

Introduction

A Utopian Political Theory?

A Crossroads

During the years preceding the establishment of the State of Israel, the chief rabbi of Palestine, Yitzhak Isaac Herzog, devoted considerable thought to the question of the constitution and legal code to be enacted in the future Jewish state. Rabbi Herzog sought to draw up a program for the management of a modern Jewish state according to the Torah. He was entirely aware, of course, that many of the state's citizens would not be religiously observant and that some of them would not be Jewish. Accordingly, he wrestled long and hard with the question of the projected relationship between the Jewish legal code—the *halakhah*—and the law of the land in such a sovereign state.¹ The chief rabbi applied to other sages as well for advice in this matter, first and foremost to Rabbi Chaim Ozer Grodjinsky, head of the European Council of Torah Sages prior to the Holocaust.

Rabbi Grodjinsky's response took Herzog by surprise. He proposed setting up two parallel judicial systems: the rabbinic one would follow the laws of the Torah, while the political one would operate according to the

immediate needs of society. In other words, he granted religious authorization "to enact state ordinances" according to practical criteria of the public good. This included judging and punishing in criminal matters according to "general [i.e., secular] law," even when the latter constituted a deviation from Jewish religious law.

Grodjinsky endeavored to anchor his proposal in the classical tradition. He found support for the concept in a model of political thought developed in the 14th century by the outstanding halakhic scholar Nissim of Gerona (known as the Ran, an acronym for 'Rabbi Nissim'). According to this model, religious law itself seeks to create a certain duality within the Jewish polity. On the one hand, it establishes the authority of Torah law, which represents the ideal 'true justice', while on the other hand it simultaneously asserts the authority of the king's law, which is meant to guarantee the political order and the wellbeing of citizens in actual human society.²

Rabbi Herzog, however, dismissed this proposition outright. Challenging it first on a practical level (how were the two systems to function under the same roof?), he likened the suggested separation to the problematic division practiced at the time in Great Britain between 'common law' and 'equity' courts.³ Yet Herzog's antagonism derived primarily from the fact that he adhered to a very different model of political and legal thought, the unifying model of Maimonides.

According to the latter, no sharp division should be made between state and religion, theology and politics, the law of the Torah and the law of the state. Quite the contrary: the 'political order' is a primary objective of the religious law itself. In Rabbi Herzog's words,

For doesn't the entire Torah seek to promote the social welfare? Thus how could it be that the holy Torah would put forth a legal regime which is inherently in need of emendation by royal or government decree, in order to attain this welfare?⁴

Herzog, then, favored a more holistic approach toward religious law and consequently sought ways to apply this approach to the contemporary socio-political field.

The dispute between these two religious leaders stemmed from more than differing interpretations of the status of authoritative medieval sources (Maimonides and the Ran) and their implicit politico-legal theories. Their disagreement also expressed the huge gap between their positions regarding the Zionist movement and the very idea of a contemporary Jewish state. Grodjinsky was an ultra-Orthodox, non-Zionist teacher. He had no part in the ethos of the Jewish national revival, remarking that even if the Zionists were to succeed in setting up their state, "It would at best be a state with Jewish rulers, rather than a Jewish state!"⁵ Consequently, he had no trouble relating to the officers and magistrates of such a regime pragmatically and recommending that its political and religious dimensions be kept entirely separate. It is not inconceivable, in fact, that he consciously sought to prevent any hint whatsoever of contact between the secular state and Torah law.

In contrast, Chief Rabbi Herzog was an enthusiastic supporter of the Zionist enterprise. He viewed the much longed-for Jewish state in thoroughly religious terms, colored with messianic overtones. Accordingly, he recoiled from the idea that this state might maintain such a yawning gap between the ideal and the actual law. His expectations were of a reverse order: that the state should ultimately bring about "the fulfillment of God's word as rendered by his prophet: *And I will restore your judges as of old, and your counselors as of yore* (Is. 1:26)."⁶

Therefore, Herzog aspired for the state to legislate, from its inception, a comprehensive and all-encompassing religious law. However, precisely because the controversy between these two sages revolved around pressing issues of the contemporary Jewish agenda, it

is all the more striking that they both had recourse to medieval political theories that had lain dormant for the previous 600 to 800 years. They sought to endow these theories with practical relevance in anticipation of the Jewish return to political sovereignty. Indeed, the debate between them could not have taken place in such a fashion had the religious tradition not developed varying and even contradictory political theories, and had these theories not taken systematic shape in the scholarly literature of the Middle Ages.

