

JOHN SELDEN AND THE BIBLICAL ORIGINS OF THE MODERN INTERNATIONAL POLITICAL SYSTEM

Abraham Berkowitz

John Selden, one of seventeenth century England's foremost jurists and legal scholars, wrote many monographs treating the interrelationship between the universe of the Hebrew Bible and that of contemporary Protestant Europe. As we demonstrate, Selden analogized relations among the states of Europe to relations among the biblical nations. Indeed, in defining and in applying the concept of sovereignty to the modern world, Selden relied heavily on the biblical ideal of artificial boundaries and separations in international relations, even locating the very origins of sovereignty in the biblical narrative's affirmation of the principle of boundaries. Most significantly, as we argue, in connecting the principle of sovereignty to the ideal of boundaries, Selden captured in geo-political terms the very essence of the Calvinist worldview, appropriated from the Hebrews and rooted in the austere monotheist system which they share. This system compels man to create artificial boundaries and separations in order to distinguish one entity from another as the only means for protecting the gulf between man and God.

According to Louis Henkin, Selden articulated in Mare Clausum a position that corresponded with England's political and economic interests during the early part of the seventeenth century. At that time,

Jewish Political Studies Review 6:1-2 (Spring 1994)

England was navally inferior to Holland, on whose behalf Hugo Grotius, the founder of modern international law, wrote Mare Liberum. Although, as James Brown Scott notes, Grotius' work was a refutation of Spain and Portugal's exclusive claims to the high seas, his arguments challenged as well England's claims to dominion over the high seas to its south and east. Thus, following the publication of Grotius' treatise, King James I commissioned Selden to present a response on England's behalf.

The politics surrounding Selden's Mare Clausum, indeed, the entire problem of the law of the high seas and territorial waters, is fundamental not only for establishing Selden's status as an important figure during the founding decades of modern international relations, but for validating the now ignored biblical origins of the modern international political system. As such, it is worth mentioning that Henkin describes the dispute between Grotius and Selden as "a famous controversy in international law," suggesting as well that Selden's line of reasoning resonated among his contemporaries. In other words, Scott's contention that Mare Clausum "has gone under...[because]...it is heavy and water-logged" is perhaps true only in part. Mare Clausum has gone under because it was sunk by a world unwilling to recognize the origins of its structure in the biblical principle of boundaries and separations.

I

John Selden, one of seventeenth century England's foremost jurists and legal scholars,¹ wrote many monographs treating the interrelationship between the universe of the Hebrew Bible and that of contemporary Protestant Europe. Most significantly in connection with the biblical origins of modern world politics is his work on the law of the sea entitled *Of the Dominion or Ownership of the Sea (Mare Clausum)* (1635).² In the foregoing, Selden attempted to isolate elements of biblical law explicated in the Talmud and expounded upon by the earliest post-Amoraic scholars, in order to apply such Rabbinic jurisprudential concepts to the emerging international law of the high seas. Specifically, Selden argued that the sea was subject to national sovereignty because it could be enclosed within arbitrary territorial boundaries. For this purpose, he invoked proof-texts drawn

from the Hebrew Bible which he interpreted according to the Talmudic and Rabbinic traditions. In other words, Selden's work on the law of the sea confirms the contention that seventeenth century Protestants used the biblical idea of separations and boundaries not only for interpreting Scripture but for applying the Scriptural word to modern international relations.

To be sure, Selden appropriated many jurisprudential concepts derived from the Hebrew Bible in order to resolve the political and social struggles of his time.³ In this context we could cite his monograph on *The Jewish Law of Marriage and Divorce* which addresses the contractual nature of marriage and divorce expounded in the Talmud.⁴ As Michael Walzer argued in *The Revolution of the Saints*, the Puritans rejected the traditional Catholic view of marriage as a sacramental and indissoluble bond. Instead, according to Walzer, they considered marriage to be a secular contract freely entered into by two consenting parties and therefore dissoluble under certain prescribed conditions.⁵ Selden's exposition on the Rabbinic conception of marriage supported the Puritan approach with biblical evidence. Indeed, according to David Berkowitz, Selden's account of the Talmudic understanding of marriage and divorce fascinated John Milton, who Walzer identifies as the standard bearer of Protestantism's "radical" views on divorce.⁶ Apparently, the Rabbinic link forged by Selden between Protestant innovations in seventeenth century European social life and their origins in Hebraic sources was critical in legitimating this new conception of the family.⁷

The pivotal nature of this link is highlighted by Selden in his theoretical work on international law and the modern international system. In *The Law of Nature and Nations According to the Hebrews*, Selden argues that natural law as well as Roman and Greek law were subsumed within the seven Noahide laws propounded in the Bible and expounded in the Talmud.⁸ This volume, now virtually unknown, enjoyed immense popularity during the formative decades of modern international relations. Between 1640, when it first appeared and 1726, this *opus magnum* was reissued in five separate editions.⁹ This fact would indicate both an appreciation of the subject matter of Jewish legislation and a preoccupation with the influence of Hebraic law on modern secular Europe by contemporary scholars and states-

men. As Shabtai Rosenne suggests, Selden's contemporaries treated *The Law of Nature and Nations According to the Hebrews* as an alternative to Hugo Grotius' successful treatise on international law, *The Law of War and Peace*.¹⁰

