale* of the Roman jurists, has decidedly Stoic influences. The Stoic notion of *logos* as a law that permeates the cosmos and is associated with the reason of the human sage can be clearly identified in Philo's discussion of a *logos* of nature that commands and prohibits and in his association of the law with the "right reason" of a sage.²¹ Although he creates a synthesis of this idea and elements of the Bible, as can be seen when he says that the forefathers lived by

Leviathan, chap.13.8, eds. Brian Batiste and A. P. Martinich (Peterborough: Broadview Press, 2011), 95.

¹⁹ Jonathan Jacobs, "Aristotle and Maimonides on Virtue and Natural Law," *Hebraic Political Studies* 2.1 (2007): 73.

²⁰ Jonathan Jacobs, *Law, Reason, and Morality in Medieval Jewish Philosophy: Sadia Gaon, Bahya ibn Pakuda, and Moses Maimonides* (New York: Oxford University Press, 2010), 161.

²¹ Matt A. Jackson-McCabe, *Logos and the Law in the Letter of James: The Law of Nature, The Law of Moses, and The Law of Freedom* (Leiden: Brill, 2001), 90; Philo, *On Joseph* 29. Cf. Helmut Koester, who argues that natural law was essentially absent from Stoic writings and that Philo fused the Greek concept of nature with a belief in a divine lawgiver. Helmut Koester, "Nomos Physeos: The Concept of Natural Law in Greek Thought," in *Religions in Antiquity*, ed. J. Neusner (Leiden: Brill, 1968), 529, 533, 540.

natural law long before the Mosaic law was given,²² Philo certainly does not offer anything like a comprehensive treatment of natural law within the broader Jewish tradition.²³

For a treatment of natural law which engages more fully with the Jewish tradition, we need first to look to the fifteenth century.²⁴ At that time the idea of *dat tiv'i*, a literal translation of natural law based on the term *lex naturalis* in the writings of Aquinas,²⁵ appears in the work of R. Joseph Albo. For Albo, natural law, which he ranks below Mosaic law and even civil law, is a universal law that prevents “theft, thievery, and murder.”²⁶ Even if he reduces natural law to these rational principles, Albo does not associate those laws with the Noahide code. A possible reason for this choice is that he conceives of natural law as a system of principles, one that is divorced from any religious foundation. For him, Noahide law has a divine basis.²⁷ More than four centuries later, the Italian rabbi, Elijah Benamozegh refers to natural law but in relation to the Noahide laws,²⁸ and he frames the Noahide laws in universal terms so as to serve as a

²² Philo, *On Abraham* 1:6.

²³ The connection between Philo’s thought and the Pharisaic tradition of his day is difficult to establish. For the position that Philo was well acquainted with the Jewish tradition of his day, see Harry A. Wolfson, *Philo: Foundations of Religious Philosophy in Judaism, Christianity, and Islam*, vol. 2 (Cambridge: Harvard University Press, 1947, 1962), 90-93, 95-96. Cf Samuel Sandmel, *Philo’s Place in Judaism: A Study of Conceptions of Abraham in Jewish Literature* (New York: KTAV Press, 1971), 210-212.

²⁴ Not coincidentally, it would take about that long before Philo receives any attention from the Jewish tradition – by Azaria De Rossi, in the 16th century. Azaria De Rossi, *Me’or Einayim* (Vilna: Joseph Reuben, son of Menachem, 1866), 136ff.

²⁵ On Joseph Albo’s reception of Aquinas’s work on law, see Giuseppe Veltri, *Renaissance Philosophy in Jewish Garb: Foundations and Challenges in Judaism on the Eve of Modernity* (Leiden: Brill, 2009), 182ff.

²⁶ Joseph Albo, *Sefer ha-Iqqarim*, 1:7 (Warsaw: I. Naldman, 1870), 19-25.

²⁷ In this sense, natural law in Albo’s account is Hobbesian in nature, something already suggested by Ralph Lerner. Ralph Lerner, “Natural Law in Albo’s Book of Roots,” in *Ancients and Moderns: Essays in the Tradition of Political Philosophy in Honour of Leo Strauss*, ed. Joseph Cropsey (New York, London: Basic Books, 1964), 132-147. An alternate explanation for this problem is offered by Novak. Novak, *IONJ*, 194.

²⁸ Benamozegh’s conception parallels that of Grotius. Elijah Benamozegh, *Israel and Humanity*, trans. Maxwell Luria (New York: Paulist Press, 1995), 260ff.

gateway to understanding the relationship between Jews and non-Jews. Also in the nineteenth century, Hermann Cohen, a Kantian rationalist, develops this line of thought, interpreting the Noahide code as a common basis of morality between Jews and non-Jews.²⁹

David Novak is a natural law theorist in the Jewish tradition. Novak follows Grotius, Benamozegh, and Cohen in locating natural law in the Noahide code, initially only within its prohibition of murder, but soon thereafter describing the entire Noahide code as an expression of natural law.³⁰ In later writings, however, Novak expands his treatment of natural law in Judaism to include the reasons for the commandments, inasmuch as what are known as the rational commandments³¹ are based on reasons that human beings can understand and are therefore “mediated by our rational reflection on created human nature.”³² Going beyond this, Novak also locates natural law in the rabbinic enactments, initially basing his claim on the argument that

²⁹ Hermann Cohen, *Religion der Vernunft aus der Quellen des Judentums* (Frankfurt am Main: J. Kauffmann, 1929), 135–48, 381–8.

³⁰ Compare Novak, LAT, 114; Novak, NLIJ, 64. Following a few other modern Catholic scholars such as John Finnis, Robert George, and Germain Grisez, Novak’s natural law theory is divorced from metaphysics. John Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980), 52; Robert P. George, “Natural Law and Human Nature,” in *Natural Law Theory: Contemporary Essays*, ed. Robert P. George (Oxford: Clarendon Press, 1992), 31–41; Germain Grisez, “The First Principle of Practical Reason,” *Natural Law Forum* 10 (1965): 181–86; Novak, JSE, 70–74. The existence of natural law in Judaism is vigorously debated, in part because of the relatively late inclusion of the term in medieval literature. See for instance Isaac Abravanel, *Pirush Abravanel al Ha-Torah*, Exodus 19:1 (Warsaw: J. Lebensohn, 1862), 33; Isaac Hayyim Cantrini, *Egev Rav* (Venice, 1711), 30. For the earliest modern scholarship on this topic, see Isaac Husik, “The Law of Nature, Hugo Grotius and the Bible,” *Hebrew Union College Annual* 2 (1925): 399; Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1953), 81–82; Steven Schwarzschild, “Do Noahites Have to Believe in Revelation,” *Jewish Quarterly Review* 52 (1962): 297–309. For recent treatments of the question, see Avi Sagi, “Natural Law and Halakhah,” in *Avi Sagi: Existentialism, Pluralism, and Identity*, eds. Hava Tirosh-Samuelson and Aaron W. Hughes (Leiden: Brill, 2015), 59–102; Tamar Rudavsky, “Natural Law in Judaism: A Reconsideration,” in *Reason, Religion, and Natural Law: From Plato to Spinoza*, ed. Jonathan A. Jacobs (New York: Oxford University Press, 2012), 83–105.

³¹ The term is based on R. Saadya Gaon’s *mitzvot sikhliyot*. R. Saadya Gaon, *Emunot Ve’deot* 3.1, 2 (Jerusalem: Mekor, 1972), 65–68; Novak, NLIJ, 73.

³² *Ibid.*, 67.

those enactments have to be “rationally convincing”³³ but subsequently further arguing for a teleology that drives the enactments.³⁴ In a basic comparison between his earlier and later accounts, the former can be shown to be narrower than the latter, inasmuch as the earlier account limits the relevance of natural law to human beings bound by Noahide law; the latter account broadens its impact to include those bound by Torah law as well. Further, Novak’s earlier treatment of the subject can be identified with Jacob’s “rational principles” category, whereas his later account seems to fit the criteria for an “intrinsic end for human nature.” Indeed, comparing the rabbinic constitution of the Noahide code and the Stoic theories of natural law, Novak himself writes:

By their negative constitution of the prohibitions that pertain to gentiles, the rabbis were not doing anything like what the Stoics were doing in their natural theology and natural law theories. The Stoics saw evidence of universal reason and morality; the Rabbis emphasized how the gentiles had failed to live up to these minimal moral standards that they should have known.³⁵

With this statement, Novak acknowledges that the natural law that is expressed in the rabbinic iteration of the idea professes moral standards rather than universal ideals. Using Jacobs’ categories, we might say that Novak would not accept a natural law theory based solely on “rational principles” but instead prefers one based on “intrinsic ends for human nature,” in other words a natural law theory guided by moral standards.

The similarity of the later account to the “intrinsic ends for human nature” category can also be seen in the fact that Novak describes the mediating concept between the negative prohibitions of the Noahide code and the positive law of rabbinic prohibitions as “human

³³ Novak, JSE, 38.

³⁴ Novak, NLIJ, 106ff.

³⁵ Novak, TWC, 115.

personhood.”³⁶ In other words, the teleology that drives the rabbinic enactments is based on seeing human beings as ends in themselves.³⁷ Along the same lines, the reasons for the commandments can be explained rationally by reference to human nature. Novak states that the process of interpreting laws, particularly those that pertain to legal situations, call for “judgements about human nature *per se*.”³⁸ Thus, unlike the specific norms of the Noahide code, which certainly pertain to human nature but can be observed without any reference to it, the process of rabbinic enactments is by definition dependent on a notion of human nature.

The differences in the varying formulations of natural law in Novak’s writings have not gone unnoticed. Aaron Mackler writes:

Novak ‘initially’ defines natural law as ‘those norms of human conduct that are universally valid and discernible by all rational persons’ (1). An additional claim is folded in when we are later told that ‘Natural law is the law of God’ (54). A mediating view understands natural law as a ‘law that their human reason told them is God’s basic law for humans in community’ (58). Other definitions explicitly introduce a commitment to a particular view of *nature*: ‘Natural law, then, is the recognition of the normative significance of the limits of nature’ (147).... It may well be that no simple definition of natural law could do justice to Novak’s rich usage of the term; the definitions I have cited bear at least a strong family resemblance to one another. Still, I believe that Novak’s impressive arguments would be further strengthened if he could clearly set out the different senses in which he uses the term, as well as specify the characteristics he believes provide the ‘focal meaning’ of the concept.³⁹

Mackler’s critique can be sharpened by looking at Novak’s writings on natural law more broadly. That is to say Mackler does not study the chronology of Novak’s thought but simply highlights the different terms Novak uses for natural law in his *Natural Law in Judaism*. The present study will show that Novak’s minimal definition of natural law in his later writings is

³⁶ Novak, NLIJ, 165.

³⁷ Indeed, it is only in Novak’s later works that the Noahide code is described as having “abstract universality” and its actual content is said to be debated by the rabbis. Novak, JSE, 50.

³⁸ Novak, “Natural Law and Normative Judaism,” *Vera Lex* 6.2 (1986): 3.

³⁹ Aaron Mackler, review of David Novak, *Natural Law in Judaism*, *Religious Studies Review* 27.2 (2001): 122.

based on some of his earlier ideas.⁴⁰ In addition to analyzing the changes between Novak's earlier and later accounts of natural law, this thesis more specifically examines the question of whether the later account is compatible with the notions that Novak retains of his earlier account.

2. *Situating the Thesis in Relation to Current Scholarship*

Novak's thought extends into many areas, and that understandably invites a substantial amount of scholarly engagement.⁴¹ Those areas include Jewish law,⁴² the idea of election,⁴³ the

⁴⁰ Novak, NLIJ, 33-34.

⁴¹ Two recent useful intellectual profiles on Novak should be mentioned. One is by Aaron Hughes, the other by Martin Kavka and Randi Rashkover, with whom I engage later on. Aaron W. Hughes, "David Novak: An Intellectual Portrait," in *Natural Law and Revealed Torah*, eds. Hava Tirosh-Samuelson and Aaron W. Hughes (Leiden: Brill, 2014), 1-18; Randi Rashkover and Martin Kavka, "Introduction," in *Tradition in the Public Square: A David Novak Reader* (Grand Rapids: Eerdmans, 2008), xi-xxxiv.

⁴² Scholars who have challenged Novak in this regard include Eugene Borowitz, Michael Walzer, Bernard Jackson, Steven Windmueller, and Andrew Gluck. Their view is that Novak is too stringent in his application of Jewish law. Eugene Borowitz, "Im Ba'et Eyma – Since You Object, Let Me Put it This Way," in *Reviewing the Covenant: Eugene B. Borowitz and the Postmodern Renewal of Jewish Theology* (Buffalo: SUNY Press, 2012), 165; Andrew Gluck, *Various Theories Explaining Why the Jewish People are Special: A Response to Jerome Gellman, David Novak, and Michael Wyschogrod's Understanding of the Chosen People* (Lewiston, New York: Edwin Mellon Press, 2016), 170; Bernard S. Jackson, "The Jewish View of Natural Law," review of David Novak, *Natural Law in Judaism*, *Journal of Jewish Studies* 52.1 (2001): 136-145; Steven Windmueller, "Jewish Rights: What is Normative?" review of David Novak, *Covenantal Rights: A Study in Jewish Political Theory*, *Menorah Review* (2011): 8-10. A notable critique of Novak's stance against homosexuality is put forth by Martha Nussbaum. Martha Nussbaum, "Reply" in *California Law Review* 98.3 (2010): 735-747. Another critique of Novak's position is put forth by Louis Newman, "Constructing a Jewish Sexual Ethic: A Rejoinder to David Novak and Judith Plaskow," in *Sexual Orientation and Human Rights in American Religious Discourse*, eds. Saul M. Olyan and Martha C. Nussbaum (New York: Oxford University Press, 1998), 46-54.

⁴³ A conference in Novak's honour, entitled *Rethinking the Covenant: Engagements with the Theology of David Novak*, was held at the University of Toronto in 2014. Presentations on the topic of election were given by George Hunsinger, Leora Batnitzky, and Menachem Kellner. Hunsinger compared Novak to Karl Barth, arguing that the two thinkers have similar views on the temporality of election and the relation between culture and revealed communities.

debate over the role of religion in the Public Square,⁴⁴ the interrelation between philosophy and theology,⁴⁵ Jewish-Christian Dialogue,⁴⁶ Zionism,⁴⁷ biblical interpretation,⁴⁸ the Holocaust,⁴⁹ and

Rashkover has since made a similar comparison, using it to construct a critique of Novak for not having an account of law as a form of gospel. Randi Rashkover, *Freedom of Law: A Jewish-Christian Apologetics* (New York: Fordham University Press, 2015), 227. Batnitzky compared Novak to Rosenzweig, pointing to the independence of creation in the latter's account, and asked more generally how covenantal thought, which is based on faith, can be reconciled with natural law, which is based on reason. Elsewhere, Batnitzky has critiqued Novak's notion of God's covenant as one that Israel can only choose to be, or not to be, a part of. According to Batnitzky, the covenant is a voluntary association. Leora Batnitzky, "Beyond Sovereignty? Modern Jewish Political Theory," in *The Cambridge History of Modern Jewish Philosophy*, ed. David Novak and Martin Kavka (Cambridge: Cambridge University Press, 2012), 602. Kellner did not speak about Novak, and instead compared rationalist Yosef Qaffi to Israeli extremist Rabbi Aviner. George Hunsinger, "The Election of Israel in David Novak and Karl Barth." Leora Batnitzky, "Reconciling Chosenness and Natural Law in David Novak's Theology of Covenant." Menachem Kellner, "Maimonides and Halevi Redivivus: Contrasting Views on the Nature of the Jewish People in Contemporary Israel." Papers presented at *Rethinking the Covenant: Engagements with the Theology of David Novak*, Toronto, Canada, September 14-15, 2014. Being a prominent Jewish philosopher, Novak has also been compared to Michael Wyschogrod, particularly in reference to the intimate relationship between God and his people. Scott Bader-Saye, "Aristotle or Abraham? Church, Israel, and the Politics of Election" (P.h.D. diss., Duke University, 1997), 79ff.

⁴⁴ At the *Rethinking the Covenant* conference presentations on this topic were offered by Alan Mittleman, Gregor Scherzinger, Shmuel Trigano, and Martin Kavka. Mittleman compared Novak's Jewish Social Contract theory, which argues for involvement in society based on the existence of moral norms, to the seventeenth century thinker Althusius's *pactum*. Elsewhere, Mittleman has questioned what incentive one has to enter society given Novak's social contract. Alan Mittleman, *The Sceptre Shall not Depart from Judah* (Lexington: Lanham, 2000), 124. Scherzinger spoke about a recent question regarding the status of circumcision in Germany as an illustration of the debate about the impact of cultural factors in public matters; Trigano spoke about the conflict between the man and the citizen. Kavka spoke about the limits of rights described in Novak's *Covenantal Rights* and the failings of community leaders to protect the vulnerable. See Martin Kavka, "The Perils of Covenant Theology: The Cases of David Hartman and David Novak," in *Imagining the Jewish God*, eds. Leonard Kaplan and Ken Koltun-Fromm (Lanham, MD: Lexington, 2016), 227-253. (I am thankful to Professor Alex Green for this reference.) Kavka's critique is similar to that of Alan Arkush. Alan Mittleman, "David Novak's Social and Political Thought: An Appreciation and Critique." Gregor Scherzinger, "Idolatry and the Public Square: A Political Theology Engaging with David Novak's Thought." Shmuel Trigano, "From Rousseau to Moses: Democratic and Judaic Transcendances." Martin Kavka, "The Rights of Citizens in a Covenanted Polity." Papers presented at *Rethinking the Covenant*. See also Allan Arkush, "Theocracy, Liberalism, and Modern Judaism," *The Review of Politics* 71 (2009): 650 (fn. 45). Mark Douglas argues that faiths have to find an inner justification for the importance of the Public Square to their own faiths. The five reasons for this requirement are

biblical authenticity, historical precedent, doxological commitment, and theological credibility, as well as moral responsibility. Mark Douglas, "Democratic Structures and Democratic Cultures: A Response to Paul Hanson and David Novak," *CrossCurrents* 59.2 (2009): 241-253. Another critique comes from William Galston. Although he is a proponent of liberal pluralism, which means he is accommodating of the place of religion, Galston questions the need for religion as the foundation of democracy. William Galston, "Religion and the Limits of Liberal Democracy," in *Recognizing Religion in a Secular Society*, ed. Douglas Farrow (Montreal, Kingston: McGill-Queens University Press, 2004), 41-50; William Galston, "Response." Paper presented at *Rabbi David Novak's in Defense of Religious Liberty*, Washington, D.C., January 21, 2010.

⁴⁵ Presentations on this topic at the *Rethinking the Covenant* conference included those by Robert Gibbs, Randi Rashkover, James Diamond, and Willi Goetschel. Gibbs raised the question of pure discourse in philosophy, opening the door for a meeting point between theology and philosophy. Rashkover compared Novak to Leo Strauss, seeing in the former's thought a two-sided relationship between revelation and philosophy and a view that is informed more by Jewish texts than by a reading of Kant. Diamond posited that the rabbis legislate God out of their discussions. Goetschel raised the question of whether Novak speaks about philosophy from an outsider's perspective. Robert Gibbs, "Theology and Philosophy." Randi Rashkover, "From Text to Philosophy: Reconsidering David Novak's Account of Reason and Revelation." James Diamond, "Philosopher as Talmudist and Talmudist as Philosopher." Willi Goetschel, "Out of Judaism Inside Philosophy: Are Jewish Philosophers Outsiders, Insiders, or just Marginal?" Papers presented at *Rethinking the Covenant*.

⁴⁶ At the *Rethinking the Covenant* conference, Markus Bockmuehl, Aaron Hughes, and Peter Ochs presented on this topic. Bockmuehl expressed support for Novak's interfaith work, adding that both sides should speak from the heart and not abandon their identity. Hughes raised the question of whether there were historical examples of open dialogue. Ochs addressed the matter of the "covenanted self" and showed how Novak's practical reason precedes his transcendental reasoning. Markus Bockmuehl, "David Novak's Theology of Jewish-Christian Dialogue: From Polemics to Joint Enterprise." Aaron Hughes, "Was There Interfaith Dialogue in Medieval Jewish Philosophy?" Peter Ochs, "Covenantal Relations: Novak, Scripture, and the Other." Papers presented at *Rethinking the Covenant*. Other engagements on this topic come from John Levenson, who argues that Novak is not forthcoming in his dialogue about his personal leanings. Jon D. Levenson, "Must We Accept the Other's Self-Understanding?" review of David Novak, *Jewish-Christian Dialogue*, *Journal of Religion* 71.4 (1991): 558-567. Yiftach Fehige focuses on the tension in Jewish-Christian dialogue, inasmuch as the dialogue assumes a multiplicity of religious faiths on the one hand and one particular divine revelation from the perspective of religious faith on the other. Fehige also suggests that the "potentiality" method that Novak advances in his *Jewish-Christian Dialogue* is undermined by recent work on the analytic philosophy of reason that shows that there is no neutral point of view. Yiftach Fehige, "Circumcising Revelation Based Thinking? On the Rationality of Inter-religious Dialogue in the Encounter Between Jews and Christians," *Toronto Journal of Theology* 29.2 (2013): 351-367. In his book on the subject, Fehige also offers an analysis of Novak's preferred analogy for the basis of interfaith dialogue, namely, that both Jews and Christians have heard the "voice" of God. According to Fehige, the analogy prevents absolutism and relativism, inasmuch as it is a sound that both communities hear, but neither one hears it exclusively. The choice of God's voice,

rather than God's silent presence, also symbolizes that something is wanted of both communities, meaning that the analogy encouraging change. He then argues that Novak's claim that Jewish law is not necessarily eternal, which Novak says in the search for common ground with Christians, is a conflation of theology with revelation. Fehige also grapples with the question of why God would want two faith communities. Yiftach Fehige, *Offenbarungsparadox: Zur Dialogfähigkeit von Juden und Christen* (Padeborn: Ferdinand Schöningh, 2012), 26ff, 29-30. See also Novak, JCD, 155. Matthew Levering suggests that Novak misrepresents Christianity somewhat when he states that Messiahhood is postponed until the second coming. Matthew Levering, *Jewish-Christian Dialogue: Engagements with the Theology of David Novak* (London: Continuum, 2010), 24. John J. Goyette questions how natural law can serve as common ground with Christians, particularly since Aquinas sees natural law as an expression of participating in divine law of God who created the universe, while Maimonides, who is seen by Novak as a natural law theorist, believes that one cannot arrive at the knowledge of God's creation of the world rationally. John Goyette, "Natural Law and the Metaphysics of Creation," in *St. Thomas Aquinas and the Natural Law Tradition*, eds. John Goyette, Mark S. Latkovic, and Richard S. Myers (Washington: The Catholic University of America Press, 2004), 75. Stanley Hauerwas argues against Novak's emphasis on law. Stanley Hauerwas, "Christian Ethics in Jewish Terms: A Response to David Novak," *Modern Theology* 16:3 (2000), 293-299. Rashkover suggests that dialogue should be based on the "logic of the law," rather than on given norms, because norms hold back the dialogue from reaching deeper truths. Randi Rashkover, *Freedom and Law* (New York: Fordham University Press, 2011), 220, 170, 178ff. Batnitzky also draws on Strauss to say that perhaps Novak really models his views after Christian thought because of its "melding of religion and politics." She thus questions if Novak's argument is a theological one or a historical one; in the latter case, it is not broadly applicable. Gordon Schochet, Leora Batnitzky, Michael Walzer, David Novak, "Symposium on David Novak's *The Jewish Social Contract*," *Hebraic Political Studies* 1.5 (2006): 601-602. For a critique of Novak's caveats about proselytizing, see Elmer Thiessen, "Christians and Jews Proselytizing: A Response to David Novak," *Religious Studies and Theology* 22.2 (2003): 55-63. Richard Claman argues that we cannot require a basic morality of others before we start a theological inquiry. Richard Claman, "Is Theological Pluralism Possible," *Conservative Judaism* 64.4 (2013): 49-70.

⁴⁷ Scholars that have debated with Novak on this topic include Robert Morgan, Noam Zohar, and Walter Brueggemann. Morgan raised doubt if Novak's book on Zionism "succeeds" in resolving the tension between a Jewish state and a democratic one. Michael Morgan, "Response." Paper presented at *David Novak's New Theory of Zionism*, February 4, 2016, Toronto, Canada. Zohar questions if conversion needs to be seen in religious terms, raising the possibility of there being a sense of rebirth in an "ethnic collective," which differs from the religious undertones Novak gives the term. Noam Zohar, "Judaic Visions of a Shared World," in *Contested Boundaries: Diverse Ethical Perspectives*, eds. David Miller and Sohail H. Hashmi (Princeton: Princeton University Press, 2001.), 237-248. Brueggemann calls Novak's book a "disappointment" and accuses Novak of lacking any "self-critical reflection." Brueggemann also sees Novak as repackaging religious Zionism, without offering any new perspective. Walter Brueggemann, review of David Novak, *Zionism and Judaism: A New Theory*, *The Christian Century*, January 22, 2016.

redemption.⁵⁰ Natural law theory features in virtually all of these categories.⁵¹ The focus of the current study, however, is the development of Novak's natural law theory.⁵²

⁴⁸ There are not many scholars that challenge Novak on these grounds. Mark Hamilton criticizes the fact that Novak eschews biblical criticism. A similar point is made by Milton Konvitz. Mark Hamilton, review of David Novak, *The Jewish Social Contract*, *Reviews in Religion and Theology* 13.3 (2006): 406-409; Milton Konvitz, review of David Novak, *Natural Law in Judaism*, *Journal of Law and Religion* 17.1/2 (2002): 155-58. Eliezer Segal argues that Novak diverges from the traditional interpretation of the Bible on occasion, which puts into question how Novak can cite the traditional point of view. Eliezer Segal, review of David Novak, *Natural Law in Judaism*, *Studies in Religion* 29.2 (2000): 246-247. Milton Konvitz express similar concerns, loc cit. Daniel Weiss disagrees with Novak over his relational view of the *imago Dei*, arguing that the term has strong physical manifestation. Daniel Weiss, "Direct Divine Sanction: The Prohibition of Bloodshed and the Individual as Image of God in Classic Rabbinic Literature," *Journal of the Society of Christian Ethics* 32.2 (2012): 23-38.

⁴⁹ The conference should have included a separate panel pertaining solely to the Holocaust, but it did not, and there was only one presentation on the topic. The talk, by Yaniv Feller, was included in the panel on natural law. Feller argued that although the Holocaust is given importance by Novak, it may not bring the covenant into question, a position taken by Fackenheim. Feller went on to highlight a number of areas in which the Holocaust has an impact on Novak's views.

⁵⁰ Few scholars have engaged Novak on those grounds. Kellner argues, unlike Novak, that for Maimonides, everyone will be Jewish at the time of redemption, a view shared by a modern thinker such as Rosenzweig. Menachem Kellner, "A Suggestion Concerning Maimonides' Thirteen Principles and the Status of Gentiles in the Messianic Era," in *Tura: Oranim Studies in Jewish Thought – Simon Greenberg Jubilee Volume*, ed. M. Ayali (Tel Aviv: Ha-Kibutz Ha-Me'uhad, 1988), 253. See also Menachem Kellner, *Maimonides on Judaism and the Jewish People* (Albany: SUNY Press, 1991), 125, fn. 9, 43-45.

⁵¹ Natural law's relation to election lies in its function as a precondition for revelation. Novak, EOI, 104-105. For the connection between natural law and the public square, see Novak, IDRL, 150-154. The role of natural law as the junction between philosophy and theology can be seen in Novak, NLIJ, 174-178. For Novak's argument that natural law can serve as the common basis for Jewish-Christian dialogue, see Novak, JCD, 141-142. For an explanation of how the Holocaust is one of the reasons that occasions Novak's discussion of natural law, see Novak, NLIJ, 6-7.

⁵² For a useful introduction to Novak's natural law theory, see Louis Newman, "The Law of Nature and the Nature of the Law," in *Ethical Imperatives, Past and Future Essays in Honor of Wendell S. Dietrich*, eds. Theodore M. Vial and Mark A. Hadley (Providence, RI: Brown Judaic Studies, 2001), 259-277 and Gregor Scherzinger, *Normative Ethik aus Jüdischem Ethos: David Novaks Moraltheorie* (Fribourg: Academic Press Fribourg, 2014). In his book, Scherzinger construct a theological-political profile of Novak's thought and then assesses its suitability for the dialogue between religion and state. The book begins with a brief biographical and bibliographical overview (16-29). That part is followed by a general discussion about the question of creating a "just" or "good" life for citizens and the problem of constructing a

Previous scholarship on Novak's natural law theory is generally divided into three categories. The first consists of those scholars who engage with Novak about the assertion that there can be a natural law theory in Jewish thought.⁵³ The case is generally made on the basis

universal ethic based on a particularistic tradition (30-44). In the first section, Scherzinger's introduces Novak's theory in the context of the debate over natural law in Judaism, with a particular focus on the critiques of Fox, Faur, and Bleich (49-89). In the second section, Scherzinger constructs Novak's theory based primarily on Novak's *In Defense of Religious Liberty*, but drawing on earlier books as well. And a general discussion begins with an ontology of Novak's theory and an analysis of the way Novak sees the *imago Dei* as a limitation to human pretension. According to Scherzinger, Novak's natural law cannot be separated from his political thought. This view is supported by reference to Novak's communitarian views (97-218). In the third section, Scherzinger discusses the impact of natural law on the Public Square, drawing on the question of abortion as an example (219-384). Novak's opinion on the matter, to Scherzinger's mind, appears to emerge from rabbinic thought, rather than from a universal moral norm. It is at this point that Scherzinger formulates his most thorough critique of Novak, and it is based on epistemological, ontological, and teleological grounds. The epistemological issue is that there is no independent moral perspective. The ontological issue is Novak's misappropriation of particularistic beliefs as universal truths. The teleological issue is that there are general dos and don'ts rather than normative prohibitions arising from the concept of personhood (324-325). In his final section, Scherzinger contextualizes Novak within the history of American political thought. According to Scherzinger, Novak conflates a secular foundation with a religious one. Scherzinger's argument is that the freedom guaranteed by the founding fathers was not a religious freedom, even if that became the consequence. Following Arkush, Scherzinger also questions the amount of protection available to minorities in Novak's system. Scherzinger concludes by offering a Kantian approach that keeps Novak's ideas on the table by seeing them as socially necessary (385-448). I engage with Scherzinger's work later in this thesis.

⁵³ In the *Rethinking the Covenant* conference, the presentations on this topic included talks by Levering, Feller, Nahme and Goodman. Levering compared his view to that of Novak, and found a number of points in common, including the belief that creation is as great a mystery as election, that the intended human response to both mysteries is to engage in *imitatio Dei*, and that God enters into history and is thus unlike Aristotle's Prime Mover. Levering acknowledged, however, that he and Novak part ways on the notion that God breaks through all barriers through Jesus Christ. As a Jew, Novak cannot accept that Christian viewpoint. Nahme reframed Novak's treatment of rabbinic enactments as "finite rationality," or statements that are not ontological in nature but simply assessing the cognitive basis of moral norms. As previously noted, Feller's presentation pertained to Novak's view of the Holocaust. Yaniv Feller, "The Covenant after Auschwitz: Reflections on Fackenheim and Novak." Following Novak, Goodman challenged Hume's argument that what exists cannot make claims upon us. He developed this line of thought into a discussion of an "inherent worth of being." Novak similarly argues that every 'is' functions within a world of oughts. Novak, CR, 23. See also Novak, JSE, 51-54, where he defends Paul Tillich against William Frankena's Humean critique on the same grounds. Goodman reveals a few other points of contact with Novak in his *God of Abraham*. Like

that what is beneficial in keeping the commandments does not make them rational, or on the grounds that Judaism is a revelation-based theology that does not acknowledge reason as a source of law,⁵⁴ but also on the basis that Novak's natural law theory cannot be reconciled with

Novak, Goodman writes that the rabbis were sensitive to "the moral and spiritual thematics" of the Bible. Lenn Goodman, *The God of Abraham* (New York: Oxford University Press, 1996), 132. Goodman also sees the rabbis as expanding the laws of the Torah (ibid., 229). His most extensive support for Novak in this text can be seen in his critique of Marvin Fox's position, which Goodman formulates when he defends R. Saadya's use of rationality against Fox's charge of inconsistency (ibid., 175-185). Matthew Levering, "Creation and Election: David Novak and Thomas Aquinas." Yaniv Feller, "The Covenant after Auschwitz: Reflections on Fackenheim and Novak." Paul Nahme, "Noahide or Natural Law? Toward a Theory of Normative Agency in a Post-Secular World." Lenn Goodman, "Getting Clear and Getting Real about Natural Law - in Honor of David Novak." Papers presented at *Rethinking the Covenant*. Mark Washofsky takes a more measured approach, saying that if reason alone is what is meant by natural law, the idea becomes compatible with Judaism but the debate becomes far less controversial. A similar view is expressed by Daniel Statman who suggests that much of the debate over natural law in Judaism depends on what is meant by the term. Mark Washofsky, review of David Novak, *Natural Law in Judaism*, *AJS Review* 26.2 (2002): 384-385; Daniel Statman, "Natural Law and Judaism," in *The Jewish Legal Tradition* (New York: Yeshiva University Centre for Jewish Law and Contemporary Civilization), forthcoming.

⁵⁴ José Faur, *Iyunim Be-Mishneh Torah leha-Rambam* (Jerusalem: Mosad Ha-Rav Kook, 1978), 63. J. David Bleich argues that certain prohibitions only lean towards reason, which is why only murder can be seen as a prohibition based on natural law. J. David Bleich, "Judaism and Natural Law," *Jewish Law Annual* 7 (1988): 5-42. In a useful introduction to Novak's natural law theory, Newman assesses the strength of Novak's arguments about the rationality of the law, and shows that other nations have survived without a Noahic code. In his review of *Jewish Social Ethics*, Newman expresses misgivings about Novak's claim that the truths of Judaism are rational: "In contrast to Novak and numerous other philosophers across the centuries, Scripture often seems to assume not only that divine truths are communicated through non-rational means but also that these truths themselves may not be rational. God's election of Israel is portrayed not as a rational choice on God's part but as an expression of God's love. Correspondingly, Israel's acceptance of the covenantal relationship is not, as Novak and other rationalists would have it, that 'the Jews experienced God as good and thus judged it right to respond to his commandments.' Rather, Israel is portrayed as acting out of fear of God's awesome power or, perhaps, out of intense gratitude for God's acts of salvation." Elsewhere Newman argues that Israel's moral norms are grounded in a "communal religious experience," and so framing the law as rational is a misrepresentation. Louis Newman, "Covenantal Responsibility in a Jewish Context," review of David Novak, *Jewish Social Ethics*, *Journal of Religious Ethics* 25.1 (1997): 194-195; Louis Newman, "The Law of Nature and the Nature of the Law," in *Ethical Imperatives, Past and Future Essays in Honor of Wendell S. Dietrich*, eds. Theodore M. Vial and Mark A. Hadley (Providence, RI: Brown Judaic Studies, 2001), 259-277.

the Platonic or Aristotelian view of law.⁵⁵ Some scholars make the same case but from a narrower standpoint, focusing on the work of Maimonides.⁵⁶ The second category of scholarly engagement on natural law is comprised of natural law theorists, mainly Christians, who have slightly different formulations of natural law.⁵⁷ The third category of scholarly engagements with

⁵⁵ The latter argument is made by Martin Yaffe in the context of a discussion of the differences between Novak and Aquinas. Martin Yaffe “Natural Law in Maimonides?” in *St. Thomas Aquinas and the Natural Law Tradition*, eds. John Goyette, Mark S. Latkovic, and Richard S. Myers (Washington: The Catholic University of America Press, 2004), 66-7. Jonathan Jacobs highlights what he sees as the significance of the debate over natural law in Judaism, namely, the existence of natural law in Judaism would prove that Judaism is universal in scope. Jonathan Jacobs, *Law, Reason and Morality in Medieval Jewish Philosophy: Sadia Gaon, Bahya Ibn Pakuda, and Moses Maimonides* (New York: Oxford University Press, 2010), 190. In a chapter of his book as well as in an article on the topic, Jacobs challenges Fox’s viewpoint that social conventions cannot be known through reason. If true, Fox would thereby undermine Novak’s argument for a reason-based universal morality in Judaism. Jacobs argues that Fox is mistaken on this matter: “Common agreement can itself reflect rationality.” *Ibid.*, 192. Nevertheless, Jacobs’ own view is that natural law does not play a substantial role in Jewish thought. *Ibid.*, 221.

⁵⁶ Marvin Fox makes the case that, for Maimonides, authority and not reason is a source of law. Marvin Fox, *Interpreting Maimonides: Methodology, Metaphysics, and Moral Philosophy* (Chicago: University of Chicago Press, 1990), 142. Fox, however, also makes the case more generally that natural law cannot exist within Judaism. Marvin Fox, *Interpreting Maimonides*, 125-126. A similar argument is made by Joseph David. Joseph David, “Maimonides, Nature and Natural Law,” *Journal of Law, Philosophy and Culture* 5.1 (2010): 67-82.

⁵⁷ In his *Biblical Natural Law*, Levering expresses a general agreement with Novak on a number of points. As he puts it, “Jesus himself emphasizes the teleological dimension of Genesis 1–2. In Genesis 1–2 God’s commands and actions do not set up extrinsic norms, but rather indicate, in a theocentric fashion, the intrinsic norms that express the goods constitutive of true human flourishing.” Matthew Levering, *Biblical Natural Law: A Theocentric and Teleological Approach* (New York: Oxford University Press, 2008), 60. Elsewhere, like Novak, Levering argues that natural law is seen within the content of the covenant. Jews and Christians ought to discuss what the life of wisdom does for the sake of the world, but also for the sake of their salvation. Matthew Levering, *Jewish-Christian Dialogue: Engagements with the Theology of David Novak* (London: Continuum, 2010), 132. Levering differs, however, with regard to *imago Dei*, a key part of Novak’s teleological view of natural law. Unlike Novak’s understanding of the image of God as shadow of God or as a capability for relationship with the divine, Levering argues that the *imago Dei* is a reference to human reason. Thomas Aquinas, *Summa Theologica*, 1/2, q100, a.2, in *Basic Writings of Saint Thomas Aquinas*, ed. A. Pegis, vol. 1 (Indianapolis: Hackett, 1945), 939. Levering adds that the *imago Dei* can be distorted, but says that is not sufficient to prove that Novak’s “shadow” approach is better. Matthew Levering, *Jewish-Christian Dialogue: Engagements with the Theology of David Novak* (London: Continuum, 2010), 86-87. There is

Novak's natural law is more specifically aimed at his treatment of the Noahide code.⁵⁸ Scholars who challenge Novak on this front make the case that the specific prohibitions in the code are not borne out in the Bible,⁵⁹ that the rabbis appear to be unfamiliar with natural law ideas, and/or that the laws of the code are particularistic rather than universal.⁶⁰ Generally, scholarly

thus an implicit disagreement between Novak and Levering as to whether sin can distort natural law. Tamar Rudavsky draws on the writings of R. Saadya, Albo, and Maimonides. She shows that a notion of natural law can be seen in medieval Jewish thought, even as she differs with Novak when she contextualizes natural law in Maimonides within what he sees as commandments that benefit the soul rather than the body — the former being nobler — whereas for Novak the natural law is most evident in interpersonal commandments. Tamar Rudavsky, "Natural Law in Judaism: A Reconsideration," in *Reason, Religion, and Natural Law: From Plato to Spinoza*, ed. Jonathan A. Jacobs (New York: Oxford University Press, 2012), 83-105. David VanDrunen acknowledges a similarity between his natural law theory and that of Novak. The only significant difference between VanDrunen's account of natural law and the Jewish interpretation of the Noahide law is that the Noahic covenant obligates everyone even today, whereas Jews believe that they are not directly bound by the Noahide laws. For VanDrunen, Novak "does not ground his natural law in the Noahic covenant." Instead, he treats it as "something distinct from revelation and history." Explaining this point, VanDrunen says that for Novak natural law is bifurcated from revelation, history, community and covenant. VanDrunen also posits that there is a needless contrast in Novak's work between what is covenantal and what is natural. VanDrunen adds, however, that Novak has more appreciation in his later work for the Noahic covenant but that it is still underdeveloped. David VanDrunen, *Divine Covenants and Moral Order: A Biblical Theology of Natural Law* (Grand Rapids, MI: Eerdmans, 2014), 544, 545, fn. 8, 545.

⁵⁸ Michael Broyde argues that since there is no Jewish precedent for enforcing Noahide law upon non-Jews, the agenda of the Jewish community should be shaped by what serves the Jewish people, not the values of society. Michael J. Broyde, "Jewish Law and American Public Policy: A Principled Jewish Law View and Some Practical Jewish Observations," in *Religion as a Public Good*, ed. Alan Mittleman (Lanham, MD: Rowman and Littlefield, 2003), 161-184.

⁵⁹ J. Budziszewski, *Written on the Heart: The Case for Natural Law* (Downers Grove, Illinois: Intervarsity Press, 1997), 183-207.

