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CLASHING WORLDS: RELIGION AND STATE DUALISM IN JEWISH POLITICAL THOUGHT

MASTER'S RESEARCH REPORT

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DECLARATION

I, Joshua Hovsha, hereby declare that this dissertation is my own work. Assistance that I have received is detailed in the acknowledgments of this report. I am responsible for the content of this study and the conclusions reached.

Signature: _____ Date: _____

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Section 1: Introduction, Aim and Scope of Study

Modern day Israel has faced questions over the balance between religious tradition and liberal democratic aspirations since its formation. Indeed, an implied but unspecified reference to God as the "rock of Israel" in the 1948 Israeli "Declaration of Independence" encapsulates the ambivalent attitude of the state's secular institutions towards its religious history (Ravitzky, 2003: 274). This has been amplified by the pronouncement of two Basic Laws by the Israeli legislative, the Knesset, in 1992 characterising the state as being both "Jewish and democratic" in nature. The result is that this tension is given legal ramifications (Ravitzky, 2003: 263).

Beyond the ongoing Israeli-Palestinian conflict, the occupation of the West-Bank and the blockade of Gaza, all of which undermine Israel's espoused democratic ideals, the state's future as a democracy is additionally subject to the successful negotiation of tensions over its religious and national character. Indeed, significant division in Israeli society between secular and religious groups necessitates that attention be given to questions around the state's Jewish-religious identity. Upon the issue of religious identity, political coalitions and parties are formed and undone. Moreover, through such acts as the 1950 Law of Return, which grants automatic citizenship rights to persons of Jewish decent, relationships between Israel and the Jewish Diaspora are defined by this tension (Ravitzky, 1998: 7). This is further amplified by the existence of large minority groups including Arabic Muslims, Bedouins and Christians within contemporary Israel (Stern, 2004: 5-6). It is noteworthy that a proposed two-state solution successfully ending the Israeli-Palestinian conflict would still leave numerous challenges for such minorities still living under Israeli jurisdiction.

The need for constructive debate around these issues is heightened by a recorded escalation in antagonism between the religious and secular segments of Israeli society, already labeled as a *kulturkampf* (Stern, 2003: 19; Mautner,1999: 27). A key feature of this crisis is an increased recourse to the judiciary as the arbitrator of cultural value disputes. Far from being removed from all matters of religion, Section I of the 1980 Foundations of Law Statute calls for the adoption of "the principles of freedom, justice, equity and peace in Jewish tradition" by Israeli state courts on occasions when legislation and case law cannot provide a decision to a legal question (Quoted in Mautner, 2011: 41). Stern (2003) notes an acceptance of this role in state-civil courts as well as within religious communal *battai din* (lit. houses of justice) and rabbinical edicts with each segment seeking to claim exclusive jurisdiction. Consequently, it is maintained by Stern (2001; 2003; 2004) and Mautner (1999) that a clash of religious and secular values has led to the proliferation of judicial activism in both spheres.

1.1 Purpose of Study

This study seeks to understand the tension between religion and state within Jewish tradition in light of historical realities, Jewish philosophy and modern religious responses. It is believed that a full appreciation of this relationship in both history and thought may serve as a vital framework by which the institutional consequences of a meeting of the traditional *halakhic* (Jewish religious law) system and the values of a modern state with asserted democratic ideals may be explored.

This study will not seek to analyse the "democratic" nature of modern Israel in reality. Indeed, the complexities of Israel are numerous and feature a striking contrast between what prima facie appears to be a vibrant democracy with thirty-four separate political parties running in its recent 2013 elections (Government of Israel, 2013: internet). Additionally, Israel has a strong independent judiciary with the ability to review and invalidate legislation, government and even military actions in time of war. These are complemented by widespread media freedom and a strong civil society (Freedom House, 2013: Internet). However, any claims for Israel's democracy are greatly undermined by the ongoing occupation of the West-Bank, the blockade of Gaza and exclusions to civil and political rights for Arab minorities among others. The interest in Israel instead stems from claimed democratic aspirations outlined in its Declaration of Independence, the Basic Laws of 1992, and other key legislative acts and judicial decisions. It is the potential for the realisation of such a democracy in light of Jewish-Religious understanding that is the key focus of this investigation.

In pursuing an understanding of historical Jewish thought's conception of legal and political dualism it should be noted that an exhaustive study of all Jewish philosophy is not possible due to the sheer volume of work in the field. This investigation is similarly limited to models of Jewish Political thought which seek to base themselves upon *halakhic* principles. Other models including those of Benedict Spinoza and Moses Mendelssohn, which do not claim to hold a religious-legal foundation, will not be explored. Instead, primary attention will be given to the works of Moses Maimonides, Nissim of Gerona and Don Isaac Abravanel. These scholars have been chosen as they may be regarded as the leaders of three distinct branches of thought on Jewish legal philosophy and political structure (Ravitzky, 1998: 12). Collectively, these traditions may be viewed as forming the cannon of Jewish political thought in which modern discourse operates. These archetypes of political thought may be identified as Maimonides' unity model, Nissim of Gerona's model of dualism and Abravanel's model of collision (Ravitzky, 2005: 14). Ravitzky (2003: 272) is careful to note that the key issue for analysis is not the supposed contradiction between human and divine authority. Instead, the Jewish religious traditional perspective accepts that ultimate "metaphysical authority" lies in the hands of God alone. However, it is simultaneously maintained that the Divine has ceded political authority to humanity. Thus, in Ravitzky's rendering the fundamental question is a more limited "*halakhic* and political" enquiry over the correct form for human authority and societal organisation.

Attention will then be given to reactions by Jewish religious-thinkers to both the emergence of modern political-Zionism in the late 19th century and the establishment of the State of Israel in 1948. The collective phenomena of political-Zionism, its aims and achievements may be seen as a radical departure from the traditional vision of Jewish religious thought. Indeed, the emergence of such an entity is argued by Ravitzky (2003: 271) to be outside of all that is envisioned in the corpus of religious literature "whether legal, philosophic, mystical or messianic." It is the combination of (i) Jewish political independence, (ii) in a biblically identified 'holy land' (iii) without a messianic arrival and (iv) achieved through the directives and work of self-proclaimed 'secular Jews' that places modern Israel outside of previously imagined possibility.

Broadly outlined, the responses to modern Zionism may be labelled as (i) rejection on the part of both the majority of the orthodox and the larger reform movement (albeit for very different reasons), (ii) The Mizrachi movement of religious Zionism based upon pragmatic necessity as outlined by Isaac Jacob Reines, (iii) messianic religious-Zionism as articulated by Abraham Isaac Kook and radicalised by his son Zvi Yehuda Kook. Attention will also be given to Eliezer Berkovits' (2004: 140-141) conception of "a God-Centred Republic" in which modern Zionism is perceived as an opportunity for a return to Jewish national life without messianic implications. These various responses to the Zionist movement draw from the previous traditions of Jewish Mediaeval thought as well as from historical memory within Jewish thought both explicitly and implicitly (Ravitzky, 1998: 12-13; Stern, 2001). The manner in which both the Zionist endeavour and the State of Israel are conceived has broad implications for the status of secular authority within such a state and the level of engagement or distance that it should have with traditional religious authority. As such, a complete theoretical study of religion and state in Jewish religious-political thought must include an investigation into the reception of Zionism as a vital component.

1.2 Literature Review

The immediate sources of relevance in the study of Jewish Law's stance on governmental structure are the classical texts of the *Torah*. In this regard the Hebrew Bible and Talmud collectively forming the Written and Oral Law of the Jewish tradition will be examined. In particular, the context surrounding the command to appoint a king in Deuteronomy 17:15 (JPS, 1961: 302) shall be explored along with other models of leadership dealt with in the Bible and Talmud. Furthermore, as Judaism comprises a written and interpretive element, a review of the key statements of Medieval and contemporary biblical commentators on these verses is necessary. In this regard the work of Leibowitz (1996) provides a key overview of the various interpretations of these incidents, while Veirito and Bassin (2005) present the unaltered statements of the chief medieval commentators. Moreover, Wildavsky (2008) presents a new thesis on biblical leadership as experimentation with regime type.

Vital to this study is an understanding of the structure of Jewish Law in general. In this regard the works of Berkovitz (2010), Daube (1971) and Glen (2000) provide fundamentally similar accounts of the nature and evolution of Jewish Law.

In studying the thought of Maimonides, attention must be given to his primary legal work the *Mishnah Torah* (2008) as well as his key philosophic treatise *Guide for the Perplexed (*1956). The thought of Maimonides has been analysed by scholars of Jewish law and philosophy since its inception. In the domain of political thought, attention must be given to the treatments of Hartman (1986), Leibowitz (1996), Diamond (2006), Ravitzky (1998) and Sicherman (2009). The political model of Nissim of Gerona is presented in his *Droshot Ha-Ran* ("Homilies") (2007). In comparison to the work of Maimonides, relatively little has been written on the thought of Nissim of Gerona. However, the work of Ravitzky (1998, 2003, and 2005) deals with the political position presented in Meditations at length; while Stern (2004) and Hellinger (2009) each provide a brief treatment of Nissim's political philosophy. Unlike the works of Maimonides and Nissim of Gerona, the thought of Don Isaac Abravanel is not presented in a

single work. Instead the thrust of Abravanel's political thought is found in his biblical commentary. In particular Netanyahu (1998), Ravitzky (1998, 2005) and Leibowitz (1996) provide a full reconstruction of Abravanel's political outlook. While Sicherman (2009), Gutwirth (1998) and Gitelman (1992) each conduct an evaluation of Abravanel's thought.