Selden's exhaustive exploration of the multifarious aspects of Talmudic jurisprudence in the above work led him to the following conclusion: that the scope of Talmudic law was so inclusive as to extend to virtually every aspect of human activity on the individual and societal level, as well as the interaction between nations on the international level. According to Rabbi Isaac Herzog, *The Law of Nature and Nations According to the Hebrews* encompasses, among other subjects, Talmudic rulings on the seven Noahide commandments, polygamy, excommunication, the law of lost property, poor-law, Herod's legal status, the Jubilee year, the concluding of treaties, war and peace, and the law of levies and tributes.¹¹ In his view, Selden considered Talmudic exegesis to be the vehicle for deriving the true meaning of Scripture and he contemptuously dismissed his fellow Christian writers, both Catholic and Protestant, who ignored Jewish traditional learning in their explanations of the Hebrew Bible.¹²

As we have already noted, in his polemical works on international law Selden applied this same methodology in order to validate his legal position. Thus, in his *Of the Dominion or Ownership of the Sea*, Selden not only cites the obvious biblical texts and allusions that bear on this subject, he also makes extensive use of Talmudic and post-Talmudic literature which support his contention.¹³ This study, originally appearing in Latin, was subsequently translated into English in 1652. In view of the fact that a knowledge of Latin was restricted to the scholarly community, had *Mare Claussum* remained untranslated it would have suffered the same fate as his *Law of Nature and Nations*; read by few and not considered as an alternative to Hugo Grotius' *Mare Liberum* or *The Freedom of the Sea*.¹⁴

According to Louis Henkin, in *Mare Clausum* Selden articulated a position that corresponded with England's political and economic interests during the early part of the seventeenth century.¹⁵ At that time, England was navally inferior to Holland, on whose behalf Hugo Grotius, the founder of modern international law, wrote *Mare Liberum*. Although, as James Brown Scott

notes, Grotius' work was a refutation of Spain and Portugal's exclusive claims to the high seas, his arguments challenged, as well, England's claims to dominion over the high seas to its south and east.¹⁶ Thus, following the publication of Grotius' treatise, King James I commissioned Selden to present a response on England's behalf.¹⁷

The politics surrounding Selden's *Mare Clausum*, indeed, the entire problem of the law of the high seas and territorial waters, is fundamental not only for establishing Selden's status as an important figure during the founding decades of modern international relations, but for validating the now ignored biblical origins of the modern international political system. As such, it is worth mentioning that Henkin describes the dispute between Grotius and Selden as "a famous controversy in international law," suggesting as well, that Selden's line of reasoning resonated among his contemporaries.¹⁸ In other words, Scott's contention that *Mare Clausum* "has gone under...[because]...it is heavy and water-logged"¹⁹ is perhaps true only in part. *Mare Clausum* has gone under because it was sunk by a world unwilling to recognize the origins of its structure in the biblical principle of boundaries and separations.

For Selden, dominion over the sea was indistinguishable from his concept of dominion over land; in both instances he defined sovereignty in terms of boundaries.²⁰ Moreover, Selden identifies the Hebrew Bible as the primary source for justifying this notion of sovereignty over the sea by citing Scriptural references and the Talmudic exegesis thereof wherein the application of boundary lines is mandated as a prerequisite for the recognition of separate and sovereign territorial entities.²¹ The significance of Selden's arguments for the "closed sea," specifically the biblical, Talmudic, and post-Talmudic references that he invokes for this purpose, highlights the biblical origins of the organizing principle of boundaries in modern world politics as will be seen from the following detailed analysis of the aforementioned treatise.

II

Selden's inordinate number of references to the principles of boundaries in Hebrew sources suggests that he saw in the biblical world a paradigm for structuring modern international law.²² To be sure, Selden traces the evolution of dominion over the sea from the Hebrews through the Greeks, the Romans, the Arabs, and the Europeans. Significantly, however, it is only in his discourse on the Hebrew tradition that the principle of boundaries appears as the basis for distinguishing between and among various dominions and as the defining element of territorial sovereignty.²³ Further, Selden isolates and designates this biblical concept of boundaries as a universal principle that, while addressed to the Hebrews, was intended for the other nations that existed at that time.²⁴

In presenting his arguments, Selden locates the origin of private property rights in the biblical story of Noah and his sons. As he expresses it, "after the flood, Noah and his three sons, Shem, Cham, and Japhet, became joint lords of the whole world."²⁵ In his view, however, the period of common property was relatively brief, being quickly replaced by private dominion or, as he put it, by the "distribution of possessions and *bounds* which deprive other besides the known possessor from a liberty of use and enjoyment."²⁶ To validate this contention, Selden cites the biblical text in Genesis which describes the territories belonging to Japhet and his sons, "the isles of the Gentiles divided in their lands, every one after his tongue, after their families in their nations."²⁷ In explaining this sentence and its connection to the shift from common to private property, Selden states the following: "That is to say, they settled themselves as private lords and appointed *bounds* according to the number of their families, from the River Taanis as far as the Atlantic Sea, or through a great part of Western Asia and throughout all of Europe."²⁸