⁶⁰ Even as he agrees with Novak about the historical setting of the code, Klaus Müller argues that the code is particularistic and sees the code as based on God's will rather than reason. Klaus Müller, *Torah Für die Völker* (Berlin: Institut Kirche und Judentum, 1994), 123, fn. 169, 22, 36, 47, 102-103. Matthias Morgenstern shows that the laws are first and foremost rabbinic and only subsequently derived through exegesis. Matthias Morgenstern, "Eine Talmudische Ethik für die Menschheit: Die Noachidischen Gebote und das Problem eines jüdischen Verständnisses des Naturrechts," in *Sein und Sollen Des Menschen: Zum göttlich-freien Konzept vom Menschen*, eds. Christoph Böttigheimer, Norbert Fischer, Manfred Gerwing (Münster: Aschendorf, 2009), 261-264. For Christine Hayes, the fact that the laws are linked to an authoritative text and that they are prescriptive, in the sense that they prohibit actions such as eating a limb from a live animal,

engagements with Novak's thought have attempted to undermine his identification of the Noahide code with natural law or have been criticisms of the possibility of natural law in Judaism.

To my knowledge, only one scholar, Aaron Mackler, has raised the question of the compatibility of the different terms Novak uses to describe natural law.⁶¹ No scholars have studied the relationship between Novak's earliest account of natural law, which finds natural law only in the prohibition of murder within the Noahide code, and his later account, in which he argues that not only the entire Noahide code but also the reasons for the commandments as well as the rabbinic enactments are expressions of natural law. This thesis undertakes such a study. It may indeed be, as Mackler suggests, that such a study has not yet been undertaken due to the lack of specificity of Novak's natural law theory.

militate against Novak's view. She also points to the fact that the laws are not applicable to Jews and non-Jews in the same way to indicate that the laws are not universal in scope. Hayes further strengthens her case by showing that in a talmudic discussion about the need for the Bible to repeat certain prohibitions, there is an implicit assumption that certain Noahide laws can be overturned by Mosaic law. Hayes also disputes Novak's reading of the midrash, which states that God offered the other nations the Torah, but they rejected it on the grounds that the Torah included laws that they do not keep, suggesting that the Noahide laws are the necessary condition for the reception of the Torah. For Hayes the midrash is actually a reflection of the Noahide laws' status as positive laws, in that they can be promulgated and even revoked. Moreover, she argues that the tale makes an inherent distinction between the Israelites and the other nations, inasmuch as the other nations are presented as not only not bound by – but not capable of – keeping those laws. According to Hayes, even the rabbinic discussion praising the rational commandments cannot be brought as evidence, since those rational laws are typically juxtaposed with the irrational laws. Thus, the laws are being depicted as the “arbitrary decree of a sovereign divine will.” Christine Hayes, *What's Divine about Divine Law?* (New Jersey: Princeton University Press, 2015), 335, 366-369, 248-249. In some regards, Hayes follows the work of Devora Steinmetz, who sees the rabbis as putting forth differing accounts of Noahide law, only some of which are consistent with natural law. Devora Steinmetz, *Punishment and Freedom: The Rabbinic Construction of Criminal Law* (Philadelphia: University of Pennsylvania Press, 2008), 20-39.

⁶¹ Aaron Mackler raises the question very briefly. Mackler, review of David Novak, *Natural Law in Judaism*, *Religious Studies Review* 27.2 (2001): 121-126. I should mention that one other scholar, Professor Harry Fox of the University of Toronto is currently writing an article on this question. His work is not yet available at this time.

That is to say, an assessment of Novak's understanding of natural law throughout all of his writing pertaining to the topic cannot be given under the assumption that the changes in Novak's terminology preclude any meaningful comparisons between his earlier and later terms. As a result of that assumption, scholars have overlooked key terms and ideas that Novak consistently employs in his earlier and later accounts of natural law. Specifically, they miss the importance of the language Novak uses to describe rationality. As I will show, the significance of rationality to his earlier account can be seen from the fact that the Noahide law is taken to be knowable by human beings, while the significance to his later account can be seen both from the fact that reasoning about the commandments assumes their purpose is rationally attainable and from the fact that rabbinic decrees presuppose a rational capability to construct them as well as a rational audience to whom they are presented. By not focusing on Novak's understanding of rationality, scholars have tended to miss the significance of the development of Novak's natural law theory. In particular, they have missed the equivalence, for Novak, of the rationality of the Noahide laws, the rationality of the so-called non-rational commandments, and the rational basis of the rabbinic enactments. On a deeper level, they have not seen the tension between, on the one hand, Novak's understanding of laws for which human beings can only be held responsible if they are rationally attainable and, on the other, his understanding of a divine covenant that can be described as rational if what is meant by rationality is human acceptance. And by missing this tension, they miss the opportunity to identify the areas in which Novak gives new meaning to the categories of rationality.

In the first chapter I analyze Novak's discussion of rationality, particularly by reference to his distinctions between internal and external relations and between inherently rational and widely known ideas, and relate the change in his view to his broader natural law theory. This

study yields two accounts of natural law, one based on reason and the other based on the relationship between the human and the divine.

In the second chapter, I assess and critique the methods used by Novak to reconcile his first and second accounts of natural law. These include an added normative component, an added metaphysical background, a mediating concept of personhood, a phenomenological retrieval of norms, and minimal and maximal claims. The main upshot of this chapter is that scholars should take both of Novak's accounts of natural law into consideration.

In the third and final chapter, I analyze Novak's account of redemption over the course of his writings. Through this study, I show that there are parallels between his natural law theory and his view of redemption, which I build upon to challenge the view of Jody Elizabeth Myers that natural law theorists are by definition active messianists.⁶² I also assess the role of redemption on Jewish-Christian dialogue. Finally, I challenge the view that suggests that Novak's natural law theory becomes more political later in his thought and I respond to the claim that Novak's natural law is incompatible with his covenantal thought.

⁶² Myers claims that a robust account of natural law is incompatible with a passive messianism. Jody Elizabeth Myers, "The Messianic Idea and Zionist Ideologies," in *Jews and Messianism in the Modern Era: Metaphor and Meaning*, ed. Jonathan Frankel (New York: Oxford University Press, 2013), 3-13.

Chapter 1 Identifying Novak's Two Accounts of Natural Law

1. *Introduction*

Novak does not often explicitly define what he means by the word rational.⁶³ In broad strokes, however, he tends to associate rationality, at least as it pertains to human beings, with what he calls an “internal relation” rather than an external relation, meaning that what is rational concerns the “relation between mind and body” rather than “one’s status in society.”⁶⁴ In other words, rational ideas must relate to human thought rather than social interaction.⁶⁵ Given that my thesis argues that the meaning Novak assigns to rationality changes over the course of his writings, a change that ultimately broadens the scope of his natural law theory, it is imperative to develop a clear understanding of what constitutes rationality throughout Novak’s earlier and later accounts of natural law. In this chapter, I will consider Novak’s various discussions of the internal and external aspects of rationality in his writings on natural law to identify the ways in which rationality becomes increasingly dependent on, affected by, or understood by reference to, external considerations.

As he develops his natural law theory, Novak increasingly emphasizes the importance of “cultural heritage” and makes objections to defining human beings by their rationality. These trends in Novak’s thought seem to indicate that, as he gives prominence to “external relations,”

⁶³ In Novak, IONJ, 32, he equates rationality and universality, since they both apply to human beings.

⁶⁴ Novak, HITD, 99; Novak, LAT, 2nd Series, 109.

⁶⁵ For Novak, that is a category associated with human freedom. Novak, HITD, 98-99.

he minimizes the significance of internal ones. At the same time, a tension between the need for a community, on the one hand, and the discoverability of the law, on the other, emerges from Novak's usage of *ratio per se*, that which is inherently reasonable, and *ratio quod nos*, that which is widely known. It would seem evident that something that has an inherently rational explanation (*ratio per se*) can be discovered on one's own; and it would similarly seem reasonable to assume that such an explanation should be widely accepted (*ratio quod nos*). However, Novak writes that human beings must also belong to a community that transmits rational explanations:

Man is not only a rational being but a historical being as well. Therefore, his cultural heritage informs him about his moral obligations.⁶⁶

Novak is suggesting that there are explanations which are only provided by one's cultural heritage. The implication is that such knowledge is not widely known. Otherwise, any social network would be sufficient. That interpretation can be further supported from Novak's reference to the advantage of Christian communities, who regard the Bible as divinely revealed.⁶⁷ That is to say he is referring to knowledge that is based on revelation. It follows that the human grasp of inherently rational ideas is dependent in part on one's heritage. A related issue is the question of whether Jews are expected to promulgate the Noahide laws. If the laws, which Novak later describes as *ratio per se* and *ratio quod nos*,⁶⁸ are completely discoverable through reason, as opposed to either not being fully attainable, or not being attainable at all, that should obviate the need to promulgate them. It would also be reasonable to assume that the rational explanations for the norms should be knowable independently of any external factors,

⁶⁶ Novak, LAT, 116.

⁶⁷ Ibid.

⁶⁸ Novak, IONJ, 172.

particularly those that are not readily available to individuals that are outside a covenantal community.

Similarly, with regard to the Mosaic law: if the explanations for the interpersonal commandments, which Novak defines as rational, do not depend on external considerations, they would not have to be provided by Moses. It would follow that Moses' understanding is equal to everyone else's. However, the supremacy of Moses' prophecy is traditionally viewed as foundational;⁶⁹ and Novak implies that Moses' understanding of the law was superior to that of the Israelites, suggesting that even the rational laws are based on external considerations that are not generally accessible.⁷⁰ Understanding the changing balance between what is known versus what needs to be transmitted, and the unstable relationship between what is widely recognized versus what is known only by the enlightened,⁷¹ helps us delimit the meaning Novak gives to rationality. These discussions are located in *Law and Theology in Judaism*, within a halakhic treatment of the question of how the Noahide law is known and enforced, as well as in "Natural Law and Normative Judaism" and "The Commandments: Divine Will or Divine Wisdom." In the former article, Novak touches on the esoteric component of the Torah; in the latter article, he discusses the possibility of a deepening appreciation of the reasoning behind the Torah's laws.

This thesis will also gain insight into Novak's use of rationality by considering his comparison of the Noahide and Mosaic laws. Novak originally identifies only one of the Noahide commandments, namely, the prohibition of murder, as a natural law. The obvious explanation for that prohibition, which is that "human life is structured towards its own self-

⁶⁹ *The Koren Siddur*, ed. Jonathan Sacks (Jerusalem: Koren, 2009), 203.

⁷⁰ Novak, "Natural Law and Normative Judaism," *Vera Lex* 6.2 (1986): 3; Novak, "Can We Be Maimonideans Today?" in *Maimonides and his Heritage*, eds. Idit Dobbs-Weinstein, Lenn E. Goodman, and James Allen Grady (Albany: SUNY Press, 2009), 202.

⁷¹ Novak, "The Commandments: Divine Will or Divine Wisdom," *Hawaii Jewish News*, Special Supplement, November 1987, 4.

preservation and enhancement,”⁷² is helpful in identifying what Novak means by “rationally discernable” in that regard.⁷³ He means that it is immediately evident that murder brings an untimely end to human life, which under normal circumstances would continue. As Novak begins to include the rest of the commandments in his natural law theory, however, it becomes more difficult to determine what he means by the rationality of the commandments. The ground for the prohibition of eating a limb from a live animal does not seem as immediately self-evident as the command against the shedding of human blood. Novak further compounds the problem when he includes the reasons for the commandments and the rabbinic enactments in his natural law theory. The former also consists of non-rational commandments and the latter are described by Novak as grounded by the *imago Dei*, a concept which is not widely known, and are often intended to protect Torah law, which means that they do not serve any apparent human end. A proper grasp of how the term rational can encompass all these elements of Novak’s later account of natural law will provide a clearer understanding of the changes in his theory.

Moreover, the fact that Novak engages in a comparison of the Noahide and Mosaic laws sheds light on his theory, for it suggests that he considers rationality a continuum or a spectrum; and an analysis of that comparison will indicate what factors, in Novak’s view, suggest greater or lesser degrees of rationality. A similar suggestion emerges from Novak’s later discussion of minimal and maximal claims.⁷⁴ The existence of the two categories of claims is an indication that there are two levels on which the norms can be perceived, a basic one and a more informed one. Even if we presently do not have a clear picture of what minimal and maximal claims would look like, we can recognize that Novak’s argument is based on the assumption that there are

⁷² Novak, LAT, 119.

⁷³ Ibid., 115.

⁷⁴ See for example Novak, TWC, 36.

different levels of understanding, suggesting that more rationally obvious norms are more likely to be widely appreciated than less obvious ones. This discussion is mainly found in *Image of the Non-Jew in Judaism*, in which Novak considers the rationality of the Mosaic law, but also in “Natural Law and Normative Judaism,” where Novak discusses the non-rational commandments.

Finally, this chapter will also look at Novak’s objections to defining human beings solely by their rational abilities.⁷⁵ According to Novak, the statement in the Talmud that the Torah is written in the language of human beings is the rabbinic way of expressing the natural law notion that the Torah addresses its listeners as people who are already communal by nature.⁷⁶ By extension, the Torah must be written in a way that is compatible with its definition of human beings. But if human beings cannot be described strictly by reference to their rationality, then there are two possibilities. Either the rationality upon which the Torah’s laws governing what Novak calls “interhuman relations”⁷⁷ are based is insufficient, or the Torah includes laws that cannot properly be called rational. The definition of human beings implied by this discussion would also have an impact on the way Novak later writes about the Noahide law, because if the manner in which Noahide law is addressed to human beings is a reflection of their “created human nature,”⁷⁸ and that nature cannot be defined solely by reason, then the basis for the Noahide law would have to be something more than rationality, narrowly understood. Thus, an appreciation of the way Novak defines human beings sheds light on what he means by rationality both in regard to the Noahide commandments and the Mosaic law. The relevant discussion can

⁷⁵ Already in *Suicide and Morality*, Novak speaks about the limits of rationality. Novak, SAM, 126.

⁷⁶ Novak, NLIJ, 246, fn. 69.

⁷⁷ Novak, “Judaism and Natural Law,” *American Journal of Jurisprudence* 43 (1998): 121, 127.

⁷⁸ Novak, *Trialogue*, 7.

be found in *Law and Theology in Judaism*, 2nd Series, in which Novak treats the understandings of human nature implicit in various positions on euthanasia.

2. *A Chronology of Novak's Natural Law Theory*

2.1. *Law and Theology in Judaism*

Novak's first sustained treatment of natural law in Judaism is found in the first of two books belonging to his *Law and Theology in Judaism* series.⁷⁹ It is in these texts that he introduces two distinctions in rationality, an epistemological one between ideas that are known in themselves and those that are widely accepted,⁸⁰ and a taxonomic one between ideas that are related to the relationship between mind and body and those that pertain to one's status in society.⁸¹ According to Novak, only the former category is considered to be rational, as it pertains to human beings. The first distinction can be found in his treatment of abortion in Jewish law.⁸² Novak discusses the issue in the context of the Noahide code, the rabbinic legal framework which includes the prohibition of murder, theft, adultery, and the like, and is seen as binding on

⁷⁹ These were written in 1974 and 1976 respectively. Both books of the series contain essays similar in structure to halakhic responsa. In Novak's own words, the essays demonstrate that "Halakhah (law) and Agaddah (theology) are not only indispensable elements of Judaism in and of themselves, but that their interrelationship is equally important." Novak, LAT, xiv. In the second book in the series, Novak describes its objective as showing "how the Halakhah reacted to various nonhalakhic factors: religious, psychological, cultural, political and economic." Novak, LAT, 2nd Series, xv.

⁸⁰ Novak, LAT, 115, 116.

⁸¹ Novak, LAT, 2nd Series, 109.

⁸² Novak, LAT, 114-124. Emphasis mine.

all descendants of Noah, including the Israelites before Sinai and non-Jews even after Sinai.

Novak argues that abortion is included in the prohibition of murder:

While later medieval theologians debated the scope of reason in relation to revelation, virtually all of them agreed with [R.] Saadya [Gaon] that violence (*hamas*) and bloodshed (*shefikhat damim*) are *rationaly discernable* as prohibitions for all human beings. Even such ‘nonrationalists’[*sic*] as R. Judah Halevi and Nahmanides are included. Therefore, the question before us is whether or not abortion is bloodshed. Since there is virtual unanimity that reason is the source of the prohibition of bloodshed, we can conclude that the prohibition of bloodshed for Noahides is not only *jus gentium* – that is, valid by universal consensus – but also *jus naturalis*– that is, a norm that is valid because it is evidently rational (*ratio per se*). Since, as we will see below, normative Judaism considers abortion for Noahides within the context of bloodshed, abortion is a question which, Jewishly speaking, is within the proper range of human reason.⁸³

Two points emerge from this excerpt, both relating to the rational discernability of the prohibition.⁸⁴ The first point is that natural law is located in the Noahide code on the basis of its immediately evident rationality. An obvious proof for this assertion is that none of the other commandments included in the code are associated with natural law at this point; Novak makes

⁸³ Ibid., 115. Cf. Novak, “Reply to Critics of ‘Exclusionary Rule’ with Judge Herbert A. Posner,” *New York Law Journal* 188.81 (1982): 2. In that article, which pertains to the insights that the Noahide law can offer to the American legal system, Novak calls the code the “law of nations” (*jus gentium*) rather than “natural law” (*jus naturalis*). Novak does not maintain that position elsewhere.

⁸⁴ By highlighting Novak’s emphasis on rationality, this study counters the approach of Martin Kavka and Randi Rashkover, who posit that Novak develops an account of human personhood when he introduces natural law: “Novak’s account of natural law, when it first appeared in the 1970s, emerged out of his inquiry into rabbinic anthropology as it derives from the dynamic exchange between halakhah and extra-legal accounts of the human person. In an essay from this period, ‘Noahide Law: A Foundation for Jewish Philosophy,’ Novak points to the rabbinic category of the ben Noah, or the Noahide, the non-Jew who according to the biblical story of the flood is by definition a son of Noah, as the category by which the tradition develops an account of personhood in general.” Randi Rashkover and Martin Kavka, “Introduction,” in *TIPS*, xxv. This excerpt has shown, however, that Novak’s earliest description of natural law is associated with inherent and universal rationality. No mention is made of personhood, and more importantly there is no reference to the *imago Dei*, which is at the heart of Novak’s concept of personhood. Therefore, Kavka and Rashkover’s characterization of Novak’s thought in the 70s as an inquiry into the anthropological view of human beings in rabbinic thought is premature.

that connection only with the most rational of the Noahide commandments.⁸⁵ The second point is that subsets of rationally discernable law belong in the realm of reason and could be ruled upon halakhically. Thus, by associating abortion with murder, Novak justifies his application of deductive reasoning to arrive at normative applications.⁸⁶ If those points bring out the significance of rationality for Novak's early treatment of natural law, the epistemological distinction that he introduces here reveals a certain ambiguity in his understanding of the term. It is a distinction between the terms *ratio per se* and *ratio quod nos*. The former is defined by Novak as an idea that is known only by reference to itself; the latter is explained as an idea that is widely accepted.⁸⁷ A useful example of *ratio per se* can be seen when Novak describes the reason for the commandment against murder:

Recognizing the essentially rational nature of the prohibition of bloodshed is the moral meaning of the general truth that human life is structured towards its own self preservation and enhancement.⁸⁸

What makes this explanation rational in itself is that it does not depend on the benefits of not committing murder, which would make the explanation understandable by reference to an external factor. The appeal is to the law's inherent rationality – namely, it denies life, which is itself intended to continue. On occasion, however, it is difficult to determine to which of the two categories he is referring:

If the prohibition of bloodshed is rationally evident to all (*ratio quod nos*), a fact emphasized as early as Saadia and as late as Hermann Cohen, including virtually all the

⁸⁵ The other norms, which do not have self evident explanations, are identified with *jus gentium*, which Novak later associates with convention. Novak, LAT, 127. At this point in Novak's thought, however, it is not clear how the other prohibitions are known.

⁸⁶ The reasoning process often needs to be preceded by what Novak calls "selective prioritization." Novak, HITD, 1-10.

⁸⁷ In this text, Novak refers to both categories. Novak, LAT, 115, 116.

⁸⁸ Ibid., 115. Cf. Novak, JSE, 154, fn. 30, in which Novak notes that for Aquinas, *inclinatio naturalis* is "the weakest moral ground," that must be combined "with grounds theologically and metaphysically constituted."

rationalists and nonrationalists [*sic*] in between, then is it possible to permit wanton bloodshed of any kind and still affirm the irreducible dignity of human life?⁸⁹

It is not entirely clear what Novak means here. Is it the fact that the prohibition is “rationally evident to all,” or is it the “dignity of human life,” that prevents us *in actu* from engaging in bloodshed? Stated differently, there appears to be some ambiguity about the source of the commandment’s universality. The same ambiguity can be seen in Novak’s explanation for the connection between the prohibition of murder and the notion of equality:

Maimonides, too, in another text, emphasizes the fact that our principle of the equality of human life is one of natural reasoning, something universally common.

‘It is a matter of rational inclination [*dabar shehadaat noteh lo*] not to destroy one life for another.’⁹⁰

Now, rational inclination is the very term Maimonides uses elsewhere in referring to the seven Noahide commandments, which for him are the Torah *in potentia*.⁹¹

In using the term “natural reasoning,” does Novak mean that everyone is aware of the prohibition, or does he mean that everyone knows the value of human life, which is why no one would replace one life for another? The difficulty in making that determination serves as an early indication that the distinction between what is knowable in itself and what is widely accepted does not always hold up.

The same can be said of the second distinction used by Novak in the second book of the series. The distinction is introduced in a discussion about euthanasia. According to Novak, the different views on assisted dying reflect a tension between the Hellenic and Hebraic views of man.⁹² The former reduces human beings to their rational component, whereas the Hebraic view defines mankind by its relationship with God. According to Novak, the former definition is

⁸⁹ Ibid., 116.

⁹⁰ Maimonides, *Mishneh Torah: The Foundations of Torah*, 5:7.

⁹¹ Novak, LAT, 133.

⁹² Novak, LAT, 2nd Series, 108ff.

insufficient, as a rational account of human beings does not account for mankind's other facets.

In making this argument, Novak makes a distinction between internal and external relations.

Relations are of two kinds: external and internal. For example, to say, 'man is a rational animal' is a definition based on an internal relation. Man has both rational and nonrational [*sic*] components, mind and body. To define him as rational, then, implies that the rational component *within* him is predominant and the nonrational [*sic*] is subordinate.⁹³

Novak suggests that what is rational about human beings accounts solely for their internal component. To capture the complexity of human beings, who are by their nature political, one must account for their external relations as well.⁹⁴ Along these lines, Novak's argument against euthanasia is based on what he sees as a "different definition of human nature,"⁹⁵ namely, a "transcendent definition of man."⁹⁶ Even as he undermines the importance of the distinction by suggesting that "internal relations" do not account for the totality of human experience, it is clear that the line Novak draws between what is, and what is not, rational bears a similarity to the earlier distinction. In this distinction as well, something that relates to society, which therefore corresponds to what is widely known, has no impact on the "relation between mind and body," which corresponds to that which is discoverable by the mind, that is to say something rational in itself.⁹⁷

Even without that parallel, however, it seems to follow from both distinctions that one's community is at best unnecessary for the transmission of "rational" ideas. This inference can be shown in the following way. Inherent to the epistemological distinction is the notion that only that which is discoverable on its own, i.e. without reference to any other concept, is rational in

⁹³ Ibid., 109.

⁹⁴ Ibid.

⁹⁵ Ibid., 114.

⁹⁶ According to Novak, man is thereby defined, "in terms of his whole presence before God."
Ibid.

⁹⁷ Ibid.

itself. As a result, one's community is unnecessary for the transmission of inherently rational ideas; those can be discovered independently. The implication of the second distinction goes even further. Based on the difference between internal and external relations, ideas that one learns through one's experience in society cannot properly be called rational; rational ideas must be discovered on one's own. The problem with this implication is that it conflicts with Novak's emphasis in this text on cultural heritage. We can see that emphasis in a statement I cited earlier. I cite it in its larger context now:

Man is not only a rational being but a historical being as well. Therefore, his cultural heritage informs him about his moral obligations, for law, which has been historically preserved, carries the assumption of its rationality unless proven otherwise. Our sages had great respect for those cultures which they believed were morally constituted, and, conversely, great contempt for those who were not.⁹⁸

Novak implies that a law – presumably even one that relates to human interaction, since the discussion relates to the prohibition of bloodshed – can be described as rational, provided it is transmitted through a historical tradition. Indeed, the fact that the law has been transmitted and accepted lends it a status of rationality. Returning to Novak's taxonomic distinction, we can say that he must identify rationality with "external" considerations as well, inasmuch as the rationality to which he refers is determined by the historical acceptance of the law.⁹⁹

⁹⁸ Ibid., 116. Novak's reference to "cultural heritage" is of a piece with his broader emphasis on community. For example, Novak offers a treatment of the often quoted midrash that God offered the Torah to the other nations of the world before he offered it to the Israelites, but that the other nations refused it out of their distaste for the laws that God chose to enumerate as examples of what the Torah contains: "In other words, the acceptance of the Torah by the Jewish people was conditioned by their prior acceptance of the universal Noahide law, such as the prohibition against murder, adultery, and theft. What was unconditional was the acceptance of the new form of lawfulness: after revelation morality is now personal obedience to God, that is, mitzvah." Novak, LAT, 26. By speaking about the Jewish people as a whole, Novak implies that morality before Sinai, which is the precondition of the reception of the Torah, is dependent on a communal, rather than individual, acceptance of the code.

⁹⁹ It remains unclear at this point whether the idea of human dignity is available to human reason even without a "cultural heritage." I return to that question later.

The same idea can be seen from Novak's argumentation. Specifically, even in discussions that relate to the prohibitions of the Noahide code, which Novak takes to be rational, his reasoning is based on knowledge that is learned through one's community.¹⁰⁰ To prove this point, let us take a close look at the way Novak prefaces one of his responses. He begins his remarks by trying to identify the ground of the Noahide code:

I think the times require of Jewish theology that it determine whether the seven commandments are essentially grounded in man's reason, or in universal consent, or in the direct revelation of God's will. Surely such determination will throw deeper light on how Judaism views moral judgement.¹⁰¹

Earlier on the same page, Novak writes that there are three possible ways to classify Noahide law, namely, *jus naturale*, *jus gentium*, and *jus divinum*. Those three possibilities seem to correspond to the three options for the ground of the seven commandments. "Man's reason" corresponds to *jus naturale*, "universal consent" corresponds to *jus gentium*, and "direct revelation of God's will" corresponds to *jus divinum*.¹⁰² The distinction between the first two possibilities is that the first type of ground pertains to matters decided by human conscience, while the second type of ground relates to decisions made by reference to their impact on society.¹⁰³ Those two possible grounds are respectively consistent with *ratio per se* and *ratio quod nos*, inasmuch as that which is based on human reason corresponds with what is inherently rational, and what relates to universal consent corresponds to what is widely accepted.¹⁰⁴

¹⁰⁰ That is to say the basis for the ruling is not an inherently rational idea but is rather something learned through the Jewish tradition.

¹⁰¹ Ibid., 127.

¹⁰² Ibid.

¹⁰³ Novak does not entertain the possibility that these are known through revelation. It should be noted, however, that Novak later refers to the Noahide code as "indirect revelation." Novak, IONJ, 24.

¹⁰⁴ More evidence for the fact that natural law is grounded by inherent rationality can be brought from Novak's earlier statement that only what is "evidently rational" can be identified with *jus naturalis*. Novak, LAT, 115.

Novak then proves that the Noahide laws are based on human reason, a point he demonstrates by citing a source which states that the law of the land is considered valid law for Jews (*dina de-malkhuta dina*),¹⁰⁵ adding that Rashi understands the statement to mean that non-Jews are commanded to practice justice. Whereas the former talmudic statement could only be referring to consensus, inasmuch as what the government decides does not seem to be bound by any other “standard of judgement to determine whether these laws are right or wrong,”¹⁰⁶ Rashi’s statement implies that the “state’s right to rule is directed to the conscience of man.”¹⁰⁷ According to Novak, it follows from Rashi’s statement that Jews should weigh the merits of a state’s policies on “standards intrinsic to Judaism,”¹⁰⁸ by which he means conscience. Although it is implied that these possible grounds are not mutually exclusive, insofar as something can be beneficial for society and inherently rational as well, the bridge upon which Novak forms the moral connection, and consequently the ground of the commandments, is moral reason. As we have seen, moral reason is associated with what is *ratio per se*, inasmuch as that term is synonymous with the norms of natural law that are grounded in “man’s reason.”¹⁰⁹

However, in his responsum on abortion, Novak’s argument is based on the law of the *rodef* – the pursuer, according to which one who poses an unprovoked, immediate, and direct threat to the life of another can be killed even extra-judiciously.¹¹⁰ To the extent that he is making an argument about the life of the mother by reference to obscure laws pertaining to one specific facet of Jewish law, Novak’s reasoning is based on a concept that is transmitted through

¹⁰⁵ b. Batra, 54b; Novak, LAT, 129.

¹⁰⁶ Ibid., 129.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid., 130.

¹⁰⁹ It is worth noting that, at this point, Novak finds this answer to be satisfactory. A few years later, the ground of natural law changes in Novak’s thought. Novak, HITD, 94ff. I take up that issue later.

¹¹⁰ Novak, LAT, 117-124.

one's community. The same type of reasoning can be found in the way Novak formulates a ruling on the Vietnam War.¹¹¹ Not unlike Novak's earlier discussion of abortion, this ruling is also based on the biblical law of the pursuer. Novak argues that because it is not clear that the Viet Cong has the status of a pursuer, the Vietnam War is unjustified, and a "religiously committed Jew" should voice concern and oppose the government's policy.¹¹² Both arguments are based not on an idea at which one can arrive through contemplation but on a branch of legal thought known through the Jewish tradition. Thus, from Novak's argumentation, we can see that even matters that pertain to internal relations are not easily separated from external ones.¹¹³

Before moving on to Novak's next major text, I also want to note that Novak's "transcendent definition" of human beings is not captured by either set of distinctions, at least as he originally presents them. That is to say that which is internal cannot capture man's presence before God, which is by definition external, to say nothing of the fact that one's status in society does not incorporate that definition. Similarly, that which is rational in itself (*ratio per se*) does

¹¹¹ A similar point can be made by reference to Novak's epistemological distinction. Even the first step Novak takes before formulating his ruling indicates that the ground of the Noahide code has an inherently rational ground. Specifically, Novak first locates "a moral connection between the individual Jew and the non-Jewish (not anti-Jewish) society." Novak, LAT, 127. The purpose of this step is to make sure that any statement about morality made by Jews reflects more than an apparent similarity which is "rooted in a subjective bias." Ibid. The implication is that if the code were based on consensus, there would be no moral connection between the two parties. Since a consensus need not be based on judgements of right and wrong, there can be no "inference" from Jewish law. Ibid., 129. That statement is true not only because there would be no standards to judge the morality of those decisions, but also because it would inherently depend on the opinion of the society in question rather than on any other factors. Accordingly, a connection can only be established if the basis for the code is reason, or more accurately, moral reason. It is also relatively clear that Novak is not at this point presenting any account of human personhood or philosophical anthropology. To my knowledge, that only occurs after 1992. Novak, JCD, 141.

¹¹² Ibid., 134-135. In this context, it is also interesting to note that Novak does not return to the third possibility for the ground of the Noahide code, namely, the "direct revelation of God's will." Ibid., 127. Novak appears to reject that possibility, since he later identifies Noahide law with a "natural morality." Novak, LAT, 2nd Series, 77.

¹¹³ The question becomes even more pressing in light of Novak's emphasis on community later in his writings. Novak, JSC, 12-21; Novak, IDRL, 51-52.

not capture the transcendent definition, which is by its essence external to that description, and that which is widely known (*ratio quod nos*) cannot capture that definition either, because the human relationship with God is not widely communicable. Anticipating Novak's subsequent steps, he either has to move towards a new model for rationality, one which is more inclusive and represents external relations as well, or, if natural law is to account for human interaction, his theory would have to become a composite of what is accessed rationally, combined with that which is known solely through other sources of knowledge.¹¹⁴

2.2. *The Image of the Non-Jew in Judaism*

In Novak's next major work, written in 1983, he begins to situate natural law, which he originally locates in the Noahide code, within Judaism. More specifically, he forms a conceptual link between the rational commandments of the Noahide code and the rational commandments of the Torah. In so doing, Novak offers more insight into what he means by *ratio per se* and raises the possibility that the adherence to the Noahide laws can be based on more than one level of understanding. The purpose of the book is to answer two questions he poses earlier in his writings, namely, why the doctrine of the Noahide commandments was formulated and what function is served by those laws.¹¹⁵ Responding to the first question, Novak begins with a historical survey of the formulation of the code, arguing that it is an Amoraic idea, made at the

¹¹⁴ It should be noted, however, that at this point Novak does not yet directly link his statement to natural law. I return to this point when I treat Novak's *Halakhah in a Theological Dimension*.

¹¹⁵ Novak, "The Origin of the Noahide Laws," in *Perspectives on Jews and Judaism: Essays in Honor of Wolfe Kelman*, ed. Arthur Abraham Chiel (New York: Rabbinical Assembly, 1978), 310. Even the question itself is revealing. It indicates that the rabbis were formulating specific laws for a fairly specific political purpose, rather than simply articulating basic claims that human beings have upon one another. Novak only frames the laws in those terms later in his writings. See for instance Novak, SHL, 7.

time when “minimal, indispensable laws for Jews” were specified.¹¹⁶ This perspective challenges a number of scholarly theories, including the view that the Noahide law was developed at the time of the Bible; that the laws are based on Hittite law; that they were formulated at the time of the Maccabees; or that they were created for the “fearers of the lord,” a group of quasi-Jews.¹¹⁷ Novak also suggests that the creation of those indispensable laws followed the institution of the *ger toshav*, that is, the sojourner who has the status of a resident, provided he or she adheres to the minimal legal standards. The formulation of this idea led to philosophical reflection about the minimal conditions for Jews, namely, the laws of idolatry, murder, and adultery, for any of which one is supposed to give his or her life rather than transgress. That is to say the Noahide code was formulated at the same time as these three laws.¹¹⁸ According to Novak, the defining feature of the laws at the intersection of the regulations for the *ger toshav* and the minimal conditions for Jews is the following:

¹¹⁶ Novak, IONJ, 31.

¹¹⁷ Ibid., 11-35.

¹¹⁸ Ibid., 31.

It should be noted that this view of the code is in tension with Novak’s responses to the questions that served as the catalyst for this text, namely, the purpose and function of the laws. Novak, “The Origin of the Noahide Laws,” in *Perspectives on Jews and Judaism: Essays in Honor of Wolfe Kelman*, ed. Arthur Abraham Chiel (New York: Rabbinical Assembly, 1978), 310. In his earlier account, Novak draws upon the code to establish a broad halakhic precedent against murder, enabling him to adduce further laws pertaining to abortion, bioethics, and suicide. The historical background offered by Novak in the beginning of his *Image of the Non-Jew* reveals that the Noahide code had an entirely different purpose. According to Novak, the rabbinic construct was the way in which the rabbis normalized relations with non-Jews. Novak, IONJ, 31. While those views do not appear to contradict each other on the surface, that is not the case upon closer review. In the earlier presentations, the norms are seen as binding because of their rationality. In that case, they are not formulated as much as they are expressed. But, when Novak explains why the rabbis formulated the laws, namely, to have a jurisprudential concept that enables them to interact with non-Jews, he implies thereby that the rabbis created the system *de novo*. Stated differently, the later formulation implies that the rabbis created the laws for a practical purpose, that is, in order to have a common legal framework with non-Jews. Therefore, these two formulations are not easily reconciled with one another.

The choice of these three commandments as obligatory appears to be based on the notion that they are *ratio per se*, that is, their prohibition is immediately evident and not the result solely of divine fiat, unlike the majority of the 613 commandments.¹¹⁹

The emphasis is placed on the fact that one can arrive at these laws on one's own. For the same reason, there is no need to warn those about to transgress one of the Noahide laws about the consequences of doing so, since the laws are taken to be knowable rationally.¹²⁰ More evidence for the significance of the Noahide code's discoverability can be seen in the tension between the specificity and generality of Novak's description of its commandments. In a contemporaneous piece on the Noahide laws, Novak writes as follows:

The understanding of the Noahide is *fundamentally legal* before it is theological, and certainly before it is historical or sociological. Therefore, Jewish philosophy begins at the boundary of Judaism with a fundamentally legal datum.¹²¹

In other words, the elements encompassed by the laws are fairly specific legal doctrines.¹²² Thus, the commandment against murder includes abortion because the latter is an act which inhibits the "self-preservation" and "enhancement" of life, and thus bears the hallmarks of the general prohibition.¹²³ Along these lines is Novak's question of why the commandment to honour one's parents is not included in the Noahide laws.¹²⁴ The question indicates that Novak views the laws in specific terms. It is difficult to imagine that the Noahides would be expected to honour their

¹¹⁹ Ibid., 31.

¹²⁰ Novak gets this idea from Elijah Benamozegh, *Israel and Humanity*, ed. and trans. Maxwell Luria (New York: Paulist Press, 1995), 260ff. See also Novak, IONJ, 105. Other differences, such as the variation in punishment for Jews and non-Jews, are seen by Novak as a reflection of the conditions of the period in which the laws were formulated. Ibid., 32.

¹²¹ Novak, "Noahide Law: a Foundation for Jewish Philosophy," TIPS, 122. Emphasis mine.

¹²² Novak calls them "specific laws." Novak, LAT, 115.

¹²³ Ibid.

¹²⁴ Novak, LAT, 2nd Series, 76. Novak explains its omission based on the fact that the laws are generally negative commandments and the fact that it would constitute a complete morality, which would obviate the need for a fuller morality. Ibid, 77.

parents under some broad directive. Having said that, the specificity implied in the aforementioned description of the code is in tension with the generality of this representation:

The concept of the seven Noahide laws appears to be a theological-juridical theory rather than a functioning body of laws administered by Jews for gentiles actually living under their authority at any time in history.¹²⁵

This broader perspective can be shown to relate to the way in which the norms of the Noahide code are discovered, namely, through rational consideration. The conceptual connection lies in the fact that, in using their own reason to arrive at norms, human beings are more likely to discover broad directives than specific laws. Here, Novak makes the connection between generality and rational attainability explicit:

This greater generality of Noahide law makes it more rational because general categories are more evidently intelligible than specific norms, which inevitably involve historically contingent factors.¹²⁶

Thus, the rational attainability of the laws is directly related to the fact that they are general in nature.¹²⁷ Together with an emphasis on rational attainability, the meaning Novak assigns to rationality, and the significance it holds for him, differs from what we have seen earlier. In line with Novak's original presentation of the Noahide code, Novak explicitly states here as well that the Noahide laws are rational both in themselves and widely. The difference in this text,

¹²⁵ Novak, IONJ, 35. It should be noted, however, that the case for the recognition of gentile normativity by Jewish authority would be stronger if the Noahide code could be presented as a specific set of laws not unlike the Torah. In other words, the idea that non-Jews have specific laws meeting predetermined criteria, just as the Jewish law does, would bolster the argument that non-Jewish jurisprudence is recognized by the Jewish legal tradition.

¹²⁶ Novak, IONJ, 148. It is important to note that even as he no longer describes the Noahide commandments as a "functioning body of laws," Novak still makes a halakhic argument to show that universal norms bind Jews and non-Jews equally.

¹²⁷ In a subsequent chapter, I deal in part with Novak's attempt to reconcile the general and specific facets of the Noahide code.

however, can be seen in a detail Novak adds to his explanation of Maimonides' treatment of the code:

Noahide law is natural law in its most immediately evident manifestation. Its generality enables us to see full correlation of divine wisdom and will. It is both knowable itself (*ratio per se*) and known by all rationally moral persons (*ratio quod nos*).¹²⁸

Wisdom, as we will see later in this chapter, is a reference to the fact that commandments have explanations; will is a reference to commandments that have no explanation, other than being a directive from God. While the thought is not yet fully formulated, Novak is suggesting that the simple fact that the commandments can be understood reflects on a source beyond those immediate laws. If that inference is accurate, it would mean that rationality gestures towards something other than the reasonableness of the law or its knowability to many. This shift in what Novak means by *ratio per se* can be seen when he explains how non-Jews arrive at the norms of the Noahide law that are now kept as a "human institution," rather than divine law:

This descent of gentiles from an original condition of consciously living under divine law to a present condition of merely living under law as a human institution has had two implications. First, it implies that Noahide law is capable of being perceived rationally, that is, it can be observed, *however inadequately on the level of the sacred*, by human beings enlightened by their own reason.¹²⁹

We note that in Novak's first account there is no indication that the laws can be kept in more than one way. Particularly if the ground of the commandments is human reason, the first account seems to suggest that the laws are kept because they are reasonable. In this account, however, it seems that arriving at the laws by way of reason is somehow inadequate. From here it would

¹²⁸ Novak, IONJ, 172. An earlier version reads, "Its generality and its lack of obscure details enable us to see full correlation of divine wisdom and will." Perhaps Novak is more critical in his later version, acknowledging that some of the code's details are indeed obscure. Novak, IONJ, 1st ed., 300.

¹²⁹ Novak, IONJ, 147. Emphasis mine.

appear that *ratio per se* includes knowledge at which one arrives through other means.¹³⁰ It is unclear, however, if it would therefore be insufficient to keep the Noahide commandments solely on the basis of their reasonableness. The wider context of this excerpt helps us clarify this point. At issue is an explanation of the talmudic saying that the non-Jews have rejected the Noahide code. In an addendum to the midrash cited earlier about God offering the Torah to the other nations of the world before he offered it to the Israelites, it is stated that even the Noahide code was rejected by the non-Jews. The Talmud raises the question of what would happen if the non-Jews would continue to keep the Noahide laws, and the answer given is that they would not receive a heavenly reward for it.¹³¹ According to Novak, the Talmud means that before Sinai, the laws that were kept had the status of *mitzvot*. But those commandments became mere laws when they were kept only as a human institution.¹³² Novak's treatment of this gentile "rejection" of the Noahide laws is revealing. It marks the first time that Novak knowingly discusses the two ways in which the Noahide laws can be kept, namely, based on their rationality alone or based on their deeper ground as well. The independence of these two modes of adherence, at least in theory, can be seen from the way Novak links the code to the place of rationality within Judaism.