Medieval Jewish political philosophy constituted a sort of crossroads in this area. On the one hand, it had assimilated formative ideas from classical Jewish literature—biblical, talmudic and midrashic—as well as from classical Greek philosophy in its Muslim and Christian garbs. On the other hand, it also maintained a perpetual dialogue with the social reality of the autonomous Jewish communities in the Diaspora, as well as with the patterns of government developing (and clashing) all around it among the non-Jewish nations. Ultimately, once these political ideas had been developed and given conceptual structure in the writings of medieval Jewish thinkers, they continued to leave their mark on future religious thought and social reality, up to and including that of the modern Jewish polity.

Memory and Historical Reality

Notwithstanding all of the above, Jewish political thought is commonly held to be chiefly theoretical in nature. It is not considered to address actual society or the historical state but only the ideal society and the utopian regime. On the face of it, we are driven to the understanding that most of the political ideas of this tradition took shape in conditions of exile from the Land of Israel and remoteness from political

independence, among a people who had played no part in international politics since the 2nd century, whose leaders had not ruled and whose lawmakers had not legislated in a sovereign kingdom. They were not constrained to compromise on a daily basis with the realities of *force majeure* or with the exigencies of actual governing. All their constructs on the subject of 'kingship', 'government', and 'nation' were consequently rooted in distant historical memory or in messianic hopes for the future. Isn't it natural to assume, then, that their political thought as well concentrated almost exclusively on abstract models, ideal and utopian structures?'

This is not my understanding, for a number of reasons. First, Jewish political literature generally took the form of commentary. It reverted back to old memories and classical religious sources, seeking to extract from them political theory. Even when thinkers developed new ideas, they drew the authority for these ideas from the Bible and the Talmud, interpreting the latter in their own original fashion. And both biblical and talmudic narratives make crisis and conflict, rather than harmonious acceptance, central to the discussion of questions of religion and state. They emphasize tales of clashes between prophecy and kingship, justice and force, theology and politics.

The most prominent biblical event in this regard is, of course, the clash between the prophet Samuel and the people over the question of kingship. This is a confrontation which, according to the plain sense of the text, exemplifies the basic antagonism between earthly and heavenly sovereignty (*And God said to Samuel . . . it is not you that they have rejected; it is me they have rejected as their king* [I Sam. 8:7]).

The same holds true with regard to the principal talmudic passage on this subject, namely, the dramatic showdown between King Yannai and the Sanhedrin, in which the monarch intimidates the greatest of the rabbis. From that time on, the law retreated in the face of power, and a

clear separation was demarcated between law and state: "A king neither judges nor is judged, neither testifies nor is compelled to testify" (in the language of the Mishnah).⁸ The halakhic literature itself bears witness here that it was a rebellious reality that wrought this radical change, compelling the legal system to revise its practice by legislating new statutes for future generations with regard to the regime.

These stories and their analogues do not present us with any kind of idealization of the relations between sovereign and religious power. Quite the reverse: they deal with conflict and practical accommodation. And these are the basic narratives of the collective political consciousness, the constitutive events of Jewish political philosophy; indeed, most of the chronicles of Jewish political thought can later be presented as commentaries on these memories and traumas. In this sense, political thought wove itself around realistic models of crisis and compromise, rather than around harmonious, ideal or utopian models.