By locating the principle of boundaries in Noah's legacy, Selden has assigned this principle to the same source as the seven Noahide laws which he considers to be the foundation of all human society.²⁹ As we have already noted, in his view, civilized relations among nations require adherence to the law of nations which he derives from these seven prohibitions and commandments.³⁰ Indeed, according to Selden, Noah even per-

ceived the necessity to recognize boundaries in order to maintain peaceful relations. Thus, says Seldon, "he admonished his children, that no man should invade the bounds of his brother, nor should they wrong one another; because it would of necessity occasion discord and deadly wars among them."³¹ In other word, in Seldon's view, Noah appreciated the fact that recognition of and respect for boundaries would mediate among the various interests of his three sons and their progeny.

Having focused initially on Noah, Seldon then finds precedent for defining private property in terms of boundaries at the very outset of the biblical narrative, in the account of Adam's life following the expulsion from Eden. Thus, writes Seldon, "[Adam] possessed the Land of Nor or Naida where he built the city of Enoch...[following which]...he appointed judges of covenants and contracts, and added *bounds and limits* to fields and pastures."³² Further, writes Seldon, that Cain was "the first to set *bounds* unto fields."³³ Logically, Seldon should have begun with these proof-texts since the Bible begins with the story of Adam. However, the fact that Seldon relegated Adam's significance in this respect to a precedent for his interpretation of the Noahide legacy of boundaries as an instrumentality of international peace proves our contention: Seldon assigned to the principle of boundaries a status tantamount to the seven Noahide Laws.

Equally significant is the fact that Seldon did not begin his argument regarding the application of dominion, defined in terms of boundaries, to the sea with examples from the books of Exodus, Numbers and Deuteronomy. In these Mosaic books, to which Seldon refers extensively, as we shall have occasion to show, one finds a more concrete and cogent argument for the notion of boundaries. But, unlike Genesis, these later portions of the five Mosaic books are generally more concerned with the Children of Israel and their Promised Land. In Genesis, Seldon saw a universal paradigm for this concept of boundaries, and thus he anchored his argument in the more general references to the principle of boundaries in the Story of Noah, who is the biblical character representing civilized nations.

With his theoretical framework in place, Seldon turns to deriving from the Hebrew Bible practical evidence supporting sovereignty over the sea. Now, he draws heavily and almost exclusively from the biblical accounts of the borders of Israel

and its neighbors, as explicated in the Talmud and other Rabbinic writings.³⁴ Whenever possible, of course, Selden relates these proofs to the Noahide paradigm, or to other non-Jewish figures or nations identified in the Bible or the Talmud as having parallel rights over specific and bounded territory, either land or sea.³⁵

III

As the first step in his argument Selden notes that in the Hebrew Bible, the sea is often identified as a boundary line. Thus, he points to the text in Exodus which specifies the Red Sea as Egypt's eastern boundary, to the text in Deuteronomy which names the Mediterranean as Israel's western boundary, and to the text in Genesis which allocates the territories bounded by the Nile, the Euphrates, and the Mediterranean, to Canaan, the son of Cham.³⁶ Selden, however, admits that based on these texts alone his case is incomplete since in each of these examples, the sea serves only as a boundary, not being explicitly included into the territorial dominion or sovereignty assigned by the Hebrew Bible to each of these nations.³⁷

For these reason, Selden expands his argument, claiming that even biblical Israel's western or sea border was an artificial boundary line. Thus, says Selden, "but suppose at last it were granted that the seas came not into those territories [included within biblical Israel], then it remains next to be considered whether they might not lawfully be acquired afterwards by title of occupation of things vacant and derelict, that is, by natural law or by the law of diverse nations, common or civil."³⁸ This question Selden answers in the affirmative by demonstrating that even biblical Israel's sea border was not a "natural frontier" but an imaginary and artificial line drawn over some part of the Mediterranean whose two ends connected Israel's northern and southern boundaries.

The source for Selden's contention is the Talmudic Tractate of *Gitin*.³⁹ As he notes, the Talmud there records a dispute between Rabbi Judah and the Rabbis regarding the exact location of the western boundary of the Land of Israel because, as he says, "Jewish divines and lawyers...used to treat very precisely,

even to an hair, the borders of their dominion as it was appointed by God."⁴⁰ As Selden reports, the above disputants differ on the precise meaning of the sentence in Numbers which reads, "as for your sea border, you may have the great sea, and let this border be your sea border."⁴¹ Selden explains that the Talmud considered such Scriptural repetition to signal a meaning other than the one suggested by a simple reading of the text. Thus, he notes, that both Rabbi Judah and the Rabbis concur that the Hebrew Bible did not place Israel's sea border at the coast line but rather at some point in the Mediterranean.