If one views the rational component in Judaism to be central, then the fact that rational law is found among gentiles will enable Jews to intellectually, at least, interact with gentiles on the basis of a real, enduring, common moral ground. On the other hand, if one considers reason as peripheral in Judaism, then they will regard gentile rejection of the *divine* Noahide law as making for a fundamental separation between Jews and non-Jews because they essentially have nothing in common.¹³³

¹³⁰ It may be useful to see Novak's view of *ratio per se* as a balance that is maintained between wisdom and human rational ability. Any deficiency in the human understanding of what is *ratio per se* is supplemented by wisdom.

¹³¹ b. Avodah Zara, 2b-3a.

¹³² Novak, IONJ, 147.

¹³³ Ibid., 147.

Novak proves that there is a relationship between the rational component in Judaism and the Noahide code by bringing an example from the kabbalists. Those who belong to the Jewish mystical tradition and habitually suppress the rational facet of Judaism see the Noahide laws as a “dead-end.”¹³⁴ They also hold a generally negative attitude towards non-Jews.¹³⁵ By drawing on the code as an expression of the importance of the rational component of Judaism, Novak is implicitly reaffirming the possibility of keeping the code on the basis of its rationality alone. At the same time, if the rational component of the Noahide code would be inseparable from its non-rational component, the code would not necessarily reflect on the importance of rationality. It follows that there are two possible changes that would upset this relationship between the Noahide code and Judaism. The first is if the laws of the code were to no longer be attained solely by reason. In that case, as I have just explained, the relationship with non-Jews who keep the laws would not reflect on the question of reason more generally. The second way in which this relationship can be undermined is if the role of reason in Judaism were seen to be less prominent than is being assumed here. In that case, the rationality of the Noahide laws would be of no great import to Judaism as a whole, and an adherence to the code based on rational reasons would be of little or no merit.

There are indications in this text that Novak’s views admit of the first of these two changes. To cite one example, Novak explains why Maimonides suggests that only the first two commandments of the Decalogue, namely, “I am the Lord, your God” and “you shall have no other gods besides me” (Exodus 20: 2, 3) were received for the entire nation:

What Maimonides does intend, I think, is that only these two commandments are immediately intelligible *per se* because they deal with the essence of God that is the unchanging foundation of all intelligibility. The intelligibility of these two

¹³⁴ Ibid., 152.

¹³⁵ Ibid., 51.

commandments, then, requires no external point of reference. They are ends in themselves.¹³⁶

The description Novak provides for the first two commandments, which refer to the exclusive belief in God, correspond with the definition of *ratio per se*. Those are known without reference to anything else. Evidence for this reading of Novak's statement can be seen from the fact that Thomas Aquinas, from whom Novak learns this distinction, uses God as an example of something that is *ratio per se*.¹³⁷ Further, Novak explicates the distinction between those commandments and the rest of them by drawing on the two types of perfection in Maimonides' thought, namely, physical and intellectual. For Novak, the latter perfection, which corresponds to the first two commandments, is identified with *ratio per se*.¹³⁸ That distinction further suggests that the first two types of commandments are known solely through intellectual exercise. The sense with which Novak imbues *ratio per se* in this case seems unrelated to the sense that we found in *Law and Theology in Judaism*, specifically, that of a legal concept known without reference to anything else. Particularly by using the term "foundation of all intelligibility," Novak appears to suggest that anything inherently rational is somehow based on the "essence of God." If that is what Novak now argues, it would explain why the discovery of rational norms without recourse to a covenantal tradition is "inadequate." In other words, since the law is not being grasped in reference to its divine source, it is not entirely understood.

¹³⁶ Novak, IONJ, 168. Outside of these two commandments, however, it is unclear what other commandments are known in themselves, that is, with the exception of lying. Novak, TWC, 200.

¹³⁷ Thomas Aquinas, *Summa Theologiae*, 1/1, q.2, a.1, trans. Fr. Laurence Shapcote, in *Basic Writings of Saint Thomas Aquinas*, ed. A. Pegis, vol. 1 (Indianapolis: Hackett, 1945), 6.

¹³⁸ Maimonides sees the two types of perfection as going hand in hand with each other. Following Aristotle, Maimonides notes that man is social by nature. Maimonides, *Guide to the Perplexed*, 3:27. Therefore, through the commandments that pertain to social coexistence, one develops physical perfection. Nevertheless, the Torah intends intellectual perfection as well. As Novak explains, Maimonides believes that if a person keeps the Noahide laws solely for their political reason, rather than their rational function – thereby ruling out intellectual perfection – he or she would be living in a "theologically lacking" manner. Novak, IONJ, 164-165.

In light of this view, it becomes possible to speak of a spectrum or continuum with which Novak begins to view the rationality of law. When Novak originally speaks about rationality, he means what one can discover through reason.¹³⁹ He does not speak *qua* irrational law, or law that is not immediately evident or widely known. And Novak offers no indication that the standard of comparison for this rationality is Mosaic law. In *Image of the Non-Jew*, however, Novak explicitly compares the Noahide commandments to the Mosaic laws:

These rational commandments, five of the seven Noahide laws, are contrasted with uniquely Jewish commandments such as the dietary laws and the clothing restrictions, prohibitions that ‘the evil inclination and the nations of the world’ ridicule as irrational.¹⁴⁰

To the extent that the Noahide commandments are rational, they can be distinguished from those laws of the Torah that subject Jews to ridicule.¹⁴¹ It therefore appears that Novak is offering a new comparative standard for the rationality of the Noahide commandments. Another example can be seen when he makes it clear that, even as the greater generality of the Noahide code makes it less historically contingent and more rational,¹⁴² it does not make those laws greater than the Torah:

Greater rationality, however, does not mean that Noahide law is superior. On the contrary, the greatness of the Mosaic law is precisely its specificity, a specificity that speaks to the greater insight of the divine author into the existential particularities of the Torah’s recipients. Such insight is not as evident in the Noahide law because of its generality. The following aggada brings this out:

R. Eleazar said that it is like a king who went to war and his legions were with him. When he slaughtered an animal or beast he apportioned a part to everyone which suited him (she-yagi’ah bah). His son noticed and said to him, “What are you going to give me?” He said to him, “From what I have prepared for myself. Therefore God gave the gentiles unspecific commandments (mitzvot golamot).¹⁴³

¹³⁹ Novak, LAT, 115, 117.

¹⁴⁰ Novak, IONJ, 32.

¹⁴¹ Ibid.

¹⁴² Novak, IONJ, 148.

¹⁴³ Ibid., 148-149.

Thus, the broader understanding of rationality allows Novak to compare the Noahide commandments, which are rational, with the commandments of the Torah, many of which are non-rational.¹⁴⁴ At the same time, Novak begins placing an emphasis on the rationality of Torah law itself. That much can be seen from his interpretation of a midrashic gloss on the first case of blasphemy recorded in the Bible.¹⁴⁵ According to the rabbis, what prompted the blasphemy, spoken by a man with an Egyptian father, was an unfair law related to the restriction on land-ownership based on ethnicity. Novak takes that statement to mean that rationality is important.¹⁴⁶ Since the case pertains to Mosaic law, we can see that rationality holds value for Novak even within the Mosaic covenant.¹⁴⁷

2.3. *Halakhah in a Theological Dimension*

In this text,¹⁴⁸ Novak carefully considers the relationship between human beings and rationality, and once again draws upon the internal/external distinction. Building on his earlier

¹⁴⁴ In *Jewish Social Ethics*, Novak illustrates the difference between the Noahic and Mosaic law in the following way: “Their point of difference is that the norms of natural law, by virtue of their very generality, are more easily known, whereas the norms of the divine positive law, by virtue of their greater specific obscurity, are assumed to be intelligible even if that intelligibility is only partially perceived by us.” Novak, JSE, 37.

¹⁴⁵ Leviticus 24:10-16.

¹⁴⁶ Novak, IONJ, 62.

¹⁴⁷ Nevertheless, as Novak develops this idea, it will become clear that the rationality Novak ascribes to Torah law cannot be identified as *ratio per se* but only *ratio quod nos*. An early indication of that point is the evidence Novak brings for the rationality of the commandments as perceived by the rabbis. He cites the Talmud’s proof that one may not take another’s life to save his own, because one’s blood is not redder than another’s. Based on that argument, Novak shows that the ground for the prohibition must be rational. Novak, IONJ, 32. However, the principle of equality which seems to be in play here is not an idea that is known in itself, but by reference to other human beings.

¹⁴⁸ This text is written two years later, in 1985. In it, he treats many of the same issues as he does in the two *Law and Theology in Judaism* volumes. Indeed, Novak writes that this text is a continuation of his project in that series. Novak, HITD, ix.

point that there is a tendency to subordinate one category to the other, he argues that both the rational and social elements of human beings need to be taken into consideration in the context of natural law. According to Novak, that idea is what drives Justinian to state that slavery is against natural law, even though it is rational:

What was recognized here was that human freedom is determined by an external relation, namely, one's status in society. Rationality on the other hand is determined by an internal relation, the relation between mind and body....Therefore the assertion that human freedom is humaneness allows for the permission of even more acts that traditional ethics has prohibited than the older assertion that humanness is rationality.¹⁴⁹

Novak treats this issue in a broader context which he describes as “an area of halakhah which is universally significant in the ethical sense; that is, it deals with man qua man as both the subject and the object of an area of law.”¹⁵⁰ The endnotes, in which Novak refers to the verse that the Talmud draws upon in its exposition of the Noahide laws, make it clear that Novak is referring to the Noahide code.¹⁵¹ Already here we can see that Novak includes external considerations in his natural law theory, even if he does not yet describe those considerations as rational.

The change in the meaning Novak assigns to rationality can be seen when he addresses the non-rational laws and posits that they need not be seen as irrational. That point comes in the midst of a question of why it is necessary to have universal ethics in Judaism.¹⁵² Novak raises the possibility that the universal ethics can be attributed to God's will, a view he rejects because that would only ground ethics and not explain them. In the process of making that argument, however, he adds that God's will does not necessarily exclude rationality, and that is for two reasons. The first is that God's will is not capricious and is therefore not irrational; and the

¹⁴⁹ Novak, HITD, 99.

¹⁵⁰ Ibid., 94.

¹⁵¹ Ibid., 155, fn. 33.

¹⁵² Ibid., 95.

second is that the laws that precede the Mosaic law are rational.¹⁵³ A proper understanding of the second reason shows that Novak is reasoning by analogy: he is demonstrating that one set of divine – albeit indirect – laws admits of rational consideration, and so God’s will cannot be said to be irrational.

The last point appears to bankrupt Novak’s epistemological distinction. The rationality of God’s law, as it is understood here, is not common knowledge. One arrives at such a determination by inference. However, this rationality is also not discovered on its own: one discovers the rationality of Torah law by inferring from a divine law that is external to it. Thus, the rationality in question is neither *ratio per se* not *ratio quod nos*. Along the same lines, Novak becomes more conservative about what can be assumed to be self evident knowledge:

Nevertheless, I believe it is more humanly realistic, as well as more theologically correct, to assume that the absolute sanctity of human life is by no means self-evident. If it were, it would be hard to accept the miserable and dangerous situation human beings find themselves in this last part of the twentieth century, a situation epitomized by the threat of nuclear war. When we assume that it is self evident that all human life is sacred, we are actually engaging in a very dangerous type of utopian thinking.¹⁵⁴

The basis for the argument here is the claim that the Jewish perspective on matters pertaining to medical ethics has to be persuasive to hold any sway. The reason that Novak rejects the sanctity

¹⁵³ Ibid. Novak already intimates that the Noahide law is divine, otherwise whence the comparison?

¹⁵⁴ Novak, HITD, 113. A similar case could be made about Novak’s purpose in his *In Defense of Religious Liberty*. Novak’s clearest summary of the book’s objective comes at the conclusion of the book, where he writes the following: “Without such prior obligation [‘divine morality’] and its protections, our human rights cannot trump the power of the state, because they are derived from that very power, which without a true covenant standing over it can easily take away what it has given. So those who would interpret Grotius’s dictum literally, that we can have law ‘even without God,’ and who claim that the de facto atheism is the only cogent basis for commitment to a democratic polity, have no basis for rationally challenging the unjust exercise of state authority, which is the very antithesis of constitutional democracy.” Novak, IDRL, 182. See also *ibid.*, 181.

of human life as a basis for his argument is the fact that the world is facing nuclear war.¹⁵⁵ By looking out the window, as it were, Novak perceives that the inherent rationality of the dignity of human life is not widely recognized.¹⁵⁶ Novak's preferred solution to the threat of nuclear war is to affirm "our messianic hope for the coming of God's kingdom of peace."¹⁵⁷ The advantage of that approach is that it overcomes the despair that idealists have "when they realize that their dreams are only dreams."¹⁵⁸ It may be suggested that this solution is similarly based on something that is not self evident. Perhaps Novak sees the benefit of waiting for a solution to present itself, rather than taking any radical steps, as an approach that is more widely understandable. Be that as it may, Novak's argument shows that he begins to sharpen the distinction between what is widely known and what is known in itself.

In light of this trend, we also need to take a closer look at what Novak means by "self-evident." Novak is not denying the concept of the *imago Dei*; he is only limiting the groups for whom that concept is evident. Novak explicitly states that God's command to choose life "seems to limit absolute concern with the sanctity of human life to those who base their faith on Scriptural revelation."¹⁵⁹ In other words, the *imago Dei* is evident to those who belong to a scripturally based faith. However, the same idea is not evident to those who do not belong to such groups and do not share the same concerns. Thus, what Novak means by "self-evident" is that society at large does not recognize the *imago Dei*, even if the lack of awareness does not change the *imago Dei*'s status as an inherent truth. Unlike Novak's earlier statements about inherent rationality being transmitted through one's community, the result of which is that there

¹⁵⁵ This book is written in the mid 1980's.

¹⁵⁶ Novak will draw the opposite conclusion by looking at society later in his thought.

¹⁵⁷ Novak, HITD, 115.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid., 113.

are inherently rational concepts which are widely known, here there is a complete break between ideas that are rational in themselves and those that are widely recognized. It is therefore difficult to understand how Novak can speak about the knowability of the norms when he grounds the prohibition of murder in the *imago Dei*.¹⁶⁰

Further complicating the issue is that Novak ultimately grounds the entire Noahide code in the *imago Dei*. A far more persuasive case can be made for the knowability of the norms when they are treated individually. Each law pertains to a different facet of social-coexistence, and most can be presented as rationally understandable in their respective context. Thus, in *Image of the non-Jew in Judaism*, Novak makes a case for the rationality of at least four of the commandments.¹⁶¹ Here, however, Novak argues for a unified moral ground. It stands to reason that a single moral ground for laws as diverse as blasphemy on the one hand and eating the limbs of live animals on the other will constitute a less persuasive argument.

2.4. “Natural Law and Normative Judaism”

A similar question arises in connection to this article, as Novak begins to associate the rationality of the Torah with an acceptance based on faith. Of particular interest in this article, written in 1986, is Novak’s explanation of the way two of the earliest Jewish thinkers reconcile the apparent contradiction between natural law, which is seen as both universally necessary and exoteric, and Judaism, which is believed by its followers to espouse esoteric knowledge.

According to Novak, these thinkers justify their position in the following way:

¹⁶⁰ Ibid., 97. Cf. Novak, review of Menachem Elon, *Jewish Law: History, Sources, Principles, Vera Lex* 14.1-2 (1994): 52-53, where he argues for a substantial role for natural law in Judaism, calling it a notion of law “grounded in reason, rather than will.” In a later section, I will refer to another novel approach Novak introduces in this text which may reconcile this problem.

¹⁶¹ Novak, JSC, 233.

Some (for example, Philo and Saadya, in the first and ninth centuries respectively) have argued that although natural law is universally necessary it is not immediately exoteric (*ratio quod nos*), but was apprehended by Moses, who taught it to his people Israel, and that gradually it will be apprehended by more and more intelligent human beings during the course of history.¹⁶² Therefore, Judaism's apparent parochialism is only relative; actually it is the vanguard of universal truth. It only appears to be parochial to those who have not yet apprehended that truth, as, for example, the universal laws of science appear to be the exclusive domain of the minority of *cognoscenti* known as scientists even though they obtain universally in and of themselves.¹⁶³

Novak goes on to argue that the fideist view, which counters the opinion that Judaism admits of natural law, does not account for four points. The first is that Judaism includes the belief in a Divine Lawgiver who must have a standard of justice; the second is that the human acceptance of divine law assumes a rational motive; the third reason is that the understanding and application of the laws presupposes a "criteria of human nature"; the fourth reason is the existence of rabbinic law, which even the opponents of natural law in Judaism recognize as rational. A closer look at the second reason Novak provides indicates the shift in emphasis:

Since the context of the law is a covenant between God and a people, the acceptance of the law by the people must proceed from *rational motives*. One could not enter such an agreement from motives of fraud or coercion or sentiment and still be morally bound to uphold it. In biblical and rabbinic texts the assumption is made that the people of Israel accepted God's law because they judged this overall covenantal relationship it concretized to be good and "righteous" (*tzedaqah*) for them.¹⁶⁴

According to that statement, the Israelites arrive at the goodness of the law by reasoning based on their previous relationship with God. It is difficult to determine what type of rational argument this is. Is it widely known because it is based on the Israelites' experiences or because it is inherently rational, even if it is not known as such? Before resolving this difficulty and

¹⁶² If this statement sounds messianic in Novak's hands, that is not coincidental. I devote a later chapter to Novak's view of redemption.

¹⁶³ Novak, "Natural Law and Normative Judaism," *Vera Lex* 6.2 (1986): 3.

¹⁶⁴ *Ibid.*, 4. Emphasis mine.

taking up a few other concerns, it should be noted here that from the discussion thus far, it is apparent that Novak is using the terms *ratio per se* and *ratio quod nos* in fairly exact ways, which are more or less consistent with the way he originally defines the terms. *Ratio per se* is being used to mean an idea that is known by reference to nothing but itself. *Ratio quod nos*, however, is used by Novak to refer to an idea that is widely accepted, as can be seen from the evidence Novak brings in support of his claim. The two thinkers Novak cites, namely, R. Saadya and Hermann Cohen, lived a millennium apart from one another, and both have different perspectives.¹⁶⁵ However, both figures take the prohibition to be widely known. Thus, the way Novak formulates his argument indicates that what he means by *ratio quod nos* is not an idea that makes a prohibition rational, but the fact that it is widely accepted.

The difficulty arises from the change in the way Novak is using *ratio per se*. Since he writes that the “natural law” is first apprehended by Moses who teaches it to Israel, it seems that Novak no longer espouses the view that the inherent rationality can be discovered by everyone.¹⁶⁶ Only a select few can obtain that knowledge, and it is up to those few figures to transmit that information. Conversely, however, it would be difficult to accept the view that Moses’ understanding is no different from anyone else’s, since it is widely accepted that Moses had a superior grasp of the law. A closely related question, which illustrates this point, is whether Jews are required to promulgate the Noahide laws. Given that Novak presents the Noahide commandments as *ratio per se*, it would stand to reason that non-Jews should be able to arrive at

¹⁶⁵ R. Saadya, *Emunot Ve-De’ot* 3:1. Hermann Cohen says as follows about the *mitmensch*: “Only now, after (*nachdem*) man has learned to love man as fellow man (*mitmensch*), is his thought turned to God, and only now (*jetzterst*) does he understand that God loves man.” Hermann Cohen, *Religion of Reason Out of the Sources of Judaism*, trans. S. Kaplan (New York: Scholars Press, 1972), 146ff, quoted in Novak, *NLIJ*, 84. R. Saadya begins with the premise that man must respect God’s plan in order for God’s creation to survive.

¹⁶⁶ What is not clear, however, is if Novak believes that Moses grasps the law on the exoteric and immediately necessary level, or on the esoteric level as well.

that knowledge on their own. However, Novak later writes that it is up to Jews to publicize the laws.¹⁶⁷ That statement would appear to suggest that there are insights into the law which are not widely available.

Returning to our discussion, there is another indication that the goodness of the law is not known as such. Instead, one only recognizes that goodness on the basis of an analogy:

Even if one is unconvinced of the goodness of a particular law (that is, what its beneficial purpose really is), one can still be convinced of the goodness of the Law *per se*, based on a relationship with its Giver in nature and history.¹⁶⁸ Thus, on a particular level of action, a law is deontological; but that particular deontology is relative to a general and larger teleology.¹⁶⁹

From this statement it would appear that the Israelites can only take God's law to be rational based on a presupposition, namely, a relationship with God in nature and history. The point echoes Novak's earlier discussion of the historical component of human beings, which means that they learn certain ideas from their community.¹⁷⁰ In this context, it is significant to note that Novak stops using the internal/external distinction. As we have seen, the ground of the Noahide code is now based on an idea at which one cannot arrive by reason alone. To access that idea one needs a "cultural heritage." It is therefore not surprising that rationality in Novak's thought is no longer limited to internal or external relations. In fact, some of the basic norms necessary for a "relationship with God"¹⁷¹ are based on ideas that can only be learned in society. Therefore, the

¹⁶⁷ Novak, JSC, 234; Novak, "Genesis and Morality," *Azure* 15 (2003): 125.

¹⁶⁸ Cf. Novak, EOI, 151, where Novak bases the decision of the Israelites to accept God's law on the goodness God showed them by taking them out of Egypt. On the question of Novak's conflicting views on why Torah law should be kept, see Gregor Scherzinger, *Normative Ethik aus jüdischem Ethos: David Novaks Moraltheorie* (Fribourg: Academic Press Fribourg, 2014), 133.

¹⁶⁹ Novak, "Natural Law and Normative Judaism," *Vera Lex* 6.2 (1986): 4.

¹⁷⁰ Novak, LAT, 116.

¹⁷¹ Novak, IONJ, 148.

distinction between the rational domain of the mind and the social domain that is external to it becomes meaningless.

At the same time, Novak argues for the necessity of “rational motives” in order for God to involve himself in human history and to enable his law to be received and interpreted.¹⁷² What that idea is said to prove is that the covenant only holds water if there is a rational acceptance of it.¹⁷³ The crux of the argument is not the rational validity of the law, but rather the objective factors that need to be in place for God’s law to be received. From this argument we can see that natural law is now broadened to include the relationship between divine law and human acceptance. In other words, by making that argument, Novak appears to switch paradigms between analyzing the compatibility of natural law with Judaism based on the rationality of

¹⁷² Novak, “Natural Law and Normative Judaism,” *Vera Lex* 6.2 (1986): 4. Perhaps more than in any other source, this idea of “rational motives” indicates that covenantal thought and reason are not mutually exclusive. That is to say a faith-based concept can still have a rational framework, such as a reasoned acceptance of God’s authority. By extension, I disagree with Aaron Hughes, who argues that reason for Novak is something that cannot be discussed outside of the framework of tradition: “While Novak maintains that natural law is available by way of ‘reason,’ and therefore does not require revelation, he also maintains that one will only find articulations of the use or findings of such reason save for how they are expressed within a ‘tradition.’” Aaron Hughes, “David Novak: An Intellectual Portrait,” in *NLART*, 6. Based on the distinction I have highlighted, that which is *ratio per se* can only be known inside a covenantal tradition, but that which is *ratio quad nos* can be known outside of it as well. Note also what Novak himself writes in 1974: “By emphasizing the will of God, Judaism is accused of providing an authoritarian rather than intelligible foundation for human action: the person is *told* what to do rather than *discovering* what is to be done. This critique found its most famous spokesman in Immanuel Kant, who rejected *heteronomy* (external standards) in ethics in favor of *autonomy* (internal standards). Nevertheless, this rejection of theological ethics falsely assumes that the revelation of the Torah is the same as the presence of an oracle. The difference between them, however, is considerable. Revelation is God’s approach to man at a point in history. After that event, man must attempt to comprehend the meaning of revelation as the fundamental ethical datum; that is, he must intelligently approach God...Therefore, the theological process of discovering God’s will is as intelligent a human enterprise as the psychological process of discovering the nature of the self or the sociological process of discovering the nature of society.” Novak, *LAT*, 81.

¹⁷³ Elsewhere, Novak writes that God would be the equivalent of a tyrant if that were the case. Novak, “The Commandments: Divine Will or Divine Wisdom,” *Hawaii Jewish News*, Special Supplement, November, 1987, 4.

specific laws, which is essentially the way he originally presents the Noahide code – norms that are valid because they are “evidently rational”¹⁷⁴ – to drawing on natural law to explain the compatibility of a divine covenant with human subjects. More broadly, the issue with which Novak is concerned is proving that human reason can still figure into a divinely-given legal system. Seen in that way, this article marks a transition between Novak’s earlier and later accounts. In the former, one specific facet of Judaism is shown to correspond with natural law, while in the latter, natural law is shown to be inherent to Judaism. A significant marker for this change is the idea of “rational motives.” That expression is Novak’s way of proving that the circumstances around divine law can exhibit features of natural law just as the Noahide law itself does.

2.5. “*The Commandments: Divine Will or Divine Wisdom*”

In an article written for the *Hawaii Jewish News*, Novak sheds more light on the epistemology of the rational basis of the commandments. If it emerges from Novak’s *Halakhah in a Theological Dimension* that inherent rationality is based on a concept that is not widely known, here it becomes clear that only certain individuals are privy to that knowledge. The article relates to a conflict between Biblical verses detailing why one must fulfil the commandments. In some verses, the Torah implies that one should follow God’s command because of divine authority; in others, it is because God’s laws are “good.”¹⁷⁵ Even taken individually, however, the verses raise theological questions. The former verse, which states that the laws are to be followed simply because they have been commanded, makes God appear as a

¹⁷⁴ Novak, LAT, 2nd Series, 115.

¹⁷⁵ Deuteronomy 6:16, 18; Deuteronomy 4:6; Novak, “The Commandments: Divine Will or Divine Wisdom,” *Hawaii Jewish News*, Special Supplement, November, 1987, 4.

tyrant. The latter verse, in which it is stated that the laws are to be followed because they are “good,” appears to make God subservient to a higher idea or cause. Novak writes that the way Jewish Neoplatonists have resolved this problem is by explaining that God, who created the world, also created a Torah that conforms to it. In other words, God chooses to be bound by justice. Thus, the Bible advocates following the commandments on the basis of their “goodness” only because God chooses to be faithful to that criteria. The type of rationality that is presupposed by his discussion is a widely accepted one. Only that type of explanation would enable a comparison between commandments and allow them to be ordered “in a structure of values.”¹⁷⁶ Basing his argument on an inherent rationality would leave no way to compare two different commandments. The only way to compare commandments is by reference to their benefit, which is by definition not known immediately.

At the same time, Novak is concerned with the inherently rational purpose of the commandments, and makes it clear that it can only be achieved through an adherence to the commandments. This point emerges in Novak’s statement that Philo’s emphasis on the fulfilment of the commandments themselves as a key to achieving the ends they intend influences the distinction in Aquinas’s writings between *ratio per se* and *ratio quod nos*.¹⁷⁷ This idea raises the spectre of there being a component of fideism within the inherently rational explanation. The logic is as follows: if the purpose of the commandments cannot be achieved in any other way but through adherence to the commandments, then there is another benefit associated simply with following God’s law – a benefit that is not correlated with the ultimate purpose of the commandment.

¹⁷⁶ Ibid.

¹⁷⁷ Novak, “The Commandments: Divine Will or Divine Wisdom,” *Hawaii Jewish News*, Special Supplement, November, 1987, 4.

Be that as it may, even through diligent observance, one's knowledge of the inherent rationality of the commandments is by no means guaranteed:

Initially, because of this, the commandments must be accepted simply as God's will, just as the creation of existence is the result of God's will. The developing insight of the seriously committed and intelligent student of nature and the Torah will enable one, however, to see more and more of the Divine wisdom in the Law *as one comes to recognize the aptness of that law to human nature and the divine goal of perfecting human nature* – or rather, allowing us to perfect it ourselves.¹⁷⁸

According to Novak, only the enlightened student will gradually come to recognize the suitability of the commandments to human nature. And for the same reason, the initial acceptance of the commandments is taken on faith, meaning, as Novak explains elsewhere, that the laws are accepted on the basis of “the goodness of the Law *per se* based on the relationship with its Giver in nature and history.”¹⁷⁹ Only those “seriously committed and intelligent” recipients of the Torah, however, will arrive at deeper – albeit limited – insights.¹⁸⁰ Seen in this way, the distinction between *ratio per se* and *ratio quod nos* balances the wide acceptance of God's law with the abilities of the few enlightened students. Most will not be able to understand the law at the inherently rational level, but they do need to accept the law based on “rational

¹⁷⁸ Ibid. Emphasis mine.

¹⁷⁹ Novak, “Natural Law and Normative Judaism,” *Vera Lex* 6.2 (1986): 4.

¹⁸⁰ Reinforcing the relationship between *ratio per se* and *ratio quod nos* is a parallel to Novak's treatment of Torah in an article written a decade later. The context for this reference is a discussion of the potential of seeing the discussions in the Talmud as philosophical speculation. Novak's starting point is the differing approaches of Rabbi Ishmael and Rabbi Akiva. For the former, the Torah has general and specific principles; for the latter, the only principles that can be established are done so on the basis of interpretation alone. This understandably gives Rabbi Akiva more interpretative flexibility. Nevertheless, “Like nature, the object of philosophical reflection, nothing in the Torah is seen as being superfluous or of arbitrary significance. The Torah is wholly and consistently intelligible (*ratio per se*), even if that intelligibility is only partially grasped by finite human intelligences (*ratio quod nos*). Therefore, the underlying meaning of the text must be worked out speculatively.” Novak, “The Talmud as a Source for Philosophical Reflection,” in *The History of Jewish Philosophy*, eds. D. H. Frank and O. Leaman (London: Routledge, 1997), 53.

conditions.” Nevertheless, there is a deeper component that offers more insight into the law, specifically, an understanding of its inherent rationality (*ratio per se*), but that is simply out of reach for most recipients of the Torah.

2.6. “Natural Law, Halakhah, and the Covenant”

In his next article on natural law, Novak places more restrictions on how one arrives at the inherently rational explanation for the Noahide laws. He appears to suggest that one can only arrive at that type of explanation by first benefiting from its widely known purpose. In the article Novak defends his Jewish natural law theory against the likes of Marvin Fox and José Faur.¹⁸¹ Building on his earlier discussion of “rational motives,” Novak speaks more broadly of the “rational conditions” that are necessary for the acceptance of God’s law, including those commandments that are clearly not rational and are perceived as “*jus divinum positivum*.”¹⁸² As Novak explains,

Both [rational and non-rational commandments] are aspects of the Torah as God’s cosmic law. Their point of difference is that the norms of natural law, by virtue of their very generality, are more easily known, whereas the norms of divine positive law, by virtue of their greater specific obscurity, are assumed to be intelligible even if that intelligibility is only partially perceived by us.¹⁸³

¹⁸¹ The article also includes a response to Leo Strauss. That section pertains to the question of whether the Bible has a notion of ‘nature.’ Novak sees justice (*mishpat*) in the Bible as the equivalent of nature. That discussion does not have an immediate bearing on our study. Novak, “Natural Law, Halakhah, and the Covenant,” in *Jewish Law Annual*, vol. 7, ed. Bernard Jackson (London: Harwood, 1988), 43; Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1983), 81.

¹⁸² Novak, “Natural Law, Halakhah, and the Covenant,” in *Jewish Law Annual*, vol 7, ed. Bernard Jackson (London: Harwood, 1988), 51.

¹⁸³ *Ibid.*, 52.

This statement can be understood by reference to the idea Novak expresses earlier, namely, that the specificity of the Mosaic law makes it superior to the generality of the Noahide code.¹⁸⁴

Novak is therefore seemingly reiterating his earlier preference for commandments which are obscure over those that are more rational. Evidence for this reading can be shown from the words, “by virtue of their greater specific obscurity.” That is to say the fact that their purpose is unclear and their application is limited leads the Israelites to assume that they must be intelligible.

More importantly, in what may be explained by the context – the discussion pertains to the majority of Israelites – Novak implies that rational commandments are not understandable *a priori*. Instead, the norms must be experienced first before their purpose can be conceptualized. This idea can be seen in Novak’s robust defence of his natural law theory against Marvin Fox.¹⁸⁵ Fox argues that the benefits from God’s commandments are not perceived rationally before they are performed; only their usefulness can be detected, and only after they are performed.¹⁸⁶ Novak disagrees with this view and writes,

Does not our experience of society and our need for society indicate to us *in advance* of any promulgated prohibition that murder is the most fundamentally antisocial act, that the permission of murder would destroy social intercourse? In other words, this commandment does not introduce us to a new experience whose meaning is only subsequently inferred: rather, it itself is inferred from an experience the rabbis considered to be universal.¹⁸⁷

¹⁸⁴ Novak, IONJ, 148.

¹⁸⁵ Ibid., 40-50. Novak devotes less than a page to Fox in his *Image of the Non-Jew in Judaism*, and only in connection with the claim that Maimonides favoured revelation over reason, which Novak disputes. Novak, IONJ, 173.

¹⁸⁶ Marvin Fox, *Interpreting Maimonides: Studies in Methodology, Metaphysics, and Moral Philosophy* (Chicago: University of Chicago Press, 1990), viii.

¹⁸⁷ Novak, “Natural Law, Halakhah, and the Covenant,” in *Jewish Law Annual*, vol 7, ed. Bernard Jackson (London: Harwood, 1988), 41-42.

The phenomenology employed in this response will be treated a little later. For the moment, it is sufficient to note that, according to Novak, without the experience of society, one cannot arrive at the basis of the prohibition against murder. Based on this statement, it would appear that Novak makes explanations that are *ratio per se* dependent on the experience of reasons that are *ratio quod nos*, even if access to the former is by no means guaranteed, as we have seen.

2.7. Jewish Social Ethics

In his *Jewish Social Ethics*, written in 1992,¹⁸⁸ Novak develops the connection between two of the three areas in which he now locates natural law in Judaism, namely, the reasons for the commandments and the rabbinic enactments.¹⁸⁹ Here as well, Novak invokes the distinction between what is *ratio per se*, that is, something known to us by inference and *ratio quod nos*, meaning something known to us immediately.¹⁹⁰ It is the latter that appears to be a comparative measure between the reasons for the commandments and the rabbinic enactments. The contrast between them appears in a section on the rabbinic view of economics. The section is worth citing at length:

Based on the theological principle “My thoughts are not your thoughts” (Isaiah 55:8), it was always assumed that whatever reasons for God’s commandments could be inferred from the formulae of their promulgation, the basic fact that they are God’s revealed will always takes precedence. Thus, even if one could infer the reason/*telos* of a commandment, and even if one could judge that the commandment no longer served its original purpose, such a judgement was deemed invalid and the commandment could not

¹⁸⁸ In this text, Novak’s focus turns to the ethics of issues facing “the larger world.” Novak, JSE, 4.

¹⁸⁹ These expressions of natural law were introduced in 1986. The book includes an essay on natural law, but much of the content of that section (22-44) is based on the article “Natural Law, Halakhah, and the Covenant,” which was reviewed earlier.

¹⁹⁰ Novak, JSE, 83, fn. 41. It is interesting to note that in an article dating to 1993, Novak equates *ratio per se* with judgement (*din*), which is the traditional term for God’s unquestioned judgement, and he says that the basic Noahide laws fall under the same category. Novak, “What is Jewish about Jews and Judaism in America,” in TIPS, 197.

be repealed based on such a judgement. The assumption is that God's revealed will has absolute authority because it is wholly sufficient. Human reasoning, conversely, has only relative authority, because it is never wholly sufficient. Human reason is never foundational but only conformational at best when interpreting divine law. Hearing God's voice takes precedence over reading God's mind when that seems possible.¹⁹¹

Novak, however, adds:

With rabbinic legislation, however, the assumption is that humans can fully understand why other humans have legislated as they have. To be sure, it was not at all easy for later Rabbis to repeal the legislation of earlier Rabbis, even when the original reason for the original legislation called for such a repeal.¹⁹²

The comparison here is one between what can be known of God's law versus what must be known about the enactments. The two categories are cognates of the *ratio per se* and *quod nos* categories. That is to say the rabbinic enactments must be persuasive to the community they serve and therefore universal, whereas the commandments are not contingent on their universally known purpose. To the extent that they have their own inherent purpose, the commandment would hold even if the purpose is deemed irrelevant. Put differently, the reasons for the enactment have to be more "convincing," and thus more rational, in a universal sense, than the reasons for the commandments. That distinction presupposes that God's commandments are to be followed even if they do not serve their original purpose. But that would not be true of the enactments. Based on that comparison, and the emphasis on the purpose that drives the enactments, it might equally be said that the enactments are judged by reference to their purposes, while the commandments are judged by reference to their source.

It should also be noted that Novak provides conflicting explanations for the prohibition of murder. In one section of the text, in which Novak responds to Fox's claim that the benefits of the commandments can only be known after the fact, Novak says that murder would destroy

¹⁹¹ Novak, JSE, 216.

¹⁹² Ibid., 217.

“social intercourse.”¹⁹³ In this case, the explanation for the inclusion of the prohibition of murder is known by reference to social existence, and so the reasoning cannot be said to be *ratio per se*. Later in the very same text, in the context of a chapter on crime in our society, Novak explains the commandment in the following terms:

The sanctity of human persons as the image of God is the foundation of human equality, which is, in turn, the basic ethical norm. It means that all humans are sacred entities requiring respect and protection.¹⁹⁴

This second argument cannot be seen as an appeal to that which is widely known; quite the opposite is the case. And, suffice it to say, Novak’s basis for treating every human being equally, even those that are “psychotic” or “senile,”¹⁹⁵ cannot be described as readily apparent either. Even for those who believe in the doctrine of *imago Dei*, it is at best only upon consideration of one’s beliefs that hurting another human being could be represented as harming God’s image. Thus, even as Novak employs *ratio quod nos* reasoning for the commandment, he offers a *ratio per se* explanation as well. That is not to suggest that those explanations are at odds with one another, but it does reflect on Novak’s view of the two types of rationality as being able to function independently of each another.

As his appraisal of John Courtney Murray’s natural law theory shows, one could only successfully argue on the basis of widely known rationality. According to Novak, Murray’s theory is not relevant for our time, since it is not based on a “definable human nature” that can be referenced even outside of a religious framework.¹⁹⁶ The key to a more convincing natural law theory is the following:

¹⁹³ Novak, JSE, 26.

¹⁹⁴ Ibid. 165.

¹⁹⁵ Ibid.

¹⁹⁶ Ibid., 76.

Jus naturale will have to give way to *jus gentium*, namely, not what the community accepts as a priori universal truth but only what it itself constitutes as generally normative in and for the world beyond the immediate pale of its own adherents. Here one will have to appeal to historically evident data, rather than to the type of metaphysics Murray suggested.¹⁹⁷

A close look at this statement shows that Novak aligns *jus naturale* with “a priori universal truth” and *jus gentium* with what is constituted as normative and thus accepted by consensus. In this formulation, natural law in Novak’s view is based on the wide acceptance of universal truth, but that is subordinated to what is widely accepted.¹⁹⁸

2.8. Review of Menachem Elon’s “Jewish Law”

In a review of Menachem Elon’s magisterial work on Jewish law, Novak defends the prominence of natural law in Judaism. In this article, Novak’s views appear to come full circle, as it were. Instead of using the term *ratio per se*, which he has shown to refer to the superior explanation for the Noahide laws, as evidence that the concept of natural law can be found in rabbinic texts, Novak uses only *ratio quod nos*. The term is one of a few other mishnaic and talmudic terms that he sees as the equivalent of natural law:

Yes, what this misses is that a concept is not confined to a particular name for it. As such, such terms as *mishpat* (“justice”), *tikkun ha’olam* (“bonum commune”), *mitsvot sikhlliyot* (“rational commandments”), *ha-mitsvot ha-nikarot* (“ratio quoad nos”), and *hekhrekh ha-da’at* (“inclinatio rationalis”) are the conceptual equivalents of the term “natural law.”¹⁹⁹

¹⁹⁷ Ibid., 77.

¹⁹⁸ It must be noted that this interpretation is not entirely consistent with what Novak originally calls *ratio quod nos*, since the term is generally associated with normative implications rather than universal truths. Cf. Novak, NLIJ, 153, where he mediates between the earlier and later interpretations.

¹⁹⁹ Novak, review of Menachem Elon, *Jewish Law: History, Sources, Principles, Vera Lex* 14:1-2 (1994): 51-54.

Novak's main argument in this review is that Elon unduly minimizes the role of natural law in Jewish law and arbitrarily focuses just on the "interhuman" law rather than on the laws governing the relationship between man and God. Placing the two arguments in tandem, Novak seems to be grounding Jewish law as a whole in natural law.²⁰⁰ Given the level of prominence that Novak attaches to natural law, and the reasoning that is at the core of its norms, it is significant to note that he omits the term *ratio per se*. That is to say Novak leaves out the word that would best represent *ratio per se*, namely, "understanding" (*binah*). It would appear from this list that only what is generally known is associated with natural law.²⁰¹ The most obvious reason for this change is the fact that *ratio per se* is now associated with knowledge that is not immediately available.