The relationship between Jewish and State law is one discussed at length by Stern (1999; 2001; 2004), Gavison (2003), Mautner (2011) as well as Cohen and Susser (2000). The changing role of the judiciary within Israel is discussed by Gavison, Kretmintzer and Dotan (2000). While Israeli Supreme Court Justices, Aharon Barak (1987; 1990; 1992; 1994) and Menachem Elon (1987; 1993) are seen as the pioneers of two distinct understandings of Israel's dual Jewish and democratic identity as established in legislation. A review of their respective judgments and personal publications is necessitated in order to understand the full ramifications of Jewish heritage and values within the State's judiciary. The changing policy of the governing administration to the role of religious law is explored by Zameret (1999, 2001). Finally, the impact of the state apparatus upon the *halakhic* system is analysed by Stern (2001; 2003; 2004), Friedman (1972), Cohen (1998) as well as Warhaftig and Shatz (1996).

Noteworthy for this study is the perception of a marked change in the relationship between the state and religious authorities within Israel. Indeed, an initial policy that may be characterised as consociational democracy on matters of religion and state was pursued under Israel's first prime minister David Ben-Gurion (Stern, 2003: 19,66-67). However, the relationship between the two has increasingly been marked by rivalry and antagonism since the 1980s (Cohen and Susser, 2000: xi, 38). The result is a perceived *kulturkampf* with Israel defined by Stern (2003: 19), Mautner (1999: 27) Cohen and Susser (2000: xi) as a "democracy in crisis".[1]

In pursuing an understanding of religious-traditional responses to the agenda of political-Zionism attention should be given to the history and ideology of the movement. In this regard the work of Cohn (1970), Zuckerman (1995), Sharansky (2006), Goldstein (2010) and Y. Hazony (2006) provide an outline of the modern Zionist agenda under Theodore Herzl. Moreover, the writings of influential political-Zionist writers including those of Herzl (1988 [1896]) and rival Ahad Ha'am (1912; 1962) provide a clear outline of the intentions and aspirations of the movement. The responses of various religious-traditional segments have been explored in depth. Specifically, orthodox and reform rejectionist approaches are explored by D. Hazony (2006: 168-198), Glinet and Shilhav (1991: 67-70) as well as Rubinstein (2006). Religious Zionist responses including both the pragmatic model of Reines and the messianic model of Kook are similarly explored by Waxman (1987), Singer (1996), Seaman (2005), Ratzabi (2008) and Idel (2012). Finally, the thought of Berkovitz is discussed at length by D. Hazony (2004; 2006; 2011).

1.3 Methodology

1.3.1 Organisation of Sections

[1]See section 1.1 for this study's stance on Israel's claimed democratic character

This study is divided into seven separate sections, with the first providing the background, scope and purpose of the investigation. The second section will explore the nature and function of Jewish Law with specific regard to statements made on government type found in the Hebrew Bible and Talmud. Additionally, power sharing models described in the Hebrew Bible and existing later in the Talmudic and Geonic periods will be outlined. In this regard, classic and contemporary commentaries will be utilised to understand the tradition of Jewish Law, which forms the background for all Jewish Philosophy. The third, fourth and fifth section will examine the political thought of Moses Maimonides, Nissim of Gerona and Don Isaac Abravanel respectively, as classic Jewish archetypes for the relationship of religious and state institutions. In particular, focus will be given to each thinker's treatment of the biblical command to appoint a king, as well as their perspective on other political regimes particularly those that bare similarities towards democratic states. Section six will explore the reactions of leading Jewish religious-thinkers to both the emergence of modern political-Zionism in the late 19th century and the establishment of the State of Israel in 1948. Specifically, the following approaches will be explored: (i) the rejectionist stance of both majority of the orthodox and the larger reform movement, (ii) The Mizrachi movement of Isaac Jacob Reines, (iii) Messianic religious-Zionism as articulated by Abraham Isaac Kook and Zvi Yehuda Kook and (iv) Eliezer Berkovitz's model of a "god-centred republic" divorced from messianism. The implications of each position for the status of secular authority and its relationship to religious authority within the conceived State of Israel will be explored. Finally, the seventh section will summarise the main findings of this study.

1.3.2 Cambridge School of Analysis

In reviewing the works of numerous thinkers both Medieval and modern, attention will be given to the "Cambridge School" of Political Thought. In this regard the work of John Dunn and Quentin Skinner are of particular importance. This approach maintains that an understanding of the social, political and historical context of a particular work is imperative for its proper understanding (Hamilton, 2014: 6). Indeed, it is asserted that the author's intended meaning may only be arrived upon in this way. Hamilton (2014: 6) explains that ideas are not to be understood as "free-agents" taking on an independent life in their passage through history, as articulated by Arthur Lovejoy. Moreover, this is not to be confused with biographic speculation. Rather it is vital to understand arguments through the clear intent of their author. This may only be achieved through a thorough understanding of the political and philosophical climate of the time of the work's composition, in addition to a comprehensive analysis of the meaning of key terms and language utilised by a thinker. Hamilton (2013: 7) highlights the changing nature of language as a key rationale for the importance of historicity. Indeed, terms of fundamental importance to all political thought including justice', 'freedom', 'equality' and 'democracy' have all been understood in radically divergent ways at distinctive points in history. As such, equating Aristotle's notion of democracy, as experienced in ancient Greece, with a contemporary understanding of the term, is inaccurate and disingenuous.

Hamilton (2014: 7) identifies three components to this practise found consistently in the works of Dunn (1980a, 1980b & 1996) and Skinner (2002: 87). Here, the researcher is tasked with (I) exploring possible meanings intended by the author in light of their historical period and

intended audiences. Thereafter, (II) an investigation of the author's language and key phrasing must be traced in light of the author's own linguistic context. Finally, (III) the social context of the text must be examined as the "ultimate framework" in which its true meaning may be deduced.

While demanding, this methodology is seen as allowing for a more faithful understanding of the text. Moreover it is noted that economic and social dominance of particular groups throughout history has led to the subservience of certain ideas to prevailing interpretations (Hamilton, 2013: 8).

In interpreting the works of Medieval thinkers such as Maimonides and Nissim of Gerona together with modern *halakhic* thinkers, attention must be given to two distinct contexts. The first is the individual experience of each author in history and society. Indeed, Maimonides' 11th century Egypt is concerned with radically different questions than the Spanish context of Abravanel amidst the rule of Ferdinand and Isabella. Both however are far removed from the experiences and language of modern Israel and both its secular and religious judicial leaders. These realities undoubtedly shape the thought, concerns and language of these authors. Nevertheless, they are united by a second shared intellectual tradition. In truth all of these thinkers finds themselves the heir to a Jewish legal and philosophical tradition with a defined terminology of its own. In defining a distinctly "Jewish" political system all must grapple with (often conflicting) biblical notions of social organisation, justice and division of state and religious authority. Moreover, each must account for Talmudic developments of these notions in order to allow their own works to be considered legitimate. As such, an exploration of this tradition will be conducted in section two as a pivotal precursor to each of the models to be explored in this study. In this regard unless otherwise stated all biblical quotations in this study are taken from the 1988 JPS Edition of the *Tanakh* (Hebrew Bible) and all Talmudic quotes are taken from the 1961 Soncino Edition of the Talmud. Additionally, a distinct account of the context of each thinker will be provided before an exploration of the body of their work is presented in sections three and four. Moreover, an overview of the modern Zionist Movement, its assumptions and aspirations will be undertaken at the onset of section six.

In order to provide an accurate treatment of the Jewish philosophical and legal tradition as inherited by various thinkers, this study will be conducted within the parameters of its key assumptions. As such, higher biblical criticism, including the source criticism of Julius Wellhausen, fundamental to academic biblical scholarship, will not be pursued. The matter of key importance is not whether the Hebrew Bible is a divine work or a consistent one. Rather, the fact that these thinkers accepted the Bible as divine, consistent and binding demands that such assumptions be accepted for the purpose of fully understanding the inherited boundaries, constructs and language that shape the thought of Maimonides, Nissim of Gerona, Abravanel and modern religious thinkers including Reines, Kook and Berkovitz.

In deciphering ambiguous terms found in the Jewish legal tradition, attention will be given to the definition explicitly or implicitly conveyed by the thinker in the specific work or within the larger body of their compositions. Wherever possible, unclear terms will be explored in their original language (Biblical, Medieval and Modern Hebrew as well as Aramaic for Talmudic

passages)**.** Additionally special focus will be given to the primary Biblical and Talmudic commentaries which form part of the Jewish legal tradition inherited by each thinker.[2]

Section 2: The Jewish Political Tradition

2.1 The Jewish Legal System

The Jewish legal tradition is rooted in the notion of divine revelation. Nevertheless, Glenn (2004: 93) notes that the Hebraic nation existed long before the notion of a divinely revealed law at Sinai. As such, a system of religious and legal practises was well entrenched in Jewish history before the emergence of a biblical tradition. Nevertheless, the biblical period marks a definitive stage in the nation's legal development. The significance of the theophany described in Exodus 20-24 (The Decalogue and subsequent laws known as the *Mishpatim* code) lies in the transformation of Jewish law thereafter. Beyond altering and adding to the previously established laws of the Hebrew tradition, the Decalogue gave this code a divine justification. The realm of law was moved beyond its previous human origin and instead claimed to emanate from divine wisdom. Moreover, subservience to this adapted system was now rooted in a unique relationship between God and the Jewish people, stemming from their release from Egyptian bondage.

The chief source of this law lies in the Pentateuch, believed to be the word of God revealed to Moses. Although the Hebrew Bible consists of twenty-four books divided into three sections; the first five books, nevertheless receive special standing as the word of God from which law must be derived. This first section known as the *Torah* (Teaching) or Pentateuch covers the account of creation and the origins of the Jewish forefathers (Genesis); the slavery and exodus from Egypt, as well as the revelation at Mount Sinai (Exodus); the forty-year travels in the desert (Numbers); codes of priestly, religious, political, economic and moral law (Exodus, Leviticus, Numbers, Deuteronomy) and Moses' speeches in preparation for his people's entering of the land of Canaan (Deuteronomy). The other two sections, *Nevi'im* (prophets) and *Ketuvim* (Writings), form a key component in religious understanding and philosophy. However, teachings within these two do not hold binding legal obligations as is the case with the Pentateuch's various codes.