Indeed, the entire dispute between Rabbi Judah and the Rabbis, which Selden reviews in much detail,⁴² revolves around identifying just how much of the Mediterranean is included within the boundaries of the Land of Israel. As Selden points out, the difference between these competing viewpoints lies in their particular understanding of where the two end points connecting an imaginary and artificial line which makes up Israel's western boundary are located. According to Rabbi Judah, those end points are themselves imaginary extensions of biblical Israel's north-west and south-west land borders leading him to the conclusion that almost all of the sea opposite the Land of Israel falls under Hebrew dominion. The Rabbis, on the other hand, endorse what Selden calls "an opinion much more agreeable to reason"⁴³ by limiting Israel's dominion over the sea to that part of it which falls east of an imaginary line drawn northward from the south-west border to a second imaginary line drawn westward from the north-west border. In any event, according to Selden, even this limited dominion incorporated more than 200 miles of the sea into the Land of Israel.⁴⁴

To summarize, by arguing for the closed sea, Selden is attempting to replace even natural frontiers with the authority of arbitrary boundaries. Thus, from his perspective, the idea of dominion or sovereignty in the modern world goes hand-in-hand with the recognition of the rule of boundaries. In other words, Selden's argument leads to only one conclusion: in the modern world, just as in the world of the Hebrew Bible, there can be no frontiers — not even those "natural" divisions such as the sea. In the same way that the Bible recognizes the Children of Israel's dominion over the sea in order to transform a frontier into a boundary, so too, Selden argues for the obliteration in the

modern world of all frontiers as a necessary prerequisite for establishing dominion over any given geographic area. That is to say, sovereignty is only possible where frontiers become boundaries.

IV

Selden's method of extrapolating legal and sociological precedent from the Hebrew Bible for seventeenth century Europe included the universalization of biblical concepts by using non-Jewish figures as proponents. For this reason, as we have already noted, Selden initially places this concept of boundaries within the episode of Noah and his progeny. In connection with the idea of transforming frontiers into boundaries, Selden also, by way of example, cites Noah and numerous other non-Hebrew figures in the Bible to substantiate his assertion that sovereignty can only be maintained where boundaries are established.

For this purpose, Selden invokes the Divine imperative to Noah to dominate, among other things, the fishes of the sea.⁴⁵ In this regard, Selden stresses that God made no distinction in His granting to man the earth, the sea, and the fullness thereof. That is to say, just as man can choose to privatize the earth, as he did, dividing it into bounded realms, he can also "privatize" the sea by assigning to it arbitrary boundaries corresponding to the interests of different sovereigns. By so doing, Selden dispels the argument of those who contended, based on the allusion in Psalms that, "the earth is given to the children of man, but the sea belongs only to God,"⁴⁶ that the sea is not amenable to dominion in the same manner that land is. On the contrary, argues Selden, the meaning of that citation from Psalms is that God retains His dominion over man, while at the same time, granting man dominion over the earth. To prove this point, Selden refers to another line in Psalms that "the earth is God's and the fullness thereof; the tops of the hills are also His,"⁴⁷ noting that God's sovereignty over every part of His creation does not prejudice man's right to exercise dominion over the same.

To underscore this point, Selden refers to the Book of Ezekiel wherein we read that the lords of Tyre were masters over the

Phoenician Sea. Indeed, the text describes the boundaries of Tyre as being located "at the depths of the sea."⁴⁸ Selden also notes that this same prophetic book assigns to Egypt sovereignty over the Alexandrian Sea.⁴⁹ It should be noted that the Phoenician Sea and the Alexandrian Sea are parts of the Mediterranean that are contiguous with the respective lands of Tyre and Egypt. This fact is significant because, in effect, Selden is delineating the sea into components that correspond to the interests of the national entities that abut them. It will be remembered that we previously discussed this phenomenon in connection with the Land of Israel and its western border, the Mediterranean Sea, demonstrating, once again, the universal nature of boundaries as perceived by Selden.

Further to this universal theme, Selden brings the account of King Ahashvarosh, who is commonly identified by historians as Cyrus, King of Persia, as recorded in the Book of Esther.⁵⁰ In that instance, Selden draws attention to the declaration that "the King made not only the land, but all the Isles of the sea to become tributaries."⁵¹ In other words, Ahashvarosh's sovereignty extended over land and sea, which is verified in Talmudic sources.⁵²

Beyond these and other examples, Selden bluntly states in the conclusion of his argument that the principle of boundaries expressed in the Hebrew Bible applied to all nations and not just the Jews. Thus, says Selden, "there is a true picture of imperative law in the aforesaid distribution of bounds."⁵³ That is, according to Selden, the biblical notion of boundaries captures the very meaning of imperative law in seventeenth century international relations. Selden considered imperative law to be the common law of nations that establishes relations among the nations. As he put it, "[imperative law] binds diverse nations jointly, equally, and indifferently, by some common obligation."⁵⁴ For Selden, "the imperative law of nations is that which is observed or receives authority among several nations or people who are subject to one supreme power but are otherwise distinct."⁵⁵

Selden's interpretation of the Hebrew Bible for the purpose of validating his thesis on *The Closed Sea*, validates as well the following: that in the world of the Hebrew Bible, as in the modern world, artificial separations and boundaries integrate the distinct territorial entities into a single system of relations. For this reason, Selden saw in the rule of boundaries expressed

by the Hebrew Bible and analogized to the modern world a "true picture of imperative law." That is, he considered the rule of boundaries to be fundamental for establishing relations among diverse and otherwise independent sovereign entities.