2.9. "Religious Communities, Secular Society, and Sexuality"

In this article, Novak offers more insight into his notion of God's wisdom. As we will discover, "wisdom" can be seen as the divine counterpart to the rational explanation for the commandments that are discoverable by human beings. At this point, the term refers to explanations for both rational and non-rational commandments. Novak writes, however, that only the former can be publically affirmed:

One *may* only affirm what is *rational* as being the wisdom of God. For Jews, that means that among ourselves we must affirm the authority of both those commandments that do not have general reasons (like the dietary prohibitions) and those commandments that do have general reasons (like the prohibition of murder). However in secular society we may affirm the wisdom of only those commandments (like the prohibition of murder) that apply to everyone for good reasons. All we require is that the wisdom of these

²⁰⁰ Ibid., 53-54. It should be noted that, in this article, Novak grounds natural law in reason, which is a view that Novak tends to move away from. Ibid., 52-53; cf. Novak, HITD, 97.

²⁰¹ Alternatively, Novak means only *jus gentium*, as we have just seen.

commandments be capable of discussion; we do not require that the divine source of these wise commandments be affirmed by anyone else.²⁰²

The implicit question addressed by Novak is whether there is a purpose for Jewish insights into norms that society can arrive at on its own. And his answer is that wisdom can serve as a supplementary explanation for societal norms. Novak also calls this idea the “ontological constitution” of natural law, which draws on a theology of creation to base the norms in something more fundamental than society.²⁰³ Suffice it to say that that knowledge would be unavailable to anyone outside covenantal communities.²⁰⁴ There would be no way of recognizing any of the norms as a violation of an inherent truth without insight into a theology of creation.²⁰⁵ This “ontological constitution” is thus useful in describing how Jews can participate in discussions in democratic societies.²⁰⁶ According to Novak, they do so by tapping into God’s wisdom.

²⁰² Novak, “Religious Communities, Secular Societies, and Sexuality,” in TIPS, 286-287. Emphasis mine. Novak first discusses this concept in detail in 1996. Novak, “Law of Moses, Law of Nature,” *First Things* (February 1996): 48: “And yet, there is a way we can speak of the wisdom of God in a social context in which only *wisdom* is immediately intelligible. For to assert any wisdom is ultimately, for Jews, the wisdom by which God creates, structures, and sustains the world.” It should be noted that Novak hints at the concept in his *Halakhah in a Theological Dimension*. Novak, HITD, 83

²⁰³ Novak, NLIJ, 26.

²⁰⁴ Novak also calls this knowledge “historical.” Novak, LAT, 116.

²⁰⁵ Scherzinger argues that the political setting of Novak’s natural law theory allows him to argue for the universalizability of what are actually particular norms without offering an account of the epistemology of arriving at those norms. Gregor Scherzinger, *Normative Ethik aus jüdischem Ethos: David Novaks Moraltheorie* (Fribourg: Academic Press Fribourg, 2014), 323. This discussion of wisdom constitutes a challenge to that understanding. Novak does not argue that the norms themselves should be practiced by everyone; he states that they already are practiced by society. Instead, as we will see, what wisdom offers for Novak is an explanation of why those norms are universal. And as such, it is more accurate to say that Novak is offering what he sees as an inherently rational explanation for norms which he explicitly states is not knowable outside of a religious tradition.

²⁰⁶ Novak, NLIJ, 17ff.

2.10. *Natural Law in Judaism*

The ideas we have seen, in particular those pertaining to the reasons for the commandments and rabbinic interpretation and decrees, set the theme for much of Novak's most complete account of his natural law theory, written in 1998. Central to the text is Novak's robust defence of the view that natural law is inherent to Judaism, a defence which he begins by citing scriptural evidence of natural law-type ethics.²⁰⁷ For Novak, these biblical episodes seem to show that, long before the rabbinic formulation of the Noahide commandments, there was a "universal precondition" to the covenant.²⁰⁸ This exegesis indicates that Novak now subscribes to a broader view of natural law. For instance, Abraham's covenant with God and their mutual recognition of a standard of justice does not fit into any of the seven categories, at least with any measure of ease, and yet Novak includes it as an example of natural law in the Bible.²⁰⁹ The only definition of natural law that would place that idea within its boundaries is that humans are preceded by an order and therefore have the ability to respond to just demands of other human beings in our society.²¹⁰ That description significantly broadens Novak's original conception of natural law. Nevertheless, even this conception is still premised on the knowability of the law. That point can be seen in Novak's explanation for Cain's culpability in his killing of Abel:

So why is he guilty anyway? The only cogent answer is that it is already assumed that he knows murder is a crime. And how if not by his own reason? And what is that reason? Is it not the fact that he and Abel are brothers, that is, minimally, they are equal enough by virtue of ultimately common ancestry so that neither of them has the right to harm the other for his own individual advantage.²¹¹

²⁰⁷ Novak, NLIJ, 31-61.

²⁰⁸ Ibid., 61. Pace Gregor Scherzinger, *Normative Ethik aus jüdischem Ethos: David Novaks Moraltheorie* (Fribourg: Academic Press Fribourg, 2014), 254. See also Novak, NLIJ, 60-61.

²⁰⁹ Novak, NLIJ, 39ff.

²¹⁰ Ibid., 44.

²¹¹ Ibid., 33-34.

The question Novak is asking is based on the fact that the text in the first few chapters of Genesis gives no indication that murder is prohibited.²¹² Although the rabbis base that law, and most of the other Noahide commandments, on an earlier verse in the Bible in which God commands Adam not to eat from the fruit of the tree, Novak suggests elsewhere that that verse is only a mnemonic device for the law rather than its actual source.²¹³ Thus, Novak uses the fact that Cain is held responsible for the murder of Abel even if there is no indication that he has been explicitly warned against such an act to show that Cain should have arrived at the prohibition on his own. The argument hinges on two points: the first is that God would not punish Cain for doing something that has not been explicitly prohibited, or for something he could not have known; the second is that murder is something that humans could recognize as a crime. Both points in turn hinge on the rational knowability of the prohibition. That is to say that God would explicitly warn Cain against murder if it were not rationally attainable. Thus, Novak's argument still hinges on the discoverability of the norms.²¹⁴

As we have seen, there are limits to what one can discover about the norms through reason alone. That observation gives rise to the following question: since the commandments are

²¹² Meaning, even if one overlooks the fact that God never explicitly warns Cain not to murder Abel. Ibid., 34.

²¹³ Novak, CR, 189, re: b.Sanhedrin, 56b; Genesis 2:16.

²¹⁴ This view differs from that of Scherzinger and Newman. They divide Novak's natural law into four parts, which are as follows: natural law in the Bible, specifically, the instances of biblical figures being aware of, or held responsible for, commandments that were not directly given to them; the rabbinic interpretation of the reasons for the commandments; the Noahide laws; and creation theory, by which Scherzinger means Novak's teleology. From what I have shown it is evident that Novak does not argue that the Bible is a separate source of natural law in Judaism but rather that the episodes recorded in the Bible reinforce the role that the Noahide law plays in the lead-up to the Sinaitic covenant. Gregor Scherzinger, *Normative Ethik aus jüdischem Ethos: David Novaks Moraltheorie* (Fribourg: Academic Press Fribourg, 2014), 254; Louis Newman, "The Law of Nature and the Nature of the Law," in *Ethical Monotheism, Past and Future: Essays in Honor of Wendell S. Dietrich*, eds. Theodore M. Vial and Mark A. Hadley (Providence, RI: Brown Judaic Studies, 2001), 264.

only a “further specification” of the Noahide law,²¹⁵ do those limitations extend to one’s discovery of the reasons for the commandments as well? To answer this question, we need to look at Novak’s explicit warning about what to avoid in discussing the reasons for the commandments. Novak writes that, in providing a rational basis for the commandments, one must not engage in “totalizing rationalism.”²¹⁶ As Novak explains, Maimonides was able to achieve the former while avoiding the latter:

The reasons of the commandments are the *purposes* we discern for which they have been formulated in the first place. Nevertheless, no matter how well we might discern what the reasons are, we are never able to simply deduce from them all the particular details of the commandments. Thus, the irreducible authority of revelation and its tradition in the law lies in the irreducibility of these very details.....By emphasizing the rationality of the law without resorting to the totalizing rationalism characteristic of some modern Jewish thinkers, Maimonides saves revelation from being reduced to reason, and he saves the law from being reduced to divine caprice.²¹⁷

To understand Novak’s meaning, a little clarification is necessary. There are details within commandments that can be explained quite easily by reference to the general purpose of the commandment to which they belong. So, for example, there are a number of organic species that cannot be mixed with one another.²¹⁸ The basic details of the commandment that are specified in the Oral Law, such as the list of species that are included in that prohibition,²¹⁹ follow from the basic purpose of the commandment, namely, keeping apart the various species that God has

²¹⁵ Novak, IONJ, 148. Novak’s treatment of the commandments is heavily influenced by Maimonides’ discussion of the purposes of the commandments (*ta’ameiha-mitzvot*). Novak argues that Maimonides’ discussion of the reasons for the commandments has a talmudic precedent in Rava, the Babylonian sage who speaks of the *ta’ama*, or reason, of the commandments. Novak, NLIJ, 98.

²¹⁶ Ibid., 97.

²¹⁷ Ibid. Emphasis mine.

²¹⁸ Leviticus 19:19.

²¹⁹ M. Kilayim, chap. 1.

separated at the time of creation.²²⁰ Other details, however, such as how distant the seeds have to be from one another to fall outside of that prohibition, are also described by the Oral Law.²²¹ But those details are not necessarily understandable by reference to the general purpose of the commandment. Consequently, the rational explanations are essentially kept in check by the minutiae of the commandments. Stated differently, the type of rationality to which Novak refers in the context of the reasons for the commandments is the kind that keeps revelation from being reduced to reason – a type that is not too rational. It follows that there is a parallel between the attainability of the ground of the Noahide commandments and the understanding of the purpose of the Mosaic law. In both cases, there are limitations to what can be known through human reason.

That is not to say that this lack of understanding should in any way impinge on the adherence to the commandments. Building on an idea he briefly introduced in his earlier article, Novak says that the rational explanations for the norms can be a motivating factor – and can be acted upon – even if they are not entirely understood. Indeed, according to Novak, rationalists see a purpose even in the so-called non-rational laws, inasmuch as adhering to them is attaining what God intended.²²² The meaning behind that statement is that these thinkers are motivated by an idea that they perceive to be rational.²²³ However, they can only suppose the idea to be rational; they have no knowledge of the *ding an sich*. In this case, the deciding factor for the

²²⁰ This interpretation follows that of Nahmanides. Nahmanides, *Commentary on the Torah*, Leviticus 19:19, ed. C. Chavel (Brooklyn: Shilo, 1974), 195. According to Maimonides, however, mixing species is an idolatrous practice. Maimonides, *Guide to the Perplexed*, 3:37.

²²¹ M. Kilayim, chap. 2-6.

²²² Novak, NLIJ, 65.

²²³ Thomas Aquinas, *Summa Theologiae*, 1/1, q.2, a.1, trans. Fr. Laurence Shapcote, in *Basic Writings of Saint Thomas Aquinas*, ed. A. Pegis, vol. 1 (Indianapolis: Hackett, 1945), 6.

acceptance of the non-rational commandments is achieving their intended benefit.²²⁴ However, the benefit is not knowable in itself; it is known by virtue of God's promise.

As we have seen, the rabbinic enactments are closely related to the reasons for the commandments. In this treatment of the enactments, however, the natural law factors that Novak locates within that rabbinic enterprise differ from what he has previously stated. Earlier, Novak speaks about the persuasiveness of the rabbinic enactments as the locus for natural law factors.²²⁵ Here, however, Novak locates natural law factors in the process of the enactments, rather than what it takes to enforce them. Novak bases this point on the prerequisites for the enactments, as described by Maimonides:

(1) The authorities must deliberate 'according to what seems proper in their eyes (*ke-fi mah she-nir'eh*); (2) they must discern the likelihood whether the proposed legislation will be accepted by the majority of the law abiding members of the community.²²⁶

Novak speaks of a rabbinic teleology, which he closely associates with the teleology of the commandments.²²⁷ This teleology is in evidence in the first prerequisite, for the rabbis could only uproot earlier enactments (or make new ones, for that matter) through "rational/teleological grounds," which Novak defines as new or better ways at arriving at the original purpose.²²⁸ The likelihood that the decree will be accepted is still important, but that is only to ensure that the enactment will not be in vain. Further, the natural law factors that Novak locates in the enactments now relates to the teleology that drives rabbinic thinking in these matters, rather than to the wide acceptance of their decrees. The contrast between the earlier and later interpretations

²²⁴ Novak, NLIJ, 65.

²²⁵ Novak, JSE, 38.

²²⁶ Novak, NLIJ, 107.

²²⁷ Ibid., 68, 96ff.

²²⁸ Ibid., 108.

can be illustrated by looking at the divine purpose of some of the enactments. Those types of purposes can be seen here:

Obviously, for such approval to be won, the enactment itself had to be based on a consideration of the purposes of the Torah in general, one of which is surely to directly relate all instances of great deliverance to the awareness of the presence of God and to thus affirm that nothing is accidental.²²⁹

In the case that is mentioned here, an enactment could be the institution of a new holiday, one which recognizes “great deliverance.” The ultimate purpose of such a *gezerah* would be to create a long-lasting tribute to a miraculous event.²³⁰ In other words, it is the recognition of God’s intervention. As a result, that enactment cannot be easily understood by reference to a widely accepted reason, even if the rabbis gain universal acceptance for their decision. That example illustrates the difference between Novak’s earlier and later formulation. In the earlier description, the focus is on what the community would accept; in the later one, the attention is directed to the ability of the rabbis to align their thinking with the “purposes of the Torah.”

Nevertheless, the change in perspective may be explained by reference to Novak’s earlier discussion of enlightened students – the talmudic word for a rabbi is often *talmid haham*, literally “a disciple of a sage” – and their ability to grasp the purpose of the commandments. Unlike the majority of the community, the rabbis have an insight into human nature. This idea can be seen, for example, when, in the same context, Novak discusses the “truths” of the Torah that are sought by judges.²³¹ The idea is that the Torah provides judges, just as it provides the rabbis, with a certain leeway to interpret its laws. Therefore, as Novak separates those that have an insight into the Torah’s purposes from those that do not, the wide acceptance of the enactments becomes less important than the truths to which those enlightened few are privy.

²²⁹ Ibid., 99.

²³⁰ The holidays of Hannukah and Purim are two prominent examples of such an enactment.

²³¹ Novak, NLIJ, 112-113.

According to Novak, the enactments are driven by “human personhood,”²³² meaning the notion that human beings ought to be seen as ends in themselves.²³³ Crucially, the basis of this concept is the *imago Dei*.²³⁴ While that ground seems to be at odds with the purposes of the Torah, Novak reconciles them elsewhere by saying that “that which pertains to interhuman relationships (*bein adam le-havero*) is of ultimate significance in the relationship between God and man (*bein adam le-maqom*).”²³⁵ Thus, the ground upon which the rabbis base their enactments – regardless of whether those two purposes can be reconciled – can be identified with what Novak calls an inherently rational idea rather than a widely known one. Seen in this light, Novak’s views stand in contrast to his statement in *Jewish Social Ethics* concerning the difference between the purposes of the commandments and the purpose of rabbinic enactments. Novak originally presents the enactments as requiring an immediately evident purpose, the reason being that the purpose of each enactment is what makes it valid. Suffice it to say that that requirement is absent from the divine commandments, which are valid regardless of their purposes.²³⁶ The practical difference is that an enactment would not hold when its purpose is no longer evident, while a commandment would be valid regardless of whether its apparent reason is still relevant. According to this formulation, however, the enactments are similar to the divine commandments, inasmuch as it is assumed that the rabbis have an insight into human personhood that enables them to make decrees. Indeed, that type of insight would explain why only the rabbis are “empowered” to make those decrees.²³⁷

²³² Ibid., 164ff.

²³³ This is an idea that Novak owes to Kant, quoted in *ibid.*, 165.

²³⁴ Ibid., 167ff.

²³⁵ Novak, *EOI*, 174. I challenge this point in a subsequent chapter.

²³⁶ Novak, *JSE*, 216-217.

²³⁷ Novak, *EOI*, 172.

Finally, Novak also offers more insight into what he calls “God’s wisdom.” First, by contrasting it with divine will. When taken as a transitive verb, God’s will is an object that cannot be separated from its subject. That is to say the term refers to obedience to God’s command. Thus, in the prohibition against eating pork, not eating it is a response to God’s will. Wisdom is different:

But to speak of the wisdom of God, when “wisdom” functions as a predicate, is to speak of a state which can be spoken of, at least initially, apart from the subject of whom it is predicated. For when we speak of something as being the product of the wisdom of God, we can see its meaning, at least initially, in and of itself. Thus, for example, we can appreciate the wisdom of the commandment, “you shall not murder” (Exodus 20:13) before we eventually understand that its prescription is part of God’s wisdom as creator of the universe and its nature in which moral law is an inherent ingredient.²³⁸

Novak also offers more clarification by explaining wisdom in reference to the human process of understanding God’s commandment, rather than simply reacting to it. Seen in this way, “God’s wisdom,” as a concept, concretizes the component of inherently rational ideas that are out of reach for anyone outside a covenantal tradition.

Incidentally, this excerpt also shows that wisdom affirms something that is already recognized as normative. Because wisdom serves as an explanation for an existing phenomenon, the idea is in essence a descriptive rather than normative one. Earlier on in his thought, however, that is not the case. Speaking about the prohibition of murder in the context of war, Novak draws upon the Noahide laws as his frame of reference and claims:

²³⁸ Novak, NLIJ, 17-18. See also Novak, “Law and Moses: Law of Nature,” *First Things* (1996): 45-49: “All of this is why Jews can speak persuasively in secular public space about the prohibition of murder in a way we cannot (and should not) speak about the prohibition of eating pork. And it is why the prohibition of murder is taken to be immediately universal and rationally perceivable.”

The rabbis made it quite clear that gentiles domiciled under Jewish jurisdiction were expected to conform to their seven commandments as *enforced by their Jewish authorities*.²³⁹

Novak then shows that the laws are used as a measure to determine whether a Jew can participate in society. If these principles are kept, then Jews can recognize the state *de jure* not just *de facto*.²⁴⁰ Thus, it was not assumed that the laws were already being kept. Further, in his *Image of the Non-Jew in Judaism*, Novak states that “the Noahide was judged bound by Noahide law regardless of formal acceptance.”²⁴¹ That statement, which is clearly formulated as a desideratum, implies that the concept of the Noahide is normative, rather than descriptive. Further, in response to critics of an article Novak writes about the criminal defence system, he makes reference to the “immutable principles” in Judaism from which he argues that the American legal system can learn.²⁴² Nevertheless, Novak never blurs the distinction between that which is normative and that which is descriptive. Indeed, early on Novak shows clear-headedness about the difference between the two:

Jewish law is essentially divided into two realms: (1) Jewish law for Jews living in a society governed by that law; (2) the law governing all peoples as seen by the rabbis either as the actual state of affairs in the world (similar to the Roman *ius gentium*), or as seen as a legal desideratum (similar to the medieval *lex naturalis*).²⁴³

In this section, Novak responds to the criticism that admissions are not accepted in Jewish law, by showing that there are exceptions to that rule. The immediate relevance of the introduction is that in the case of the Noahide laws, which he identifies as laws governing everyone, some admissions are accepted. The point worth emphasizing here is that Novak clearly recognizes a

²³⁹ Novak, LAT, 128.

²⁴⁰ Ibid., 129.

²⁴¹ Ibid., 146.

²⁴² Novak, “Reply to Critics of ‘Exclusionary Rule’ with Judge Herbert A. Posner,” *New York Law Journal* 188.81 (1982): 2.

²⁴³ Ibid.

difference between the normative and descriptive elements of natural law, even if he does not yet formulate the criteria to distinguish between them. As I will soon show, the type of argument Novak formulates in reference to wisdom has a bearing on the two categories of rationality, inasmuch as Novak makes a case for the inherently rational basis of the Noahide laws, which are already widely known – and kept – by society. I return to this point in my treatment of Novak’s *Sanctity of Human Life*, in which he is more explicit about the type of argument he is making in the public square.

2.11. *Talking with Christians*

More insight into what Novak means by *ratio per se* comes from his 2005 work, *Talking with Christians*. Novak begins a chapter that outlines the influence of Martin Buber on Paul Tillich and proposes a way in which Buber’s thought could be enriched by that of Tillich.²⁴⁴ The discussion centres on the exegesis of Exodus 3:14, “And G-d said unto Moses: I am that I am; and he said: ‘thus shalt thou say unto the children of Israel: I am hath sent me unto you.’” Novak prefers the Hellenistic interpretation of the verse, namely, that the text refers to “being per se,” and that enables Novak to posit that the verse refers to an objective and subjective knowledge of God:

Hence, the relationship is always present as an object is always present. Its absence is only an experience due to a subjective lack in the human knower. To borrow from Aquinas’s language: God is always “*ratio per se*” (intelligible in himself) with regard to human noetic potential; God is only “*ratio quod nos*” (intelligible to us) with regard to actual human knowledge. The actualization of human knowledge is essentially an issue

²⁴⁴ Novak admits that there is no evidence that Tillich influenced Buber. Novak, TWC, 91. In this chapter Novak nevertheless shows how Tillich’s thought can be enriching for Buber’s theology.

for humans as temporal existences in the process of becoming; it is not essentially an issue for the eternal, unchanging God.²⁴⁵

Novak follows Aquinas, as we saw, in associating God with what is *ratio per se*, and in so doing reinforces here his earlier idea that *ratio per se* is not necessarily knowable through human cognition. Novak's reference in his footnotes to Plato's allegory of the cave complicates the efforts to determine the relationship between *ratio quod nos* and *ratio per se* in Novak's thought.²⁴⁶ Since Plato's allegory refers to human beings who perceive only an approximation of reality, Novak's reference to it can be taken to mean that the noetic potential can include knowledge that is objectively different than actual human knowledge. However, from what we have seen, the two types of rationality are not as distant from one another as they appear to be here. On the surface, at least, the knowledge of the benefit of not killing other human beings cannot be seen as differing categorically from the knowledge of why it is inherently unjust. The latter may require more cogitation, but the two rationalizations are then known in the same way. Further, the two reasons are not opposed to one another: murder can be seen as socially destructive and also inherently unnatural. Those ideas can coexist in a way that cannot be said of the display in Plato's cave, inasmuch as shadows are only an approximation of reality, not simply a different perspective. It is unclear if Novak is suggesting that there is indeed a categorical difference between *ratio quod nos* and *ratio per se*, or if the chasm between what is rational in itself, on the one hand, and widely known, on the other, only pertains to the knowledge of God. Even if the latter is the case, according to Maimonides, divine law is only compatible with reason, but not fully accessible by it. According to either interpretation, the

²⁴⁵ Novak, TWC, 94.

²⁴⁶ Ibid, fn. 15; Plato, *Republic*, 514Aff.

meaning Novak attaches to *ratio per se*, in his final reference to that term, would be in keeping with the rarefied realm in which he places that category of rationality.

2.12. “*The Universality of Jewish Ethics: A Rejoinder to Secularist Critics*”

In this article, Novak refutes the charge of Jewish particularity. Indicating the direction of his argument, Novak posits that a norm that is based in a religious tradition can be universalized only if the reason behind it applies to everyone.²⁴⁷ Novak's main challenge is from Kant, from whom he learns that the question of the universality of norms needs to be addressed in light of their subject, object, context, and source.²⁴⁸ The norm has to be universalizable for all of these factors. Novak initially argues for the universality of the first three areas, on the grounds that the laws pertain to anyone to whom they are directed. And the fact that non-covenant members are excluded from the law is described by Novak as a feature of partial egalitarianism. On that basis, Novak suggests that Judaism is “universal enough.”²⁴⁹ Because the last of Kant's factors depends on the equality of subject and object, however, which of course cannot be the case when the source of the commandment is God, it is difficult to argue for the universalizability of Jewish law in that regard. But Novak argues later in the same article that Judaism is more universal than Kantian ethics in that regard, for the law includes even those who are mentally incapacitated:

That is why expanding our view of the moral universe through a theory of divine creation of the universe helps us overcome the estrangement from the rest of creation (Nature) that is inherent in Kantian like autonomy with its elevation of the ideal of autonomy to the level of the absolute.²⁵⁰

²⁴⁷ Novak, “The Universality of Jewish Ethics: A Rejoinder to Secularist Critics,” *Journal of Religious Ethics* 36.2 (2008): 183.

²⁴⁸ Ibid., 188.

²⁴⁹ Ibid., 196.

²⁵⁰ Ibid., 203.

This last point connects the dots between Novak's formulation of the *imago Dei* as a term implying a capacity for a relationship with God and his argument for the universality of the norms. Because the relationship with God is at the heart of the commandments, those obligated by the commandment include anyone capable of that relationship.²⁵¹ This connection illustrates the radical change in Novak's argument for the universality of the laws over the course of his writings. What is first seen as obligatory by virtue of it being rationally attainable is later seen as obligatory by virtue of one's capacity for a relationship with the God of creation.

2.13. *The Sanctity of Human Life*

In one of his more recent works, Novak makes it explicit that the norms of the Noahide code are already being kept:

*We are already acting in a certain way: doing this but not doing that, consciously and wilfully. When we reflect on why we are doing this but not that, we see retrospectively that we act this way because of the way we regard both our own nature and the nature of those with whom we interact – a nature that is freely affirmed or denied by the way we act.*²⁵²

²⁵¹ Novak adds that only an infused teleology, concerned as it is with God's active interest in the world, rather than inherent teleology, whose subject is the striving to be like God, offers a satisfying reason why one should pursue peace and avoid violence. Ibid., 202-204.

²⁵² Novak, SHL, 8. Here I disagree with Scherzinger and at the same time with Rashkover and Kavka. For Scherzinger, Novak does not clarify whether he means his natural law descriptively or prescriptively. For Rashkover and Kavka, Novak bases the moral obligation of Jews towards democracy on the norms within the Noahide commandments, "since it is a rabbinic category that can test the moral legitimacy of the state on rational grounds." Gregor Scherzinger, *Normative Ethik aus jüdischem Ethos: David Novaks Moraltheorie* (Fribourg: Academic Press Fribourg, 2014), 299; Randi Rashkover and Martin Kavka, "Introduction," in TIPS, xxx. As I have shown, the norms are already practiced in society; Novak is only concerned with the universal basis for those norms. Thus, unlike Scherzinger, I argue that Novak is making a clear descriptive case for the basis of the norms, not the norms themselves. And, unlike Rashkover and Kavka, the argument put forth by Novak is not one that can be tested rationally. It is a question of the ground of the norms, and provided that society acknowledges a transcendent source for the law, that would be sufficient.

Consequently, we can see again why the categories of rationality are helpful for Novak's argument. Since he already assumes the norms are widely known and thus kept by consensus, the only basis upon which he can construct a relevant argument is what he calls an inherently rational one. In light of the way Novak makes his case in the public square, it becomes possible to parse his meaning in the following excerpt:

Whereas Mosaic law is the direct decree of God, given to a single human community at a certain point in history, Noahide law is not the direct decree of God but a rational human inference that God stands behind norms that seem to oblige all humans at all times. These commandments, especially, have been most often called rational commandments (*mitzvot sikhliyot*). They are the equivalent of what has been called natural law (*jus naturale*), which is law discovered by humans when they rationally discern the authentic needs and justifiable claims of their human nature.²⁵³

There are two types of law being discussed here, Mosaic and Noahide. The latter is being treated within the covenantal framework. That is to say Noahide law is being explained not only by reference to its immediately evident norms but in a way that is true to its inherently rational justification. In the first instance, then, Novak is discussing not only the universal knowability of the Noahide commandments but their inherent rationality as well. The second part of the statement, however, is referring to the norms outside a covenantal framework. In that regard, Novak is only referring to their immediately evident level. And it is to that level to which those needs and claims correspond.

In this text, we can also see how Novak takes his thought process to completion, drawing on what he establishes as the ground of the Noahide commandments to provide a Jewish point of view in the public square about issues such as stem-cell research, universal healthcare, and physician assisted death. To Novak's mind, his message is relevant even to those outside of covenanted communities:

²⁵³ Novak, SHL, 32-33.

Nevertheless, they can appreciate that human life alludes to more than merely being a thing in the world that can be destroyed or exploited.²⁵⁴ This appreciation often *comes out of their experience of injustice*. That is, they cannot accept the reduction of human beings to the status of mere things, which is what injustice assumes. Even though they cannot or will not offer any positive reasons that are otherworldly to counter the reductive assumption underlying all injustice and what is invoked to rationalize it, they refuse to be persuaded by these rationalizations.²⁵⁵

The experience to which Novak refers in this phenomenological argument is of encountering the other as the image of God. That assertion can be supported by a similar association Novak makes elsewhere. Speaking about Rabbi Akiva's statement about mankind being beloved because they are made in God's image, Novak writes:

Following Rabbi Akibah's line of thought, we could say that even before revelation, humans have some inchoate notion of their special status, and that is beyond anything one could get from the world.²⁵⁶

Crucially, this argument is still defined as rational. Indeed, elsewhere in the text, Novak states in no uncertain terms that only rational argumentation is sufficient when addressing the public square:

Even if the subjects of the prohibition (and the warrant) are taken to be all humankind, there is no reason for any non-Jew to accept either the prohibition or the warrant simply because the Jewish tradition says so. In other words, *only when the Jewish tradition can represent such prohibitions and warrants rationally* rather than prescribing them *do the*

²⁵⁴ Cf. Novak, "Buber's Critique of Heidegger," in NLART, 53-69.

²⁵⁵ Novak, SHL, xiii. Emphasis mine. Cf. Novak, JSE, 165. Here I part ways with Aaron Hughes, who frames *The Sanctity of Human Life* as Novak's answer to the question of the Jewish response to public square issues. In support of that statement, Hughes cites Novak, SHL, 29, where Novak writes that anyone who identifies as Jewish could not permit abortion. Aaron Hughes, "David Novak: an Intellectual Portrait," in NLART, 13. Hughes's presentation gives the impression that the book is meant for Jews who want to know how the Jewish tradition responds to these questions. That does not represent the book, however. The statement cited by Hughes is made in the context of a discussion of Jewish ethicists. The book as a whole is intended to share a Jewish view in the public square, but at the same time offer a reason why the Jewish perspective concerns non-Jews. Novak is advocating that Jews should have a voice in the debate, using knowledge from the Jewish tradition. Novak, SHL, 4.

²⁵⁶ Novak, NLII, 172.

prohibition and the warrant have enough universal validity to be given to all rational persons who are ethical subjects on behalf of all persons (even those who are prerational, such as fetuses, or postrational, such as persons who are senile or irreversibly comatose) who are ethical objects.²⁵⁷

Thus, in an argument addressed to the public square, Novak refers to the basis of the “transcendent definition,” which he originally introduces in *Halakhah in a Theological Dimension*,²⁵⁸ and frames it as a rational representation of the Jewish prohibition against murder.

2.14. *Natural Law: A Jewish, Christian, and Islamic Trialogue*

Another slight shift in Novak’s thought can be detected in Novak’s *Natural Law: A Jewish, Christian, and Islamic Trialogue*, which is co-written by Matthew Levering and Anver Emon.²⁵⁹ The first of those is that Novak describes even those commandments that fall within the parameters of rational law in slightly different terms:

²⁵⁷ Novak, SHL, 30. Emphasis mine. Novak later rules out explanations that are dependent on *ratio per se* in his *Natural Law: A Jewish, Christian, and Islamic Trialogue*. The context for the discussion is an overview of the natural law principles he formulated in *Natural Law in Judaism*: “To simply advocate that an act be done because it is *good per se* is to ignore the relational context in which designating an act to be “good” can be rationally justified. To judge an act to be essentially good requires that one show its essentially personal character, i.e. one must show the act is a benefit *for someone by someone from someone*.” Novak, Trialogue, 22-23. See also Novak, *Jewish Justice: The Contested Limits of Nature, Law, and Covenant* (Waco, Texas: Baylor University Press, *forthcoming*), 7.

²⁵⁸ Novak, HITD, 99.

²⁵⁹ In Levering’s response to Novak, Levering is generally in agreement with Novak, but he posits that Novak needs to have a clearer account of sin and its consequences on natural law. Matthew Levering, “Response to David Novak’s Natural Law in Judaism,” in Trialogue, 57-65. Emon does not offer much by way of engagement, and he speaks about the philosophy of law in the Islamic tradition as being a more fruitful source for natural law. Anver Emon, “Response to David Novak’s Natural Law in Judaism” (45-55). Levering’s section discusses Romans 2:14-15 in the thought of the Church Fathers of the Christian East and West, explaining the interpretations of Origen, Chrysostom, Ambrosiaster, Pelagius, and Augustine of the notion of law before Christ. Matthew Levering, “Christians and Natural Law,” 66-109. Novak does not directly engage Levering in his response, instead highlighting a point of agreement between them. In both Christian and Jewish thought, natural law is only a component of morality. Novak then adds the debate over the status of Christianity in the Jewish tradition, offering a refutation of

Maimonides says they are known by “rational compulsion,” or that “reason inclines towards them,” both terms which could be translated into the scholastic term *inclinatio rationalis*.²⁶⁰

Novak refers to the norms associated with the Noahide code, which are said by Maimonides to be known through the mind (*da'at*). Instead of using *ratio quod nos*, which, given his line of argumentation, would be the appropriate word, Novak uses *inclinatio rationalis*.²⁶¹ The term should be seen in its original context, namely, Thomas Aquinas’s natural law theory. The expression appears in connection with Aquinas’ definition of natural law as a “participation of

the position that it is idolatrous. Novak, “Response to Matthew Levering’s Christians and Natural Law,” 126-143. In Emon’s response to Levering, Emon notes that temporality has a level of significance for Levering’s writing but not so in Novak’s thought. He also discusses how Levering’s question of whether non-Christians can participate in natural law is unlike the Islamic emphasis on obligation. Anver Emon, “Response to Matthew Levering’s Christians and Natural Law,” 111-126. Emon’s section pertains to the Hard and Soft theories of natural law. The former constitutes seeing the world as having been created for “good,” a proposition which then allows human beings to reason based on nature; the latter is closer to voluntarism and sees the world as imbued with God’s grace. Emon also speaks about the relevant ideas and terms in the Islamic tradition and posits that the impact of this discussion pertains to agency and authority even in spite of a temporal and spatial existence within a religious tradition. Anver Emon, “Islamic Natural Law Theory,” in *ibid*, 144-187. Novak responds that a Jewish natural law theory cannot be reconciled with a Hard natural law theory, inasmuch as it leaves little room for election. Novak finds his own theory closer to the Soft natural law theory. Novak, “Response to Anver Emon’s Islamic Natural Law Theories,” 196-210. In Levering’s response to Emon, Levering suggests that natural law needs to account for human nature and the relationship with other human beings. Matthew Levering, “Response to Anver Emon’s Islamic Natural Law Theories,” 188-195.

²⁶⁰ Novak, *Dialogue*, 32. We encountered this term in Novak’s thought one other time, but in conjunction with other terms he uses to show that there are equivalent terms for natural law in rabbinic thought. Novak, review of Menachem Elon, *Jewish Law: History, Sources, Principles, Vera Lex* 14.1-2 (1994): 52.

²⁶¹ *Ibid*. Cf Novak, *JSE*, 25, where he translates it as “reason inclines.” See also Novak, “Maimonides and Aquinas on Natural Law,” in *St. Thomas Aquinas and the Natural Law Tradition: Contemporary Perspectives*, eds. John Goyette, Mark S. Latkovic, and Richard S. Myers (Washington: The Catholic University of America Press, 2004), 49. Novak acknowledges that the Noahide code is meant as a set of principles not a legal framework, something that sharpens the argument I am making. Novak, *Shabbat Class, Shaarei Shomayim* Synagogue, February 4, 2017.

the eternal law in the rational creature.”²⁶² By that, Aquinas means that, by using reason, human beings partake in eternal law. By choosing this term, Novak knowingly imbues his words for rationality with a sense of the process of human thought and its framework, rather than the content at which it arrives.²⁶³ Drawing on the two categories of natural law theories with which this thesis began, we can say that Novak’s choice of words is an indication that he changes the focus of his natural law theory from “content” to “form.”²⁶⁴ In other words, Novak moves further away from the rationality of the norms toward the rational human inclination that is directed to them.

In the same text, Novak also articulates a position that can be identified as philosophical anthropology. Explaining his position that natural law is divine law, Novak writes:

Nevertheless, unlike divine law that is revealed, natural law is not immediately received as God’s commandment. Instead, humans learn natural law when we methodically discover (i.e., by the mediation of human reason), what are the authentic requirements of our created nature (i.e., what we naturally need) and by our rational formulation of those requirements into actual norms.²⁶⁵

²⁶² Thomas Aquinas, *Summa Theologiæ*, 2/1, q. 91. a. 2, trans. Fr. Laurence Shapcote, in *Basic Writings of Saint Thomas Aquinas*, ed. A. Pegis, vol. 2 (Indianapolis: Hackett, 1945), 749.

²⁶³ Novak’s preference for Aquinas’s formulation is also of a piece with his choice of the word *hokhma* for rational consideration. To understand the significance of this specific term, it is necessary to define the possible words for knowledge, based on the definitions offered by Meir Leib ben Yehiel (known as the Malbim, d. 1879). The three possibilities are *hokhma*, *bina*, and *da’at*. The first is taken to mean knowledge learned through one’s encounter with the universe, the second is taken to mean the capacity to build on prior knowledge to acquire more of it, while the third is a reference to divine wisdom. Based on Maimonides’ description of those that arrive at natural law norms on their own, in which Maimonides uses the same word, Novak says that the appropriate term is *hokhma*. See for example Meir Leibush Malbim, *Nevi’im U-ketuvimim Miqraei Kodesh*, Proverbs 30:1-3 (Vilna: Widow and Brothers Rahm, 1891), 93-94. Novak, Shabbat Class, *Shaarei Shomayim* Synagogue, Toronto, Canada, July 16, 2016. That is to say that the rational capacity is equated with attaining readily knowable information, rather than arriving at new concepts through deductive reasoning.

²⁶⁴ Petter Korkman, “Voluntarism and Moral Obligation: Barbeyrac’s Defence of Puffendorf Revisited,” in *Early Modern Natural Law Theories: Context and Strategies in the Early Enlightenment*, eds. T. J. Hochstrasser and P. Schröder (Dordrecht: Kluwer Academic Publishers, 2003), 206.

²⁶⁵ Novak, *Dialogue*, 15.

The *grundnorm* is a useful concept in this context. What makes the natural law itself binding on human beings is its status as God's command. The law, however, is mediated through a created nature to which God's command is suited.²⁶⁶ In a similar vein, Novak's statement identifying Maimonides as a natural law theorist puts the emphasis on the human subject of the law:

The very fact that Maimonides sees six sevenths of the Noahide laws to really be "adamic" or "human" (i.e., human as pertaining to their subjects, not pertaining to their source who is God) indicates his acceptance of basic natural law reasoning. "Adam" is the personification of humankind per se.²⁶⁷

The emphasis on the individual to whom the laws are given instead of their source is of a piece with the philosophical anthropology that features in Novak's later account.

2.15. *Two Other Recent Texts*

Novak's two other recent texts include *Zionism and Judaism: A New Theory*, published in 2015, and the forthcoming *Jewish Justice: The Contested Limits of Nature, Law, and Covenant*. In the first text, Novak advocates for a religious, rather than secular or political, Zionism. Arguing against the views of those, such as Theodor Hertzl, who posit that Israel is necessary to defend Jews, a claim made in particular after the Holocaust, as well as those, such as Ehad Ha-Am, who see Israel's survival as being based on Jewish culture rather than religious ideas, Novak argues that the justification for Israel's existence and subsequently its future depends on religious Zionism. The second book contains previously published material on matters such as capital punishment, torture, marriage and civil law, and a number of thematic essays.

²⁶⁶ See also Novak, TWC, 36, where he writes that Noahide norms are "so closely related to universal human nature."

²⁶⁷ Novak, Trialogue, 33.

I mention these texts here because they both include references to natural law ideas, most prominently in his book on Zionism, where Novak makes the case for an Israeli constitution based on Noahic principles. The desideratum is formulated in this way:

Can we find in the Jewish tradition an affirmation of a secular realm that is based neither on dogmatic secularism nor on the particular revelation in the Torah (i.e., Jewish religion) to the Jewish people claiming both the people collectively and each and every Jew individually? In other words, can we find in the Jewish tradition grounds for asserting a theistically based polity, which is presupposed by, yet not identical with, the optimal theocratic polity the Torah seems to be intending for Israel.²⁶⁸

Novak frames the laws as “theistically based,” meaning that the laws cannot be separated from their divine origin. He acknowledges, however, that some human beings keep the laws for different reasons:

To be sure, there are those who live this way only because it is accepted tradition; and there are those who live this way only because it seems to be reasonable in a pragmatic way. And there are those who live this way because it is commanded by God in revealed scriptures. Yet, as Maimonides emphasizes, the most astute humans realize that what they were doing is because of the rational commandment of God, which would hardly be universal if no particular tradition taught it. Therefore, each one of these three levels of moral understanding reinforces the other and no one of them contradicts the others.²⁶⁹

Novak clearly has a preference for an adherence to the laws that is based on their divine origin. It should also be noted, however, that Novak’s description of those who live by those standards solely because of their social benefit is not free of theistic elements. According to Novak, those people do so “because of the rational commandment of God.” Further, a close look at the statement shows that Novak is not acknowledging that course of action as a valid option. It seems that it only reinforces the other options; it cannot stand independently. Nevertheless, neither text includes the distinction of *ratio per se* and *ratio quod nos*. Even in the book on

²⁶⁸ Novak, *Zionism and Judaism: A New Theory* (Cambridge: Cambridge University Press, 2015), 171.