In addition to biblical teaching, the Jewish legal system is also comprised by an oral tradition. As such the complete word of God is said to consist of a *Torah Sh'biktav* (The Written Teaching) as well as *Torah Sh'Bal Peh* (The Oral Teaching). The origins of this oral teaching are said to lie in an unbroken chain of tradition given to Moses at Sinai. As such the phrase *halacha l'Moshe m'sinei* (a law transmitted to Moses at Sinai) is at times used to explain a law without rational basis or biblical source[3] (Alexander, 2007: 39). This tradition was said to have been preserved through mnemonic device and carefully taught from teacher to student

[2]As such, the tradition of commentary will be traced only up to the times of each thinker. Consequently a notable omission in certain circumstances will be the widely utilised commentary of Rabbi Solomon Isaaci (Rashi), written in 12th century Provence.

[3] See *Mishneh Pe'ah 2:6; Eduy. 8:7; Yad. 4:3* and Babylonian Talmud *Bava Kamma 3a; Eruvin 97a; Sukkah 34a* (Berkovitz, 2010: 49,56).

throughout the biblical period. Moreover, this process involved not only passive transmission, but an expansive interpretation and application. This teaching survived the brief, but traumatic period of Babylonian exile following the fall of the Kingdom of Judah[4] in the sixth century BCE. However, the failed rebellion against the Roman Empire and resultant destruction of the Second Temple in 70 CE marked a period of greater uncertainty. The ability to maintain fidelity to the tradition in a period of prolonged exile and political hardship was doubted. As such, the various teachings as developed over generations were recorded in the six orders of the *Mishnah* (lit. study/repetition) around the year 200 CE (Glenn, 2004: 95). In the words of Maimonides, this first codification under the stewardship of Rabbi Judah the *Nasi* (see section 2.2.2 *supra)* was undertaken, lest "the oral tradition be forgotten in Israel" (quoted in Berkovits, 2010: 132).

However, the tradition once more expanded over several hundred years of learning and debate around the teachings of the Bible and Mishnah. At this point the role of logical deduction began to carry greater weight in interpreting and developing the law (Glenn, 2004: 95). Moreover, disputes over the correct application and understanding of tradition proliferated. In the absence of divinely recognised truth all opinions were given weight (Daube, 1971: 788). The expansion of these disputes and further political instability led to a second stage of recording in the form of the *Talmud* (lit. study). Two distinct compositions were created the first was compiled in fifth century Palestine and is known as the *Jerusalem Talmud.* A second formation was arranged in Babylon and reached its final form around 700 CE. This *Babylonian Talmud* is regarded as a more refined, intellectual and authoritative version. Both versions are divided in terms of the various tractates found in the larger six divisions of the Mishnah. Together, the Mishnah and the two versions of the Talmud form the Oral Law (Glenn, 2004: 95-96).

The Written and Oral Laws are given special status and cannot be contradicted by later authorities. Indeed, this principle, similar to that of *Stare Decisis* in modern law, applies within the differing periods of the Mishnah and Talmud. Consequently, a *Tanna (*sage of the Mishnaic period) has authority to differ with the opinion of another *Tanna,* even of an earlier age, but cannot undermine explicit biblical law. Biblical law may however be rendered in an alternative manner, even one that radically alters its apparent meaning. This may be undertaken for several purposes including bringing application of the law into line with its spirit (Berkovitz, 2010: 11, 28-32, 86-97). In contrast an *Amora* (sage of the Talmudic period) may dispute the conclusion of another *Amora,* but in order to differ with a *Tanna* a supporting position held by another *Tanna* must be found.[5] Similarly, a position contrary to that found in the oral law may only be maintained by a later authority if another supporting position may be cited.[6] As such,

[4] The smaller of two distinct political entities that emerge after the united kingdom of Israel splits after the reign of Solomon. The northern Kingdom of Israel is destroyed and exiled by the Assyrian Empire around one hundred and fifty years earlier (Glenn, 2004: 95-6).

[5] Such support need not involve the identical case or issue, but rather must demonstrate a logical connection between the cited example and current position (Berkovitz, 2010: 6).

[6] Additionally, the later authority may prove that the earlier opinion did not apply to the case in question.

the systems created by later thinkers must be compatible with pre-existing teachings of the Pentateuch and Talmud.

The further development of Jewish law exists through several mechanisms. Typical legislative means were greatly limited by the end of Jewish sovereignty and the dispersion of the *Sanhedrin* (religious high court) in the generations following the destruction of the Temple. Nevertheless, theoretic legal positions have been developed through Talmudic interpretation. So entrenched are these commentaries that virtually all editions of the Talmud published since its first printing in Venice 1523 include the elucidation of Rabbi Solomon Isaaci (Rashi) and the French School of interpreters, the *Tosa'fot,* on the physical page of each Talmudic folio (Glenn, 2004: 97). A second vehicle for the development of Jewish law takes place through later codification. Such codes seek to clarify which is the correct legal position that should be practised out of the numerous opinions outlined in Talmudic debates. Earlier codes such as the eleventh century work of Isaac Alfaasi simply rewrite each Talmudic tractate omitting all opinions that are not followed in reality.[7] In contrast, later codes such as the twelfth century *Mishnah Torah* of Maimonides, the fourteenth century *Tur* of Jacob ben Asher and the sixteenth century *Shulhan Arukh* of Joseph Caro sought to reorganise the entire gamut of law into logical divisions. Additionally, rabbinic *responsa*, written in answer to questions posed of leading sages in each generation, form a body of case law consulted in later religious rulings (Glenn, 2004: 97-98). Ultimately, the Written and Oral Teachings, in addition to the body of commentary, legal codes and case law form the ever-growing body of Jewish Law.

2.2 Divisions of Power in Jewish History

Ravitzky (1998: 57) draws attention to "obvious hallmarks" taken from external literature and political reality found in the corpus of Jewish political thought. It is noted that this influence is more pronounced in the political realm than in any other sphere of Jewish thought. Two reasons are provided for this reality, the first focuses upon the fact that politics is often viewed as "less loaded from the perspective of faith and values"; instead its consequences are seen as "more open and universal." Moreover, it is maintained that the biblical narrative itself, provides precedents for adapting outside values in this field. The account of Moses accepting the proposed amendments of his father-in-law, Jethro the Midianite in Exodus 18 is significant in this regard. Additionally, the Pentateuch and books of the Prophets contain repeated references to the fact that the institution of Jewish monarchy in Israel was derived from the behaviour of the surrounding nations (Deut. 17: 14; I Sam. 8:5). Yedidia Stern (2001: 12) argues that Jewish law developed "a civil leadership track" parallel to its religious path. It is asserted that this was a necessity for mediating between "ever-changing reality" and the normative boundaries of Jewish law. Stern (2001: 17) bases this argument upon empirical evidence of a developing chain of civil leadership central to Jewish society. Although this study will seek to analyse biblical depictions of divisions in authority, it does not do so from the assumption that the biblical record should be treated as history. Rather this exploration takes

[7] Nissim of Gerona's major legal work is in fact a commentary on this work of Alfaasi and not upon the Talmud itself.

place because the biblical record is accepted and internalised as a key component in the systems developed by the thinkers examined in this study.

2.2.1 Biblical Depictions of Authority

2.2.1.1 Moses, Joshua and the Judges

Already in Genesis allusions to a division of roles are made. Upon his death-bed Jacob, the last of the accepted Hebraic Patriarchs, blesses his children. Of particular relevance is the blessing of Judah: "The staff shall not depart from Judah, or the sceptre from between his feet" (Genesis: 49:10). Later, in his blessings of the tribes Moses charges Levi: "they shall teach Jacob your judgments and Israel your Torah" (Deuteronomy 33:10). These verses have commonly been rendered as referring to two distinct branches of authority. The first takes the form of political leadership handed to the tribe of Judah, the second is that of religious leadership and priestly responsibilities given to the Levites. Indeed, King David and his dynasty find legitimacy in their Judean lineage. In contrast, the kings of the Second Temple Hasmonian dynasty were chastised for adding political control in the form of the monarchy, to their priestly status (Stern, 2001: 17).

In the Pentateuch political and religious leadership are vested in Moses (a Levite), who alone is the leader, judge, prophet and teacher (Wildavsky, 2008: 7-8). Yet even at this stage it must be noted that Moses' power is somewhat curbed. Indeed, the priesthood is given to his brother Aaron and his decedents as a permanent role (Exodus, 28:1). Furthermore, unlike Aaron or David, Moses is not given a dynasty. While, the leadership of Israel is to pass to his pupil Joshua (Numbers, 27:15-23), no role is ever cited for the children of Moses. In fact, the children of Moses are never mentioned after the 19th chapter of Exodus. Joshua is to be aided by Aaron's son Elazar, the new high priest (Numbers, 20:22-29), while Moses' children play no role in the people's future. The closing account of the Pentateuch records the death of Moses finishing with the description: "there rose not again a prophet in Israel, whom the Lord knew face to face" (Deuteronomy, 34:10). Wildavsky (2008: 183) notes that this is a short-distance from stating that such complete control of power should never again take place. A more limited role is thus imagined for Joshua and his successors.

Although Joshua still holds the dual function of prophet and leader, these two offices are soon divided. Following the conquest of Canaan a third authority emerges in the form of the *Shofet* (Judge).[8] While Moses leaves a clear successor, Joshua does not do the same. Instead, the events immediately following his death describe a search for divine direction in concluding the conquest of the Promised Land (Judges, 1:1). A period of *ad hoc* leadership ensues, where charismatic leaders, "Judges", arise to resolve specific crises. These leaders usually emerge upon divine directive, but are not themselves prophets. Moreover, both judges and prophets

[8] Despite this title, consistent with judgment in both English and its Hebrew original, the role of adjudicating disputes is secondary to the function of military leadership. Indeed, certain "judges" such as Samson are never described as having sat in judgment; moreover his actions do not involve any type of formalised leadership. Rather, it seems this role is that of a "saviour" offering reprieve from foreign oppression. While, this usually involves leading an army, in the case of Samson this is a task best achieved alone.

rely upon charismatic leadership for legitimacy (Stern, 2001: 22). No formal institutions may be identified at this stage.