V

It is our contention that the universal authority for the principle of boundaries in the world of the Hebrew Bible crystallized just prior to the arrival of the Children of Israel in the Promised Land.⁵⁶ As related in the Book of Numbers, the penultimate step in the redemption of the Jews brought the Chosen People into direct contact with the nations of Edom, Amor, and Moav. According to the text, the Children of Israel would have to traverse the territories of these nations in order to reach the Land of Israel. Each in their turn, however, denied the Jews' permission to enter their borders, and in the case of the Amorites actually crossed into the desert in order to do battle with Israel. As the text states, "and Sychon [their King] denied Israel the right to enter its boundaries; and he gathered his nation and crossed into the desert to wage war against Israel."⁵⁷

It is interesting to note that both John Selden in *Mare Clausum* and Hugo Grotius in *Mare Liberum* cite this biblical episode in connection with the law of the sea. According to Grotius, the war between Israel and the Amorites sets a precedent for the right of free navigation by establishing the right of innocent or free passage. As he puts it, "we read of a similar case in the history of Moses...where the Israelites justly smote with the edge of the sword the Amorites because they had denied the Israelites an innocent passage through their territory, a right which according to the law of human society should have been allowed."⁵⁸

In rejecting Grotius' interpretation of the biblical text, Selden argues that, in the first place, "freedom of passage does in no way derogate dominion thereof,"⁵⁹ and in the second place, that "free passage may always be limited by the Princes in their territories according to their concerns."⁶⁰ As we noted above, based on the biblical verse, Selden is correct. The Israelites did not claim a right of free passage through the territories bordering the Promised Land, they merely requested permission to do

so. Indeed, as the text reports, when the Edomites refused free passage to the Jews, God's Chosen People did not fight or even protest that decision. They simply decamped for an alternative route into the Promised Land.⁶¹ The Amorites, however, crossed into the desert and attacked the Jews who in self-defense "smote them with the edge of the sword." In other words, the Hebrew Bible does not mandate a right of free passage. Moreover, the Hebrew Bible allows a right of exclusion by virtue of the fact that one can close the borders of his sovereign territory. The Children of Israel, in the above episode, merely defended themselves from an unprovoked attack outside the borders of the Amorite Kingdom.

From the foregoing, it is not surprising that Selden's explication of the biblical war between the Israelites and the Amorites was more loyal to the scriptural text than Grotius'. After all, as we have amply demonstrated, John Selden's scholarship was emblematic of seventeenth century Protestantism's affinity for Talmudic exegesis which is based on explicating Scripture through the use of logic and reasoned dialectics based on an exact rendering of the biblical verse. As we have shown, Selden even incorporated Talmudic exegesis into his arguments for the closed sea.

But beyond Selden's method of scholarship there is its essence: that the sea was subject to national dominion and territorial sovereignty because it could be parceled by arbitrary and imaginary boundary lines. To sustain this contention, Selden analogized international relations in seventeenth century Europe to relations among the nations who inhabited the world of the Hebrew Bible. There, too, sovereignty over land and sea was defined by arbitrary boundary lines. In other words, the essence of Selden's scholarship confirms our claim that the Protestants of sixteenth and seventeenth century Europe came to inhabit the world of the Hebrew Bible by structuring the religious, social, economic, political, and even international aspects of their lives according to biblical text. Thus, just as the lands of the Hebrew Bible are defined cartographically, with each nation set apart from its neighbors by a secular boundary line, so, too, the nations of Europe. Their future was to be mapped out according to the biblical principle of metes and bounds.

VI

John Selden was only one figure in seventeenth century Europe, albeit, an important one. But his appreciation and understanding of the Hebrew Bible, specifically in connection with the idea of boundaries as the defining element in the principle of territorial sovereignty, was representative of the prevailing attitude and understanding of Scripture and its application to contemporary issues in international relations, at least among the Protestants.