²⁶⁹ *Ibid.*, 173.

justice, which includes essays that are based on the implicit and explicit argument that Judaism does not have a separate sense of justice²⁷⁰ – an idea that strongly correlates to natural law – Novak makes no mention of the distinction.²⁷¹

3. Conclusion

In my introduction to this thesis, I noted that, according to Jonathan Jacobs, the universality of natural law theories is typically based either on “rational principles” or on an “intrinsic end for human nature.”²⁷² The former can be ascertained by anyone, while the latter

²⁷⁰ Novak, *Jewish Justice: The Contested Limits of Nature, Law, and Covenant* (Waco, Texas: Baylor University Press, *forthcoming*), 6-7.

²⁷¹ He does, however, draw on wisdom, calling it something that human reason could identify with. As we have seen, wisdom corresponds to that which is unknowable to anyone outside a covenanted community, and it pertains to a *ratio per se* explanation. *Ibid.*, 148, 38.

²⁷² Jonathan Jacobs, “Aristotle and Maimonides on Virtue and Natural Law,” *Hebraic Political Studies* 2.1 (2007): 73. One of Jacobs’s contributions to the scholarship on Novak’s natural law is the distinction he makes between Novak’s view and the “evident principles” as well as “philosophical anthropology” approaches of the past. As Jacobs explains, Novak’s view is that, “human reason is the precondition for ascertaining what morality requires and for ascertaining its general validity.” Jonathan Jacobs, “Judaism and Natural Law,” *Heythrop Journal* 50 (2009): 940-941. However, Novak himself uses the term “philosophical anthropology” in reference to his *imago Dei*. Novak, *NLIJ*, 171. Kavka and Rashkover similarly support a reading of philosophical anthropology in Novak’s thought, arguing that Novak’s notion of the *imago Dei* connects his natural law with his teleology. Randi Rashkover and Martin Kavka, “Introduction,” in *TIPS*, xxvi-xxvii. It should be noted that it is apparent that Novak does not support a ‘goods evident’ view of natural law. Indeed, writing about the difference between the generality of the code and positive law-making, where the content of the law is located, he writes: “Accordingly, even when natural law is invoked as the teleological justification for some positive legislation, as in the case of the invocation of the principle of the common good, that invocation is penultimate. That is, the common good is instrumental; it is for the sake of the real ultimate end of *that* community.” Novak, *NLIJ*, 152. Novak thus seems to preclude the ‘goods evident’ approach with that statement, and the proof is that there is an overarching principle, one which is for the good of the community. The ‘goods evident’ theory is incompatible with such an overarching idea. Indeed, in his defense of Grisez, Novak suggests that Grisez should abandon the view that religion is “one good among several” and should give it an overarching role. Novak, review of Russel Hittinger, *A Critique of the New Natural Law Theory*, *This World* 26 (1989): 137-140; cf.

pertains to everyone by sharing those ends. In this chapter, I have analyzed the development in Novak's natural law theory from a view that is dependent on "rational principles" to one that is more heavily based on an "intrinsic end for human nature." The major finding of this study is the shift in Novak's natural law theory that was shown to occur through a gradual but substantive change in his definition of rationality. The most obvious expression of this shift is that *ratio per se*, originally taken by Novak to mean something knowable in itself, is later associated solely with ideas that are based on a "doctrine of creation." Since rationality is intrinsic to natural law theory, the change in the meaning that Novak assigns to that term is a reflection of a broader natural law theory that includes the reasons for the commandments and the rabbinic enactments.

Some of the more subtle changes in Novak's view of rationality emerged from the tension that was highlighted between *ratio per se* and his other category of rationality, namely, *ratio quod nos*, that which is widely known. Specifically, although Novak describes the Noahide laws as knowable in themselves, as evidenced by the fact that, in *Law and Theology in Judaism*, he identifies only the most immediately rational commandments with natural law, he also writes that the explanations of such a prohibition are necessarily transmitted through one's community. Strictly speaking, those two ideas should contradict one another, since a "historical" community should not be necessary to transmit ideas that are inherently rational. That contradiction also raises the possibility that an explanation which is *ratio per se* is based on something that cannot be known outside of one's community. A striking example of this was found in Novak's *Halakhah in a Theological Dimension*, in which Novak identifies a new ground for ethics.

Instead of basing ethics on a universal consensus, moral reason, or divine will, Novak suggests

Germain Grisez, "The First Principles of Practical Reason," *Natural Law Forum* (1965): 168-201. See also J. Budziszewski, who argues that Novak's view, which is based on the rabbinic formulation of the Noahide code, resembles the 'goods evident' theory. J. Budziszewski, *Written on the Heart* (Downers Grove, IL: InterVarsity, 2009), 207.

that it is grounded in the *imago Dei*. The notion of *imago Dei* is clearly based on a doctrine of creation, and is thus unavailable to unaided human reason. That is to say a universal ethics grounded in the *imago Dei* is categorically distinct from a system grounded solely on reason. Indeed, Novak places an adherence to the commandments based on reason alone in a separate category – he considers it to be an adherence to “mere laws.” Not surprisingly, in his *Image of the Non-Jew in Judaism*, Novak states that observing the Noahide commandments solely on the basis of their reasonableness is inadequate.

We have also seen that Novak qualifies his original notion of rationality, perhaps to the point of undermining it. That trend in Novak’s thought first appeared in *Law and Theology in Judaism*, 2nd Series, in the manner in which he becomes reluctant to define human beings by their rational abilities. He prefers a “transcendent definition.” It is fairly obvious that this transcendent definition is captured neither by the *ratio per se* nor the *ratio quod nos* categories of rationality, at least as Novak originally presents them. That is to say, a transcendent definition is neither rational in itself nor widely known. Furthermore, Novak’s standard for rationality changes. In *Image of the Non-Jew in Judaism*, he places the Noahide commandments on the same spectrum as the Mosaic law, which admittedly includes both rational and non-rational commandments; and Novak takes that which is better suited to human beings to be superior to that which is widely accepted as rational.

Novak’s new and more expansive definition of rationality explains how, in his “Natural Law and Normative Judaism,” he can draw on natural law to explain the compatibility of a divine covenant with human subjects. Since the term rational is now taken, in part, to mean that which does not reduce revelation to reason, rationality now describes divine law in human terms. The same understanding also helps Novak to explain the so-called non-rational commandments

in rational terms. Given that what is rational is no longer necessarily that which is inherently reasonable, even those commandments can be described by that term. And similarly, as a corollary, even the rational commandments cannot be explained by reference to Novak's original usage of the term. As he writes in *Natural Law in Judaism*, the rational commandments are structured in such way so as to preclude them from being completely understandable.

By changing the scope of his natural law theory from a focus on what human beings can rationally understand to a broader emphasis on what is well suited for created human needs, Novak is also able to incorporate the teleologically motivated rabbinic enactments into his theory. On Novak's view, the enactments are intended to treat human beings as ends in themselves, and so the purpose of the enactments is not unlike the Noahide code. Stated differently, in Novak's later account of natural law, he identifies what is rational with that which does not reduce the divine to the human. As Novak's notion of wisdom demonstrates, the inherently rational explanation for the Noahide norms is based on a metaphysical ground that is not knowable outside of one's tradition.

Chapter 2 Analyzing Novak's Fusion of the Two Accounts

1. *Introduction*

In one of his most recent works on natural law, Novak admits that he has been “formulating and reformulating” his natural law theory for over 30 years.²⁷³ In the previous chapter, the focus was on the discontinuity between Novak’s earlier and later accounts of natural law. In this chapter, the attention shifts to the way Novak reconciles his two accounts. As we have seen, the earlier account is grounded by reason; the later account is grounded by the *imago Dei*. More broadly, the earlier account is located within specific rational laws; the later one is located at the juncture between divine authority and human judgement and acceptance.²⁷⁴ My attention turns to the way in which Novak bridges the gap between these two accounts. I identify his attempts at reconciliation by comparing the later account as he originally presents it in his “Natural Law and Normative Judaism” with the way he eventually describes it in *The Election of Israel* and in *Natural Law in Judaism*, as well as in subsequent texts, and by highlighting the features that are unique to the earlier and later accounts, such as the personhood of the latter and the specific normative content of the former. I then look for the occasions wherein those components are added to the expressions of natural law as he defines them in his earlier and later accounts. These efforts at reconciliation include the normative content Novak incorporates into his second account, the metaphysical background he adds to his later view of the Noahide code,

²⁷³ Novak, *Dialogue*, 4.

²⁷⁴ Novak, “Natural Law and Normative Judaism,” *Vera Lex* 6.2 (1986): 4.

the mediating concept of personhood, the phenomenological retrieval of the norms of the Noahide code, and his argument in favour of minimal and maximal claims.

I will discuss each of these attempts at reconciliation, followed by a respective critique. In the critiques of the metaphysical background added to the Noahide code, the mediating concept of personhood, and the phenomenological retrieval of the norms, I contextualize the efforts to reconcile the accounts by highlighting the discussions in the Talmud, as well as in Maimonides' writings, of the Noahide code, the reasons for the commandments, the rabbinic enactments, and the relationship between the Noahide code and the Mosaic law. As we will see, there are a number of significant differences in the treatment of those subjects both within rabbinic texts and in Maimonides' writings. In both sources, the Noahide code is plainly described as a legal system for which non-Jews are commanded. But there is wide disagreement on what those laws are. There is also no apparent guiding principle, such as the idea that human beings can only be held responsible for what is rational, for example, in terms of how to determine what those laws ought to be. In contrast to that description, the reasons for the commandments of the Torah are depicted as illusive, and any effort to determine what those reasons are is discouraged; and the enactments are framed as divinely sanctioned but only because they are intended for the protection of Torah law. Further, the covenant with Abraham is seen by the Talmud as replacing the Noahic status of his descendants, which undermines Novak's view that the Mosaic law can be seen as an extension of the Noahide law and that both legal codes can be viewed on a spectrum or continuum. The other critiques will be based on the inherent difficulties of Novak's attempts at reconciliation. The phenomenological approach will be assessed in light of the specificity with which Novak describes the experience of the norms, the metaphysical background of the Noahide code will be analyzed given the limitations Novak

places on human knowledge of the cosmos, and the minimal/maximal claims will be studied in view of the differing conceptions of natural law upon which each of those claims is based.

2. *Novak Reconciles his Two Accounts*

2. 1. *An Added Normative Component*

One of the key differences between Novak's earlier and later accounts of natural law relates to the fact that, in his earlier account, Novak locates natural law in one of the commandments of the Noahide code,²⁷⁵ meaning that only one commandment can be identified with natural law simply on the basis of its reasonableness, but that is not the case in his later account. In an article he writes in the 1980's, Novak argues that the Mosaic covenant must include a doctrine of natural law because it presupposes divine "lawgiving," human acceptance, interpretation, and legislation. The common basis of these factors is described as follows:

In all of these questions, the teleology inherent in natural law takes precedence over the deontology inherent in obedience to any particular law of an authority.²⁷⁶

Novak means that the authority on which the covenant is based must also be answerable to human beings, to the extent that divine law is based on human understanding and initiative.²⁷⁷ This point can be clarified by comparing an earlier statement made by Novak about non-rational law, with what he writes about the same issue in *Natural Law in Judaism*. In a lecture about Jewish dietary laws, delivered in the 1960's, Novak explains the talmudic suggestion that the kosher laws were to be accepted "on divine authority alone":

²⁷⁵ Novak, LAT, 115.

²⁷⁶ Novak, "Natural Law and Normative Judaism," *Vera Lex* 6.2 (1986): 4.

²⁷⁷ Elsewhere, Novak succinctly explains this idea by reference to the rabbinic concept, "[T]he Torah speaks according to human language," meaning that the divine law must accommodate human intelligence, so that it can "understand the Torah in the world." Novak, NLIJ, 29.

It is quite clear from even a cursory reading of the Pentateuch that the underlying theme of all of the various commandments is to make man aware of the kingship of God in every area of human life. No detail of life routine is too trivial for God's kingly involvement. Even provisions for the proper lavatory facilities are considered part of divine law! This line of interpretation has had the strongest appeal throughout the history of Judaism. It might be called the concept of "ritual restraint," the idea that man must at all times restrain some of his impulses for higher ends. Personally, *I myself am most attracted to this interpretation* of the kosher laws. It justifies them purely on *religious grounds*.²⁷⁸

This statement seems to indicate that an explanation for non-rational commandments that can be reduced to the acceptance of God's authority alone is not only sufficient but preferable. In this instance, it seems that no external standard is necessary in order to accept that authority. Later on, however, the acceptance of non-rational laws is presented as having been based on what the Israelites perceived as meeting an external criterion of goodness:

Although there have been those in the history of Judaism who have seen all the commandments being obeyed only because they are the decrees of God, those of a more *rationalist* frame of mind have also thought that the commandments are to be obeyed because to obey them is to attain what the wisely beneficent creator has intended as good for us.²⁷⁹

In this case, the judgement about God's non-rational law is not made by reference to God's authority in every area of life; it is based on human judgement.²⁸⁰ Along the same lines, Novak later defines natural law as an understanding of human beings by those with authority,²⁸¹ by

²⁷⁸ Novak, "The Jewish Kosher Tradition," *Highlight Journal of the Institute of Sanitary Management* (1967): 21. Emphasis mine.

²⁷⁹ Novak, NLIJ, 65.

²⁸⁰ Cf. Novak, EOI, 150-151, where Novak explains that it is the fact that God took the Israelites out of Egypt that allowed them to draw conclusions about God's goodness. Based on that statement, one might suggest that, for Novak, the Exodus later replaces the Noahide code in providing the Israelites with a standard for measuring goodness. On the question of Novak's conflicting views on why Torah law should be kept, see Gregor Scherzinger, *Normative Ethik aus jüdischem Ethos: David Novaks Moraltheorie* (Fribourg: Academic Press Fribourg, 2014), 133.

²⁸¹ Novak, CR, 115.

which he means God, and by extension the rabbis, who are aware of human needs. In other words, in his later formulation, Novak's natural law theory pertains to the balance between divine authority and human acceptance, rather than to specific reasonable commandments that are expressions of universal moral law. Thus, as he formulates his later account, the Noahide code is framed as a "standard of justice" which can be known by "created human intelligence."²⁸²

Taken as a whole, the Noahide code in Novak's thought becomes a reflection of what enables human beings to judge the goodness of the Mosaic law.²⁸³ Not surprisingly, the commandments in this account are not expressed as specific laws, and they do not seem to include any normative content. Evidence for this reading can be seen from the fact that, in his earlier formulation, Novak writes that the Torah needs to be given to a lawful community.²⁸⁴ But in this later text, the code is described as preparing the community for a covenant with God. Indeed, it is not on the basis of the laws that precede the covenant that God's ends are seen as "constructive" and not "capricious," but from the fact that God enters into history and deals with human beings.²⁸⁵ It is as if the content of revelation or the code that precedes it is less important than the actual fact of revelation and the broad presuppositions upon which it is based. As one scholar says of Novak's account of natural law:

In this approach the point is not to show that the six hundred and thirteen commandments constitute a revealed body of natural law. Rather, natural law helps explain the moral validity of the commandments and the moral soundness of the acceptance of the

²⁸² Novak, "Natural Law and Normative Judaism," *Vera Lex* 6.2 (1986): 4.

²⁸³ As Novak puts it, the Noahide law makes the revealed law "intelligible." It should be noted that even when he lists the seven commandments, he does so in the context of Nahmanides' view of minimal moral standards. And while Novak acknowledges that his theory is similar to that of Nahmanides, he implies that it is not identical to it, seemingly because he views the laws more broadly at this point. Novak, "Natural Law and Normative Judaism," *Vera Lex* 6.2 (1986): 6.

²⁸⁴ Novak, LAT, 26.

²⁸⁵ Novak, "Natural Law and Normative Judaism," *Vera Lex* 6.2 (1986): 4.

covenant. There is, on the human side, receptivity to the covenant through acknowledgment of its ethical soundness. This, in Novak's view, reflects the role of natural law as reflected in human rational recognition of validity.²⁸⁶

Along these lines, Novak's next sustained treatment of natural law makes no mention of the Noahide laws by name, certainly not explicitly.²⁸⁷

Nevertheless, as he fleshes out his later account of natural law, Novak once again incorporates the specific content of the Noahide code into his formulation. This development can be seen by comparing the explanations Novak provides for why the Noahide code serves as a precondition for revelation. When Novak first develops his fuller account of natural law he states the following:

Now it is assumed that the world has been created according to a standard of cosmic justice (*mishpat*), by which it is subsequently ordered by God. And this standard of justice is assumed to be known, at least in general, by created human intelligence.²⁸⁸

In this instance, Noahide law is associated with a standard of justice that must be known by the Israelites before the divine law can be received. Just a few years later, however, Novak explains his view of the precondition to revelation, which is opposed to that of Hermann Cohen, who views ethics in ontological terms, in the following way:

It functions as the moral condition – but not the moral ground as it does for Cohen – of that higher law. *It is the norms for creation*, one mediated by the natural order. This norm emerges when human persons accept their creaturely limitations, both individually and collectively, as being instituted by their creator. Accordingly, they formerly order their lives by these limitations *taken* as nature, and the content that is within these limitations they develop as history.²⁸⁹

²⁸⁶ Jonathan Jacobs, "Judaism and Natural Law," *Heythrop Journal* 50 (2009): 937.

²⁸⁷ Novak, "Natural Law, Halakhah, and the Covenant," *Jewish Law Annual* 7 (1988): 43-67.

²⁸⁸ Novak, "Natural Law and Normative Judaism," *Vera Lex* 6.2 (1986): 4.

²⁸⁹ Novak, EOI, 76. Emphasis mine.

Even if Novak frames this content as a historical development, that is still an element that he includes in this account of natural law that he does not include earlier. Further, his reference to “creaturely limitations,” implies that there is more than one normative limit – and those are presumably straightforward ones – even before the historical content is added. Indeed, it is likely that the historical content that he is describing is built on the existing laws in much the same way that Joseph Albo describes civic law – specific laws that are built upon natural law.²⁹⁰

Another example of Novak’s inclusion of specific content into his later account comes from a comparison between the explanations he provides in his earlier and later accounts for why the Noahide code is a precondition for revelation. In *Law and Theology in Judaism*, 2nd Series, he calls the precondition, “social legislation.”²⁹¹ That is to say the basic norms have to be in place for the Torah to be given to a community. Then, in his “The Origin of the Noahide Laws,” Novak calls the Noahide code “a theoretical construct,” which is “moral rather than legally operative.”²⁹² Subsequently, Novak offers a slightly different explanation:

That is, if Israel had not considered itself bound by the universal law of God perpetuated by the Noahide covenant with humankind on earth, it would have been in no position to conscientiously accept the more singular law of God revealed at Sinai to it and for it.²⁹³

Novak is describing the relationship between the two covenants, Noahide and Mosaic.²⁹⁴ The parallel he constructs seems to be at odds with his original description of the precondition. In this case, his meaning appears to be that the relationship with God is enabled by the code because it is an expression of law *per se*. A similar connection between natural law and specific

²⁹⁰ Joseph Albo, *Sefer ha-Iqqarim*, 1:8 (Warsaw: I. Naldman, 1870), 34ff.

²⁹¹ Novak, LAT, 2nd Series, 25. See also Novak, HITD, 88-89.

²⁹² Novak, “The Origin of the Noahide Laws,” in *Perspectives on Jews and Judaism: Essays in Honor of Wolfe Kelman* (New York: Rabbinical Assembly, 1978), 309-310.

²⁹³ Novak, JSE, 34.

²⁹⁴ Note that Novak calls the Noahide code a covenant. Ibid.

content can be found in Novak's article, written in 1995, about God's election of Abraham and Abraham's acceptance of it.

In Scripture, God's original presence is explicitly normative: his first contact with humans in the garden is set forth with these words: 'The Lord God commanded [*vayitsav*] the humans [*al ha'adam*]' (Gen. 2:16). Norms are a necessity for human life because humans are beings who must consciously order the conflicting parts of their experience if they are to survive and cohere...So it follows that any rejection of God's norms presupposes the substitution of God's authority by the authority of one who is not-God being made into God.²⁹⁵

The verse mentioned by Novak is the very same one that the Talmud draws upon to learn the Noahide norms.²⁹⁶ Novak's reference to this verse indicates that this treatment of natural law is not entirely consistent with the standard of justice about which he speaks earlier. A plain reading of this statement shows that he is referring to "God's norms," not a humanly knowable standard of justice. In another text, Novak goes further and analyzes the commandments individually. That is to say he divides the commandments into those that are more and less effective for moral discourse, and he suggests that only the first four commandments, namely, the prohibitions against murder, adultery, and robbery, and the commandment to set up courts are "pertinent to modern moral discourse."²⁹⁷ The rest of the commandments, such as the laws against eating a torn limb from a live animal, blasphemy, and idolatry are "hard to justify" in modern moral discourse, but Novak suggests that they can represent laws against cruelty to animals, hate speech, and "modern pagan ideology, like Nazism."²⁹⁸ From this discussion, we can see that

²⁹⁵ Novak, "Creation and Election," in TIPS, 49.

²⁹⁶ b. Sanhedrin 56bff. Novak ultimately calls this verse a pneumatic device (*asmakhta*) rather than the authentic source of the prohibition. Novak, CR, 189.

²⁹⁷ Novak, JSC, 233.

²⁹⁸ Ibid.

Novak follows his earlier treatment of the Noahide code, associating it with specific laws rather than broad moral standards.²⁹⁹

The change in emphasis that I have highlighted can also be expressed by looking at the way Novak handles the question of whether the Noahide laws are sublated by the Sinaitic covenant. In the first series of his *Law and Theology in Judaism*, he writes the following:

Our inheritance from Noahide law is reverence for life. But our system is now improved upon, in the German sense of *aufhebung*...something lifted from a lower level and included on a higher level.³⁰⁰

Similarly, in the second series of his *Law and Theology in Judaism*, Novak describes the difference in the Noahide laws before and after the Sinaitic covenant in the following terms.

In other words, the acceptance of the Torah by the Jewish people was conditioned by their prior acceptance of the universal Noahide law, such as the prohibitions against murder, adultery, and theft. What was unconditional was the acceptance of the new *form* of lawfulness: after revelation, morality is now personal obedience to God, that is, a *mitzvah*.³⁰¹

That statement comes in the midst of what Novak presents as a novel construct of revelation, wherein he argues that the Torah has preconditions – that is, the Noahide laws.³⁰² The implication is that, although the norms must exist before revelation, once the precondition has been met, the laws do not feature in Judaism in the same way. Novak’s position on this issue

²⁹⁹ It should be noted, however, that some of this discussion can be attributed to the change in audience. Novak’s original texts are written in the style of halakhic responsa, that is to say that they are written in response to questions, presumably by Jews – published when Novak was serving as a rabbi – and the second texts are theological works meant for a wider audience.

³⁰⁰ Novak, LAT, 56; Novak, LAT, 2nd Series, 26.

³⁰¹ Ibid. This point also reinforces the non-metaphysical nature of the Noahide code earlier in Novak’s thought. I return to this point later in the chapter.

³⁰² Novak, LAT, 2nd Series, 26. Even a few years later, Novak shows that the code can be relevant now, in the sense that it is used as a mode of comparing Mosaic law to other legal systems and understanding Mosaic law in relation to them. Novak, “Noahide Law: A Foundation for Jewish Philosophy,” in TIPS, 127.

changes, however. In *Natural Law in Judaism*, written in 1998, he insists that the code is not *aufgehoben*:

In other words, to use Hegelian language, natural law must not be *aufgehoben* by positive law. It must not be so transformed by it that it eventually loses its former identity altogether.³⁰³

That is, the covenant does not free the earlier agreement.³⁰⁴ If that were the case, “that would entail a separation from the justice that God requires of the human world.”³⁰⁵ In other words, the laws retain at least a part of their original sense. The significance for Novak of including the laws of the code in the Torah is that, as the clearest expression of natural law, it would seriously challenge his argument that Judaism is compatible with natural law if the Noahide commandments do not remain in a recognizable form after the Sinaitic revelation. This idea comes out more clearly in *Natural Law in Judaism*, where Novak explains the continuing presence of Noahide law by stating that a true precondition is present even after the terms have been met:

A true precondition always accompanies what it has enabled to appear; it can never be left behind as finished.³⁰⁶

Novak’s inclusion of specific Noahide laws into his later account of natural law is of a piece with his view of the halakhic process, which he lays out explicitly early in his writings. Explaining how one arrives at rulings, Novak writes as follows:

In both Torahs [written and oral] data are presented in such a way as to make subsequent generalizations possible; the data are not deduced from the generalizations a priori. To miss this basic distinction is to confuse historical sequence with logical sequence (post

³⁰³ Novak, NLIJ, 164.

³⁰⁴ They are “subsumed,” as he writes elsewhere. Novak, CR, 86.

³⁰⁵ Ibid.

³⁰⁶ Novak, NLIJ, 187.

hoc ergo propter hoc), namely, to assume that temporal series are necessarily consequential, that what comes earlier solely determines what comes later.³⁰⁷

Following this logic, we might say that what enables generalizations based on the laws of the Noahide code, including abortion in the prohibition of murder, for instance, is that the “specific prescriptions” come first.³⁰⁸ Based on Novak’s later view that the Noahide laws are not legal principles *per se*, it would not be possible to formulate a halakhic ruling from them. Thus, Novak later reintroduces the specific principles, which allow him to generalize and include other areas under the six negative prohibitions of the code in the questions that he takes up for example in his *Jewish Social Ethics*.

Nevertheless, Novak’s reference to specific laws creates a fair bit of tension within his natural law theory, a point brought out by Novak himself:

[W]e must see how natural law in Judaism is the Jewish discovery of the law of God as it applies to all humankind – law that also is discoverable by any rational human being. Human reason or wisdom is primarily heuristic; only divine wisdom is primarily creative or autonomous, in the strong sense of that term.³⁰⁹

Novak is describing a way to circumvent the dilemma of, on the one hand, grounding a prohibition such as abortion in natural law, rather than framing it as an “invention” of Judaism, but on the other hand addressing the claim that such law is a fabrication that does not stem from God. In response, Novak explains that natural law, which is clearly taken here to be identical with human reason, is itself heuristic; it only discovers, rather than creates, law. From this point we can see why the specificity of the code is problematic. The existence of a definitive number of commandments within the code belies the heuristic way Novak describes it. Thus, the greater the specificity of the Noahide code, the less defensible is the claim that these seven

³⁰⁷ Novak, HITD, 2.

³⁰⁸ That is how he describes the Talmud’s reasoning. Ibid.

³⁰⁹ Novak, SHL, 31.

commandments are grounded by natural law. Moreover, as we will see in a subsequent section, in the treatment of the rabbis, there is a disagreement over the number of Noahide commandments. A greater emphasis is placed on the fact that the Noahides were given a set of laws which they later rejected.³¹⁰ That definition is not consistent with either of Novak's accounts.

2. 2. *An Added Metaphysical Background*

Another attempt at reconciliation can be seen in the way Novak later adds a metaphysical component to the Noahide laws.³¹¹ A fairly clear instance of his doing so can be seen in Novak's description of the two sides of the covenant between God and the sons of Noah following the "perversity" leading to the flood.³¹² According to Novak, the sons of Noah had to view their adherence to the law in the following terms:

[T]hey had to see moral law as their inclusion in the law by which God governs the cosmos, and that divine law itself would prevail in heaven and on earth no matter how much some humans might ever violate it again.³¹³

In return, God makes pledges not to annihilate the earth. In keeping their side of the covenant, however, the sons of Noah are including themselves in the law of the cosmos. In a recent text, Novak scales back on the cosmic impact of this idea, but he still describes the adherence to the Noahide laws to be a response to God's creation of man in his image:

The fact every human person is created in the image of God calls for an appropriate response from any other human person encountering that other human person.³¹⁴

³¹⁰ b. Avodah Zara 2b-3a.

³¹¹ For example, while defining natural law, he writes as follows: Natural law is the essential limit on the pretensions of human action for the sake of human existence and its transcendent intention. It operates best when its rightful role is understood, when neither too much nor too little is expected by it. Novak, NLIJ, 193.

³¹² Ibid., citing Genesis 6:12-13.

³¹³ Novak, JSC, 38.

In this interpretation, the laws cannot be separated from what occasions them. By extension, the adherence to the norms is not linked to the inherent reasonableness of the norms. Instead, keeping the law is a form of response to God.³¹⁵ This response needs to be seen in cosmic terms. In fact, when Novak describes the implications of the gentile “rejection” of the Noahide laws, he explicitly connects the idea of a response to God with what he calls “cosmic consequences”:

Rather, the change has been in terms of the transcendent status of the Noahide laws as observed by gentiles. Prior to the rejection at Sinai, the laws were accepted as direct commandments, and as such were immediately involved in human responses to God’s authority, a response having cosmic consequences.³¹⁶

Novak is thus drawing on a theology of creation – even when he does not mention the cosmos, it is what he intends when he mentions a response to God as creator – in order to explain the Noahide commandments. Both statements are an indication that Novak’s later account of the Noahide code becomes more metaphysical than his original account.³¹⁷ A similar feature of Novak’s more developed account is seen when he frames the adherence to the Noahide laws as a

³¹⁴ Novak, *Dialogue*, 40-41. It should be noted that earlier in the text, Novak rejects the view that human beings participate in the law of the cosmos. *Ibid.*, 8.

³¹⁵ Novak, *JSE*, 37; Novak, *NLIJ*, 17.

³¹⁶ Novak, *IONJ*, 146.

³¹⁷ This presentation is in part a response to Scherzinger, who sees a tension in Novak’s thought between what appears to be a non-metaphysical natural law on the one hand and a natural law theory based on metaphysics on the other, and it is also a critique of Yaffe and Jacobs, who argue that Novak removes natural law from its metaphysical framework. I have shown that Novak does draw on a “theology of creation,” but he does not do so arbitrarily; the metaphysical aspect of his natural law is introduced by way of “God’s wisdom.” Gregor Scherzinger, *Normative Ethik aus Jüdischem Ethos: David Novaks Moraltheorie* (Fribourg: Academic Press Fribourg, 2014), 109-113; Martin Yaffe, “Natural Law in Maimonides?” in *Saint Thomas Aquinas and the Natural Law Tradition*, eds. John Goyette, Mark S. Latkovic, and Richard S. Myers (Washington: Catholic University of America Press, 2004), 70; Jonathan Jacobs, *Law, Reason and Morality in Medieval Jewish Philosophy: Sadia Gaon, Bayha ibn Pakuda, and Moses Maimonides* (New York: Oxford University Press, 2010), 203.

way of entering into a relationship with God. Novak makes that statement explicitly.³¹⁸ In his original account of the Noahide code, however, the adherence to the norms is connected, ideally, to forming a “positive criterion of judgement” or at the very least to filling “a moral void.”³¹⁹ Indeed, Novak originally makes a clear distinction between the norms of the Noahide code and the laws of the Mosaic covenant. And that distinction relates to the relationship with God:

Natural law, then, is indirect revelation. Direct revelation is from God and constitutes the unique relationship between God and Israel. Indirect revelation is *inferred from human kind's relationship with their fellow humans*.³²⁰

Taken in conjunction with his comparison between Noahic and Mosaic law, the statement about the laws enabling a relationship with God appears to not only change but reverse his earlier position. Particularly if one looks at the way in which Novak originally describes the purpose of the code, it does not seem that it offers any sort of relationship with God.³²¹ In particular, Novak's argument that the Pharisees formulated the code in order to recognize gentile normativity is hard to reconcile with the cosmic bearing or theological implications that the code has in his later treatment.³²²

³¹⁸ Novak, “Gentiles in Rabbinic Thought,” in *Cambridge History of Judaism* 4 [The Late-Roman Rabbinic Period], ed. S. T. Katz (Cambridge: Cambridge University Press, 2006), 652.

³¹⁹ Novak, IONJ, 122.

³²⁰ Ibid., 224. Emphasis mine.

³²¹ Novak only raises the possibility that the Noahide code offers human beings a “relationship with God” in his *Image of the Non-Jew in Judaism*. Novak, IONJ, 148.

³²² Novak, IONJ, 35. Implicit in this presentation of the development in Novak's thought is that his view of the Noahide code and by extension natural law becomes more theological than political as he develops this theory, *pace* Scherzinger who argues that Novak's natural law is particularly suited for the public square and suggests that the broad political application of the norms of Noahide code allow Novak to sidestep the issue of epistemology that is inherent to natural law. Gregor Scherzinger, *Normative Ethik aus Jüdischem Ethos: David Novaks Moraltheorie* (Fribourg: Academic Press Feibourg, 2014), 323. By extension, Novak's dependence on the theology of creation and his case for the universal basis of norms indicate that his argument pertains to laws that are already kept by society. As a result, he does not argue for the norms but rather for their ground. Further, the three recent texts that Scherzinger mentions as pertaining to political issues, namely, the *Jewish Social Contract*, *Covenantal Rights*, and *In Defense of*

Novak's subsequent interpretation appears to be related to the description he later offers for natural law:

Natural law is the *order of creation* that is knowable by all persons before, and independent of, specific covenantal experience.³²³

One can see, therefore, that Novak eventually frames the Noahide code in terms that are more consistent with the later account of natural law. The problem with this attempt at reconciliation, however, is that Novak eventually places limits on what one can know about nature. In Novak's doctoral thesis, he writes the following about nature, in particular as distinct from society:

Morality reconstitutes the two orders in which the person as a sensuous being participates, namely, nature and society. Nature, morally considered, now becomes a type of estimation for the moral law, that is, a model for universalizeability.³²⁴

The guiding assumption here, which is not unlike the classic natural law position we encountered in Philo, is that we can learn from nature. Novak insists that, "there is knowledge to be gleaned in nature, even apart from what we may learn from revelation."³²⁵ Indeed, learning from nature is the only way to combat "literalists," for whom Scripture is the literal truth which is contradicted by science. Later in his thought, however, Novak rejects the possibility of learning anything directly from nature.³²⁶ In fact, he posits that knowledge of nature can only be accessed through

Religious Liberty all make a theological case as well. In the *Jewish Social Contract* Novak argues for a "Jewish religious justification for a secular democratic order." Novak, JSC, 5. In *Covenantal Rights* Novak identifies the rights that an individual can receive from the community, based on evidence from within the Jewish tradition. Novak, CR, 209ff. In his *In Defense of Religious Liberty* Novak makes a case that society's norms must be grounded in a belief in God. Novak, IDRL, 177ff.

³²³ Novak, review of Menachem Elon, *Jewish Law: History, Sources, Principles*, *VeraLex* 14.1-2 (1994): 54. Emphasis mine.

³²⁴ Novak, SAM, 88.

³²⁵ Novak, "Religion and Science: Maimonides and Neoplatonic Cosmology," *Hawaii Jewish News*, Special Supplement, November 1987, 5, 8.

³²⁶ Novak, JSE, 154, fn. 46, where he writes that "intelligence and intelligibility become located in the human observer/orderer. See also Immanuel Kant, *Critique of Pure Reason*, Bxiii; Martin

the covenant, rather than through human reason. Unlike what he describes as the “liberal” perspective that grounds revelation in nature and resultantly equates revelation with human effort, Novak argues that there is no access to nature outside of revelation:

Nature is not an object right before us about which we can argue using the truth criteria of correspondence. It is something that can only be grasped abstractly from within our historical present, a present whose content is continuously provided by revelation. The truth criterion here is much more one of coherence.³²⁷

Novak argues here that what is said about nature cannot contradict what is known about it; but that which is attained by human reason cannot either be said to correspond to any inherent quality of nature, because human reason cannot access that independently. Evidence for this substantial change in perspective comes from a textual variation between the first and second editions of *Image of the Non-Jew in Judaism*. In the first one, the version reads as follows:

Man, by living between these two realms, is master of the lower one and servant, or better student, of the upper one.³²⁸

In the second version, Novak removes the clause, so the statement reads as follows:

Humans, living between these two realms, are masters of the lower and servants of the upper one.³²⁹

Heidegger, “Modern Science, Metaphysics and Mathematics,” in *Heidegger: Basic Writings*, trans. David Farrell Krell (New York: Harper and Row, 1977), 265ff.

³²⁷ Novak, “The Doctrine of Creation and the Idea of Nature,” in *Judaism and Ecology: Created World and Revealed Word*, ed. Hava Tirosh-Samuelson (Cambridge: Harvard University Press, 2002) 167. This point is explained by the editor of the book: “Properly understood, Novak argues, creation is not in time; it is prior to the existence of every creature; and redemption is ‘not yet,’ that is, it is beyond what humans can know or experience in the present. All that humans have is revelation, yet revelation is not a one-time historic event, but is ‘God’s presence in us, with us, and for us.’ It is the ever-present ‘Giving of the Torah to Israel,’ an act which organizes all meaning for Jews. Novak argues, therefore, that nature cannot be grasped as a mere given, or an abstraction of the human mind. Instead, nature is ‘something that can only be grasped abstractly from within our historical present, a present whose content is continually provided by revelation.” Hava Tirosh-Samuelson, “Introduction,” in *Judaism and Ecology: Created World and Revealed Word*, ed. Hava Tirosh-Samuelson (Cambridge: Harvard University Press, 2002), xlvii.

³²⁸ Novak, *IONJ*, 1st ed., 249.

If this reading is accurate, it puts the later formulation of the Noahide code in conflict with Novak's developed position on nature. The logic is simple. Since the code is a precondition for the covenant, that set of laws is outside the covenant by definition. Thus, the adherence to the code cannot be associated with nature, which is only knowable from inside the covenant. This question is more pressing because Novak himself appears to identify the earlier, but not the later, account with the Stoic conception of natural law.³³⁰ Originally, as we have seen, the connection between the Noahide code and natural law was made on the basis that the norms are valid because they are "evidently rational."³³¹ Great currency is placed not only on the knowability of the norms but on their inherent logic. That definition of natural law is fairly consistent with the account of the Stoics, who place an emphasis on rationality and living in accordance with nature.³³² However, Novak ultimately rejects the view that human beings participate in nature:

So, one might say that in this theologically formulated view of nature, nature is not something in which humans participate (contra the ancients), nor is nature something simply there for humans to use at their will as *homo faber* (contra the moderns).³³³

Not surprisingly, Novak contrasts the natural law of the Stoics with that of the rabbis, and writes that the latter had nothing to do with universal reason but instead focused on minimal moral

³²⁹ Novak, IONJ, 2nd ed., 142.

³³⁰ This point is not unlike the one made by John Goyette, namely, that it is impossible for Maimonides to have a natural law theory like Aquinas, which is based on a participation in the divine law, if human beings cannot arrive at God's creation through reason. John Goyette, "Natural Law and the Metaphysics of Creation," in *Saint Thomas Aquinas and the Natural Law Tradition*, eds. John Goyette, Mark S. Latkovic, and Richard S. Myers (Washington: Catholic University of America Press, 2004), 75.

³³¹ Novak, LAT, 115.

³³² Jonathan A. Jacobs, *Law, Reason and Morality in Medieval Jewish Philosophy: Saadia Gaon, Bahya ibn Pakuda, and Moses Maimonides* (New York: Oxford University Press, 2010), 156, 161.

³³³ Novak, Trialogue, 8.

standards.³³⁴ Thus, Novak's more developed account of the code is in tension with his own conception of the natural law theory of the rabbis.

Novak's suggestion that the code enables a relationship with God, which is related to his description of the Torah as a "further specification" of the code,³³⁵ is also problematic, the reason being that the Talmud indicates that the Noahide code and the Mosaic law do not belong on the same continuum. In a tractate on vows (*Nedarim*), within a chapter that delineates what those who make general vows are understood to mean by them, the Talmud states that, "one who vows that he or she will not have enjoyment from the sons of Noah is permitted to have enjoyment from Israelites but not gentiles."³³⁶ The Talmud asks why the Noahides do not include the Israelites who descend from them, to which the answer is that, "Since Abraham was sanctified, they [the Israelites] were called by his name."³³⁷ The implication of this statement is that there is a covenant in betwixt the one with Noah and the one with the Israelites. That covenant is with Abraham, and it somehow confers a new status on his descendants that excludes them from the status of Noahides. If that is the case, it is difficult to argue that the Torah, and the relationship with God on which it is premised, is simply a fuller form of the previous arrangement. To my knowledge, Novak does not explain the significance of the covenant with Abraham over the one that is made with his descendants.³³⁸

2.3. *A Mediating Concept*

³³⁴ Novak, TWC, 115.

³³⁵ Novak, IONJ, 148. As Novak goes on to say, both sets of laws are concerned with humanity's relationship with God. Ibid.

³³⁶ M. Nedarim 3:11.

³³⁷ b. Nedarim 31a.

³³⁸ Levering alludes to this problem. Matthew Levering, *Jewish-Christian Dialogue and the Life of Wisdom: Engagements with the Theology of David Novak* (London: Continuum, 2010), 111.