2.2.1.2 The Biblical King

During the Era of Judges political authority is discontinuous and tribal identities are emphasised over national cohesion. Furthermore, rule of law is non-existent; a repeated refrain of this period is "at that time there was no king in Israel: every man did that which was right in his own eyes" (Judges, 17:6; 21: 25). This phrase is ultimately used to summarise the Book of the Judges following an account of a vicious civil war, almost resulting in the complete destruction of the Benjamite tribe (Judges, 19-21). Stern (2001: 23) notes that all prospects of long term collective organisation are undermined by this political instability. This is contrasted to the firm political structure of the Philistines, the key rivals of the Israelite tribes throughout this period. Entrenched family dynasties allowed the Philistines to pursue long-term projects. The result was military superiority in the form of a standing army and a chariot force. Conversely, only with the use of significant charisma is the prophet Samuel able to create national political cohesion. In the absence of a central seat of power this is achieved through a circuit of judicial seats throughout the tribes followed by Samuel on an annual basis (I Samuel 7:16-17). It is to the end of Samuel's life, when his own sons have proven to be unworthy successors (I Sam. 8:1-3) that the nation requests a change of political structure. The request "Place for us a king, to judge us all the nations"[9] (I Sam. 8:5) is interpreted by Stern (2001: 23) as emanating from the need for stable executive power. Nevertheless, it is noted that the position of King includes legislative powers as well as executive authority. Stern explains this to be the ancient equivalent of a "constitutional revolution" – whereby power is transported from the spiritual leadership to a newly instituted office. The king is apparently to have widespread powers, as may be understood from Samuel's lengthy protest of this request. The root of this opposition is perplexing as the appointment of a king is given explicit divine sanction in Deuteronomy (17: 14-15):

> When you come into the land which the Lord your God gives to you, and you shall possess it, and shall dwell therein; and shall say: 'I will set a king over me, like all the nations that are round about me'; Set, you shall set upon yourselves a king whom the Lord your God shall choose.

This text is subject to much dispute. Indeed ambiguity is found in the double-language expression of the Hebrew, שׂוֹם תָּשִׂים עָלֶיךָ מֶלֶךְ *s'um tu'sim aleikheh melekh* (Set, you shall set upon yourselves a king). This is usually rendered as emphatic language consistent with a command, thus: You shall *surely* set upon yourselves a king. Nevertheless the expression may be understood as allowing for permission, thus: you shall *in any case* set him king over

[9] Author's own translation. The rendition of Stern (2001: 23) "make for us" misses the nuance of the Hebrew *sim'ah* denoting a placement. While the common rendition "place upon us" overcorrects by rendering the expression *sim'ah lanu* as denoting a specific position, as would be the case in s*im'ah ahleinu.* Despite being a minor point semantically, the relevance of this rendering lies in Samuel's vehement opposition to this request. Certain commentaries assert that this is based upon the nation seeking to use the king to usurp God's role as being "above" the nation. However, a literal reading of the language of the request is consistent with the rendering of the command to appoint a King found in Deuteronomy 17:14.

yourselves. This ambiguity is later reflected in Talmudic debate. In the Babylonian tractate of Sanhedrin (2b) Rabbi Judah maintains that appointing a king is a divine command and an ideal. In contrast, Rabbi Nehorai's maintains that this is a concession granting permission for such a position to be created in the future, even though it is not an ideal state. Nehorai's position is revolutionary in creating room for the notion of a non-utopian political model in Jewish thought (Leibowitz, 1996: 175-180). This is well reinforced by Samuel's lengthy warning to the people of the "manner of the king"[10] (I Samuel. 8:11-18):

> This will be the customary practice of the king that shall reign over you: he will take your sons, and appoint them unto him, for his chariots, and to be his horsemen; and they shall run before his chariots. And he will appoint them…to plough his ground, and to reap his harvest, and to make his instruments of war, and the instruments of his chariots. And he will take your daughters to be perfumers, and to be cooks, and to be bakers…He will take the tenth of your flocks; and you shall be his servants. And you shall cry out in that day because of your king whom you shall have chosen for yourselves; and the Lord will not answer you in that day.

The implication is that uniform political organisation under a king may bring military gains, but these will come at a great cost.

Of particular interest is the divine reaction to this request. In line with Deuteronomy, God is portrayed as giving sanction for a monarchy; however the demand is understood as a rejection of God himself: "And the Lord said unto Samuel; listen to the voice of the people in all that they say to you; for they have not rejected you, but they have rejected Me, that I should not be king over them" (I Samuel 8:7-8). It seems this ambivalence is rooted in the independence from religious rule to be enjoyed by the monarch. Indeed, later examples make clear that the king of Israel enjoys far-reaching legislative powers, which are used for purposes contrary to and in direct opposition with religion. Biblical ambivalence towards monarchy forms a critical part of the Jewish political tradition (Leibowitz, 1996: 175-180). The models presented by Maimonides, Nissim of Gerona and Abravanel must each account for this tension.

Following the reign of Solomon, the kingdom splits into two distinct entities (I Kings 12: 1-24). The Northern Kingdom consisting of ten of the twelve tribes breaks away and follows Jarov'am son of Nevat, meanwhile the Davidic dynasty held by Solomon's son Rehav'am continues to rule in the smaller Southern Kingdom, consisting of the tribal territories of Judah and Benjamin. Periods of conflict, cooperation and outright war mark the history of the two kingdoms. The Northern Kingdom is ultimately conquered and exiled by the Assyrian Empire circa 720 BCE. While the southern kingdom, under the reign of Hezekiah, survives the Assyrian attempt of conquest. The Davidic dynasty continues uninterrupted until King Zedekiah aligns Judah with Egypt in a revolt against Babylonian rule. In response King Nebuchadnezzar II sieges the Judean capital of Jerusalem, conquering and dispersing the kingdom (Stern, 2001: 34).

Initially the monarchy is highly reliant upon religious sanction from both the priestly cult and prophet. In this way, a division of powers is matched with a limited form of checks and

[10] There is a play on words in the Hebrew original. The people ask for a king to judge them, in response Samuel states "this will be the manner (*mishpat*) of the king" the word *mishpat* may be rendered as both judgement and manner (Berkovitz, 2002: 129-154). The effect is Samuel answering the request with biting irony, as if to say: this will be the real "judgement" achieved through a king.

balances, whereby even the king is dependent upon the support of the priestly cult and prophet (Israel, 2009a: Internet). However, this is not strongly institutionalised and the king's own established throne and lineage is often stronger than that of the prophet who is legitimised through charisma. Moreover, the power of the priesthood and prophet disintegrate following the split in the united monarchy. Upon creating a new seat of power in Samaria, Jerov'am realises that his newly independent monarchy will be greatly undermined by the enshrined practises of the Israelite religion. Chiefly, three institutionalised annual pilgrimages to the temple in Jerusalem would require the majority of the Northern Kingdom to regularly visit the Southern Kingdom. As such, the close relationship between the priestly cult and the monarchy of Judah, is perceived as a threat to enduring political independence (Israel, 2009b: Internet). In response Jerov'am creates widespread religious reforms. Two new shrines are established at the far north and south of the newly independent kingdom, these are to be visited in place of the Temple of Jerusalem. Moreover, the priestly caste which had been established from the tribe of Levi is replaced with a new group of priests made from all the tribes. As such, the reformed religious cult removes all power from the entrenched priesthood of Jerusalem and creates a new spiritual practise, which is itself subject to the monarchy in the Northern Kingdom. To demonstrate the control of the new religion Jerov'am personally leads the sacrificial service on the first of his newly appointed pilgrimages (I Kings, 12: 31-33).

Furthermore, this religious revolution also weakens the role of the priesthood in the Southern Kingdom. Hitherto, national and tribal leaders had been reliant upon divine sanction, emanating from either the priesthood or revelation delivered by a prophet. However, Jerov'am's reformation placed the priesthood's survival in Judah at the mercy of the Davidic dynasty. As such, the priesthood never again attains the same power in the first temple period. Indeed, other religious practises, particularly worship of the Canaanite God Baál, are often advocated by the Southern king. The exception is in limited instances of religious renaissance led by the king himself. Such is the case in the time of Kings Hezekiah and Josiah of Judah (II Kings, 18-20, 22). Nevertheless, the prophet's success in these instances is subject to his influence upon the king and does not stem from any intrinsic authority of the prophetic role itself. As such the prophet is reliant upon the monarchy and never enjoys a restoration of power to the extent of the period before the split in kingdoms. The religious failing of the kingdoms, as well as corruption, the lack of social-justice and moral deficiencies are cited as the cause of fall of both kingdoms. Ultimately, the monarchy is closely linked to these events and, as such, gives validity to the suspicion of the office found in earlier biblical sources.

2.2.2 The Talmudic Period

The period of the Talmud is marked by the existence of two distinct centres of Jewish life-Palestine and Babylon. The independence and intellectual vibrancy of both of these centres resulted in the formation of two dissimilar Talmudic editions. As in the case of the biblical period these centres demonstrated a duality in legal authority. In Palestine civil authority was vested in the Nasi (prince); while religious authority was held by the Great Assembly. In Babylon, the Exilarch fulfilled the role of the Nasi, while religious authority was vested in the heads of the major *yeshivot* (academies of study) in Sura and Pumbedita. Beer (1966: 8) asserts that a pure division of roles is not clear as the Nasi and Exilarch both perform religious

functions including determining the calendar for religious festivals (B.T. *Rosh Hashanah* 19b) and initiating public fast days (B.T. *Ta'anit* 24a). Stern (2001: 26) notes that broad judicial powers were held by the offices of Nasi and Exilarch. In particular, the court of the Exilarch dealt with *dinei mamonot* (civil laws). Importantly, this civil jurisdiction was respected by the religious authorities. Indeed, the Talmud (B.T. *Bava Batra,* 65a) gives specific weight to the opinion of sages who have expertise in judgments of the Exilarch's court. Stern (2001: 61) notes that these rulings have ramification for religious law, which itself has branches relating to monetary disputes and other civil matters. Beyond civil matters, criminal jurisdiction was held by the Exilarch's court (Beer, 1966: 5).