Nevertheless, one could argue that some aspects of the modern international political system evince certain similarities with past models wholly indigenous to Europe, such as the conception of private property rights under Roman law.⁶² Indeed, in one form or another, all previous theories of modern international relations consider modern territorial sovereignty to be the international equivalent of private property in bourgeois society.⁶³ In fact, J.L. Brierly asserts in *The Law of Nations* that

the founders of [modern] international law turned unhesitatingly to Roman law for the rules of their system wherever the relations between ruling princes seemed to them to be analogous to those of private persons. Thus, for example, rights over territory...bore an obvious resemblance to the rights of a private individual over property, with the result that the international rules relating to territory are still in essentials the Roman rules of property.⁶⁴

Selden, too, considered the Roman law tradition in presenting his arguments for the closed sea.⁶⁵ However, he framed his case for sovereignty over the sea with evidence for boundaries drawn from the Hebrew Bible because, as we explained, he saw in the principle of boundaries a manifestation of imperative law. That is, contrary to Brierly's contention about the founders of modern international law "turning unhesitatingly to Roman law for the rules of their system," Selden, one of the more important founders of that law, recognized what Brierly and the modern theorists of international law and international relations disregard: that domestic law such as the Roman rules of property

could not establish a system of relations which would "bind diverse nations jointly, equally, and indifferently by some common obligation."⁶⁶

Indeed, John Seldon considered domestic laws such as those governing private property rights to be civil law and not international law even when the same set of laws are binding on two or more nations.⁶⁷ Thus, says Seldon, "the law of the XII Tables that were brought from Athens to Rome remained in force in both nations...but not by any common or mutual obligation between them; and therefore the law of the XII Tables ought much more properly to be called the civil law of those nations."⁶⁸ Seen in this light, Seldon's application of the biblical principle of boundaries to the modern international arena in order to explain why the sea can be subjected to national territorial sovereignty confirms our contention that the international system established at Westphalia required an external catalyst to foster regular and ongoing relations among the modern nation-states. After all, Roman law formed the basis of civil or domestic law in Europe for centuries without a distinct system of international law evolving from it. These facts support our overall thesis that the authority of boundaries in modern international affairs cannot be properly understood without recognizing its Hebrew origins.

Mare Clausum was translated into English shortly after the religious wars ignited by the Protestant reformation were finally settled by the Treaty of Westphalia. At that time, the principle of boundaries and separations, already so well ingrained in the Protestant psyche through religious practice and world view, appeared in yet another incarnation. Boundaries which were hitherto primarily metaphysical, philosophical, and intellectual now became physical, political and actual. In other words the principle of boundaries had come full circle. That is, after having first been enunciated in the Hebrew Bible in connection with the Land of Israel and the territorially bounded entities on its borders, the idea of boundaries evolved into a system of logic and reason applicable to biblical interpretation. This pattern, clearly discernible among Jews, found parallel expression among the Protestants. It is, therefore, not surprising that its ultimate expression was once again to define national boundaries and the international political system.

Notes

1. Selden was born in 1584 at Salvington, Sussex, and died in 1654 at London. According to the *Dictionary of National Biography* he "attained a degree of proficiency in Jewish learning equaled by very few non-Israelites." In addition, he was a renowned jurist and Orientalist who participated actively in English political life. In addition to serving in the Parliament during the most turbulent decades of the seventeenth century, Selden actively participated in the Westminster Assembly. For a report on his activities there, see Robert S. Paul, *The Assembly of the Lord* (Edinburgh: T&T Clark Ltd., 1985). For an evaluation of his overall contribution to modern international law, see H.D. Hazeltine, "Selden as Legal Historian," *Harvard Law Review* 24 and 25 (1910); and Eric Fletcher, "Selden and His Contribution to International Law," *Transactions of the Grotius Society* 11 (1926). For a biographical perspective on Selden, see David Berkowitz, *John Seldin's Formative Years* (Washington, D.C.: Folger Books, 1988).
2. For a more inclusive list of Selden's works, see Berkowitz, *ibid.*, pp. 358-359. According to Shabtai Rosenne in "The Influence of Judaism on the Development of International Law," a multi-volume edition of his complete works was issued in 1726. It should be noted that in 1617 Selden wrote a treatise *Of the Jews Formerly Living in England*. This work was cited approvingly by William Prynne in his *Short Demurrer to the Jews Long Discontinued Barred Remitter into England* (1656), which was the leading work of those who opposed Cromwell's decision to readmit the Jews into England. This work reveals Selden's negative attitude toward the Jews, notwithstanding his appreciation and knowledge of rabbinics and his recognition of the significance of the Hebrew Bible in the organization of the modern world.
3. Many of Selden's writings were never translated out of Latin. Fortunately, in his review of Selden's works, Rabbi Isaac Herzog, former chief rabbi of England and Israel, says that in preparing his work he read all of Selden's writings. See Rabbi Isaac Herzog, *Judaism: Law and Ethics* (London: Soncino Press, 1974). Some of the material referred to below was translated for my use by Dr. Stephen H. Garrin whom I warmly thank for all of his help.
4. According to Rabbi Herzog, Selden's work on this subject is reliable. "It is comparatively free from mistakes and presents a good summary of the Jewish law of marriage and divorce...dealing with...the Noahide marriage and divorce, marriage and divorce under duress, and the Bill of Divorce or *Get*. *Ibid.*, pp. 72-73.