Novak posits that there must be some connection between “limits on human action,” which are proposed by the code, and the positive law. As he explains, if that were not the case, positive law might destroy “the limits natural law has placed upon it.”³³⁹ He therefore concludes that there must be a mediating concept between those limits and positive law, which as we already saw is the concept of personhood.³⁴⁰ In his attempt to mediate between the law of the Noahide code and rabbinic law, there is an implicit admission that the heuristic guidance provided by the code and the positive divine law are not immediately compatible. If that were the case, Novak could just say that the divine law builds upon the Noahide commandments. But Novak attempts to reconcile them by means of a mediating concept.

So it seems to me that the best mediating concept for this interrelation is a concept of human personhood inasmuch as human persons are the subject of both natural law and positive law. To assume that positive law, specifically the positive law of revelation, makes its addressees a new species (rather than members of a new culture) would make any notion of natural law irrelevant to a tradition like Judaism that bases itself on such a revelation. Thus, the mediating concept must be a concept of human personhood in which the subject of natural law and the subject of positive law, even positive divine law, retain enough in common to still be considered human persons in a real sense, that is, members of the same species.³⁴¹

The idea he draws upon is that other human beings are not treated as means to something else but as their own ends, and it comes from Kant.³⁴² The connection Novak makes between natural law and positive law is based on the fact that the Noahide law ostensibly protects human beings from harm and that the rabbinic enactments are similarly driven by a teleology of personhood. That is to say the ultimate purpose of both kinds of law is the preservation and protection of human life. Elsewhere Novak writes that, in their creation of law, the rabbis are imitating God, for they too

³³⁹ Novak, NLIJ, 164.

³⁴⁰ Ibid., 165.

³⁴¹ Ibid., 164-165.

³⁴² Ibid., 165-166. Following Martin Buber and Emmanuel Levinas, Novak also argues that one must constitute the other before one constitutes the self. Ibid., 166.

are concerned with perfecting the body and the soul.³⁴³ And he adds that, “the correlation between divine law-making and human law-making is consistent with Maimonides’ conclusion that the greatest purpose of the entire law is *imitatio Dei*.”³⁴⁴ It emerges from that statement that the ends of positive law and the ends of divine law are the same.

A great deal of evidence from Jewish sources suggests otherwise. Indeed, it can be demonstrated that Novak’s concept of personhood only suffices when explaining how divine law maintains an element of natural law, but that will not do for positive rabbinic law. Although Novak argues, quite convincingly, that the Torah law includes basic protections for human beings,³⁴⁵ the same idea does not feature in classic rabbinic law. Simply put, is the rabbis’ concern not ultimately the Torah, first and foremost, and the community as a whole secondarily? It would seem that way from the Talmud in Yevamot, which explains, based on the verse in Leviticus 18:30, “Therefore shall you keep my charge,” that the rabbis ought to create fences to protect against the violation of the commandments.³⁴⁶ In other words, the origin of the empowerment of the rabbis is the Torah’s need for extra measures. That being the case, how can rabbinic enactments reflect that same concern with human beings, particularly when their enactments occasionally also serve divine purposes? As Novak writes,

All rabbinic legislation requires rational justification (*ta’ama*), namely, it must be argued prior to legislation just how a proposed decree or enactment fulfils an agreed-upon purpose. As a means to an end, the proposed means is conditional; it requires a rational argument to persuade others of its theological (in the case of a matter between humans and God) or its ethical (in the case of a matter between humans themselves) value.³⁴⁷

³⁴³ Novak, NLIJ, 106.

³⁴⁴ Ibid., 106.

³⁴⁵ Novak, “Is there a Concept of Individual Rights in Jewish Law?” in TIPS, 104-110.

³⁴⁶ b.Yevamot, 21a.

³⁴⁷ Novak, JSC, 87.

Even the rabbinic notion of human dignity, which Novak makes much of,³⁴⁸ is limited in its application.³⁴⁹ The concept of dignity in itself, however, does not create its own law. It only limits the application of Torah law in some circumstances. If human personhood would be as central as Novak makes it seem, it would feature more prominently in halakhah. Further, if Novak is drawing on personhood as a mediating concept, one would expect it to be mentioned in relation to the Noahide code. But that is not the case.

The difference between the Noahide code and the rabbinic enactments also comes out here:

Nevertheless, the Halakhah and its development seem to manifest a role for human freedom over and above the choice to respond or not to what God has commanded. In this sense, the covenant seems to call forth not only a human response but, moreover, human initiative, even autonomy of sorts.³⁵⁰

There seems to be a difference between the response to God, which is Novak's reference to the Noahide laws, and human initiative. Namely, those initiatives are rarely directed at other human beings. Novak himself states that some rabbinic laws protect "the sanctity of scriptural laws."³⁵¹ A similar idea can be seen when he explains Maimonides' ruling against those who make a blessing on Torah study by saying, "Blessed is He who teaches the Torah," rather than, "Blessed is He who gives the Torah":

Thus, for Maimonides, the authentic human response to revelation is the free inquiry of the intellect into its deepest truths. This, then, is the authentic *amor Dei intellectualis*. And, this same free inquiry of the intellect, which enables the sages of Israel to perceive the transcendent ends of the *Torah* and to *enact programs* which enable the people to affirm these ends and act for their sake.³⁵²

³⁴⁸ Novak, "On Human Dignity," in NLART, 72ff.

³⁴⁹ Even as the concept is described by the Talmud as "great." See for example b. Menachot 37b.

³⁵⁰ Novak, JSE, 37.

³⁵¹ Novak, NLIJ, 108.

³⁵² Novak, "Maimonides and the Science of the Law," in *Jewish Law Association Studies 4* (Atlanta: Scholars Press, 1990), 133. Emphasis mine.

Novak makes it clear that the enactments are not for human ends but divine ones. The same cannot be said of the Noahide code. Even if someone were to cite Novak's statement that personhood intends revelation,³⁵³ meaning that some divine purpose is served by the *imago Dei*, that idea does not seem to be reflected in the laws themselves. In fact, according to Novak's earlier formulation, the code is created for the purpose of recognizing the laws of non-Jews on a *de jure* basis.³⁵⁴ In contrast to that purpose, if what drives the enactments is human personhood, it stands to reason that those decrees are based only on that concept. By definition, then, the two types of law are dissimilar from one another.

The disparity between the Noahide code and the enactments becomes more pronounced in Novak's treatments of rabbinic decrees in *Jewish Social Ethics*. For Novak, at least in this text, the meeting point between natural law and rabbinic formulations is that the enactments must be "rationally convincing."³⁵⁵ Anything that is enacted "for the benefit of society," which is the mishnaic term for enactments that remove obstacles to the economic and social well-being of the community, such as streamlined divorce proceedings, less restrictions on loans, preventing uncertainty in the status of slaves, and so on, would be included in natural law factors.³⁵⁶ Given that, even if the Noahide commandments are categories rather than specific laws, there are still only seven of them, those examples would certainly broaden what Novak originally includes in his definition of natural law. Moreover, the specific details of the enactments related to *tiqqun*

³⁵³ Novak, NLIJ, 165.

³⁵⁴ Novak, IONJ, 48.

³⁵⁵ Novak, JSE, 38. As we have seen, Novak eventually sees natural law factors in the teleology that drives the enactments. Novak, NLIJ, 68, 96ff.

³⁵⁶ M. Gittin 4:2-9. Another example of natural law factors in rabbinic literature includes "reasoning rationally" (*hekhrekh ha-da'at*), but to my knowledge, that does not appear in his later texts. Novak, review of Menachem Elon, *Jewish Law: History, Source, Principles, Vera Lex* 14.1-2 (1994): 52.

olam, which pertain to divorce, slavery, and even loans, are not consistent with the principles of natural law.³⁵⁷ Thus, the very factor that allows Novak to incorporate the Noahide laws into the later account of natural law is resistant to the defining characteristic of the rabbinic enactments.

Further, even if the concept of personhood successfully mediates between natural law and positive law, it does not account for the natural law Novak locates within the reasons for the commandments. This point emerges from an apparent contradiction between statements that Novak makes about the intention one must have in fulfilling the commandments. With regard to interhuman law, Novak states as follows:

In the commandment to love one's neighbor as oneself, the neighbor needs full and immediate attention of the one acting on his or her behalf.³⁵⁸

Later, Novak makes a seemingly conflicting statement:

The authoritative halakhic conclusion is that all of the commandments minimally require intention of their divine source (whether immediate or ultimate) in order to qualify as *mitsvot*.³⁵⁹

The difference between the two rulings appears to be that only the nonrational commandments require the intention of their divine source. If that is the case, the focus of at least part of the commandments does not pertain to the *mitmensch*.³⁶⁰ Those commandments are therefore categorically different than those within the Noahide code. At the very least, we can say that the commandments of the Torah belong to a more complex matrix of intentions. Examples of that complexity can be found in Novak's discussion about the nature of commandments. As he

³⁵⁷ As we saw earlier, Justinian believes it is against nature to enslave human beings. Taking interest was historically seen by many as against natural law. Charles Geisst, *Beggar Thy Neighbour*, (Philadelphia: University of Pennsylvania Press, 2013), 54-56.

³⁵⁸ Novak, NLIJ, 67.

³⁵⁹ Ibid., 68.

³⁶⁰ Here, I am using Hermann Cohen's term. Hermann Cohen, *Religion of Reason Out of the Sources of Judaism*, trans. S. Kaplan (New York: Scholars Press, 1972), 146ff.

explains, the nature of any commandment can only be known by reference to a number of factors, including the subject of the command, the outcome of the commanded act, the entitlement of the beneficiary, and the appropriateness of its time and place.³⁶¹ Assuming those facets are integral to the commandments, the reasons for the commandments differ from the Noahide code, which, as we have seen, only intends human personhood in Novak's later account.

There is also no sign of Novak's mediating idea in the main discussions pertaining to the Noahide commandments or the rabbinic enactments in either the Talmud or Maimonides' halakhic writings. The primary discussion (*sugya*) of the Noahide code is found in tractate Sanhedrin, based on the following teaching in the *Tosefta*.

On seven commands the sons of Noah were commanded. On laws, and on idol worship, and on adultery, and on murder, and on theft, and on a limb from a live animal. On laws, how so? Just as Israel is commanded to establish houses of judgement in their cities, so too are the sons of Noah commanded to establish a house of judgement in their city.³⁶²

The rest of this pericope explains the differences between laws pertaining to Israelites and those pertaining to Noahides and discusses the specific cases in which these laws apply. There is no mention here, or any hint, of the concept of personhood. If the ground of the Noahide code is personhood, that would distinguish it from the ground of the Mosaic law. The fact that the statement speaks about both groups as "commanded" in the same way suggests that both legal frameworks have a similar basis.

Perhaps not surprisingly, Maimonides, who draws heavily on rabbinic texts in his legal rulings, also makes no mention of an underlying concept for the Noahide commandments. Not unlike the Talmud's formulation, he begins the section of the code by stating that Adam was

³⁶¹ Novak, *Dialogue*, 22-23.

³⁶² T. Avodah Zara 9:4. Translation mine. It should be noted that the law of blasphemy is missing from this pericope.

given six commandments.³⁶³ He does, however, state the fact that the seven laws are attainable by reason. But he adds that keeping the laws based on their rational basis alone is somewhat insufficient.³⁶⁴

Further, in rabbinic texts, the most prominent reason that one must accept rabbinic enactments is that the rabbis have been given the authority to make them. The *locus classicus* is in Deuteronomy 17:11, but also in the rabbinic statement of “guard what I am guarding.”³⁶⁵ The traditional interpretation of the former is as follows: “Even if it appears to you that right is left, follow what they say.”³⁶⁶ In light of these teachings, it would not be an overstatement to say that the rabbis are advocating for blind obedience to their rulings. Further, the classic formulation of “make a fence,”³⁶⁷ which refers to protecting the Torah from being trampled upon, if we follow the metaphor, is silent on serving the community or its individuals. On this view, it is not accurate to say that the rabbis pay very much attention to human personhood. Even *tiqqun olam* cannot be used as evidence for such rabbinic concern. The fact that the rabbis made enactments that fall under that category out of necessity, and the fact that there are no biblical verses brought in support, is not consistent with the account of human personhood that Novak locates in the Bible and upon which he places so much emphasis.³⁶⁸

Since Novak includes the reasons for the commandments as one of the expressions of natural law in Judaism, it should follow that the same concept should be located within the discussion in the Talmud pertaining to that topic. In the Talmud, however, the desire to know

³⁶³ Maimonides, *Mishneh Torah: The Laws of Kings*, 9:1.

³⁶⁴ Ibid., 8:11.

³⁶⁵ b. Yevamot 21a.

³⁶⁶ *Sifri*, 177-78 (Berlin: D. Bamberger, 1925), 48; Sanhedrin 89; Deuteronomy 17:11.

³⁶⁷ Avot 1:1. See also Leviticus 18.

³⁶⁸ They are more consistent with Hobbesian measures than a divinely backed natural law theory.

the reasons for the commandments is associated with antinomianism and sin.³⁶⁹ Not surprisingly, the tendency to interpret the “reason of the text” is typically associated with only one rabbi in the Mishnah.³⁷⁰ It should also be noted that in the treatment in the Talmud of the reasons for the commandments, the word used for it is טעמא or reason (literally taste).³⁷¹ The discussion of the enactments, however, features the word for fixed or established (גזר or תקן).³⁷²

Be that as it may, based on the precedents in the Talmud, Maimonides describes the obligation to listen to rabbinic rulings in the following terms:

Whoever does not act in accordance with their ruling transgresses a negative commandment....whether matters that they learned through a report, which is Oral Torah, or whether matters that they learned through their knowledge through one of the methods with which the Torah is interpreted and it seems in their eyes that this matter is a certain way. Or, whether it is something they enacted as a fence to the Torah and according to what the time requires, and those are the rulings, enactments, and customs. In all these three matters, there is a commandment to listen to them.³⁷³

According to this statement, rabbinic rulings encompass the Oral Torah, interpretation, and enactments for the purposes of the Torah. None of these categories pertain to human needs. Yet, much of Novak’s argument about the expressions of natural law depends on the similarity between the teleology of the commandments and that of the rabbinic enactments.³⁷⁴ Certainly the terminology that the Talmud employs to describe these enactments appears to be distinct from the word it uses for reasoning.

³⁶⁹ See for instance b. Sanhedrin 21b.

³⁷⁰ Ibid., 21a.

³⁷¹ b. Sanhedrin, 21a. Further, the only place in the Talmud that discusses the Noahide laws uses the term נצטוו, meaning commanded, which is an indication that the rabbis themselves see a categorical difference between the reasons for the commandments and the pre-Sinaitic laws. Ibid., 56b.

³⁷² Both can be seen in b. Shabbat, 14b. There are numerous other examples.

³⁷³ Maimonides, *Mishneh Torah: The Laws of Transgressors*, 1:2.

³⁷⁴ Novak, JSE, 37-38.

Therefore, in contrast to what seems to be a divine licence to take necessary but unspecified steps that protect the Torah, the Noahide code is associated with specific laws that one is “expected to know” and follow.³⁷⁵ Further, to use Novak’s own terms, there is a difference here between heteronomy and autonomy. When it comes to the Noahide code, the rabbis see human beings as commanded by seven basic laws. Even if the decision to adhere to those laws is autonomous, the root of the prohibitions is heteronomous, inasmuch as the laws are commanded. In the case of the enactments, however, the rabbis are divinely sanctioned to use whatever measures they see fit to protect the laws of the Torah. The enactments are therefore autonomous in nature.

2.4. *A Phenomenological Retrieval of Norms*

As we have seen in the previous chapter, the problem with grounding the Noahide code in the *imago Dei* is that that knowledge is not widely available, particularly to those outside the covenant. That problem is exacerbated by Novak’s inclusion of “content” into his later account of Noahide law.³⁷⁶ Novak’s view of Noahide law is that it is binding on human beings because they are able to arrive at it rationally.³⁷⁷ It follows that if there is specific content, by which he means norms, within the Noahide code, human beings should be capable of knowing it as well. But if that specific content is grounded in a metaphysical concept at which one cannot arrive without a covenantal community, how is one supposed to know it? I return to this question later in the section. At this point, I want to focus on a related point, which is that the

³⁷⁵ See b.Makot, 9b for a similar idea.

³⁷⁶ Novak, EOI, 76.

³⁷⁷ See for example Novak, IONJ, 147.

phenomenological approach is associated with specific content. Let us first contextualize the way Novak introduces the approach. Novak refers to phenomenology as the third and best method of articulating the “relevance of Judaism to universal ethical concerns.”³⁷⁸ This last approach is described in the following terms:

In this approach, the inquirer enters into the intelligible structure of Judaism and attempts to see the *method* of ethical judgement at *work*. Only this approach enables the inquiring ethicist to ask all three fundamental ethical questions: Thus he asks: *What* is universally relevant in Jewish ethics? *Why* is one obliged by it? *How* is it to be applied?³⁷⁹

Instead of presenting the universal relevance in rational terms, one discovers it by entering into “the intelligible structure of Judaism.” The analogy of the pursuer, which Novak relates to questions of pregnancy and birth, illustrates the point. Novak considers the question of which life takes precedence in cases of complications during pregnancy. And he shows that the case of the pursuer is relevant because it teaches us that, “only when the postnatal life is unavoidably victimized by the prenatal life can it defend itself even if the only such defense is to kill its

³⁷⁸ Novak, HITD, 85. The first approach is “dogmatic,” and it simply assumes that Jews have “something to say concerning universal ethical questions.” Ibid. But Novak rejects this attitude as unrealistic because it depends on Jews having the authority to enforce its moral norms. Ibid., 86. The second approach is the “apologetic” one: it is the view that the ethical teaching of Judaism is essentially the same as that of either Christianity or Secular Humanism. But this approach is rejected on the grounds that it presents the Jewish point of view as “essentially redundant.” Ibid.

³⁷⁹ Novak, HITD, 87. Novak’s phenomenology can be seen as resembling that of his mentor Abraham Joshua Heschel. Novak’s understanding of Heschel emerges from an article he writes about his master. In that article, Novak calls human reception epiphenomenal and suggests that we are “objects” and God is the “subject” that enters through a barrier that separates the human and divine spheres. Novak, “Heschel’s Phenomenology of Revelation,” 45-46. Elsewhere Novak defends Heschel against those who just see the German-Jewish thinker as a poet. In contrast, Novak posits that, like Maimonides, Heschel sees prophecy as experience, not words. Novak, “Heschel on Revelation,” TIPS, 37-45, esp. 42ff. Heschel’s influence on Novak, particularly with regard to the concept of person at the heart of his theory is astutely noted by Scherzinger. Gregor Scherzinger, *Normative Ethik aus Jüdischem Ethos: David Novaks Moraltheorie* (Fribourg: Academic Press Fribourg, 2014), 426.

‘pursuer.’”³⁸⁰ The analogy is justified by reference to the “essential ambiguity involved in a conflict between two lives within one body,”³⁸¹ which Novak calls the “phenomenology of morally complex situations.” From this comparison, we can understand what phenomenology enables him to do. Namely, it allows him to speak of an experience of a moral dilemma – one has to make an admittedly difficult choice – without articulating its underlying cause. The implicit difficulty, however, stems from the need to make a decision. We can therefore see how Novak’s phenomenology has a normative component.

This feature of his phenomenology can be seen even as he develops the approach later in his writing. To wit, the experience to which Novak first refers relates to the widely known explanation for the norms, but the experience of which he speaks later can be identified as the inherently rational explanation he provides for the prohibitions. In *Halakhah in a Theological Dimension*, for instance, Novak explains that the experience of society shows that murder “destroys social intercourse.”³⁸² That description is a reference to the widely known explanation that murder is destructive. In later texts, however, the phenomenological approach pertains to the inherently rational explanation for murder, namely, the damage that such an act inflicts upon the *imago Dei*. Thus, Novak explains that we do not harm others because we have an “inchoate notion” of the “special status” of human beings.³⁸³ In a similar vein, when Novak then explains that human beings can experience the *imago Dei* through “hearing the mediated voice of God through the world,”³⁸⁴ he is using phenomenology to arrive at ideas that are rational in

³⁸⁰ Novak, HITD, 93.

³⁸¹ Ibid.

³⁸² Novak, “Natural Law, Halakhah, and the Covenant,” in *Jewish Law Annual*, vol 7, ed. Bernard Jackson (London: Harwood, 1988), 41-42.

³⁸³ Novak, NLIJ, 172.

³⁸⁴ Novak, “The Human Person as the Image of God,” in *Personhood and Healthcare* (Dordrecht: Kluwer Academic Publishing, 2001), 52, 54.

themselves. Nevertheless, in both variations of this approach, there is a strong normative component. When he discusses the experience of society, Novak writes that the inference one must make is that murder is “not to be done.”³⁸⁵ The same idea can be seen when Novak revisits his notion of the precondition of the covenant:

For Jews, that means we were living under the more general Noahide law before we came to live under the more specific and more concrete Mosaic law (as we shall soon see). This is best understood when we look at what might be considered the beginnings of general moral experience in any human culture, employing phenomenology as our method of enquiry.³⁸⁶

In this example, Novak is arguing why even the non-rational law ought to be kept, namely, because of one’s experiences of having to listen to authority figures based on their authority alone. In this case as well, phenomenology is linked to normative implications. Similarly, when he articulates the position of the would-be murder victim, the experience of his cry not to be harmed translates into a prohibition against violence towards him or her.³⁸⁷

Some may argue, however, that there are no normative consequences when Novak draws on phenomenology to explain the reasons for the commandments.³⁸⁸ They may claim, in other words, that Novak is just providing an explanation for the commandments, but there is no immediate normative bearing in the way he does so. But let us take a closer look at the way that Novak describes the phenomenological sequence of receiving the commandments:

The Torah had to begin as the Torah *from* the active God *to* the passive Israel. We know this from the moral experience of childhood. We had to obey the commandments of our

³⁸⁵ Novak, “Natural Law, Halakhah, and the Covenant,” in *Jewish Law Annual*, vol 7, ed. Bernard Jackson (London: Harwood, 1988), 41.

³⁸⁶ Novak, *Dialogue*, 19. See also here: “Indeed, human sociality presupposes a physical order surrounding it, upon which it can depend for its own continuity. But humans discover their own essential order, their own essential law, from their own social experience. Only thereafter do they discover the order of the nonhuman realm by analogy.” Novak, *NLIJ*, 38.

³⁸⁷ Novak, *Dialogue*, 37.

³⁸⁸ Novak, *SHL*, 31.

parents and teachers out of fear before we could reflect upon that experience to either love it – or hate it. Through our reflection on that experience we are able to discern retrospectively the reasons why we ourselves *would* have chosen these commandments God has given *to* us if we *could* have chosen them *for* ourselves back then.³⁸⁹

Novak is using phenomenology to demonstrate why the law needs to be kept – or more accurately, why the commandments are already kept – regardless of their source. Further, in his attempt to construct a notion of election between the extremes of Hermann Cohen who privileges the universal and Michael Wyschogrod who favours the particular, Novak draws on phenomenology to correlate “the singular and the general.” Through the experience of the Exodus, he shows that the generality of justice (*mishpat*) is the antecedent of the specific commandments that God immediately bestows upon the Israelites.³⁹⁰ Specifically, just before the Israelites leave Egypt they are told that they should request vessels of silver and gold from their Egyptian hosts, rather than take it by force.³⁹¹ From this Novak learns that the Exodus is preceded with a specific expression of justice. That commandment is followed by one that relates to laws that commemorate covenantal events, namely, the celebration of being freed from Egypt, as well as a positive, non-rational law pertaining to the Paschal lamb.³⁹² In that way, the law pertaining to justice serves as the background for the specific commandments of the covenant. It is therefore clear that Novak’s phenomenology of commandments has a specific normative component.

³⁸⁹ Novak, JSE, 81. This idea is confirmed in the same text when Novak discusses theonomy. He calls the task of human beings to “freely affirm being along with him,” meaning God. Novak, JSE, 17. He then phenomenologically constructs the greatest commandment, namely, to love God: “Thus, if the greatest commandment is to love God and along with him our fellow human creatures created in his image, then that is possible only responsibly. First we have to experience God’s perpetual creative love of us and for us. And we can care for the rest of created being only whenever and wherever it confronts us, after we have experienced God’s perpetual care of it and for it and then involve ourselves in his care as stewards.” Novak, JSE, 17.

³⁹⁰ Novak, EOI, 248ff.

³⁹¹ Exodus 3:22.

³⁹² Novak, EOI, 250-251.

It should also be noted, however, that the phenomenological approach gives Novak the advantage of circumventing the rational categories that are a mainstay of his earlier account.

Novak makes this point explicitly here:

As such, I see a middle road theologically between a reduction of reason to revelation, which seems to characterize the opponents of natural law, and a reduction of revelation to reason, which seems to characterize the proponents of natural law in Judaism, especially in modern times, as we shall see in the next chapter. I think that a proper *phenomenological* constitution of Judaism will bear this out.³⁹³

Novak thereby resolves the problem we encountered in the previous chapter, namely, that the rational basis of the norms is unavailable to those outside the covenant. The approach can therefore be seen as a consequence of the metaphysical ground he introduces in the later account.

Indeed, a number of factors point to a connection between the way Novak grounds Jewish ethics on the one hand and his turn to phenomenology on the other. Firstly, Novak introduces phenomenology in the same text in which he changes the ground of the commandments to the image of God. As seen earlier, Novak describes the ground for Jewish ethics, or what he calls the “relational context for universal ethics,”³⁹⁴ as the doctrine of the *imago Dei*, which he believes is an assertion that, “humanness is man’s whole presence before God and man’s apprehension of this presence.”³⁹⁵ It stands to reason that Novak’s introduction of a new method is related to the other change – his new position on the ground of ethics. Evidence for that assertion can be brought by looking back at Novak’s first treatment of the question of the ground of morality.³⁹⁶ In response to the earlier version of that question,

³⁹³ Novak, NLIJ, 28. Emphasis mine.

³⁹⁴ Novak, HITD, 96.

³⁹⁵ Ibid., 99.

³⁹⁶ As I have already suggested, Novak develops his phenomenology later in his text, and shows how the experience leads directly to the inherently rational ground of the prohibition. In the earlier formulation, the experience only pertains to the widely known benefits of the Noahide

concerning the ground of the Noahide commandments, Novak posits that there are three possibilities for the ground of the Noahide code – reason, consensus, and God’s revealed will.³⁹⁷ The first two possibilities are available to human reason, at least inasmuch as one could arrive at consensus through a rational decision, or can recognize the rationality of a specific commandment by way of ratiocination. The third possibility, however, would not be directly accessible by reason.³⁹⁸ Since Novak rejects the first two possibilities in *Halakhah in a Theological Dimension*, his alternative is not likely to be accessible through reason, for he exhausts the two forms of rationality, namely, reason and consensus. As a result, it can be reasonably argued that the introduction of a new ground of ethics is directly related to the new method of inquiry.

Having identified the primary characteristics and purpose of Novak’s phenomenology, I will speak about its shortcomings. These can be seen, first and foremost, by returning to the discussion of the Noahide laws in rabbinic texts. In the teaching that we looked at, there is no mention of the final commandment of blasphemy. And in the Talmud, there are also up to four other commandments that are added according to different opinions, such as eating blood, sorcery, castration, and the mixing of species.³⁹⁹ This variation in the list of commandments and the disagreement in the Talmud militate against the specific norms at which Novak arrives through phenomenology. Further, as we have already seen, the assumption of the author of the teaching in question appears to be that the basis of the commandments is the same for both Mosaic and Noahic law – they are given to Noahides, just as they are later given to Israelites –

commandments. Nevertheless, the primary argument, namely, that the new ground leads Novak to find a substitute for rational argumentation, still stands.

³⁹⁷ Novak, LAT, 127.

³⁹⁸ As per Immanuel Kant, *Critique of Pure Reason*, sect. 3.

³⁹⁹ b. Sanhedrin 56b.

even if the details differ. Based on Novak's suggestion that the Noahide laws are perceived differently, however, the comparison does not hold up. Classically, that type of difference would be raised as a question in the Talmud. Specifically, it would point to the fact that the comparison is invalid because there are differences in the way one arrives at the norms. If the Noahide laws are different in the way they are experienced, that feature certainly does not emerge here.⁴⁰⁰

Further, for an approach that pertains to human experience, which is typically difficult to put into words, Novak's phenomenology is remarkably articulate. According to Novak, a would be victim of murder or harm would say,

“I am the image of God. An assault on me is an attempted assault on God, which *is wrong in and of itself*. What right does a creature have to assault his or her creator? Furthermore, it is an attempted assault on God that God will not let go unpunished.”⁴⁰¹

This statement highlights the biggest difficulty with this approach. The specificity with which Novak describes the shared experience of human beings does not account for the differences in their own personal experiences. On a certain level, Novak must assume that the experiences of all human beings – and when he specifically addresses a phenomenology of Judaism, the experience of Jews – are the same. The problem with Novak's general statements addressed to the public square is that he has not accounted for those who have never experienced injustice.⁴⁰²

Taken one step further, what about those who have suffered in the hands of others to the point where they have had to use violent means to defend themselves? Would that experience not lead to the opposite conclusion, that violence is necessary as a response to other human beings? In what way can Novak explain the inherent rationality of the prohibition against treating other

⁴⁰⁰ It also does not appear to be universal. Notice that the wording is, “in their city,” rather than the plural, “in all their cities.”

⁴⁰¹ Ibid., 38. Emphasis mine.

⁴⁰² This critique is inspired by Henri Bergson. Henri Bergson, *Time and Free Will: An Essay on the Immediate Data of Consciousness* (New York: Cosimo, 2008), 18, 170.

people unjustly to people of that background? Is Novak not, in other words, pre-determining where the phenomenology leads – to seven specific commandments? Further, particularly as it pertains to the experience of Israelites, how can Novak speak of it as monolithic? On the contrary, in rabbinic literature, it is clear that every Jew has a personal and unique relationship with God.⁴⁰³ While obligations can and are described in the aggregate, every human being's situation is seen as unique.⁴⁰⁴

Furthermore, based on a world brought to the brink of war in the 1980's, Novak rules out the possibility that the sanctity of human life is known widely. Is it not possible to suggest by extension that the experience of injustice, or of the claim of other human beings upon us, can be overlooked because of the prevalence of cases of abuse? Finally, on a more fundamental level, the phenomenological approach can be questioned on the basis of the frame of reference one needs to arrive at the commandments. In Novak's original account, that frame of reference is outside the covenant. Evidence can be brought from the fact that Novak entertains the possibility that the ground of the Noahide laws is universal consensus, which is essentially a law formulated by necessity, without recourse to any external criteria. It follows from this point that one's frame of reference is one's social environment.⁴⁰⁵ Later in Novak's thought, however, the view of the Noahide code is from the perspective of post-Sinaitic tradition, the reason being that a construct of natural law depends on a notion of nature and history that one cannot abstract outside of a cultural matrix.⁴⁰⁶ Based on that idea, Novak's description of the way the Noahide code is

⁴⁰³ See for example M. Rosh Hashanah 1:2.

⁴⁰⁴ For this reason, every person is expected to make a personal accounting of his or her life. b. Sabbath 31a.

⁴⁰⁵ Novak, LAT, 127ff.

⁴⁰⁶ Novak, NLIJ, 140; Novak, Trialogue, 28.

subsumed by the Mosaic law is a function of the same perspective. Thus, the approach at reconciliation is problematic for a number of reasons.

2.5. *Minimal and Maximal Claims*

As we have seen, Novak's later account of the Noahide law includes the view that the laws enable a relationship with God. This position is related to the cosmic significance of the code that is a mainstay of Novak's later account. In his earlier account, however, the code does not have either feature. One of the ways that Novak fuses the two accounts is by framing the earlier view as a "minimal" viewpoint. One example of this approach can be seen in his *Natural Law in Judaism*:

Although teleology is necessarily connected to natural law theory...the more minimal view of natural law that I propose requires that we first look at the more negative rather than the more positive character of Noahide law.⁴⁰⁷

From this statement, it appears that Novak incorporates the negative limits of the earlier position into his later view. A clearer demonstration of the minimal/maximal argumentation comes from a statement he makes in his "Natural Law and Jewish Philosophy":

The human actions with which ethics-politics is concerned are all human *interactions* of which each and every human person is both subject and object, both means and end. Minimally, that means not harming anybody else just as nobody else is to harm you. Maximally, that means benefiting whoever requests your aid (without entailing great harm to yourself) just as you have the right to be aided similarly by somebody else. The minimal relationship involves justice as the criterion of restraint; the maximal relationship involves peace (*shalom*) as the criterion of beneficence.⁴⁰⁸

⁴⁰⁷ Novak, NLIJ, 152-153.

⁴⁰⁸ Novak, "Natural Law and Jewish Philosophy," in *Judaic Sources and Western Thought: Jerusalem's Enduring Presence*, ed. Jonathan A. Jacobs (New York: Oxford University Press, 2011), 163-164.

From this statement it can be shown that the minimal and maximal claims are different from one another both in form and content. In their minimal expression, the commandments, which are negative in nature, can be identified with a widely accepted social norm. In their maximal expression, however, the commandments are of a positive variety, one that is based on a different *telos* altogether. The problem with including these two claims into one account, therefore, is that they are not compatible with each other.

To understand why, I refer to Novak's treatment of Hugo Grotius. In an article written in 2000, Novak reinterprets Grotius's famous statement that natural law can be valid even without the existence of God.⁴⁰⁹ According to Novak, Grotius means that the law would be true even without a "revealed" God.⁴¹⁰ That gloss serves to show that Novak's later view does not comport with a literal reading of Grotius's statement, for that account presupposes a divine law-giver. By reference to this view, it becomes possible to test the compatibility between Novak's earlier and later accounts. The analysis begins with Novak's explanation, in the second series of *Law and Theology in Judaism*, of why the Noahide code does not include respect for one's parents:

First, all the Noahide laws are negative, with the exception of *dinim*, that is, the establishment of courts and the administration of justice. However, even this is essentially negative, in that crime is presupposed by adjudication since all Noahide laws entail the death penalty. Second, although the rabbis surely recognized a natural morality, they did not seem to want it to be fully constituted. For if so it might well lead to questioning the need for a revealed morality. This was indeed the case in the Middle Ages, which led to the theological defenses of revealed morality and religion by [R.] Saadia, Maimonides, and Albo among others. Honor of parents as we shall see is most clearly related to honor of God himself.⁴¹¹

⁴⁰⁹ Hugo Grotius, *The Rights of War and Peace*, prol. xi, trans. John Morrice, ed. R. Tuck (Indianapolis: Liberty Fund, 2005), xxiv. It should be noted that in Novak's original account, the Noahide commandments have no divine basis; they are an example of "natural morality." Novak, LAT, 2nd Series, 77. But in Novak's second account, the Noahide laws are explicitly identified as "divine law." Novak, Trialogue, 7.

⁴¹⁰ Novak, "Law: Religious or Secular," in TIPS, 175.

⁴¹¹ Novak, LAT, 2nd series, 77.

Novak argues that the inclusion of some laws can somehow take the place of a revealed morality, but they are omitted since those laws are “too sacred.”⁴¹² In lacking those laws, the Noahide system remains imperfect, leading to a desire for a revealed morality. The point is that there is nothing in the Noahide laws themselves that can substitute for the Torah’s commandments, inasmuch as the Noahide commandments, as they stand, constitute a natural morality that is independent of God. Even the prohibition of murder, which is the only one of the commandments directly related to the *imago Dei* in Novak’s later writings, and might therefore gesture towards a metaphysical ground, is at this point only based on the “general truth,” namely, that “human life is structured towards its own self preservation.”⁴¹³ On that view, Novak’s earlier account is premised on a purely rational acceptance of the Noahide commandments. This reading is confirmed from an excerpt in a review of Clark Williamson’s *A Guest in the House of Israel*. Novak argues that Williamson underestimates medieval Jewish attempts to normalize relations with Christians by formulating the idea that Christians only join their belief in one God with another deity (*shituf*). Novak begins, however, by explaining Williamson’s point that the Noahide laws themselves have no theological implication:

One could in effect be an agnostic (although not an atheist, since the rabbis anticipated Nietzsche by designating blasphemy to be the declaration “God is dead”) and fulfill the minimal Noahide criteria. (Actually, though, most Jewish treatments of the Noahide laws assumed that they were the *conditio sine qua non* of a gentile *religious* culture, not its *conditio per quam*.)⁴¹⁴

As such, his earlier view is consistent with Grotius’s statement. However, in Novak’s later account, written in 2000, he associates the Noahide code with a relationship with God, as can be

⁴¹² Ibid.

⁴¹³ Novak, LAT, 115.

⁴¹⁴ Novak, review of Clark M. Williamson, *A Guest in the House of Israel, Pro Ecclesia* 4.4 (1995): 487.

seen from Novak's discussion of the "covenant" God makes with Noah.⁴¹⁵ The contrast between this view and his earlier description can be seen from the fact that Novak frames these two views of the Noahide code – the one based on a natural morality and the other constituted by reference to a relationship with God – as mutually exclusive. Novak also finds the difference between these two views to be at the heart of the debate between Maimonides and Nahmanides on the Noahide code. Speaking about the possibility of a "nonmetaphysically grounded morality," or views that are based purely on reason, Novak explains:

For Nahmanides, it is sufficient, at least within its own context, even though revelation is needed to constitute the human relationship with God. But for Maimonides, revelation is not the culmination of a rational continuum, as it is for Maimonides. Hence, in the ordinary realm of human political experience, basic norms do not need revelation in the same way non-Jews do not need Jews for their moral well-being.⁴¹⁶

The background for this statement is an explanation of the difference between Maimonides and Nahmanides on the relationship between reason and revelation. For the latter, revelation is independent of reason; for Maimonides, revelation is just a higher level of reason. Given this difference in perspective, it is apparent that the view that the norms have a metaphysical basis, which would mean that the norms are a form of "indirect revelation,"⁴¹⁷ is fundamentally dissimilar from the view that the norms have no such basis. Having shown that, to Novak's mind, these two views are opposed to one another, it must be noted that Novak originally identifies his account of the Noahide code with the view of Nahmanides. In an article written in 1986, Novak explains why he sees the Noahide commandments as a precondition to the covenant:

⁴¹⁵ Novak, "Law: Religious or Secular?" in TIPS, 177.

⁴¹⁶ Novak, JSE, 199.

⁴¹⁷ Novak, IONJ, 224.

As such, the relationship with God is the domain that is constituted by revelation. In the case of morality, however, one can discover to some extent what are the *sine qua non* of human society, that is, of any society worthy of the moral allegiance of rational human beings. Only such a society is minimally capable of sustaining a covenantal relationship with God. This is quite close to the view of the anti-Aristotelian theologian, Nahmanides (d. 1267).⁴¹⁸

The description here is consistent with Novak's interpretation of Nahmanides' view, as evidenced by Novak's statement that the laws are "binding on all humankind, even if their divine source is not acknowledged."⁴¹⁹ That representation of the laws marks a divergence from the view of Maimonides, for whom, as we have seen, the divine source is integral.⁴²⁰ Here Novak explicitly states his preference for Nahmanides' natural law theory, which is constituted by a "society worthy of the moral allegiance of rational human beings." By that Novak means that the laws enable society to have the minimal conditions for receiving the law but does not prepare them intellectually or spiritually.⁴²¹ The implication is that Novak rejects a purely rational acceptance of the Noahide commandments. Consequently, the only alternative this leaves for one who wants to live by the Noahide code is to accept it on the basis of its divine origin.

Thus, this later account is inconsistent with Grotius's statement. And that brings us to the problem with this attempt at reconciliation. As we have already seen, Novak originally provides no indication that the code can be kept in more than one way. Even if Novak simply augments his original account by adding that facet, he still runs into difficulty. There would be two options. (1) The minimal view is still dependent on a belief in God, in which case it would not be accepted

⁴¹⁸ Novak, "Natural Law and Normative Judaism," *Vera Lex* 6.2 (1986): 6.

⁴¹⁹ Ibid.

⁴²⁰ Maimonides, *Mishneh Torah: The Laws of Kings*, 8:11.

⁴²¹ Novak, "Natural Law and Normative Judaism," *Vera Lex* 6.2 (1986): 6. Cf. Novak, "The Universality of Jewish Ethics: A Rejoinder to Secularist Critics," *Journal of Religious Ethics* 36.2 (2008): 207, where he describes the laws as being "existentially insufficient" if they do not enable a relationship with God.

by anyone outside a covenantal tradition. (2) The minimal view is entirely independent of a covenantal viewpoint. In the latter case, however, it would represent an entirely different natural law theory. And that would mean that Novak is combining two different types of theories.

Further, the natural law which Novak identifies in the reasons for the commandments would similarly not comport with Grotius's statement. The reasons for the commandments are by definition linked in Novak's thought to the "*reason for which they have been devised in the first place.*"⁴²² More broadly, the view that natural law could be true without a theological basis would be nonsensical not only because the commandments presuppose a divine law-giver, but because rabbinic enactments are seen as a response to divine law.⁴²³ Indeed, a natural law not premised on a divine source would make nonsense of the divine mandate of the rabbis to make enactments.

Moreover, the distinction between minimal and maximal claims can only be understood by reference to the categories of rationality. The minimal view is consistent with that which is widely known; the maximal view depends on a doctrine of creation, so it relates to a *ratio per se* explanation. However, this distinction is absent in rabbinic thought.⁴²⁴ As a result, Novak cannot draw on those types of rationality to formulate the two types of claims. Further, as Professor Harry Fox has noted, Novak's thesis is undermined by the fact that Maimonides does not make the distinction between rational commandments (*mitzvot sikhliyyot*) and received commandments

⁴²² Novak, NLIJ, 64.

⁴²³ Novak, JSE, 38.