The overlapping authority of the offices of Nasi and Exilarch with the religious leadership of the Great Assembly and Yeshivot resulted in a complex relationship. At times the association is one of mutual respect as in the case of the Exilarch, Mar Ukba and the rabbinic authority Samuel (B.T. Moed Katan, 16b; Stern, 2001: 62). In contrast, B.T. *Sanhedrin* 5a gives superior power to the judicial authority of the Exilarch. While, B.T. *Avodah Zarah* 38b portrays a power struggle between religious and civil authority, resulting in the execution of Rabbi Zveid, the head of the Pumbedita yeshiva. Similar, though less extreme, struggles are also recorded regarding the Nasi and the Great Assembly (Stern, 2001: 26).

Stern (2001: 26) maintains the authority of both the Nasi and Exilarch is rooted in twin religious and political foundations. Political authority rested upon the established role of the Nasi and Exilarch as the representatives of the Jewish people to the dominating powers of Persia and Rome, while religious authority emerges from the rabbinic notion that both Exilarch and Nasi must be descendants of the Davidic dynasty. The special status of David's line as defenders of the Hebraic religion (despite numerous examples of the opposite), ensured a religious component to their line. The greatest testament to this is the rabbinic tradition of the messiah being a blood descendent of David. Despite this religious component Stern (2001: 27) notes that the primary function of the Nasi and Exilarch was civil leadership, which itself had religious implications.

The prevalence of the civil offices of Nasi and Exilarch over that of the religious courts is rooted in the recourse that they had to the executive powers of the dominating empires to enforce their rulings. This reality provided an obvious advantage for litigants in choosing to press their claims through the religious or civil courts. The overall majority elected to carry their claims in the courts of the Nasi and Exilarch, leading to an expertise in these matters deferred to by the rabbinic leadership (Stern 2001: 27).

2.2.3 Post-Talmudic Era

The immediate post Talmudic period witnessed the destruction of Palestine as a Jewish centre. Consequently, the Babylonian community evolved into the core of all Jewish life. Civil authority continued to be held by the office of the Exilarch, while religious authority was now vested in the *Geonim* (lit. the greats). The Exilarch continued to enjoy a dual legitimacy, now as the sole heir to the Davidic line. In addition to being accepted as the legitimate leader by the people and the rabbinic leadership, the Exilarch received letters of appointment from the Muslim Caliphate (Stern, 2001: 28). The dominance of civil leadership over the religious

authorities was extended beyond the reality of the Talmudic period. Indeed, the Exilarch now had the authority to select and dismiss religious leaders to and from the office of Geon. Moreover, judicial authority was maintained as well as the ability to punish dissent in the entire community. Throughout this period, ending in the twelfth century, the Exilarch functioned as the public leadership and representative of the Jewish community, in addition the office served as an organ for the Persian, and later Muslim empires (Grossman, 1984:78). The end of the Geonic era marks both a reality of superior rabbinic authority as well as the dispersion of the Jewish centre of Babylon. Henceforth, no comparable centre of Jewish religious and political life would emerge until the establishment of the state of Israel in 1948 (Grossman, 1984:78).

Consequently, political life within Jewish communities would continue in a greatly reduced manner. Indeed, Jewish law developing through Talmudic commentary, legal codes, responsa and case law placed greater importance upon the role of the community. As such, despite an evolving tradition relating to monetary disputes, ritual, communal and family law, larger political questions involving the state, governance and larger society were left undeveloped (Berkovitz, 2010: 128-150). Among the few exceptions are the normative works on political philosophy of Maimonides, Nissim of Gerona and Abravanel. Ultimately, each must take note of the political history and dual development of Jewish law through civil and religious institutions in the biblical, Talmudic and post-Talmudic period. Moreover, each finds himself in a particular communal construct, itself subject to the larger political construct of their societies. All of this forms the background in which these thinkers composed their works.

Section 3: Maimonides

3.1 Context

Born in Muslim controlled Cordova, Spain in 1135, Moses Maimonides is regarded as the preeminent Jewish thinker of the medieval period. Commonly, referred to by the Hebrew acronym *Rambam* (Rabbeinu Moshe Ben Maimon, Our Teacher Moses the son of Maimon) the works of Maimonides form an integral part of all Jewish law and philosophy. The stimulus of Islamic philosophy is a noted feature of Maimonides' philosophic work (Hartman, 1986: 6, 32, 154, 223-250). Initially this stemmed from influences in his native Spain; however the Almohad invasion of 1148 resulted in the annulment of the *dhimma* status that protected the security and property rights of Jewish and Christian residents of Spain. Instead, all non-Muslim residents were given the choice of conversion, exile or death. Consequently large-scale Jewish flight took place, with Maimonides' family seeking refuge in Fez, Morocco in 1160. Later Maimonides travelled via Palestine to Egypt, settling in the Fustat District of Cairo in 1166. A physician, Talmudist and rabbinic leader, Maimonides' numerous works cover the full gamut of Jewish Law, theology, and biblical understanding. Among his various posts, Maimonides served as *Nagid* (leader) of the Egyptian Jewish community from 1171, in addition to the post of physician to Grand Vizier Al Qadai al Fadil, Sultan Saladin and the royal family (Hartman, 1986:3-5).

Among the chief works of Maimonides is his *Commentary on the Mishnah* the first of its type in which the associated Talmudic disputes on each Mishnaic statement are summarised and

rulings are given on undecided points. Significantly, this work is written in Arabic transliterated into Hebrew letters indicating a unique audience specific to his own time. Of particular importance is the commentary presented on Chapter Ten of the Tractate of *Sanhedrin* in which thirteen principles of faith regarded as essential to the Jewish creed are set out. The existence, incorporeality, and eternal nature of God, along with his direct involvement in the human world are included in Maimonides' principles. Furthermore, the divine authorship of the Bible along with its unchallengeable status is established. In reality, this marked the first attempt to create dogmatic articles of faith into Judaism resulting in much controversy (Hartman, 1986: 226-229). Shapiro (2011) and Kellner (1986) note that these articles have never been universally accepted.

The primary legal accomplishment of Maimonides is his code of Jewish law – *Mishnah Torah* ("Code"). Divided into fourteen sections the work covers the full scope of Jewish law established in the Talmud. Moreover, Maimonides applies an orderly framework to the disparate and tangential nature of disputes recorded in the Talmud, providing a final ruling to ambiguous points utilising sources from the Geonic era and other notable commentaries including the earlier work of Isaac Alfasi. Significantly, Maimonides' *Code* was written in Hebrew, as a means of ensuring its consistent study throughout the Jewish diaspora. The work's scope and systematic nature have ensured that it is still studied as a foundation of Jewish law in all contemporary rabbinical seminaries. Finally, Maimonides' *Guide for the Perplexed* ("Guide") contains the bulk of his philosophic deliberations. Written in Arabic, the *Guide* was seen as having application beyond the immediate Jewish context. Instead, it was aimed at contributing to the wider debates of the Aristotelian and Platonic traditions as had been adapted by Islamic thought (Hartman, 1986: 28-33). Essential to this philosophic system is a belief in a religion devoid of myth that is compatible with rationalism. Such an approach is based upon the premise that the existence of a supernatural God or "first cause" may be proven logically and is compatible with all philosophic and scientific knowledge (Hartman, 1986: 102-139). Indeed, this understanding was prevalent in the Aristotelian tradition developed in Islamic thought and was central to the approach of Maimonides. In particular, the influence of the 10th century Islamic philosopher Al-Farabi upon the bulk of Maimonides work is noted by Berman (1974), Davidson (1963:33-50), Hartman (1986: 23-30, 76, 128), Macy (1986: 205-221) and Pines (1963: xc-xci).

3.2 Foundations of Maimonides' Political Model

Ravitzky (1998: 21) draws attention to a "profound contradiction" within human nature as the starting point of Maimonides' political model. The Aristotelian conception of man as a political animal is accepted in the opening of Chapter 40 in Part II of *The Guide for the Perplexed,* however Maimonides (1963 [1190]: 184) immediately draws attention to the radical variations between individual human beings. In particular, the divergence in empathy among people is noted:

> Thus you may find in an individual cruelty that reaches a point at which he kills the youngest of his sons in anger, whereas another individual is full of pity at the killing of an insect, his soul being too tender for this deed (Maimonides, 1963 [1190]: 184).

It is asserted that the divergence in individuals is so great as to be more significant than the distinction between species. Furthermore, Maimonides (1963 [1190]: 184) contends that this radical dissimilarity undermines the viability of society. This obstacle may be overcome through two institutions: law and leadership.

Of significance is Maimonides' classification of law between 'divine' and 'secular' categories. Ravitzky (1998: 22) notes that the defining factor in this distinction is not authorship, but instead the objective of the system. Indeed, secular law is defined by an aim to improve human life on an "earthly-political" plane alone. In contrast, divine systems seek to secure political order, while simultaneously promoting a search for "perfection of belief and knowledge." Moreover, this mode of evaluation is applicable to leadership as a distinction may be drawn between social-political and religious authorities. As such, the prophetic leader attains his standing not merely through a mandate from God; instead the purpose of that instruction – to guide in both social political affairs and religious understanding is definitive. Significantly this criteria is used both in the abstract, applying to the ideal leader, in addition to 'historical' figures evaluated by Maimonides. The resemblance between this conception and that of Plato's "ideal ruler" is noted by Ravitzky (1998: 23). Thus, the model presented by Maimonides is one that places spiritual and political power within one institution, represented by the prophetic king. Furthermore, in Maimonides' view this ideal has been achieved in history[11] by the biblical figures Moses and Joshua.