5. Michael Walzer, *Revolution of the Saints* (Cambridge: Harvard University Press, 1965), pp. 193-196.
6. Berkowitz, *op. cit.*, p. 293, and Walzer, *ibid.*, p. 185. Says Walzer, "[Protestantism's] conception of the family as a political rather than a natural or sacramental community culminated in civil marriages among Protestants and in the radical views of Milton on divorce." These views Walzer describes as his granting divorce simply "when dwelling together they require of each other intolerable conditions." *Ibid.*, p. 196.
7. Walzer's ignorance of this Rabbinic link is evidenced throughout his book. Thus, in his interpretation of Protestant ideas on warfare Walzer ignores the role of the Bible in this area as well, arguing that the goal of warfare among the Protestants was the establishment of the New Jerusalem and "in pursuit of this goal the Calvinist writers eventually found their way to the alternative medieval tradition of holy war or crusade." *Ibid.*, p. 269. Actually, they found their way back to the Hebrew Bible as defined by their exegetic approach to Scripture. Walzer's failure to recognize the influence of "Rabbinics" on the revolution of the Saints suggests a critique of his entire thesis.
8. John Selden, *The Law of Nature and Nations According to the Hebrews* (1640), pp. 788-790. Selden divided this lengthy work into seven books paralleling the seven Noahide laws.
9. The editions are: Strasbourg, 1556; Leipzig-Frankfurt, 1695; Wittenberg, 1712; and London, 1726.
10. Shabtai Rosenne, *op. cit.*, pp. 128-129. Rosenne also considers the possibility that Selden was prompted to write this work because he was jealous of Grotius.
11. Herzog, *op. cit.*, p. 71.
12. *Ibid.*, p. 78. Says Herzog, "with Christian writers who ignore Jewish tradition in explaining Pentateuchal law [Selden] deals with very summarily...[equating it with]...an attempt to interpret Roman law independently of the standard Roman jurists Ulpian, Painian, etc."
13. John Selden, *Of the Dominion or Ownership of the Sea*. Translated by Marchamont Nedham, 1652. Reissued by Arno Press Inc., n.p., 1972.
14. Grotius, *The Freedom of the Sea*, translated by Ralph Magoffin and edited with an introduction by James Brown Scott (New York: Oxford University Press, 1916).
15. Louis Henkin, *et al.*, *International Law: Case Materials* (St. Paul, Minn.: West Publishing Co., 1980), p. 4.

16. Scott, *op. cit.*, pp. viii-ix.
17. For the full story of the King's commissioning of this work and of its subsequent suppression for nearly two decades, see Berkowitz, *op. cit.*, ch. IV.
18. Henkin, *et al.*, *op. cit.*, p. 299.
19. Scott, *op. cit.*, p. ix. Scott characterizes the debate between Grotius and Selden over the law of the high seas as "the battle of the books" and he contrasts Grotius' long-term success with Selden's fallen stature, revealing, once again, how important a figure Selden was to his contemporaries.
20. Thus, as we demonstrate below, the burden of Selden's argument for a closed sea is his contention that one can draw boundaries in the sea. Indeed, this is the title of Chapter XXII of his work.
21. In arguing for the closed sea, Selden cites the Hebrew Bible and the Talmudic exegesis thereof as his first authority. According to Berkowitz, Selden's analytical method was "to begin with the authority of best choice." *Op. cit.*, p. 43.
22. The number of references to the term boundaries or borders used by Selden runs into the hundreds as is evidenced from quotations cited below.
23. It must be stressed that the term boundaries is not to be found in the chapters of *Mare Clausum* dealing with non-Hebrew sources for dominion over the sea.
24. Thus, writes Selden, "for there is a true picture of the imperative law in the aforesaid distribution of bounds." *Ibid.*, p. 41. According to Selden, as we explain below, imperative law is international law which is binding on more than one nation.
25. *Ibid.*, p. 18.
26. *Ibid.* Emphasis added.
27. Genesis, 10:5. Also in *ibid.*, p. 19.
28. *Ibid.*
29. That the Noahide Laws play this role is, as we noted above, the central theoretical premise of Selden's main theoretical work on international politics and international law, *The Law of Nature and Nations According to the Hebrews*.
30. The seven Noahide Laws as listed in the Hebrew Bible are the prohibitions against paganism, blasphemy, murder, adultery, robbery, and eating a limb from a living animal and the positive commandment to establish a legal system. The Talmud in *Tractate Sanhedrin* expands through the exegetic method of analysis these seven commandments into more than fifty commandments. Ac-

cording to Rabbi Herzog, in the *Law of Nature and Nations* Selden discusses the Talmudic expansion of the seven Noahide Laws in great detail. See the Talmud, *Tractate Sanhedrin*, ch. VII, especially folio pages 55a-58b.