⁴²⁴ It is not found in Maimonides' thought either. I am thankful to Professor Gideon Libson from Hebrew University for this point. Personal communication, *Theologians in a Jurist's Robes: Relations between Theology and Law in the Judaeo-Islamic Milieu*, Toronto, Canada, Wednesday, March 22, 2017.

(*mitzvot shim 'iyot*).⁴²⁵ As a result, the rationality of both types of commandments is placed on equal footing. On that view, there is therefore only one type of rationality for which Novak can argue, and there is no basis for minimal and maximal claims.

3. Conclusion

A review of the way Novak develops his later account of natural law shows that he eventually incorporates some of the features of his earlier account into his later one, and conversely, that he includes facets of his later account into his earlier account. The fact that Novak has to introduce a mediating concept is proof that he acknowledges the disparity between the two accounts. The best indication of the difficulty associated with reconciling these two accounts is his inclusion of minimal claims in his later account. These minimal and maximal views have been shown to be incompatible, inasmuch as only the former comports with a non metaphysical natural law. At the same time, because Novak's theory originates in the Noahide code, it is irretrievably associated with specific norms. Novak's phenomenology is a reflection both on the metaphysical component of the later account and the normative component of the earlier account. On the one hand, based on what we saw in the previous chapter, Novak's phenomenology can be seen as circumventing the rational argumentation he needs in support of his natural law theory, since the later account bases the norms on ideas that are inaccessible outside a covenantal framework. On the other hand, the phenomenological approach is always associated with specific norms. Thus, Novak's natural law is too metaphysical to be presented in

⁴²⁵ Personal communication. *Theologians in a Jurist's Robes: Relations between Theology and Law in the Judaeo-Islamic Milieu*, Toronto, Canada, Monday, March 20, 2017.

normative terms, on the one hand, but it is also far too specific to be described in metaphysical terms, on the other hand.

Two primary takeaways emerge from this chapter. The first takeaway of these reconciliatory efforts relates to Novak's argument in the public square. In those instances when he speaks about matters pertaining to the modern state, Novak may make an argument that is widely known, such as the destruction that comes about through murder. As his account of natural law matures, however, the basis of the Noahide commandments becomes related to the metaphysical ground he develops in the introduction of his later account. Even by drawing on phenomenology, the norms at which one arrives cannot be separated from their ground.⁴²⁶ Consequently, Novak's argument is simply not going to resonate with people who are outside a religious tradition.

The second takeaway from this chapter pertains to scholars who engage with Novak's thought. Even without recourse to Novak's specific accounts of natural law, it stands to reason that a natural law theory within Judaism that is based on one facet of the tradition, namely, the Noahide code, will differ significantly from a natural law that seems to be expressed in multiple parts of Jewish thought and practice. In the case of Novak's natural law theory, the difference is more pronounced because, unlike Novak's first account, in which he only explains the rationality of the seven Noahide laws, Novak's later treatment explains the rationality of the Mosaic laws and the conditions that make the covenant possible. However, the tendency of scholars that look just to Novak's later works, where the notion of personhood is emphasized, is to understand Novak's account of the Noahide code based on his later view.

⁴²⁶ Indeed, that argument forms the backbone of his book *In Defense of Religious Liberty*, in which Novak argues that societal norms have to be grounded in a belief in God. Novak, IDRL, 172-177.

Stated differently, scholars take Novak's mediating concept, which he only introduces in *Natural Law in Judaism*, as a key to understanding Novak's earlier formulation of natural law. By so doing, they miss the halakhic criteria of rational knowability and the emphasis on specific norms that is so crucial to Novak's original treatment of the code. Conversely, those scholars who focus just on Novak's treatment of the Noahide code, and therefore believe that Novak argues that the norms themselves ought to be universal without reference to their ground, overlook the fact that Novak later universalizes these laws by drawing on a doctrine of creation. Scholars must therefore take both of Novak's accounts into consideration.

Chapter 3 Finding An Unlikely Parallel Between Natural Law and Redemption

1. Introduction

This chapter pertains to the relationship between Novak's natural law theory and his view of redemption.⁴²⁷ The first section will begin by establishing a connection between Novak's treatment of redemption and his view of natural law, and will then offer an analysis of the way Novak formulates his account of redemption. That analysis will be based on a chronology of Novak's treatment of redemption between his first mention of it in *Halakhah in a Theological Dimension* and his discussion of the idea in his later works, particularly in "The Universality of Jewish Ethics." From that discussion, it will emerge that there are three parallels between Novak's natural law theory and his view of redemption. The first relates to the shift already established in Novak's account of natural law from one that is dependent on reason to one that is heavily based on a doctrine of creation and the impact of that development on his conception of redemption. While Novak originally describes the redemption as a period of greater human understanding, he eventually describes it as a time of God's accomplishments on behalf of

⁴²⁷ As I have already noted, very little has been written about Novak's views on redemption. For a recent treatment of Novak's views on the relationship between Jews and Christians in the future, see Stuart Dauermann, *Converging Destinies: Jews, Christians, and the Mission of God* (Eugene, OR: Cascade Books, 2017), 74-76. Dauermann compares Novak, for whom both Jews and Christians play a role in the coming age to Sholem Asch, for whom Jesus actualizes Israel's historical ideal and to Irving Greenberg, for whom Israel and the Church are "partners." Ibid., 72-78. For the purposes of this chapter, I will not make a distinction between the world to come (*olam ha-ba*), the resurrection of the dead (*tehiyyat ha-metim*), and messiah (*meshiah*), which are three closely related components of Jewish eschatology. Novak discusses each of these components in Novak, "Jewish Eschatology," in *The Oxford Handbook of Eschatology*, ed. Jerry L. Walls (New York: Oxford University Press, 2008), 114-126, but he generally uses the term 'redemption' without distinguishing between the world to come, the resurrection of the dead, or the messiah. See also David Novak, "Judaism, Zionism and Messianism — Telling Them Apart," *First Things* 10 (1991): 22-25.

humanity. To the extent that when natural law is located in human reason, redemption represents a full human understanding of the law,⁴²⁸ and when natural law is located at the juncture of the divine and the human, redemption is something God will project from the future into human history,⁴²⁹ Novak's view of redemption parallels his conception of natural law. The second parallel pertains to the fact that natural law is a precondition both for the covenant and for the ultimate redemption, while the third parallel can be seen in the fact that both ideas are prophylactic in nature against what human beings can know – or, later in Novak's thought, accomplish.

Following that analysis, I will discuss the challenge it poses to Jody Elizabeth Myers' suggestion that advocates of natural law in Judaism are aligned with active messianism.⁴³⁰ It will be shown that, although Novak subscribes to a robust natural law theory, he is sceptical of what Myers calls active messianism. I will then discuss the status of law at the time of redemption. That issue will be prefaced with the question of what can actually be said about redemption, and will lead to a discussion of the two strategies Novak uses to speak about that time. This preface will lead us to a contradiction in the way Novak describes the status of the laws at the time of redemption. In one source, Novak writes that there will be no law; in another source he states that the law will remain. That issue will be resolved by reference to one of the ways Novak reconciles his two accounts of natural law, namely, his reintroduction of specific content. I then analyze the impact of Novak's view of redemption on Jewish-Christian dialogue. In the final section, I will show that, particularly in Novak's discussion of the future of natural law, the basis

⁴²⁸ As per Novak, "Natural Law, Halakhah, and the Covenant," in *Jewish Law Annual*, ed. Bernard Jackson, vol. 7 (London: Harwood, 1988), 65.

⁴²⁹ As per Novak, EOI, 253.

⁴³⁰ Jody Elizabeth Myers, "The Messianic Idea and Zionist Ideologies," in *Jews and Messianism in the Modern Era: Metaphor and Meaning*, ed. Jonathan Frankel (New York: Oxford University Press, 2013), 3-13.

of his assertions is covenantal. As a result, Novak's natural law is not only compatible with his covenantal thought, it is inseparable from it. A closely related point is that, since the norms of natural law can be separated from their political context but not their covenantal intent, Novak's natural law is a theological, rather than political, construct.

My methodology differs slightly from the previous chapter. While I include a chronology of Novak's albeit brief treatments of redemption, the focus is less on the meaning behind the terms he uses to describe that time and more about the interrelation of ideas. That is to say this study pertains to the question of how the concept of redemption is contextualized within Novak's view of the covenant and the relation of that idea to the place held by natural law. In particular, the role that natural law plays at the time of redemption is important for the rest of this thesis, as it allows us to assess natural law under radically different circumstances. By reference to the change we witnessed in Novak's natural law theory, we can determine how Novak's account of redemption responds to that change and look for parallel developments in order to identify the impact the two ideas have on each other on a conceptual level. In sum, it is the changing description of a more or less static concept of redemption that will prove to be of interest in our study.

2. Assessing the Significance of Redemption for Novak

I intend to show here not only why redemption holds significance to Novak himself, as a Jew and theologian, but also why it is a significant subject of study given my broader thesis, which deals with Novak's two accounts of natural law. Demonstrating the former can be accomplished by looking at his background and orientation. As a Jew, the concept of redemption

is ingrained in his tradition.⁴³¹ Indeed, from the Jewish Bible to the Mishnah and Talmud and through the Middle Ages and early modern Jewish writings, there has been an almost unending current of the idea that history as we know it will have a definitive end-point.⁴³² Beyond that, as a covenantal theologian, redemption is an inseparable part of Novak's *weltanschauung*. The link between the covenant and the redemption can be seen from Novak's view, following Franz Rosenzweig, that the covenant remains incomplete until an event in the future will mark its completion.⁴³³ The belief in redemption must therefore play a role in any completely formed covenantal theology such as Novak's.

The significance of redemption as an area of interest for my study of Novak's natural law theory emerges from a cross-section of ideas connected to the relationship between human knowledge and God's involvement in history. According to the Jewish tradition, the time of redemption is associated with a greater knowledge of God.⁴³⁴ The question that is raised by this interpretation is whether Novak's changing views on the limitations on human reason have an impact on what can be known in the future or what happens at the time of redemption. Stated

⁴³¹ The significance of redemption to Novak's thought can be seen when he writes that "all political, economic, and intellectual pursuits are for that aim," meaning the end of history. Novak, JSC, 20. I should also clarify that I am not referring to messianic Judaism in my analysis. Unlike messianic Jews, Novak is not a believer in Jesus as the promised messiah. He addresses messianic Judaism, however, in an article he writes in 1991. Novak, "When Jews Are Christians," *First Things* 17 (1991): 42-46; Novak, JCD, ix.

A recent book on the topic is Richard Harvey's *Mapping Messianic Jewish Theology* (Bletchley, Milton Keynes: Authentic Media, 2009). Harvey briefly mentions Novak when he discusses Kinzer's use of the "eschatological horizon" in comparing the low eschatological horizon he finds in Christianity and the higher horizon in Judaism. Harvey also sees Kinzer's mention of Novak as evidence of Kinzer's dissatisfaction with current dispensationalist thought. *Ibid.*, 250, 255, 259. I mention Kinzer briefly later in this chapter.

⁴³² See for instance Micah 4:1-5:15; Isaiah chap. 2; Ezekiel 40:1-48:35; b. Sanhedrin 96b-99a; b. Sukkah 52a-b; R. Saadya Gaon, *Emunot Ve-deot*, viii; Maimonides, *Mishneh Torah: The Laws of Kings*, ch. 11-12.

⁴³³ Novak, EOI, 152-153; Franz Rosenzweig, *The Star of Redemption*, trans. W. W. Hallo (New York: University of Notre Dame Press, 1970), 38ff.

⁴³⁴ As per the verse in Jeremiah 24:7.

differently, when Novak discusses what will happen in the future, is he using reason or some other source of knowledge?

3. *A Chronology of Novak's Thoughts on Redemption*

Before studying the connection between Novak's treatment of redemption and his natural law theory, it is important to identify to which of the expressions of natural law that Novak locates in Judaism redemption pertains. The strongest connection to redemption in Novak's thought emerges in his treatment of the Noahide code.⁴³⁵ The most obvious explanation for this connection is that there are two questions related to the world to come that feature prominently in Jewish theology. The first is whether there will be non-Jews living at the time of redemption.

Novak outlines a Talmudic debate between Rabbi Eliezer, who believes that there is no salvation

⁴³⁵ The connection between the Noahide code and natural law is well established in Novak's thought. According to Novak, the debates over the existence of natural law in Judaism inevitably turn into debates over the Noahide code. Novak, NLIJ 149. The most obvious reason the Noahide code generates this type of discussion is that the laws it entails include such moral commandments as the prohibition of murder, theft, and incest, thereby making the comparison to natural law theory, which deals with universal norms comparable to those laws, an obvious one. Novak also relates redemption to teleology, another facet of his natural law, in chapter six of his *Natural Law in Judaism*. There, Novak speaks about his preferred teleology, one which neither ignores the difference between commandments that correspond to the relationship between man and God and those that correspond to the relationship man and his fellow man, as R. Saadya's teleology does, nor is silent on the covenant, which Novak finds to be the case in Maimonides' teleology. Novak then writes as follows: "Only in human community can we properly wait for God. That is why natural law is manifest to us as moral law, which order our interhuman relationships. That is what connects it to the law of God." Novak, "Persons in the Image of God," in TIPS, 153. According to this statement, the teleology of human personhood, the driving factor for rabbinic enactments, which is one of the areas where Novak locates natural law in Judaism, is itself a penultimate one. While that teleology enables a human community, the human community does not stop there, as it were. Rather, the community then awaits God, by which Novak means the time of redemption. The term "waiting," in reference to the messianic age, famously occurs in Maimonides' thirteen principles of faith as well as in the Talmud and subsequent Jewish liturgy as well. Maimonides, *Mishnayot 'im perush ha-Rambam* (Lemberg, 1862), *Sanhedrin*, chapter 10; b.Sabbath 31a.

outside of Israel, and Rabbi Joshua, who believes that the righteous among the nations have a share in the world to come.⁴³⁶ The latter opinion is only applicable, according to Novak, for non-Jews who keep the Noahide laws.⁴³⁷ On a normative level, therefore, the first question in relation to redemption leads directly to a discussion of the Noahide laws. The second basis for the connection between the Noahide code and redemption comes from the fact that the laws remain at the time of redemption. Unlike the rest of the Mosaic law, in other words, the negative commandments still apply at the time of redemption,⁴³⁸ which is why they figure into his account of the End of Days. Our analysis will therefore be based primarily on Novak's thoughts on redemption as they relate to the Noahide code in particular.

3.1. *Halakhah in a Theological Dimension* and “*The Role of Dogma in Judaism*”

In two of Novak's earliest mentions of redemption, Novak writes that the need for temporary rabbinic enactments are an expression of living in a not yet redeemed world. In *Halakhah in a Theological Dimension*, Novak uses the example of *prozbul*, which is the rabbinic enactment that allows someone to lend money on the seventh year of the Jewish cycle by transferring the rights of collection to the courts.⁴³⁹ The fact that this decree is needed is described by Novak as a “regrettable fact of living in an as-yet-unredeemed world.”⁴⁴⁰ Similarly, in an article entitled “The Role of Dogma in Judaism,” Novak connects the need for temporary rabbinic enactments with redemption:

⁴³⁶ *Tosefta*, Sanhedrin 13.2.

⁴³⁷ Novak, “Jewish Eschatology,” in *The Oxford Handbook of Eschatology* (New York: Oxford University Press, 2008), 119-120.

⁴³⁸ *Ibid.*, 121.

⁴³⁹ So Rashi b.Makot, 3b, s.v. *moser*; but see Tosfot ad loc., s.v. *ha-moser*.

⁴⁴⁰ Novak, HITD, 7.

It is important to comprehend, moreover, that the recognition of the essential finitude involved in this process of making temporally conditioned normative judgments is itself an issue of faith. It saves theology from arrogant triumphalism, from the oftentimes blasphemous impression that its voice is God's last word. When theology does that, attempting to permanently subsume the transcendent within its own immanent utterances, it thereby denies its own doctrines of redemption.⁴⁴¹

In the second example, Novak emphasizes the fact that the enactments are temporary. In both instances, he sees the need for rabbinic enactment as an outcome of the current unredeemed state. But the specific expression of redemption here pertains to preventing human arrogance rather than activity. In other words, Novak is emphasizing the preventative impact of redemption as it relates to delusional human views, rather than ambitious human initiatives.

3.2. *Jewish Social Ethics*

In *Jewish Social Ethics*, Novak begins to connect redemption and universality. The context for his reference to redemption is a discussion of the basis for engagement with other faiths. According to Novak, because the views of religious traditions are built on a “respective transcendent object,”⁴⁴² by which he means faith-based concepts that are unique to each tradition, its proponents can only speak about truths that overlap with other traditions. These are what Novak calls specific truths. As per the more universal truths, however,

[O]ther than some basic logical truths, universal truth in theology or even in philosophy will have to wait for the final redemption of the world.⁴⁴³

In the corresponding footnote, Novak says as follows:

⁴⁴¹ Novak, “The Role of Dogma in Judaism,” in TIPS, 83.

⁴⁴² Novak, JSE, 80.

⁴⁴³ Ibid.

Ultimately, this *lex devina* is seen by each covenantal community as being universal law; but it cannot be considered to be intelligible either immediately (*ratio quoad nos*) or even by inference (*ratio per se*) without historical revelation.⁴⁴⁴

Placed in the context of this discussion, it would appear that the redemption is a time when universal truth will be intelligible on at least one of these levels.⁴⁴⁵ In other words, Novak repeats the idea that redemption is associated with greater knowledge.

One other interesting insight into Novak's treatment of redemption emerges elsewhere in this text, specifically in Novak's discussion of the meaning of the Jewish Sabbath. The traditional interpretation of the Sabbath, a key part of Jewish practice, is of it being a "foretaste of the world to come" (*m'ayn olam ha-bah*).⁴⁴⁶ That is to say by observing the Sabbath rituals and abstaining from work, one experiences the peaceful serenity of the time of redemption. Novak has a starkly different interpretation, however. In the context of his view on technology, Novak argues that the Sabbath symbolizes the continuity of creation.⁴⁴⁷ Indeed, according to Novak, it cannot be the case that the Sabbath symbolizes the world to come. If that were so, the laws of the Sabbath would be different; the Sabbath would take precedence even over life and death matters. Jewish law stipulates the opposite, however. That is to say human life takes

⁴⁴⁴ Ibid., JSE, 83,fn.41.

⁴⁴⁵ Novak then begins to warn about the false universalism of certain ideologies and social movements. Speaking about nationalism, particularly in the United States, Novak states that Jewish enthusiasm towards the United States has to be qualified, or it can transform into pseudo-messianism. Novak, JSE, 237. Similarly, Novak writes that "social construction" can slip into messianism: "Neither the Jews nor the gentiles can be seen to have come to any consensus that this interhuman social construction should be either the beginning or the end of authentic human community." Novak, JSC, 123. This idea applies even to unity, about which Novak says that engaging in it is a dangerous thing. The desideratum of human kind to be united for the sake of a transcendent goal becomes an "eschatological desideratum only God can and will realize." Novak, *Zionism and Judaism*, 125.

⁴⁴⁶ In a poem written by the 11th century poet Menahem ben Makhir, quoted in *The Koren Siddur*, ed. and trans. Jonathan Sacks (Jerusalem: Koren, 2009), 389.

⁴⁴⁷ However, both technology and the Sabbath can embody a continuation of creation. Novak, JSE, 150-152.

precedence over the Sabbath. Novak's interpretation can be seen as the antithesis of the traditional view cited earlier. His idea is that mankind is not a helpless victim of nature. On the contrary, a human life takes precedence over nature.⁴⁴⁸ The fact that Novak resists the traditional interpretation of redemption, which inherently views it as a time in which people will live in a completed world, indicates that, at least earlier in his writings, Novak frames redemption in intellectual, rather than political terms.⁴⁴⁹

⁴⁴⁸ It should be noted that, in making this argument, Novak is not simply speaking hypothetically. The argument is made in the context of a fairly serious discussion about ongoing nuclear proliferation. With his interpretation, Novak uncharacteristically follows the view of Maimonides, who Novak views as the greatest critic of eschatology in the history of Judaism. Maimonides, *Mishneh Torah: The Laws of Shabbat*, 30:15. Novak explains that Maimonides envisions a world to come in a transcendent dimension parallel to history, but controversially, one that occurs only after death (which is something he learns from Plato, according to Novak). Novak generally objects to Maimonides' rationalistic view, so the fact that he concurs with Maimonides on this matter is an indication of the threat Novak sees in messianism. Kenneth Seeskin, "Maimonides and the Idea of a Deflationary Messiah," in *Rethinking the Messianic Idea in Judaism*, eds. Michael L. Morgan and Steven Weitzman (Bloomington: Indiana University Press, 2015), 104. Seeskin calls Maimonides' method of minimizing the role of miracles an enhancement of the "role of human responsibility." See also Martin Kavka, *Jewish Messianism and the History of Philosophy* (Cambridge: Cambridge University Press, 2004), 87.

⁴⁴⁹ In this respect, Novak follows his teacher, Abraham Joshua Heschel, who sees the Sabbath as the sanctification of time. Abraham Joshua Heschel, *The Sabbath* (New York: Farrar, Straus, and Giroux, 1951). Given this distinctly non-messianic interpretation of Sabbath, it is surprising that Novak sees blessings as gesturing towards redemption. Novak, JSC, 49. That interpretation can be explained with a distinction between the two types of symbolisms. When one is making a blessing, one is traditionally thanking God for something he or she could not have attained on their own. A blessing on a fruit, for example, is therefore an acknowledgement that the tree and the fruit it bears are from God. At the same time, for Novak, the blessing is also an acknowledgement that there is something else that can only occur through God—the redemption of the world. With the Sabbath, on the other hand, one recognizes that human work throughout the week is complete. Seeing that as a symbol of when all human work is complete would therefore create an uncomfortable parallel for Novak whereby the redemption represents the culmination of humanity's work.

3.3. *Election of Israel*

In *Election of Israel*, Novak develops his account of redemption and starts putting a greater emphasis on its political implications. To understand Novak's account of the idea in this text, it is necessary to get a firm grasp of the disagreement in the Talmud between the two views of the time of redemption and to clarify which of those opinions is favoured by Novak. The first view is that the time of redemption will differ dramatically from the time before it; the second view is that the time of redemption will only be different from the standpoint of Israel's political independence.⁴⁵⁰ While the second view is directly attributed to one person, namely, the second century Babylonian sage, Shmuel, the first view is not attributed to any one person in particular. There are, rather, a number of Talmudic sages who seem to subscribe to that view. Among them is Rav Hisda, Rabbi Eliezer, Rabbi Shimon ben Elazar, and Rav Hiyya bar Abbah.⁴⁵¹

⁴⁵⁰ Maimonides famously sides with this first view. Maimonides, *Mishneh Torah: The Laws of Kings*, 12:1. I will discuss his view of redemption later in the chapter.

⁴⁵¹ Each of these sages, usually by reconciling conflicting Biblical verses about the extent of the changes anticipated at the time of redemption, say that the verses which are more fantastical refer to what will occur during the redemption. The variance between verses can include topics ranging from the opinion that the moon will be equal in size to the sun at that time, or the view that weapons will no longer be necessary, or the notion that there will be no merit or blame during that age. Those who subscribe to the apocalyptic view typically also assume that the farfetched prophecies in the Bible describe the messianic age, not the world to come, which is subsequent to it. b.Sanhedrin, 91b, 99a; b.Brakhot, 34b; b.Sabbath, 63a, 151b; b.Pesachim, 68b. The two descriptions of redemption, namely, the apocalyptic and extensive view, correspond to what Mark Kinzer calls the excessively low and excessively high eschatological horizons for Jews. Kinzer sees the middle alternative, the excessively low eschatological horizon for Christians, as being radically different than either Jewish alternative, as it spiritualizes this world as well, rather than emphasizing the change in the next world. Kinzer finds this critique in the work of both Novak and Soulen R. Kendall. Mark S. Kinzer, *Israel's Messiah and the People of God: A Vision of Messianic Jewish Covenant Fidelity*, ed. Jennifer Rosner (Cambridge: The Lutterworth Press, 2011), 93-94, 113-114. For an analysis of Kinzer's view with respect to Novak's covenantal theology and the issue of Christian supersessionism, see Matthew Levering, *Jewish Christian Dialogue and the Life of Wisdom* (London: Continuum, 2010), 27-46. It should also be noted that the two views of messianism continued in the medieval era. Dov Schwartz,

Maimonides famously sides with Shmuel and writes that the world at the time of redemption will function as it is used to functioning (*olam ke-minhago noheg*).⁴⁵² And since Novak rejects Maimonides' strict rationalism and places natural law within a broader teleological context, it is hardly surprising that Novak disagrees with Maimonides when it comes to redemption, at least to some extent. That is to say between the two opinions mentioned in the Talmud – Novak refers to Shmuel's opinion as the extensive view and to Rav Hisda's opinion as the apocalyptic view⁴⁵³ – Novak sides with the apocalyptic view, unlike Maimonides.

Novak explains that his preference for the apocalyptic view is based on two reasons, the first theological, the second philosophical. The theological reason is that the apocalyptic view prevents the mistake that "Israel possesses within herself the power to carry the covenant from the present into its future completion."⁴⁵⁴ According to that explanation, the alternative view would fool Israel into thinking that it can bring about the redemption on her own.⁴⁵⁵ The philosophical reason for this choice is the fact that the apocalyptic view helps us "appreciate the

Hara'ayon Hameshihi Behagut Hayehudit Bimei Habeinayim (Ramat Gan: Bar Ilan University, 2005), 1-2.

⁴⁵² In Maimonides, *The Laws of Kings* 12:5, Maimonides continues to speak of the importance of the knowledge of God, using the same term (*da'at*) that he uses for those who arrive at the precepts of Noahide law by reason alone. *Ibid.*, 8:11.

⁴⁵³ Novak, *EOI*, 154, 253. Novak consistently maintains this view, as he shows in one of his most recent publication, in which he writes that redemption will only be brought about by God himself. Novak, *Zionism and Judaism*, 239. Carlo Aldrovandi calls this notion political quietism and says that religious Zionism, the competing movement, blurs the distinction between that which for Novak is the "finite task of the Jewish people" with the "infinite task of God." Carlos Aldrovandi, *Apocalyptic Movements in Contemporary Politics* (London: Palgrave Macmillan, 2014), 70ff, 80. Novak also speaks about what he labels "projective messianism," which separates the days of the Messiah from the time of resurrection by making the Messiah a politically effective leader who will restore Jewish independence," such as Bar Kokhba, the failed messiah. Novak, "Jewish Eschatology," in *The Oxford Handbook of Eschatology*, ed. J.L. Walls (New York: Oxford University Press, 2008), 125.

⁴⁵⁴ Novak, *EOI*, 154.

⁴⁵⁵ *Ibid.*, 153-154.

finite fragility of the present through the affirmation of the future that transcends it.”⁴⁵⁶ To clarify the first reason, it is helpful to look at Novak’s statement elsewhere that the misguided belief that one must be Jewish to be a citizen of a democratic order leads to messianism.⁴⁵⁷ In other words, seeing Israel independently of other nations is what Novak sees as a messianic aspiration. Along the same lines, Novak warns here that a sense of community can turn into messianic pretensions.⁴⁵⁸ Thus, the limit which redemption places upon what can be achieved through natural law is not only conceptual but political.

A similar idea emerges from the connection Novak makes between the aversion to proselytism and the apocalyptic view. As Novak explains, the apocalyptic view, which Novak sees as abrupt, keeps Israel in its place in two ways: It reminds them of the impermanence of their rulings — since Elijah can come and overturn them.⁴⁵⁹ But it also reminds Jews that proselytising is a form of pride which is often paired with “the conquest and domination of others.”⁴⁶⁰ It should not go unnoticed that both features of the apocalyptic view are a form of political restraint. The first symbolism of an apocalyptic redemption is that rulings are not intended to last, since they can be overturned. The difference between this statement and the one Novak makes earlier about the need for rabbinic rulings is that the emphasis here is not on the philosophical meaning of change,⁴⁶¹ but on the limits on power. Even more overtly, the second

⁴⁵⁶ Ibid., 154.

⁴⁵⁷ Along these lines, Novak later warns against the view that, since the messiah enforces law, the rabbis can bring the messiah by enforcing law, because that “virtually obscures the covenantal thrust of Jewish theology.” Novak, TWC, 65.

⁴⁵⁸ Similarly, although Novak writes that man ought to join a community, he believes that seeing the community as sufficient is a form of pseudo-messianism. Novak, CR, 83-84. Elsewhere, Novak also writes that people of faith regard universal love and goodwill as Messianic desiderata. Novak, HITD, 115; Novak, JSC, 47.

⁴⁵⁹ Ibid., 160-161.

⁴⁶⁰ Ibid., 161.

⁴⁶¹ Novak, HITD, 7.

symbolism of this type of redemption puts a limit on Israel's political intentions towards the members of other nations.

Finally, Novak also writes about redemption in broader terms, framing it as a “divine trajectory into history and nature.”⁴⁶² In our current time, however, nature and history are to be seen as separate realms.⁴⁶³ Thus, in order to have a philosophically constituted doctrine of election, history needs to be seen as a realm separate from nature.⁴⁶⁴ Novak envisions the redemption as having cosmic effects, which he associates with being “an invasion from the future into the present, not a transition from the present into the future.”⁴⁶⁵ Novak does not offer any further description of the cosmic consequences of redemption.⁴⁶⁶ Instead, he seems to associate that cosmic consequence with the inclusion of the rest of the world into the covenant.⁴⁶⁷ At least as it relates to Israel, there will be no need for any external coercion to ensure faithfulness to the covenant:

Israel's relationship will be one without the need for any external coercion; the heteronomous aspect of the covenant will be absent from the covenant of the future. The future, then, will be much more than the extension of the authority found in the present, even the authority of the Torah and its sages.⁴⁶⁸

⁴⁶² Novak, EOI, 253.

⁴⁶³ Elsewhere Novak states that, “This world and the world to come are essentially incomparable.” Novak, “Jewish Eschatology,” in *The Oxford Handbook of Eschatology* (New York: Oxford University Press, 2008), 118; Novak, TWC, 7. Cf. Novak, JSC, 234.

⁴⁶⁴ Novak, EOI, 12-13.

⁴⁶⁵ Ibid., 157.

⁴⁶⁶ Martin Kavka cites Novak as saying that the Jewish tradition associates the apocalypse with justice, but I cannot find where Novak makes that suggestion. Martin Kavka, *Jewish Messianism and the History of Philosophy* (Cambridge: Cambridge University Press, 2004), 187, fn. 84. Cf. Novak, EOI, 152-156.

⁴⁶⁷ Ibid., 253.

⁴⁶⁸ Novak, EOI, 154. This change in the future also has an impact on proselytizing. That is because, unlike the extensive view, in which the task of converting non-Jews would fall upon Israel — since that view includes the belief that humanity progresses until it achieves redemption — in the apocalyptic view, “it is God that brings light upon Israel, and nations will go towards that light.” Proselytism, as we have already seen, is mitigated not just by the belief in the

It is not clear if the rest of the world will need to be coerced, but the time will mark an end to the current “estrangement” between the other nations and God.⁴⁶⁹ In a similar vein, Novak states that God’s redemption of Israel will be central to cosmic redemption, but that it will not be about the hegemony of covenant, for “the Torah in toto is concerned with more than Israel.”⁴⁷⁰ Novak explains this by reference to the metaphor of light, specifically, the interplay between Israel’s light and God’s light:

It is not that Israel’s task is to bring *her* light to the nations but, rather, that God will bring them to *his* light that is to shine on Israel as a beacon. ‘For your light has come and the glory of the Lord will shine on you...nations will go towards your light’ (Isaiah 60:1, 3). That light will be universally irresistible in the future. In the present God’s incomplete light on Israel is only capable of attracting random individuals.⁴⁷¹

The use of that metaphor is helpful in illustrating the political effects of redemption – other nations are supposed to come towards the light that will shine on Israel – while emphasizing the point that there is nothing that Israel can do to bring it about. The latter point can be seen from the fact that the light shines directly from God onto Israel; it is not Israel’s light. This reference to light also seems to indicate that the inclusion of other nations into the covenant will not stem from an intellectual interest but from a sense of awe. Novak explains that it is what God “will do” for Israel,⁴⁷² presumably in the form of political success, that will draw the other nations

apocalyptic view, but also by the idea of natural law, which is essentially the view that a natural morality can exist outside the Jewish tradition. Novak, JSC, 6. Along the same lines, Novak says that if Jews would enforce natural law, it would be seen as an expression of a messianic agenda. Novak, “Noahide Law: A Foundation for Jewish Philosophy,” in TIPS, 113-144, 127. Similarly, the Jews cannot be *herrenfolk* either. If God were to exercise this option, it would put redemption in human hands. Novak, “Persons in the Image of God,” in TIPS, 146-147. Instead, Novak advocates that every nation should enforce its own laws. Novak, JCD, 34ff.

⁴⁶⁹ Novak, EOI, 253.

⁴⁷⁰ Ibid. The same impression is given by Novak when he states that the covenant is situated between nature and the end of days, and that eventually it is meant for the whole humankind. Novak, CR, 85.

⁴⁷¹ Novak, EOI, 160.

⁴⁷² Ibid., 159.

towards her. This view would be in keeping with Novak's position that the change in the covenant is not related to the rational commandments, but to those between man and God:

Furthermore, the fundamental point of reference for the commandments that pertain to the relationship between humans and God will be changed in the future. As we have seen, that point of reference is the Exodus. 'Assuredly a time is coming – says the Lord – when they will no longer say, 'as the Lord lives who brought the children of Israel up out of the land of Egypt,' but rather as the Lord lives who brought the offspring of the house of Israel from the land of the north and from all the lands whereto I have dispersed them.' (Jeremiah 23:7-8).⁴⁷³

What Novak means to say is that the change expected at the time of redemption does not relate to the rational laws that human beings can discover on their own, in the sense that they would become more rational or easier to understand. Rather, the change relates to the commandments that are grounded in a historical relationship with God – a relationship that is now described as incorporating a broader population at the time of redemption.

3.4. *Natural Law in Judaism*

In this text, Novak explicitly connects redemption to natural law. The latter comes up in Novak's explanation of the union of nature and history to which he alludes earlier. Specifically, it figures into "the interrelation of revelation and redemption, namely, when the universality of nature and the substance of history finally become one."⁴⁷⁴ That is to say the covenant, which belongs in the realm of history, and natural law, which of course belongs in the realm of nature, merge together. In light of this explanation, one would expect the time of redemption to feature elements of both history and nature. Indeed, it is crucial that redemption includes both elements. Believing otherwise would make one guilty of the mistake made by Jewish liberal thinkers.

According to Novak, they believe the following:

⁴⁷³ Ibid., 155.

⁴⁷⁴ Novak, NLII, 143-144.

This modern world is taken to be what human reason (or consciousness for those thinkers less rationalistic) can readily bring to presence. Revelation, then, becomes the epitome of human effort itself. But that has fundamentally confused what we can learn for ourselves with what God alone can teach us. Further, liberal Jewish thought has reduced revelation to redemption by constituting it as potential for human progress. But that conflation has confused what we can do for ourselves with what only God can do for us.... Thus, by identifying revelation essentially with natural law... liberal Jewish thought has confused the necessary distinctions and interrelations between all three prime events Judaism affirms.⁴⁷⁵

A sober analysis of this excerpt shows that the two mistakes, namely, confusing revelation with reason and reducing redemption to human progress, happen in sequence. Support for this claim comes not only from the juxtaposition of both mistakes, but from the fact that the revelation in the second mistake is identical to the revelation mentioned in the first one. In other words, the mistaken notion of revelation is the one that they reduce to human progress. Novak also summarizes both mistakes by referring to the first one, which further implies that the first mistake leads to the second one. Moreover, there is a parallel in the wording describing the first and second reduction. Both times it is about humans doing what “God alone” is supposed to do. In the footnotes, Novak writes that the union of history and nature is accomplished by God, unlike the view of Hegel for whom it is done by “the self development of reason.”⁴⁷⁶ It is the second mistake, however, that corresponds to what God will do at the time of redemption, and that means that redemption is associated with a political development.

Getting back to the relationship between nature and history, Novak appears to argue that the component of history prevents redemption from being seen as something that human beings can bring about on their own – i.e. by recourse to nature alone. At this point it remains unclear

⁴⁷⁵ Novak, NLIJ, 144. The three prime events to which Novak refers are creation, revelation, and redemption. By not locating natural law at the “juncture of revelation and creation,” the liberal Jewish thinkers essentially remove God from the equation.

⁴⁷⁶ Ibid., fn.59.

what the component of nature adds to that of history. Novak returns to that issue later. What does emerge here, however, is a parallel between what human beings can know about nature – Novak writes just a few years later that nature cannot be accessed outside the covenant⁴⁷⁷ – and what human beings can accomplish by recourse to nature alone. And in order to overcome either limitation, God’s involvement is necessary.

3.5. *Covenantal Rights*

In the next sustained treatment of redemption, Novak explicitly connects it to political goals. For instance, he implies that the role of redemption is to bring human acts to their fulfilment, by which he means to make sure that those deeds have a “lasting outcome in the future.”⁴⁷⁸ Novak makes this statement in the context of a discussion about the intentions that are necessary in the fulfilment of positive commandments. Those include not only meeting their immediate ends but their ultimate ends as well.⁴⁷⁹ According to Novak, the latter is actually a claim Israel has upon God:

It would seem that the reason for this extrinsic requirement is because our commanded acts are ultimately for the sake of cooperation with God’s purposes for his created cosmos. Maximally, this means that our good acts, our acts that respond to God’s creative rights, should share in the lasting effects of what God has created and *for what* he has created.⁴⁸⁰

These claims upon God are not just communal but personal as well. Although those two claims can sometimes conflict with each other, there will be no such friction at the time of redemption:

⁴⁷⁷ Novak, “The Doctrine of Creation and the Idea of Nature,” in *Judaism and Ecology: Created World and Revealed Word*, ed. Hava Tirosh-Samuelson (Cambridge: Harvard University Press, 2002), 167.

⁴⁷⁸ Novak, CR, 71.

⁴⁷⁹ Ibid., 73.

⁴⁸⁰ Ibid. A similar role for the end times can be found in Kant, *Critique of Practical Reason*, 1.2.2.1, quoted by Novak in *ibid.*, 74, fn. 86.

Only in the messianic community, promised as the final human redemption on earth, will the needs of every individual person and those of the community itself be so completely fulfilled that neither will have to be kept separate from another. At present, every society and every individual person is incomplete; hence all their respective claims on each other can be only partial.⁴⁸¹

According to this view, God's role at the time of redemption is to bring the work not just of the community but of individual human beings to fruition.⁴⁸²

In this text, Novak also offers a clearer explanation of what the component of nature at the time of redemption adds to that of history. This point can be seen from a general statement he makes about the Noahide code:

The Noahide covenant involves the generality of nature; it does not supply historical content. It presents negative limits but not the positive claims that can only be presented in a community by persons with a historical identity. Nevertheless, no matter how singular this covenant appears here and now, it is ultimately meant for all humankind, when all the separate histories have run their course.⁴⁸³

Based on this statement, we gain a deeper insight into what Novak means by the fusion of nature and history. It seems that the singularity of the covenant is supplemented by the generality of the code, i.e. the fact that the law governs all human beings. Seen in this way, nature represents humankind, which, as we have seen, is broader than history.⁴⁸⁴ A similar idea can be seen when Novak writes that the justice entailed by the Noahide covenant continues into the next world. He explains that "the just claims of human persons" are not "overcome by the covenant" but are rather subsumed by it "intact."⁴⁸⁵

⁴⁸¹ Ibid., 217.

⁴⁸² Novak, HITD, 7.

⁴⁸³ Novak, CR, 85.

⁴⁸⁴ See for example Novak, IONJ, 148.

⁴⁸⁵ Ibid., 86.

3.6. *Natural Law: A Jewish, Christian, and Islamic Trialogue*

In this text, Novak begins thinking about universality as a reality, rather than just a concept. Writing against the Stoic view of natural law, according to which, by following that law, one belongs in the political community and in turn in the “world order,” Novak explains:

The problem with this picture of natural law, though, is twofold. One, it assumes that we have actual experience of living within such a cosmic “community,” which includes all rational beings (humans being the only such rational beings we can recognize in our world anyway). But, the fact is, we have no such experience of *this kind of universal world actually peopled by all human beings*. That seems to be some kind of romanticized past or idealized future.⁴⁸⁶

Novak’s second problem with this type of approach is that it assumes that human beings have access to an ordinary experience of a “cosmic Sovereign” relaying his command, but human beings generally do not have access to that experience, by which he means revelation. The structure of this argument is similar to that of the first. Novak is arguing that a universal world does not exist yet, implying that it will at some point. Like revelation, there will be a time for that “universal world,” which is the “idealized future.”⁴⁸⁷ Thus, although Novak originally equates universality with rationality, on the basis that they both “pertain to human beings per se,”⁴⁸⁸ here he appears to be describing universality as something of a desired reality.⁴⁸⁹

⁴⁸⁶ Novak, Trialogue, 36. Emphasis mine.

⁴⁸⁷ Along these lines, Novak writes that the Mosaic law allows humans to “experience a small part of the final redemption already,” as if to say that the universality of the future is a reality to be experienced, rather than an idea to be known. Novak, SHL, 34.

⁴⁸⁸ Novak, IONJ, 32.

⁴⁸⁹ Novak refers to the question of whether universals are real entities in Novak, LAT, 2nd series, 24. Based on the statement I have cited, it would appear he now answers in the affirmative.