Despite holding certain biblical figures as archetypes of his ideal leadership, Maimonides also acknowledged a different thrust within the Jewish tradition's understanding of power, one defined by a division of roles. Here the roles of prophet, king, judge and sage all enjoyed prominence and differing levels of autonomy. Nevertheless, these are not regarded as firm divisions by Maimonides. Indeed, Ravitzky (1998: 24) notes "even Maimonides's prophet incorporates an expressly political dimension, while even his king functions in a thoroughly spiritual capacity."

3.3 Division of Roles in Maimonides' Political System

3.3.1 The Prophet

Following the teachings of Al-Farabi, Maimonides viewed the prophet to hold the virtues of both philosopher and statesman (Berman, 1974: 25). Notably, Maimonides (1963 [1190]: Book II: 35-36) regards prophecy as an attainable trait, one that emerges through perfection of philosophic understanding.[12] As such, the prophet is first and foremost an accomplished philosopher. Moreover, this understanding is to have resulted in a perfection of emotion and behaviour in accordance with God's will. Beyond these requirements, the prophet is said to be endowed with a highly developed faculty of imagination allowing for optimum

[11] See comments at the close of section 2.2 *supra.*

[12] Maimonides (1963 [1190]: Book II: 35) in fact outlines eleven levels of prophecy in Book II of the *Guide for the Perplexed*. The highest of these tiers is that of Moses' prophecy, which is regarded as unmatched. While not all levels are attainable through philosophic perfection of the mind the lower such levels are regarded as attainable. These levels are characterised by a reduced immediacy in communication with God, through dreams and other mediums.

communication with others through the use of rhetoric, analogy and parables (Maimonides, 1963 [1190]: Book II: 37). Ravitzky (1998: 25) identifies this last trait as "political charisma", noting that it is the combination of both intellectual perfection and political prowess that is necessary for a prophet's candidacy.

In truth, the need for these qualities is seen as a reflection of the nature of Maimonides' polity, which cannot be maintained in the absence of a "divine spirit". However, the philosophy of the prophet is seen as insufficient to preserve society, rather an additional social-political element is required. A society that is to be preserved requires a common narrative, bolstered by myths and 'necessary' (if not correct) beliefs. In this regard the philosopher may serve as a threat to the polis as he inevitably undermines established beliefs that are erroneous, thereby "subverting the accepted basis for public morality." In contrast, the prophet holds the necessary political charisma to teach correct beliefs in ways that are constructive to society (Ravitzky, 1998:25-26). One component of this process is the fostering of new political myths, which are not correct, but nevertheless further social order. An example of such lore is given by Maimonides (1963 [1190]: Book III: 28) to be creating the impression that God "is violently angry with those that disobey him. And that it is therefore necessary to fear him and to dread him and to take care not to disobey." Such a statement is an absurdity to Maimonides, who understands God as an entity beyond the inconsistencies and fluctuating emotions that define the human condition (Hartman, 1986: 64, 122-5). Nevertheless, this incorrect perception is to be fostered among those incapable of understanding the true philosophic rationale for appropriate behaviour.

For Maimonides (1963 [1190]: Book II: 35), Moses serves as the archetypal prophet who combines intellectual understanding of God with social-political leadership, a legal tradition and a national historic narrative. In contrast, purely philosophic models attempted by earlier biblical figures are depicted as flawed. Indeed, in the Laws of Idol Worship, 3:1 Maimonides portrays Abraham's venture of forming "a people which knows God" as a nation of philosophers utilising reason alone. However, Maimonides explains that this attempt failed in the context of the Egyptian exile of the Hebrews, where persecution led to an almost complete degeneration of identity (Hartman, 1986: 60-61; Twersky, 1980: 451).[13] It is in the aftermath of the failure of Abraham's purely philosophical model that Moses is said to build a new nation founded upon joint experience, shared narrative as well as strict legal and religious parameters.

3.3.2 The King

In Maimonides' conception the passage surrounding the appointment of a king in Deuteronomy (17: 14-15): שׂוֹם תָּשִׂים עָלֶיךָ מֶלֶךְ -*s'um tu'sim aleikheh melekh* (set, you shall set upon yourselves a king), is to be rendered as an explicit directive. As such, the negative response of Samuel to the people's appeal for the establishment of a monarchy in I Samuel 8 is to be understood as a reflection of the motive behind the request, and not the appeal itself.

[13] It must be noted that this reading of Abraham as a philosophic teacher radically departs from a simple reading of the narratives surrounding his life and purpose from his first mention in Genesis 11: 27 to his death in Genesis 25:8.

Indeed, in Chapter 1:2 of the Laws of Kings and their Wars (Laws of Kings) in Maimonides' *Code* (2008 [1170]: 1233-4) he explains:

> Seeing that the setting up of a king was a commandment, why did the holy one, blessed be he, look with disfavour upon the request [made by the people] of Samuel for a king? Because they asked it in a contemptuous manner. Their request was prompted not by a desire to fulfil the commandment, but by a desire to rid themselves of Samuel the prophet.

As such monarchy is seen as a biblical ideal, despite explicit biblical condemnation of the failings of numerous holders of the office.

An ambiguous relationship is described between the king and the prophet. On one hand it is asserted in Chapter I: 3 of the Laws of Kings that "the first king in a dynasty cannot be set up save by a court of seventy elders and a prophet" (Maimonides, 2008 [1170]: 1234). As such, initial sanction for the king must come from a divine directive carried through the prophet. However, once rule has been established "the king takes precedence over the prophet" (Maimonides, 1967: 173). Nevertheless unchecked power is not given to the king, who should only be followed when his regime issues "an order that does not conflict with a biblical law." Moreover, continued divine sanction is dependent upon the individual merit of each successive member of a dynasty. In the Laws of Kings 1:7 Maimonides (2008 [1170]: 1235) records that "every position or appointive office held by the father descended to his son and son's son in perpetuity, provided the son is entitled to fill the vacancy by reason of wisdom and piety." Thus legitimacy is found not only through the initial divine directive, but through an on-going respect for the rule of biblical law.

Moreover, a second requirement for legitimacy is rooted in the assent of the governed. Indeed, in Chapter 5: 18 of the Laws of Robbery and Lost Property it is stated: "all the above rules apply only to a king whose coins circulate in the localities concerned, for then the inhabitants of the country have accepted him and definitely regard him as their master." Here, the use of royal currency is seen to amount to *prima facie* proof of a monarch's acceptance among the population. Thus, in the absence of this situation "he is regarded as a robber who uses force and as a troop of armed bandits whose laws are not binding" (Maimonides, 2010 [1170]: 981). Strikingly, this understanding may be seen as an anticipation of Jean-Jacques Rousseau who deliberates the nature of the right to rule in Book I of *The Social Contract*. Here, Rousseau dismisses the de facto position of leaders above their populations as proof of their legitimacy. Instead, it is contended that such a situation stems from the force of those who govern and not from a genuine right. Consequently, subjects have no duty to obey such leaders, who are liable to be replaced by a superior force at any time. Notably the same analogy of a thief found in Maimonides' Code is used by Rousseau. Indeed, it is asserted that just as an assailant who takes possession of property by way of the threat of bodily harm may make no legal claim to having a right to the property; similarly rulers who retain power through the weight of force have no legitimate authority (Rousseau, 2013 [1762]: 16-18). Thus, in Maimonides' conception two requirements for legitimacy exist in the form of a divine mandate and societal

acceptance.[14] In truth, this may be seen as a reflection of the dual nature of the role of leader who must ensure both political order and spiritual guidance. As such, legitimacy relies upon acceptance by both the governed whose primary interest is political order and the prophet who represents the divine mandate.

As is the case of Maimonides' prophet, a firm distinction between theology and politics is absent in the case of the king. In Chapter 3:10 of the Laws of Kings, the role of the monarch is designated in thoroughly theological language: "In all matters, his deeds shall be for the sake of heaven. His sole purpose and intent shall be to elevate the true faith and fill the world with justice" (Maimonides, 2008 [1170]: 1236). Indeed, Diamond (2006: 89) argues that the true purpose of Maimonides' king is to act as "the supreme existential model of *imitatio dei."* Most strikingly this is to be achieved through a consistent commitment to humility.[15] This reflects a frequent paradox within the Talmudic tradition of God's simultaneous transcendence and immanence. The root of this understanding is found in numerous biblical passages, most notably Isaiah 57:13 "For so said the high and exalted one, who dwells to eternity, and his name is holy, 'With the lofty and the holy ones I dwell, and with the modest and humble in spirit.'" Indeed, this verse is used as the basis for the Talmudic dictum "wherever one finds the awesome power of God, there he will also find his humility" (B.T. *Megillah 31a*). Moses as the archetypal leader[16] is noted for his unusual humility "Now Moses was a very humble man, more so than any other man on the earth" (Numbers, 12:3). Moreover, in Book I: 54 of Maimonides' *Guide* (1963 [1190]: 77) the driving principle of mercy in leadership is seen as an integral component of *imitatio dei:*

> It behoves the ruler of a city, if he is a prophet, to acquire similarity to these attributes [of God], so that these actions may proceed from him according to determined measure and according to the deserts of the people who are affected by them and not merely because of his passion…it behoves that acts of mercy, forgiveness, pity, and commiseration should proceed from the governor of a city to a much greater extent than acts of retaliation. For the thirteen characteristics[17], with one exception, are all characteristics of mercy.

Thus the king is to bring to his societal obligations qualities mirroring divine behaviour. As such, the king cannot undermine the supremacy of the Torah as law. Indeed, Chapter 3:1 of the Laws of Kings opens with the requirement for a monarch to write a personal copy of the Torah, which is to accompany him at all times: "When he goes to war, this scroll should

[14] This second requirement may explain why King David only begins to rule following the death of King Saul in I Samuel 31, despite having been anointed by the Prophet Samuel in 16: 13. Indeed, the initial consecration by Samuel may only be seen as providing a divine mandate; however the approval of the people has not yet been gained. Notably, this second requirement for legitimacy takes place in two stages; first David is accepted as king in his tribal home of Judah and rules in its capital Hebron for seven years, thereafter he is accepted as the rightful king of the entire nation and rules over a united kingdom for a period of thirty-three years (I Kings, 2:11).