31. Selden, *op. cit.*, p. 19.
32. *Ibid.*, p. 20, emphasis added.
33. *Ibid.*, emphasis added.
34. In addition to the Talmud, Selden refers to the works of Maimonides, Rabbeinu Nissin, Onkelaus, Rabbi Moses Cotzensus, Rabbeinu Ovadia of Bartenura, and many others. Citations from these and other post-Talmudic Rabbinic authorities appear throughout his work.
35. Thus, as we shall see, Selden refers to the Tyrian dominion over the Phoenician Sea; the Egyptian dominion over the Alexandrian Sea; to the Persian King Cyrus' dominion over the seas, and to the Amorite nations' sovereignty over its territory.
36. Selden, *op. cit.*, p. 25. See also Exodus 10:19, Deuteronomy 34:2, and Genesis 10:19. It might be noted that the so-called Canaanite faction of the Revisionist Zionist movement bases its extreme position on the question of trading land for peace on this sentence in the Hebrew Bible, despite their utter disregard for the rest of that work which they consider to be null and void since in their view there are no Jews left in this world, just Canaanites.
37. Selden, *ibid.*, p. 26. Thus, he writes, "the sea seems rather to be accounted as a boundary than any part of the territory allotted."
38. Selden, *op. cit.*, p. 26.
39. The Talmud, *Tractate Gitin*, deals with Jewish divorce law, a topic to which Selden dedicated an entire book, as we noted above. However, the first ten folio pages of this tractate are centrally concerned with establishing the precise boundaries of the Land of Israel because of the different evidentiary procedures governing a writ of divorce inside and outside the Land of Israel. For example, on page 2a, the Talmud considers only the southern half of the City of Acre to fall within the boundaries of the Land of Israel, placing the northern half outside of the Jewish patrimony. The issue with which Selden treats is on page 8a.
40. Selden, *op. cit.*, p. 34. The Rabbis are those individuals who propounded the majority opinion with which Rabbi Judah disagreed. Because they represent the majority view they are only identified as a collectivity.
41. Numbers 34:6.

42. The dispute in the Talmud takes up just a few lines while Selden's explication of it runs to more than eight pages.
43. Selden, *op. cit.*, p. 38.
44. Selden, *ibid.* Selden does not identify the geodesic method or other source which he used to calculate this distance.
45. *Ibid.*, p. 28. See also Genesis 9:2: "the fear of you and the dread of you shall be upon the fishes of the sea."
46. Psalms 115:16.
47. *Ibid.* 24:1. Selden does not identify who presented the argument which he is dispelling.
48. Ezekiel 27:4. As Selden renders the Hebrew, "thy borders are in the heart or the midst of the sea." *Op. cit.*, p. 29.
49. Selden, *ibid.*
50. See, for example, M. Weinbach, *Turnabout: The Story of Purim* (Jerusalem: Nachat Publications, 1971), pp. 7-8. Ahashvarosh's assumed philo-semitism is one of the reasons why the name Cyrus was, for a long time, popular among the Protestants.
51. Selden, *op. cit.*, p. 31. See also the Book of Esther 10:1. By his own admission, Selden did not have access to the original Hebrew text which he believed was lost. It should be noted that the translation on which he based this argument was not perfectly loyal to the original.
52. Talmud, *Tractate Magilla*, p. 11a. It is very likely that Selden was aware of this Talmudic position since on this same folio page the question of Alexander's dominion over the entire earth is raised. Selden was fully aware of the Talmud's recognition of Alexander's world-wide sovereignty, at least over the land, as he notes on p. 149 in *op. cit.*
53. Selden, *ibid.*, p. 41.
54. *Ibid.*, p. 14.
55. *Ibid.*, pp. 12-13.
56. See Abraham Berkowitz and Tom Milstein, "Manifest to Latent Destiny," *Midstream* (February 1993).
57. Numbers 21:23.
58. Hugo Grotius, *op. cit.*, p. 9. Grotius refers to this biblical episode again on p. 20 in order to prove that heathens have a right to their sovereignty.
59. Selden, *op. cit.*, p. 124.
60. *Ibid.*, p. 125.

61. See Berkowitz and Milstein, *op. cit.*
62. For an elaboration of the implications of this argument for understanding the origins of the modern international political system, and for an explanation of why it is critical to include the idea of boundaries in order to explain the foundation and operation of same, see Abraham Berkowitz, "Boundaries: The Biblical Origins of the Modern International Political System," unpublished dissertation, Columbia University, 1991.
63. *Ibid.*, chs. II and III.
64. J.L. Brierly, *The Law of Nations: An Introduction to the International Law of Peace*, edited by Sir Humphrey Waldock (New York: Oxford University Press, 1963), p. 20.
65. See above section II. See also Selden, *op. cit.*, chs. 14 and 15.
66. Selden, *ibid.*, p. 14.
67. Brierly, *op. cit.*, argues that Roman law's acceptance as domestic law in the European nations made it into the foundation for public or international law. In this connection he notes that in Germany, Roman law had been accepted as binding and in other countries the principles of Roman law were appealed to whenever local custom or law was found lacking. Thus says Brierly, "a writer had only to look about him to see actually operative in the world a system of law which was the common heritage of every country" (p. 19).
68. Selden, *op. cit.*, p. 14.