3.7. “The Universality of Jewish Ethics”

More detail about the universality of redemption is offered by Novak in an article he writes in 2006:

That direct relationship with God can be fully consummated only in eschatological redemption, which is a universal reality that revelation intends rather than presupposes, unlike ethical universality, which revelation does presuppose. As such, humans can only hope for this concrete universal redemption; they cannot suppose it lies in their background as they can suppose universal ethics lies in their cultural background. Being the ultimate divine project, this redemption can only be brought about by God eschatologically.⁴⁹⁰

Novak’s universal terms can be explained by reference to the context, which pertains to humankind. That universality must be distinguished from a universal ethics, inasmuch as redemption extends the boundaries of the covenant. In other words, as Novak explains, the inclusion of humanity is not based on a moral ideal, but a direct relationship with God.⁴⁹¹ The development in the way Novak frames redemption seems to correspond with the way he now defines universality as it relates to moral norms. Just as what makes a norm universal is not the equality of the subject and object of an act, but the relationship with God, which potentially includes everyone,⁴⁹² what makes redemption universal is that it includes all of humanity, or what Novak earlier calls nature. Novak warns, however, that the “direct relationship with God” cannot be initiated by human beings, even if it includes everyone, because that relationship comes from revelation.⁴⁹³

⁴⁹⁰ Novak, “The Universality of Jewish Ethics: A Rejoinder to Secularist Critics,” *Journal of Religious Ethics* 36.2 (2008): 207-208.

⁴⁹¹ As per Novak, JSC, 234.

⁴⁹² Novak, “The Universality of Jewish Ethics: A Rejoinder to Secularist Critics,” *Journal of Religious Ethics* 36.2 (2008): 203.

⁴⁹³ *Ibid.*, 207.

4. *Analysis*

4.1. *Three Parallels Between Natural Law and Redemption*

Having explained Novak's account of redemption, it becomes possible to place it within his broader philosophy. In doing so, we discover three parallels between Novak's account of natural law and his view of redemption. These relate to the change in the rational content of both natural law and redemption, the view of natural law as a precondition to both the covenant and redemption, and the limits to human pretensions in both areas. The first parallel can be seen from the contrast in the way Novak discusses the primary feature of redemption. Novak originally writes about the universality of redemption as being associated with the discovery of truth. In *Jewish Social Ethics*, for example, Novak makes the following statement:

Other than some basic logical truths, universal truth in theology or even in philosophy will have to wait for the final redemption of the world.⁴⁹⁴

The fact that this statement is juxtaposed with the two types of rationality in the corresponding footnotes further reinforces the point that Novak sees redemption as presenting truths more rationally. More evidence comes from the biblical verse he cites in support of his account of redemption, namely, Jeremiah 30:33: "I will place my Torah within them and write it on their heart." This verse is seen as the inspiration for Paul's reference to the "law written in their hearts," a *locus classicus* for natural law.⁴⁹⁵ By choosing this verse, it stands to reason that Novak means that the knowledge of the law will become intuitive, just as natural law is perceived to be. Further support can be brought from Novak's response to non-believers:

⁴⁹⁴ Ibid.

⁴⁹⁵ Romans 2:15; Colin G. Kruse, *Paul's Letter to the Romans* (Grand Rapids: Eerdmans, 2012), 132.

It seems that such a person must choose either to listen to other voices or to wait. If he or she chooses to listen to other voices—and they are always there—there is nothing we can say to him or her. But if that person chooses to wait, then he or she must be silent, for silence precedes the speaking of the voice. “And the Lord is in His holy abode, be silent before Him all the earth” (Habbukuk 2:20). And we who have heard it must be silent with them, for we need to hear it once again.⁴⁹⁶

In this case, Novak describes the time of redemption as a period in which we will hear the voice of God. It is difficult to understand what he means, but Novak appears to be describing a form of prophecy. What emerges from this point is that, in this relatively early account of redemption, Novak believes that the divine will is going to be widely accessible.

As Novak develops his notion of redemption, however, his emphasis shifts towards God’s accomplishments at that time. Novak warns, for instance, that “elementary justice” is not the experience of redemption.⁴⁹⁷ What that means is that the utopia envisioned by the world suffers from the misunderstanding that it can come about without God, but the vision itself is not entirely inaccurate. While some may bring evidence to the contrary from one of his later texts, in which Novak states that in the world to Come, the issue of theodicy (*tzadik ve-ra lo*) will be resolved,⁴⁹⁸ a closer look at the context indicates that the statement pertains to the outcome of human deeds:

But, as we saw in chapter 2, the rabbinic answer to this problem of theological epistemology is to assert that we cannot draw any conclusions from experience because the experience of the endtime is not yet at hand. As such, God has *not yet* brought about the full effect of the acts of the righteous or the acts of the wicked in this world (*olam ha-zeh*), this “vale of tears” (Psalms 84:7). That will have to wait for the world-to-come (*olam ha-ba*), which still lies even beyond the historical horizon.⁴⁹⁹

⁴⁹⁶ Novak, JCD, 155.

⁴⁹⁷ Novak, “Is Natural Law a Border Concept Between Judaism and Christianity?” in TIPS, 223.

⁴⁹⁸ Novak, CR, 106.

⁴⁹⁹ Ibid.

From this paragraph, we can see that the focus is not on the human capability to understand the issue of theodicy, but on God's ability to bring out the full effects of both good and evil acts. Seen in this light, the parallel to natural law can be recognized by virtue of the similarity between the change in Novak's definition of the end of days and the shift in his description of the rational validity of universal norms. As we have seen, in *Halakhah in a Theological Dimension*, Novak begins grounding the norms of the Noahide law in the *imago Dei*, a concept which cannot be known outside of a covenantal tradition.⁵⁰⁰ And while Novak originally describes the norms as knowable not only widely but in themselves (*ratio per se*), i.e. without reference to anything else,⁵⁰¹ the doctrine of creation upon which the norms come to be based broadens his original definition of rationality.

The second parallel can be seen most immediately in the fact that it is necessary for a community to accept natural law before they are offered the covenant,⁵⁰² just as it is required that humanity adheres to the precepts of natural law in order for the redemption to occur.⁵⁰³ That is to say, according to Novak, the norms of natural law are what enable society to become unified. For the same reason, Novak states that the norms ought to be promulgated through the educational system. In his *Jewish Social Contract*, he writes as follows:

[I]t would seem to be in the interest of universal morality that as many children in society receive the most explicitly moral education possible.⁵⁰⁴

⁵⁰⁰ Novak, HITD, 96ff.

⁵⁰¹ Novak, IONJ, 172.

⁵⁰² Novak is very clear on the former point: Natural law is at least a precondition for why Jews were chosen, even if the reason for that 'choice' will only be known in the future. Novak, *Zionism and Judaism*, 129.

⁵⁰³ Novak, JSC, 234.

⁵⁰⁴ Ibid. Elsewhere, Novak writes as follows: Before the revelation of the concrete realization of the final end of human existence to Israel, humans have to be living in a rudimentary communal way with themselves....this involves the discovery of natural law from creation itself, especially from created human existence in community. Novak, NLIJ, 182. Along these lines, Novak also

A third parallel relates to the fact that both redemption and natural law include prophylactic ideas. The former is a constant “not yet,” to use Martin Kavka’s formulation,⁵⁰⁵ one that manifests itself in everyday things such as blessings,⁵⁰⁶ while the latter deliberately includes elements within it which human beings cannot discover on their own. Similarly, looking towards the end time, Novak asks,

Can one think of a better prophylactic against the idealistic and ideological pretensions of all the great movements of modernity, be they secular or religious?⁵⁰⁷

The context for that statement is Novak’s observation that Jews and Christians have more power, politically speaking, than ever before. For Jews and Christians, this awareness can lead to idealistic pretensions; and the way to guard against it is by seeing redemption as apocalyptic. But this warning also applies to living strictly by natural morality. A better alternative is a “real historical covenant,” since that “provides its members enough wherewithal to participate in a social contract without being totally enveloped by the state.”⁵⁰⁸ Based on that presentation, a parallel can be seen between redemption and the limits Novak places on the human discovery of natural law:

writes that, “unless Jews make the effort to institute the most elementary standards of universal law, they will not be worthy of the final redemption.” Novak, “Genesis and Morality,” *Azure* 15 (2003): 125.

⁵⁰⁵ Martin Kavka, *Jewish Messianism and the History of Philosophy* (Cambridge: Cambridge University Press, 2004), 6.

⁵⁰⁶ As Novak describes them, blessings are a celebratory anticipation of a messianic event “when God will directly feed a redeemed humankind.” Novak, JSC, 49. Novak’s understanding of blessings differs from the traditional Talmudic interpretation. According to the Talmud it is logical that, since everything belongs to God, one cannot enjoy or partake of the world without first thanking Him. b.Brakhot 35a.

⁵⁰⁷ Novak, TWC, 66. This idea is closely related to Novak’s views on the folly of the belief in the self-sufficiency of history and nature. Novak, EOI, 103.

⁵⁰⁸ Novak, JSC, 183.

[W]e must see how natural law in Judaism is the Jewish discovery of the law of God as it applies to all humankind – law that also is discoverable by any rational human being. Human reason or wisdom is primarily heuristic....human reason can discover only the aspect of divine law that is necessary for a decent human life in a decent human society; it cannot discover the fuller aspect of divine law that is by itself sufficient for a communal life...⁵⁰⁹

Read alongside Novak's earlier discussion of natural morality, it seems clear that the component offered by historical revelation corresponds to that which human reason cannot discover for itself. The Noahide code itself only offers the following:

Natural law prepares us to accept revealed law precisely because it is preparation for but not identical with fully significant human life in the world. As such, by its existential insufficiency, natural law induces in us the desire to receive directly from God what our proper and concrete location in the universe is truly meant to be and how we are to fully dwell there until the end of days (*ahareet ha-yamim*) What revealed law lacks in universality it gains in intensity. Thus, one might take redemption (*ge'ulah*) to be the historical end-time when the unworldly of natural law and the concreteness of historically revealed law will merge into one everlasting eschatological realm.⁵¹⁰

The limits within natural law itself – or more specifically, the limitation on what can be discovered through it – are a prophylactic against human pretension. In that way, it resembles the limits that redemption places upon human pretension. Nevertheless, in light of Novak's developed view of redemption, a slight tension can be identified: on the one hand, natural law is a precondition for revelation, a requirement that is in human hands not only to keep but to promulgate. On the other hand, Novak subscribes to an apocalyptic view, as can be seen when he states that redemption is "not to be expected by human criteria."⁵¹¹ Therefore, human accomplishment and God's deliverance appear to be in tension with one another.

⁵⁰⁹ Novak, SHL, 31.

⁵¹⁰ Novak, SHL, 34.

⁵¹¹ Novak, EOI, 162.

4.2. *Can A Passive Messianist be a Natural Law Theorist?*

A similar question emerges from the work of another scholar on the relationship between one's views of redemption and the role of natural law. According to Jody Elizabeth Myers, there are two types of messianism, namely, active and passive. Passive messianism holds a belief in the following:

[M]aximal divine and minimal human control over history. The fate of the Jews is not in their own hands. As a punishment for their sins, God decreed their exile from the land of Israel and subjected them to the nations of the world. Only God can reverse this decision.⁵¹²

Crucially, Myers adds that while active messianism is “not diametrically opposed” to the passive kind and “shares similar assumptions,” it “allows greater latitude for natural law, chance and human initiative in determining the end of the exile.”⁵¹³ To illustrate Myers' point, I refer to Maimonides' view. It has already been shown that Maimonides subscribes to the extensive view of redemption, inasmuch as he sees the end times as a natural continuation of the current period. Since that view puts a greater emphasis on human agency in achieving redemption, to the extent that God does not need to interfere with human history to bring it about, it would follow according to Myers that Maimonides gives more leeway to natural law. And indeed, according to the accepted reading of his text,⁵¹⁴ Maimonides believes that one can keep the Noahide laws

⁵¹²Jody Elizabeth Myers, “The Messianic Idea and Zionist Ideologies,” in *Jews and Messianism in the Modern Era: Metaphor and Meaning*, ed. Jonathan Frankel (New York: Oxford University Press, 2013), 4.

⁵¹³ Ibid., 5. Included in the belief in active messianism is also the view that the redemption will occur, at least at first, in a natural way. Novak subscribes to the apocalyptic view, as we have seen, and so he is firmly in the passive messianism camp. Novak's belief is not consistent with what Myers calls non-messianistic religious Zionism, since he does not endorse simply pragmatic means for the return to Zion. Ibid, 8.

⁵¹⁴ Steven Schwarzschild, “Do Noachites Have to Believe in Revelation?” *The Jewish Quarterly Review* 53.1 (1962): 30-65.

without believing in revelation, and can still be considered a wise human being. What this means is that Maimonides' view allows for human beings to discover natural law on their own.

Transposing these types of messianism onto Novak's categories, it would seem that Myers' active messianism can be identified with Novak's extensive view, since in both terms the emphasis is on the human ability to affect change. Conversely, passive messianism is consistent with the apocalyptic view, for they both assume that redemption is in God's hands. Assuming those parallels hold, Myers' classification should indicate that Novak affords less status to natural law. Nevertheless, Novak is a natural law theorist who finds expressions of natural law in multiple areas of Jewish thought but still subscribes to a passive messianism. Showing the extent of Novak's views on redemption, he states that even the advocates of the apocalyptic view of redemption were on the lookout for human pretension, since even those who subscribe to that view also believe that mankind has no control or bearing on the coming of the messianic era:

Needless to say, however, even the proponents of this apocalyptic view were on guard against any pseudo-messianism that declared the kingdom of God to be now with us and that much of the present Torah, therefore, is to be presently abrogated.⁵¹⁵

⁵¹⁵ Novak, EOI, 155. The reference here is to Jewish political independence, which is what the Jews falsely assumed for themselves under Bar Kokhba in the first century CE. Novak believes that the experience taught them a valuable lesson, namely, that the messiah will be appointed by God and redemption will come through him only. Novak, JSC, 94-100. Novak also speaks about nationalism as a pseudo-messianistic endeavour. Ibid., 237. Similarly, Novak cautions against seeing redemption as utopianism, since that too would turn redemption into something human beings can accomplish for themselves, instead of seeing it as something only God can bring about. Novak, NLIJ, 144. Elsewhere Novak says the following about utopianism: "At the present time, then, Jewish eschatology functions as a negation more than anything else. The hope for redemption functions as an antidote to Utopianism, just as the acknowledgement of creation functions as an antidote to naturalism, and just as the acceptance of revelation functions as an antidote to autonomy. All of these human projects are ultimately idolatrous in their denial of the prime authority of God: naturalism in declaring the self-sufficiency of nature; autonomy in declaring the self-sufficiency of human morality; and Utopianism in declaring the self-sufficiency of history." Novak, EOI 103; Novak, JSC, 50; Novak, JCD, 37-38. Novak also warns about the tangible consequences of messianism and pseudo-messianism. He believes those types

Therefore, Novak's view seems to upend Myers' argument.⁵¹⁶ Indeed, by reference to the parallels drawn earlier, it can be suggested that Novak's natural law and his view of redemption function in strikingly similar ways. Novak has an extensive natural law theory but still remains a passive messianist, because, as we have seen, the natural law that he advocates is limited in its effects, at least without God. This view of natural law, which guards against framing the human community's political aspirations in existential terms, neatly corresponds to the prophylactic feature of redemption, which emphasizes that only God can bring human acts to fruition. Returning to Myers' classification, it can be suggested that she divides natural law theorists into categories that are altogether too sharp.

By the same token, it is also possible to resolve the tension we notice in Novak's thought regarding human agency when it comes to bringing about the redemption. Even within Novak's natural law theory itself there is a shortcoming which prevents its full existential meaning to be discovered without recourse to a divine covenant. That way, both the fulfilment of natural law and the consummation of the covenant is dependent on God, rather than human beings. Because Novak's natural law theory and his view of redemption parallel each other so closely, it is not surprising to find the impact of the contours of the former upon the latter. That is to say, by reference to the change in natural law from what Jonathan Jacobs calls "rational principles" to

of movements will lead to a community member's rights being distorted. Novak, CR, 83-84.

Novak also expresses concern that messianism leads to despair. Novak, JSE, 18.

⁵¹⁶According to Myers, the passive messianists are opposed to "forcing the end" (to paraphrase the Talmudic references to those who try to breach Jerusalem's walls in hopes of re-establishing Jewish political independence. b.Ketubot 111a), while the active messianists believe in a greater latitude for "natural law, chance, and human initiative" in bringing about the end of exile. Following this classification, it can be said with confidence that Novak is a passive messianist, since he is vehemently opposed to active messianism. Jody Elizabeth Myers, "The Messianic Idea," in *Jews and Messianism in the Modern Era: Metaphor and Meaning*, ed. Jonathan Frankel (New York: Oxford University Press, 2013), 4-5; Novak, TWC, 66.

what he describes as intrinsic ends for human nature,⁵¹⁷ we can understand the development in Novak's view of redemption that leads him to first describe the need for enactments as a reflection of living in an unredeemed world,⁵¹⁸ and later state that the "essential finitude" of the enactments reflects the maxim that "all human utterances must be *tentative* before the final redemption."⁵¹⁹ In Novak's original account of natural law, human beings have a greater capacity for understanding and are empowered to make enactments, even if those are only necessary because the world is not yet redeemed. In the later account of natural law, however, human knowledge is limited and, correspondingly, human capacity to make a lasting impact is diminished. On that view, redemption carries the balance, as it were, and assists human beings in attaining the ends that they are incapable of reaching on their own. That is to say that redemption becomes less about what humans will know and more about what God will do.

4.3. *The Impact of Redemption on Jewish-Christian Relations*

There is one other point of contact between natural law and redemption that emerges from our analysis. This other nexus between the two ideas can be seen from the way Novak differs from Rosenzweig on the redemption.⁵²⁰ Novak explains what he sees as the problem in Rosenzweig, namely, his Hegelianism. Novak finds it ironic that someone who philosophically constitutes man, God, and world as separate entities, could blur those distinctions in the redemption. Novak is specifically referring to Rosenzweig's suggestion that man and God will

⁵¹⁷ Jonathan Jacobs, "Aristotle and Maimonides on Virtue and Natural Law," *Hebraic Political Studies* 2.1 (2007): 73.

⁵¹⁸ Novak, HITD, 7.

⁵¹⁹ Novak, "The Role of Dogma in Judaism," in TIPS, 83. Emphasis mine.

⁵²⁰ Novak, JCD, 100-101. On Novak's treatment of Rosenzweig, see Randi Rashkover and Martin Kavka, "A Jewish Modified Divine Command Theory," *Journal of Religious Ethics* 32.2 (2004): 387-414.

be immanent in one another.⁵²¹ Contextualising this critique, Novak says that Rosenzweig locates the relationship with non-Jews at the juncture of “revelation and redemption,” whereas for Novak it should be at the juncture of creation and revelation. What Novak means by this is that the common ground for Jews and Christians is not their participation in the redemption, but rather in the precondition they both share for revelation, namely, natural law. In this sense, the continued role of natural law prevents the blending of Jews and Christians with one another that would otherwise occur at the time of redemption.

At the same time, Novak expresses some seemingly conflicting views about the effects of redemption on the relationship between Jews and Christians. In his *Jewish-Christian Dialogue*, he writes that there are certain topics that Christians and Jews have to bracket in order to engage in dialogue:

There can be no talk here of God the creator and sustainer of the universe, God's election of a singular community and revelation to it of unique covenantal responsibilities, God's judgment of both fidelity and infidelity to the covenant, or God's redemption of the world in an act radically transcending finite human accomplishment. This type of secular agreement, which is certainly necessary for the minimal continuity of life and civilization on this planet, seems to require that Jews and Christians bracket the historical character of their respective faiths for the sake of some broader international consensus.⁵²²

Later on however, Novak writes that Jews and Christians can still share a “mutually hopeful anticipation.”⁵²³ That statement appears to contradict what we have just seen Novak state about the redemption as it relates to Jewish-Christian dialogue. A partial explanation is offered by Novak when he says that “Jewish and Christian anticipations of the end of days contradict the

⁵²¹ Novak, EOI, 102. Novak’s objection to this idea could be something he gets from Hermann Cohen. Ibid., 60.

⁵²² Novak, JCD, 11.

⁵²³ Novak, TWC, 217.

triumphalists' assumption that our differences are final,"⁵²⁴ which could be interpreted to mean that Jews and Christians, respectively, look towards a time when the conflict between them will be resolved, even as that anticipation cannot be expressed openly. Nevertheless, does Novak not state that rival assertions will "remain with us" until then?⁵²⁵

The difficulty can be more satisfactorily resolved by reference to the broader change we have seen in Novak's understanding of redemption from one that puts an emphasis on human knowledge to one that stresses what God will bring about. In Novak's earlier account, when the focus is on human knowledge, the anticipation of that which will be known at the time of redemption can be described as a zero sum game. That is to say either Jews or Christians have the right conception. Evidence that Novak's earlier account is influenced by this type of binary formulation can be seen from his discussion about the truth upon which Jews and Christians ground their existence.⁵²⁶ Later on, however, Novak's emphasis is on what God accomplishes at the time of redemption. In that context, both Jews and Christians can have more in common. In that sense, the anticipation of the end times for Jews and Christians can be described as mutually hopeful. Even in that regard, however, the commandments keep Jews and Christians apart, and each community waits alone.⁵²⁷

4.4. *The Status of Law at the Time of Redemption*

One question remains at this point regarding the status of the Noahide law at the time of redemption. To discuss that issue, it is first necessary to provide an explanation of how Novak is

⁵²⁴ Ibid., 6.

⁵²⁵ Ibid., 10.

⁵²⁶ Novak, JCD, 11.

⁵²⁷ Novak, TWC, 165. Natural law thus represents a form of insurance against Rosenzweig's view of redemption in which Jews and Christians will be united. Novak, JCD, 100.

able to speak about redemption.⁵²⁸ The problem can be explained as follows. Saying something about redemption is ostensibly postulating about the future based on what we know about the world today. Since redemption in Novak's account is consistently described as being radically different than our current time, however, one cannot say anything about it based on one's present period. Novak gives voice to this problem when he quotes the words of Isaiah (64:3) "No eye has seen but yours, Oh God, what will be done for those who wait for you."⁵²⁹ On this verse, Novak offers the following gloss:

But, the fact is, we have no such experience of this kind of universal world actually peopled by all human beings. That seems to be some kind of romanticized past or idealized future.⁵³⁰

Novak gets around the difficulty in two ways. The first is by describing the time of redemption using the words of the prophets, that is, without any significant deviation;⁵³¹ the second is by using practical reasoning, or carefully assessing the current circumstances and using reason to determine what ought to be in the future.⁵³² The first approach can be seen when Novak justifies the political relationships that Jews had with Christians and Muslims by suggesting that they were "tentative," adding that the Jews saw redemption as a "sacred space," which would

⁵²⁸ When Novak speaks about the relationship between this world and the next, he uses the term "eschatological horizon," as noted by Mark Kinzer. Novak, "Beyond Supersessionism," *First Things* 81 (1998): 57-60; Mark Kinzer, *Israel's Messiah: A Vision of Messianic Jewish Covenant Fidelity*, ed. Jennifer Rosner (Cambridge: The Lutterworth Press, 2011), 93.

⁵²⁹ Isaiah 64:3, cited in Novak, TWC, 7. Novak paraphrases this verse by saying that redemption is "on the other side of our present horizon." Ibid.

⁵³⁰ Novak, *Dialogue*, 36.

⁵³¹ See Novak, NLIJ 144, fn. 59, where he cites Zecharia 14:9. On the debate on how to interpret prophetic verses and the tendency to do so literally, see Novak, EOI, 156.

⁵³² Jacob Neusner states that the rabbis describe the world to come not historically, but rather paradigmatically. Jacob Neusner, *The Handbook of Rabbinic Theology* (Leiden: Brill, 2002), 295-297. The two paradigms they use, the Exodus from Egypt and the life of Adam and Eve in paradise, are models for the transition into redemption and the life in the epoch of redemption. Ibid., 296.

encompass all.”⁵³³ This description closely follows the words in Psalm 72:19: “and let the whole earth be filled with his glory.”⁵³⁴ Another example can be found when Novak says, “The estrangement between God and Israel and God and the world will ultimately be overcome.”⁵³⁵ In this case, Novak’s wording parallels the words of Jeremiah and Isaiah.⁵³⁶

Novak’s second method of speaking about the redemption emerges from his treatment of the question of whether the study or practice of the commandments is more important.⁵³⁷ In that discussion, Rabbi Jose the Galelite argues that learning is more important, a view which Novak takes to mean that Torah study has chronological priority over the fulfilment of the commandments. Novak adds that, with learning alone, one can even imagine what will be done at the time of redemption.⁵³⁸ Stated differently, that feat is accomplished by thinking in a practical halakhic way.⁵³⁹ The sheer power of that type of study is such that one can even imagine the law in the distant future as well. The same kind of practical thinking is seemingly in effect when Novak says that in the time of redemption there will be an “original Jewish polity,” as opposed to a society whose values are simply consistent enough with Jewish ones for coexistence.⁵⁴⁰ Novak seems to reason — perhaps based on the minimal definition of redemption

⁵³³ Novak, NLIJ, 3.

⁵³⁴ Following the JPS Translation.

⁵³⁵ Novak, EOI, 253.

⁵³⁶ Jeremiah 31:20; Isaiah 49:6. See also Novak, TWC, 7, re: Isaiah 64:3. Novak also says that the fantastical claims in the Talmud about the time of redemption are a form of *reductio ad absurdum* that puts “a brake on those who would like to provide a map with a time table for actually getting there.” Novak, “Jewish Eschatology,” in *The Oxford Handbook of Eschatology* (New York: Oxford University Press, 2008), 118.

⁵³⁷ The discussion is based in *Sifri to Deuteronomy* ed. Finkelstein, 85. Novak sees the question about the relative benefits of theory and practice as the equivalent of the Greek discussion about *Theoria* and *Praxis*. Ibid.

⁵³⁸ The Talmud calls this *hilkhata le-meshicha*; Tosfot to b.Zevachim, 45a, s.v. “hilkhata.”

⁵³⁹ Novak, “The Dialectic between Theory and Practice in Rabbinic Thought,” in TIPS, 30-31.

⁵⁴⁰ Novak, NLIJ, 182.

held by Maimonides⁵⁴¹ — that it is inconceivable that the Jewish people will still be beholden to any other nation when God himself redeems them.

The same type of thinking is in evidence when Novak discusses the status of law at the time of redemption. The problem is that Novak makes conflicting statements on this issue. In *Halakhah in a Theological Dimension*, he writes that the rabbinic dictum that the commandments will be abolished someday is originally meant to be taken literally.⁵⁴² Novak implies thereby that, at the time of redemption, a radical transformation will occur — there will no longer be any law. Elsewhere however, Novak describes redemption as a time “where we will fully and immediately understand the law of God in all its manifestations.”⁵⁴³ By reference to the reconciliation of Novak’s earlier and later accounts, it is possible to resolve this difficulty. In Novak’s later account, the norms of the Noahide code get reintroduced. An example can be seen when Novak discusses the components of natural law:

There are two ways of engaging in natural-law thinking. One way, which is epitomized by Saadia and Maimonides, is to speculate teleologically – namely, to reflect on what the ends of law are and how natural-law precepts are the proper means to fulfil them. The “nature” in *natural* law in this way of thinking is an all-encompassing whole, each of whose parts is a good attracting intelligent human action. The other way is to reflect on the inherent negative limits and to see law as the way of practically affirming the truth of that limitation of a finite creature, a limitation apprehended by its intelligence. The “nature” in *natural* law in this way of thinking is internal structure – that is, what limits personal and communal pretensions.⁵⁴⁴

It is not surprising, therefore, that in his later account of redemption he also emphasizes the negative limits. Thus, in *Talking with Christians*, Novak argues that at least some of the norms

⁵⁴¹ Maimonides’ perspective is based on the extensive view, as I discussed earlier. Maimonides, *Mishneh Torah: Laws of Kings*, 11:8.

⁵⁴² Novak, HITD, 12-13

⁵⁴³ Novak, “Natural Law, Halakhah, and the Covenant,” in *Jewish Law Annual*, ed. Bernard Jackson, vol. 7 (London: Harwood, 1988), 65.

⁵⁴⁴ Novak, “Natural Law, Universalism, and Multiculturalism,” in TIPS, 154.

remain at that time. Specifically, he writes that it would be ridiculous to suggest that “those who did not commit adultery in this world will have their pick of sexual partners in the next world.”⁵⁴⁵ In other words, Novak cleverly applies *reductio ad absurdum* reasoning to show that even the rabbis who believe that the commandments will be null and void at the time of redemption would agree that the basic moral law must remain.

5. *Reconciling Novak’s Natural Law Theory with his Covenantal Theology*

Given this analysis, I would like to suggest that Novak’s account of redemption, particularly in light of its development over the course of his writings, presents a challenge both to the view that Novak’s natural law theory and his covenantal thought are incompatible with one another and to the argument that Novak’s natural law theory cannot be seen independently of his political thought.⁵⁴⁶ I base this suggestion on four related points. The first two points challenge the former claim, while the second two points respond to the latter one.

1. When Novak discusses the covenant at the time of redemption, it is understandable that he draws on prophetic verses, thereby applying the first method of speaking about the time of redemption; but when Novak treats the topic of natural law at the time of redemption, one would expect him to use reason to project from the present onto the future, for the obvious reason that natural law predates the covenant and is external to it.

⁵⁴⁵ Novak, TWC, 57.

⁵⁴⁶ This argument is made by Gregor Scherzinger. Gregor Scherzinger, *Normative Ethik aus jüdischem Ethos: David Novaks Moraltheorie* (Fribourg: Academic Press Fribourg, 2014), 199, 28, 279, 323. Leora Batnitzky raises those issues at a conference focused on Novak’s covenantal thought. Leora Batnitzky, “Reconciling Chosenness and Natural Law in David Novak’s Theology of Covenant.” Paper presented at *Rethinking the Covenant: Engagements with the Theology of David Novak*, Toronto, Canada, September 14-15, 2014.

That is not the case, however. Even his description of natural law at the time of redemption is developed based on biblical sources. Drawing on a verse in Isaiah, Novak discusses Israel's relationship with the physical world, upon which redemption will have "cosmic effects" and, based on a verse in Zephaniah, Novak learns about the universality of the covenant.⁵⁴⁷ Novak's evidence indicates that the natural law that he envisions at the time of redemption is only known by reference to the covenant. Further, it is not only on the margins that Novak's natural law admits of covenantal thought. As we have seen, even the typical normative concepts of natural law are imbued with a theology of creation.⁵⁴⁸ Indeed, Novak believes that natural law exists for the purpose of the covenant.⁵⁴⁹

2. Only an interrelation between the concept of the covenant and Novak's natural law theory would explain why the fulfilment of the covenant corresponds exactly to what is offered by natural law. In other words, if natural law and the covenant are incompatible with one another, it would be difficult to understand why that which is lacking in the covenant, namely, universality, happens to be present in natural law and why that which is lacking in natural law, namely, its concreteness, is inherent to the covenant.⁵⁵⁰
3. As Novak develops his account of redemption, it becomes apparent that natural law itself is insufficient as a political system. Even if scholars are correct that natural law for

⁵⁴⁷ Novak, EOI, 156-157, re: Isaiah 65:17-18; Novak, SHL, 78, fn.70.

⁵⁴⁸ For instance, see Novak, NLIJ, 17, 158.

⁵⁴⁹ As Rashkover and Kavka state, "central to Novak's theology is an account of covenantal life as a communal process of testifying to the nearness of God while engaging in a world with others who are outside of this community." The operative word in that statement, at least for me, is 'while.' For Novak, the engagement with others and the testimony of the nearness of God must occur simultaneously. Randi Raskover and Martin Kavka, "Introduction," in TIPS, xvi.

⁵⁵⁰ Novak, SHL, 34.

Novak “intends covenantal life as its highest end,”⁵⁵¹ it remains insufficient on its own.

On the contrary, the more political Novak’s view of redemption becomes, in terms of the promise of what God accomplishes on behalf of Israel and the world, the less political his natural law appears to be. Redemption is only necessary because natural law is not sufficient to accomplish that for which mankind strives. It follows that natural law is an indication of what is still needed – the existence of natural law enables revelation and a universal adherence enables redemption – rather than a description of a political system. Thus, although the implications of natural law and particularly the Noahide law are undoubtedly social-political in nature, I argue that the idea is ultimately based not upon political concerns but on theological ones.⁵⁵²

4. Since natural law exists at the time of redemption only in a minimal, hobbesian form, it can be proven that the theory is not political. The time of redemption is a radically different period for Novak. Even the moderate theories of the redemption see its political context as significantly different from the current time.⁵⁵³ Since the same norms can apply in both time periods, it stands to reason that Novak’s theory is not dependent on any current political considerations. Further, one cannot bracket the impact of redemption on Novak’s theory by seeing it as a distant time in the far off horizon. Although Novak is

⁵⁵¹ Randi Rashkover and Martin Kavka, “Introduction,” in TIPS, xxiv.

⁵⁵² Novak uses the term “political” in a “totally imminent, this-worldly sense.” Novak, “Jewish Eschatology,” in *The Oxford Handbook of Eschatology* (New York: Oxford University Press, 2008), 127. I am following his usage of the term. Matthew LaGrone may be correct when he states in the afterword to the second edition of *The Image of the Non-Jew in Judaism* that natural law is philosophical, not theological, inasmuch as natural law is by definition a universal concept, unlike revelation, which is inherently unique. Matthew LaGrone, *Afterword*, in IONJ, 232. Nevertheless, the content of his natural law, which as we have seen is grounded by the *imago Dei*, is theological. Note also that for Novak “Nobody *invented* natural law except God.” Novak, “Genesis and Morality,” *Azure* 15 (2003): 110.

⁵⁵³ Maimonides, *Mishneh Torah: The Laws of Kings*, 12:1.

careful, as we have seen, to limit the role of messianism – perhaps like Yeshayahu Leibowitz, but that needs to be discussed further⁵⁵⁴ – it still plays a part of everyday Jewish life, such as the blessings made upon food. Simultaneously, in those blessings, observant Jews affirm, according to Novak, a redemption that cannot be an extension of the current situation, but a projection from the future.⁵⁵⁵ What observant Jews are referring to in their blessings is a time that upends the presents time – and that means that none of the political context could be taken for granted.

6. Conclusion

In this chapter, I have shown that Novak's view of redemption changes over the course of his writings on the topic. I have argued that this change is in parallel with his developing view of natural law. That is to say when Novak speaks about ideas that are knowable in themselves, he still refers to the time of redemption as a period of greater knowledge. As natural law becomes based on ideas grounded on a theology of creation, and which are known only through one's tradition, redemption becomes about human shortcoming and God's corresponding promise to bring good deeds to fruition. The fact that this change was shown to correspond to Novak's view of natural law, inasmuch as natural law becomes associated less with human rational thought and more with ideas that can only be known through a covenantal tradition, refutes Jody Elizabeth Myers' suggestion that advocates of natural law in Judaism must be active messianists.

⁵⁵⁴ Yeshayahu Leibowitz, *Judaism, Human Values, and the Jewish State*, trans E. Goldman and Y. Navon (Cambridge: Harvard University Press, 1992), 401-418; Novak, *Zionism and Judaism*, 245.

⁵⁵⁵ Novak, *EOI*, 253.

The developing view of redemption has also been shown to be consistent with the change in the way Novak describes Jewish-Christian dialogue. As the emphasis changes from the human attainment of knowledge to God's fulfilment of human political goals, redemption becomes less of a sticking point for dialogue. I have also shown that Novak's view of redemption can be understood by reference to the strategies he uses to reconcile his earlier and later accounts of natural law. Examples of this connection can be seen in two ways. The first is when Novak writes that the minimal norms will remain at the time of redemption, thereby including specific normative content into his redemption, just as he does in his natural law theory. The second is when Novak discusses redemption in cosmic terms, seemingly lending his account of redemption a metaphysical background that resembles the one that he adds to his natural law. More broadly, this chapter has shown, particularly in Novak's later discussion of the future of natural law, that the basis of his assertions is covenantal. As a result, Novak's natural law becomes more theological later in his thought and can therefore be seen not only as compatible with, but inseparable from, his covenantal thought.

Conclusion

In two of the chapters in this thesis, I have studied the change in Novak's thought on rationality and on redemption respectively. The former yielded two separate accounts of natural law, with one based on what Jonathan Jacobs calls "rational principles" and the other based on what Jacobs calls an "intrinsic end for human nature." The latter study yielded a changing view of redemption. While it is originally described as a period of greater human understanding, it is later defined as a time in which God brings good deeds to fruition. When seen in dialogue with each other, those two chapters show that Novak's covenantal thought, which depends on revelation, and his natural law theory, which is based in part on a notion of creation, are compatible with one another. The compatibility of the two areas of Novak's thought can be shown by looking at the shift in his natural law theory from being based on what is widely known and inherently rational to being grounded by notions that are dependent on a doctrine of creation and then highlighting the corresponding development in Novak's view of redemption from a time that promises greater human understanding to a period that is associated with God's accomplishment for human beings. In support of this parallel, we can highlight the fact that the moment Novak suggests that the Torah can be identified with natural law, but that it is not widely known – it was "apprehended by Moses" who then taught it to the people – he adds that "gradually it will be apprehended by more and more intelligent human beings through the course of history."⁵⁵⁶ But even when natural law becomes less about rationality – the distinctions between internal and external relations and between inherently rational and widely known become insufficient as he develops his view – natural law remains inseparable from the

⁵⁵⁶ Novak, "Natural Law and Normative Judaism," *Vera Lex* 6.2 (1986): 3.

redemption. As natural law becomes a reflection of human ends, redemption becomes a time when God will bring human deeds to fruition.⁵⁵⁷

Given this parallel, both natural law and redemption are susceptible to each other's changes. The third chapter has illustrated this point. As the specific norms of the Noahide code are reintroduced in Novak's later account, redemption in Novak's later treatment is presented as having minimal laws. Similarly, the metaphysical basis that Novak later includes in natural law has an impact on the way he describes redemption. An example can be seen by studying Novak's inclusion of metaphysics into the adherence of the code – it is seen as having a bearing on the cosmos⁵⁵⁸ — as well as the metaphysical dimension he adds to ethics by grounding them in the *imago Dei*⁵⁵⁹ alongside a comparison between Novak's earlier and later description of the impact of redemption. In *Election of Israel*, Novak writes of redemption as having an impact on Israel and the rest of the world, and he identifies the latter with an impact on the cosmos.⁵⁶⁰ Later on, however, Novak describes redemption as offering “cosmic satisfaction.”⁵⁶¹ Further, he also writes about redemption as pertaining to “Israel, humankind, and the cosmos itself.”⁵⁶² In other words, Novak later sees the cosmos as a separate component which will be redeemed by God at the time of redemption. We can therefore see that the inclusion of the metaphysical component into his natural law theory has a direct bearing on his view of redemption.

If Novak's efforts to reconcile both accounts of natural law can be seen as an attempt to harmonize the normative component of natural law with the metaphysical component of the covenant, the content of the chapter on Novak's attempts at reconciliation further supports the

⁵⁵⁷ Novak, CR, 217.

⁵⁵⁸ Novak, JSC, 38.

⁵⁵⁹ Novak, HITD, 100.

⁵⁶⁰ Novak, EOI, 235.

⁵⁶¹ Novak, “Is Natural Law a Border Concept Between Judaism and Christianity,” in TIPS, 223.

⁵⁶² Novak, SHL, 34.

compatibility of his natural law theory and his covenantal views. By reintroducing the specific rational laws of the Noahide code and by framing the adherence to those laws as a participation in the law governing the world, to use two examples, Novak shows that he negotiates a place for both divine lawgiving and human acceptance and interpretation within his general philosophy.

The parallel established in the third chapter between Novak's treatment of natural law and his thoughts on redemption raises several questions which could spur future research on Novak's natural law theory. A number of those questions pertain to the impact that the changes in Novak's theory have on other areas of his thought, in particular his view of election. Specifically, do the limitations on human knowledge have a bearing on Novak's understanding of God's relationship with Israel and the rest of the world? Does the metaphysical component that Novak later adds to the norms of the Noahide code have a discernable effect on the connection between the precondition of the Torah and the Torah itself? The other questions raised by the changes in Novak's thought relate to his interlocutors, particularly in the public square. In Novak's earlier account, as we have seen, the norms are grounded in reason. It follows that those who adhere to the norms strictly on the basis of rationality can still have a "relationship with God"?⁵⁶³ As Novak develops his theory, however, he grounds the norms in the *imago Dei*. Although he seems to accommodate other levels of adherence and advises agnostics to "wait,"⁵⁶⁴ it would be worthwhile to analyze Novak's position towards those who reject this metaphysical basis *ab initio*.

A similar question can be asked regarding Novak's engagement with Christians. Among them are natural law theorists who frame the adherence to the norms of natural law in terms that

⁵⁶³ Novak, IONJ, 148.

⁵⁶⁴ Novak, *Zionism and Judaism*, 173; Novak, JCD, 155.

are not entirely consistent with Novak's later account, or even his earlier account.⁵⁶⁵ Would Novak consider an adherence that is grounded in an alternate theological view to be a sufficient response to “God’s authority”?⁵⁶⁶ Questions such as these represent avenues for future work on Novak's thought.

⁵⁶⁵ See for example Matthew Levering, “Christians and Natural Law” in *Dialogue*, 108.

⁵⁶⁶ Novak, *IONJ*, 146.

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