[15] As noted above (Section 3.3), Maimonides regards God as necessarily beyond all emotional and moral qualities, rather the meaning of such statements "is not that he possesses moral qualities, but that he performs actions resembling the actions that in us proceed from moral qualities." (Maimonides 1963 [1190]: 124).

[16] Diamond (2006: 92, 95) notes consistent references to Moses as King in *The Guide for the Perplexed.* Such a conclusion does not undermine the role of Moses as ideal prophet (see footnote 11 *supra*) rather the archetypal status of Moses is reflected in his serving in both roles. See Section 3.5.4 *infra.*

[17] The thirteen attributes of God conveyed to Moses in Exodus 34: 5-7.

accompany him. When he returns, it should accompany him. When he sits in judgement, it should be with him. When he dines, it should be opposite him" (Maimonides, 2008 [1170]: 1235, based upon Deuteronomy 17:18-19). Furthermore, the king's economic and taxation rulings are to be limited by the equivalent of a requirement for general application in order to have validity. In Chapter V: 14 of the Laws of Robbery and Lost Property, Maimonides (2008 [1170]: 980) states that "any law promulgated by the king to apply to everyone and not to one person alone is not deemed robbery." The corollary that legislation aimed only at the property of a specific person or group is considered theft, may be inferred.

A further charge given to the king focuses upon ensuring societal order when the religious legal system cannot ensure justice. In particular, the criminal law system, which places a high burden of proof for conviction, is seen as an arena needing such intervention. Indeed, in the case of murder the Talmud requires two witnesses to have physically seen the entirety of the crime in addition to a clearly understood warning be issued to the culprit before the act, in order for an individual to be convicted of the crime (Maimonides, 2008 [1170]: 1236). Consequently, a proliferation of violent crimes in the wake of a failure to convict perpetrators is foreseen by Maimonides who apportions far ranging powers to the king in order to ensure social order is maintained. Thus Chapter 3:10 of the Laws of Kings[18] rules that a "king may, if the exigency of the hour demands it, put him [the murderer] to death in order to ensure the stability of social order." Moreover, this does not only apply to individual crimes of great public attention, rather the king "may put to death many offenders in one day, hang them and suffer them to be hanging for a long time so as to put fear in the hearts of others and break the powers of the wicked" (Maimonides, 2008 [1170]: 1236). Thus, a complementary relationship is envisioned between the societal and religious functions of the king.

In truth, as Maimonides' *polis* functions according to divine law, which is defined by its directive of creating both social order and religious understanding; so too does the king leading the *polis* serve a dual political and religious role. Ravitzky (1998: 27) notes that in this regard "the state serves religion" as "the king is subordinated to the Torah, he makes its laws the laws of the land, and works to promote the 'true religion' among the people." Conversely, this model may be seen as advancing the service of religion to the state as it creates the basis for social morality necessary for the survival of the *polis.* Indeed, Maimonides (1963 [1190]: III: 28) in his *Guide* notes that the welfare of the state is preserved "through two things: abolition of reciprocal wrongdoing and acquisition of excellent characters." As such, Ravitzky (1998: 27) characterises Maimonides as presenting a model of "mutual symbiosis, irrevocable in nature" between the functions of religion and state. As such all figures of leadership including prophet and king must necessarily fulfil religious and political functions.

3.5 Ideal and Compromised Models

Despite a lofty political ideal, Maimonides' conception allows for historical realities that do not meet these standards. Indeed, Ravitzky (1998:28-30) extrapolates a series of potential models

[18] A corresponding ruling is to be found in the Laws of Murder and Preservation of Life 2:4 (Maimonides, 2008: 1170]: 1005)

from the corpus of Maimonides' political writings. These range from unacceptable usurpations of authority to a messianic utopian society.

3.5.1 The Illegitimate Tyrant

The lowest level identified by Maimonides is that of the illegitimate ruler. Such a leader is seen as betraying both the religious purposes assigned to his post in addition to the political responsibilities necessary to the functioning of society. An echo of the Greek conception of Tyranny as identified by Plato and Aristotle is present in this understanding. Within Plato's *Republic* the term tyrant is used to denote the worst form of government (ranking even beneath ancient democracy). Plato envisions tyranny as arising amidst the decay of democratic regimes, whereby the people reluctantly accept a sole ruler as the only means of ensuring order within tumultuous society. However, this dictator quickly loses any sensitivity towards either the needs of the people or the callings of virtue. Instead he pursues a path of unbridled desire, consolidated through instilling fear in the people and ensuring constant warfare in the state. Similarly, Aristotle accepts the tyrant to be a perversion of the institution of monarchy. While, a just king rules on behalf of his people, the tyrant is motivated only by self-interest. The image in both cases is of a ruler with unchecked power, exercising his privileges against his own people in an attempt to secure on-going authority (Williams, 2005: 446-449). In the view of Maimonides, such a ruler should be deposed.

3.5.2 The Kings of Israel[19]

Unlike tyrannical leaders, the kings of the Northern Kingdom of Israel fulfil a political mandate, even though their religious endorsement is spurned. Such rulers may be seen as enjoying consent of the people as a ground for legitimacy, despite failing in their divine directive. As such, base legitimacy is given to their rule.[20] However, Ravitzky (1998: 28) notes an ambivalent relationship to their rule in the thought of Maimonides who accepts their right to rule, but demands that their regimes be completely separated from all religious laws and practises. Indeed, in Chapter 3:7 of the Laws of Kings, Maimonides (2008 [1170]: 1235-6) states:

> The kings of the House of David may be judged and testified against. But with respect to the kings of Israel, the rabbis enacted that they neither judge nor be judged, neither testify nor be testified against, because they are arrogant, and [should they have judicial standing] the cause of religion would suffer.

In order to ensure the integrity of Torah Law from the whims of untrusted political leaders a complete removal of the kings of Israel from the religious court system is mandated. This decree, initially recorded in the Talmud, differs from modern notions of constitutional monarchs being held subject to the rule of law. Rather than being placed under the authority of Torah law, the kings of Israel are relegated to an 'a-legal' status, enjoying neither the right to

[19] This category refers to the leadership of the Northern Kingdom, following the biblical account of the nation's split after the reign of Solomon (I Kings 12).

[20] It would seem however that the opposite situation whereby rulers have a religious sanction, but no popular support does not amount to a functional legitimacy on any level. Consequently the kings of Israel may be said to possess legitimacy, while a divinely ordained king in exile (as is the case of David in I Sam. 21-34) cannot be seen as a legitimate ruler on any level.

participate in or be affected by the legal system. Notably this extends beyond ritual observance and family law; instead these regimes are to take no part in the civil and even criminal rules and trial procedures of the religious system. Such a model is a radical departure from Maimonides' belief in the king as political leader *cum* spiritual redeemer. Nevertheless, the biblical accounts of the religious failings of the Northern Kingdom necessitated a model of separation of religious and secular authority.

3.5.3 The Kings of the House of David

Far closer to Maimonides' ideal are the "perfect kings of the House of David" described in Chapter 11:4 of the Laws of Kings (Maimonides, 2008 [1170]: 1243-4). This category of leader fulfils both the social-political obligations of the Kings of Israel as well as a vital religious role. As such, this level is identified by Ravitzky (1998: 29) as forming the basis of the normative model adopted by Maimonides. Indeed, these kings are perceived as functioning alongside a prophetic or rabbinic leadership with both offices complemented each other. Furthermore, such a leader is to serve as a uniting force within society functioning as the "heart of the whole congregation" (Maimonides, 2008 [1170]: 1244).

It must be noted that this category refers to an archetype of leadership, as in the case of David and his successor Solomon. Conversely, rulers of the Davidic dynasty who fail in their mandate of serving both political and religious ends do not enjoy this appraisal. Instead, such leaders may fall into the category of the Kings of Israel (3.5.2) or of the illegitimate tyrant (3.5.1) depending upon their own deeds. Furthermore, rulers emanating from outside the Davidic line may enjoy full legitimacy if they fulfil both key functions as is outlined in the Laws of Kings 1:8,

> If the prophet appoints a king from any tribe of Israel [other than that of Judah] and that king walks in the way of the Torah and the commandments and fights the battles of God, he is deemed to be a legitimate king…even though the kingship belongs primarily to the House of David (Maimonides, 2008 [1170]: 1235).

Despite the full legitimacy of this rule, its permanence is prescribed against as one of the chiefs tasks given to Maimonides' messiah in the Laws of Kings 11: 1 is to "restore the kingdom of David to its former state and original sovereignty." (Maimonides, 2008 [1170]: 1243). However, this may be seen as the initial political element of an eschatological vision that is to take place in a supra-historical reality. Notably, the ultimate goal of this era is the formation of a united society without political institutions (see section 3.5.5 *infra)*. Instead, within the historical-political realm, legitimacy like law in Maimonides' understanding is a reflection of action and objective rather than merely origin.

3.5.4 The Ideal Leader

Despite the critical role served by the kings of the House of David a higher category of political leadership is identified by Maimonides. This ideal leader is one who unites the objectives of achieving both religious and social perfection within his personality. Such a persona may be seen as an adaptation of Plato's "philosopher-king" as developed in the thought of Al-Farabi. Indeed, Ravitzky (1998: 29) notes that this ruler is to "unite in his very personality the two

authorities of king and prophet, ruler and sage, politics and theology." Moses and Joshua are outlined as archetypes of this model.