Moreover, it is not merely historical memory which conferred upon the above-mentioned philosophical tradition its concrete dimension. No less a contributing factor was the fact that this tradition generally formulated itself in the face of a living laboratory, i.e., the political regimes of the Muslim and Christian nations in whose shadow the Jews dwelt. In fact, in many ways the Jews were afforded the ideal opportunity to play the role of observer to these regimes—kingdoms, principalities and republics. Their perspective was close enough to observe the political events, yet distant enough to enable them to evaluate and judge the political systems. In not a few instances, the Jews served the regimes in senior administrative capacities; in others, they were excluded from all such positions. Yet in either case, they necessarily acquired a heightened awareness regarding the political cultures of their surroundings, and some of them even managed to develop the reflective sensibility required for formulating political theory.

Many Jews were granted superior opportunities to draw comparisons between various forms of government and contrasting political cultures. For instance, Maimonides, the most outstanding political thinker in Jewish history, grew up in Cordoba, Spain, fled to Fez in Morocco as a young man (for religious reasons), and later migrated to Cairo, where he served as the doctor and confidant of the sultan. Even more telling is the biography of Yitzhak Abrabanel, the most anti-political thinker in Jewish history. He served as a minister in the Kingdom of Portugal, fled (for political reasons), rose to a similar post in the Kingdom of Aragon, and finally left there for Italy at the head of the Spanish exiles. He ultimately put his thoughts into writing in the Republic of Venice.

These thinkers had a broad perspective, and they were able to adopt the kind of comparative viewpoint from which many others were precluded in their time. In this sense, it was precisely those who could call no place home who were capable of being present in many places at once and of imagining their own, future, home as the correction of all the others around them.

Finally, Jewish political theory was impelled to realism by virtue of fundamental internal factors. Judaism (as well as Islam) is commonly characterized as both a political and a halakhic religion. As a political tradition, it is meant to be practiced within a community and a nation, not within the individual spirit only. As a halakhic tradition, on the other hand, it emphasizes deeds and laws, rather than merely faith. Yet the question remains: Are these two identifying lines of the Jewish religion mutually complementary, or are they perhaps fraught with immanent tension?

A political system naturally seeks to expand and increase in strength; it tends to overrun its boundaries and to amplify its might. In contrast, law is predisposed to define and to restrain; it strives to restrict power

and to mark out domains and boundaries. The tension between the two is manifested by the very term 'constitutional monarchy'. How much more so when both of these components—politics and law—draw strength from one Supreme Source; when both are directed toward the theological sphere and are, consequently, inextricably intertwined. For these reasons, Jewish political philosophy found itself driven again and again to ponder the fundamental risk of a confrontation between the two and to consider what belongs to the king, what to the judge, and what lies between them.⁹ It was also compelled repeatedly to address itself to the possibility that the ideal law may be helpless in the face of obstinate reality and before actual sovereignty. As articulated by Maimonides, despite his avowed tendency to conjoin the two powers as close together as possible: "Yet the [less than ideal] kings of Israel may neither judge nor be judged, because they do not submit to the discipline of the Torah. [To sit in judgment on them] might lead to untoward consequences."¹⁰

For all of the above reasons, Jewish political thought should not be presented as chiefly preoccupied with utopian patterns of leadership or statehood. Although in the Diaspora there was, in practice, an autonomous communal life, in which rabbinic sages issued ordinances and communal officers fashioned patterns of social leadership, this fact alone is insufficient to explain the realistic basis of Jewish political thought. A community in exile is not comparable to a state, autonomy is not sovereignty, and the life of a tolerated minority cannot be equated with that of a group that wields power over others.

In this book, it is my intention to review the patterns of religious thought concerning the sovereign polity in particular. To this end, I will present a series of theories addressing the question of the relations between Torah and state—or between theology and politics—as formulated in medieval Jewish thought. These theories will span the logical spectrum of possible relations between the two powers, from

unity and mutual completion to collision and conflict. Accordingly, this essay will present archetypes of political thought, rather than a historical survey of their various theoretical permutations. I will concentrate primarily on four normative models. A fifth model, that of Spinoza, is appended; it deviates from the first four in terms of both the historical period and the continuity of the tradition. I will try to show, nevertheless, how Jewish thought generated from within itself—while simultaneously decrying—Spinoza’s theoretical alternative as well.