3.5.5 Eschatological Vision

Beyond the models specific to the Jewish national context, Maimonides describes an extra-historical vision of a "universal social utopia" (Ravitzky, 1998: 29). Such a model imagines the political realm becoming entirely obsolete, instead a philosophic society, with universal "knowledge of God" is portrayed as the ideal state of man. Here, spiritual perfection is understood as synonymous with philosophic metaphysical comprehension. Indeed, in the final chapter of (III: 54) of the Guide, Maimonides elucidates four categories into which the pursuits of mankind fall. These are listed in ascending order of their true value, the first three are: the attainment of material possessions, the pursuit of self-perfection both in emotion and physical condition and the pursuit of moral perfection. The fourth category is regarded as constituting "true human perfection" and is the pursuit of correct rational virtues (Maimonides, 1963 [1190]: 557-62). This "ultimate end" of human achievement is to "to become rational *in actu…*this would consist in knowing everything concerning all the beings that it is within the capacity of man to know." (Maimonides, 1963 [1190]: 562,454-5). Moreover, it is claimed "that to this ultimate perfection there do not belong either actions or moral qualities." Instead it is to take the specific form of understanding the "true opinions concerning the divine things." Such achievement is seen to provide an enduring perfection to a person. it is asserted that through it alone "man is man" (Maimonides, 1963 [1190]: 557-62).

However, this ultimate ideal is subject to the attainment of physical excellence. Notably Maimonides maintains that this physical level depends upon society for its fulfilment. "The first perfection consists in being healthy and in the very best bodily state… this requires "food and all the other things needed for the governance of his body, such as a shelter, bathing and so forth" (Maimonides, 1963 [1190]: 400). Furthermore, a reciprocal relationship defines this state as the attainment of philosophic perfection is seen as necessarily leading to an ideal era in which war and conflict have been overcome. Indeed, in Part III: 11 of the Guide Maimonides' asserts that "through the cognition of the truth, enmity and hatred are removed and the inflicting of harm by people on one another is abolished" (Maimonides, 1963 [1190]: 401). The result is described by Maimonides (2008 [1170]: 1244) in the Laws of Kings 12:5 as an age marked by the absence of "famine and war, jealously and strife" allowing for the "one preoccupation of the whole world" to be attaining "knowledge of God". In this conception, a universal focus upon intellectual pursuits alone necessitates that the political realm becomes anachronistic. Such a model is held as an ideal to which all leaders, states and ages should aspire. Moreover, Ravitzky (1998: 30) maintains that through this vision, Maimonides places a responsibility upon the philosopher to leave the isolated realm of his own "cosmo-polis" and instead play a key leadership role within his own society.

In truth, this model serves as extra-historical ideal which cannot be seen as representative of a functioning normative framework for the running of society. Instead, Maimonides' philosophy focuses upon the fusion of politics and religion within the personality of either the ideal leader or within the complementing offices of king and prophet. Nevertheless, an array of adaptable

models is provided for, including a complete separation of religious and secular authority (see section 3.5.2). Ultimately, the unique standing of Moses Maimonides in Jewish history, as Talmudic scholar, legal codifier and philosopher *par excellence* ensured the centricity of his thought in Jewish political theory. Indeed, the epitaph upon his grave was inscribed with the phrase "from Moses [the biblical figure] to Moses [Maimonides], there was none like Moses." This well reflects the common perception that through Maimonides the Torah was 'given again' in a codified, more rigorous and systematic manner (Hartman, 1986:3-6). Thus, any overview of the Jewish political tradition would be incomplete without due consideration of Maimonides' system. Nevertheless, the popularity of this model does not mean that it is exclusive. In truth, all aspects of Maimonides' philosophy were made subject to significant dispute both during his lifetime and beyond. In particular the role of Aristotelian notions within the Guide and the Code was targeted as an artificial imposition of foreign values to a system that relies upon revelation, experience and practise rather than formal reasoning (Shapiro, 2011; Kellner, 1986). In the realm of political theory, the models of Nissim of Gerona and Don Isaac Abravanel represent marked departures from the understanding of Maimonides.

Section 4: Nissim of Gerona

4.1 Context

Born in Barcelona in 1320 Nissim of Gerona is known primarily for his work on Talmudic law. Commonly known as the *Ran* (a Hebrew acronym for Rebbeinu Nissim – our master Nissim), Nissim was regarded as the leading authority on Jewish Law in his generation with queries sent to him from the full breadth of the Jewish diaspora (Harvey, 1992: 87). The primary works of Nissim are legal in nature, the largest of which is his commentary on Isaac Alfasi's Talmudic code (see section 2.1 *supra).* Other notable works include a commentary on tractate *Nedarim* of the Babylonian Talmud, works of *Hidushim* (innovative interpretations) on several tractates of the Talmud and rabbinic *responsa*. Indeed, these Talmudic compositions may be considered his primary legacy and are still studied in contemporary rabbinical seminaries. Nevertheless, Nissim's philosophic work had a significant impact in its own right. Indeed, he may be seen as the precursor of the "rationalist" branch of Medieval Spanish Jewish Philosophy. Notably, Nissim's primary student Hasdai Crescas along with Joseph Albo would expand upon his thought, often in open opposition to Maimonides. These later systems would have a significant impact upon Benedict Spinoza's philosophic thought. The bulk of Nissim's philosophy is to be found in his *Derashot* ("Homilies") and his unfinished commentary on the Pentateuch (Harvey, 1992: 87-89).

Modern scholars of Jewish philosophy have largely ignored Nissim's work, instead focussing upon the more developed systems of his disciples (Harvey, 1992: 87). Nevertheless, in the realm of political thought, the *Ran* formulated a unique system unmatched by his successors. In this regard, Ravitzky (1998: 57-8) notes that the tradition of Spanish Jewry is marked by an amplified openness to the "external literature and reality" of their surroundings. Indeed, the sages of Spain were known for their assimilation of ideas from the contrasting traditions of the ruling Islamic and Christian regimes. Thus, It is maintained that "obvious hallmarks" of thought of the prevailing Christian tradition are to be found in the work of Nissim of Gerona. In

particular, a trend towards reconsidering the synthesis of political and religious authority gained momentum in the 14th century, starting with the formulation of a separation between the powers of king and pope by Johan of Paris in 1302. This initial formulation still claimed to be compatible with the synthesis of powers envisioned by Thomas Aquinas. Conversely, a more radical departure was envisioned by William of Ockham and Marsilius of Padua who placed emphasis upon the state's independence from the church. This involved the conferral of significant authority to the state even acknowledging the supremacy of secular rule (Ravitzky, 1998: 59, 64-5). The familiarity of Nissim and his disciples with the work of these latter two scholars has been demonstrated by Ackerman (1993) Harvey (1992: 87-98) and Pines (1977: 178-222). It is within the context of this political movement that Nissim of Gerona sought to formulate a unique model of Jewish political thought allowing for "coexistence and judicial dualism" between religious and political authority (Ravitzky, 1998: 59).

4.2 Foundations of Nissim of Gerona's Political Model

In contrast to Maimonides, Nissim does not accept Aristotle's understanding of man as "political animal." Instead, conflict and violence are understood to be the prevailing norm of human nature. It is maintained that natural instincts towards the destruction of the other can only to be controlled by the appointment of a ruler who is to create order (Hellinger, 2009: 52). In direct opposition to Maimonides, Ravitzky (1998: 59) characterises Nissim's starting point to be "Hobbesian rather than Aristotelian." Indeed, certain aspects of the 17th century political model of Hobbes' *Leviathan* may be viewed as having been anticipated by Nissim. Hobbes' subscription to the idea of man living in a natural state of war is seen as resulting from the existence of corresponding, limitless rights to all objects by pre-civilizational man (Hobbes, 1973 [1651]: 67). This leads to a situation of unending conflict of each against all, *bellum omnium contra omnes* making life "solitary, poor, nasty, brutish, and short". The response for Hobbes is the creation of a social contract presided over by a *Leviathan* leader, who is to provide stability, safety and peace (Hobbes, 1973 [1651]*:* 65, 87). Similarly, the starting point of Nissim's conception is to be found in the understanding that the "human species needs magistrates to adjudicate among individuals, for otherwise "men would eat each other alive" (Nissim of Gerona, 1976: 189).

It is noted by Ravitzky (1998: 59) that in framing the fundamental question of politics as a means of ensuring order, Nissim's first concern is a universal one. Indeed, in his Eleventh Homily, Nissim states "Every nation needs political organisation to fulfil this purpose, as the wise one stated 'a gang of thieves will subscribe to justice among themselves'" (Nissim of Gerona, 1976: 189 quoting *Plato, The Republic*, I: 351). The Jewish people are seen to be no different in this regard.

4.3 Political and Judicial Dualism

Beyond the universal need for order, another purpose to politics is identified by Nissim, which is specific to the Jewish case alone. Indeed, this second aspect of the law is seen to address man as a spiritual creature as well. Regarding criminal justice these two aspects are formulated as firstly "punishing in line with the *true law, s*econd, the need to punish so as to enhance the *political order*" (Nissim of Gerona, 1976: 189 emphasis added). In truth, these

twin-roles are to be found within the thought of Maimonides as well. Whereas, Maimonides believes that both are best achieved when combined in one institution and personality; Nissim maintains the need for separate systems. Indeed in the Eleventh Homily it is asserted that:

> God set these issues apart delegating them to separate agencies: [i] He commanded for magistrates to be appointed to judge according to the truly just law**,** as it is written "And they shall judges the people by just law" (Deut. 16: 18)…they were appointed to judge the people according to a law that was in itself truly just and their jurisdiction is not to exceed that. [ii] But since political order cannot be fully established by these means alone, God provided for its further establishment by commanding [the appointment of] a king (Nissim of Gerona, 1976: 190).

Here the domain of the king is exclusively that of societal affairs, in contrast to the "true justice" that is the domain of Torah Law. As such, the pursuit of political order is to be judged by its effectiveness and actual impact. Ravitzky (1998: 60) understands this to mean that in deviating from religious law, the king's justice is to be measured in terms of its projected results, not its principles.

Conversely, Torah law must be applied in strict adherence with its divine origin, without compromise or regard to practical concern. The value of Torah Law is understood in purely religious terms as achieving "the cleaving of the divine spirit unto us, whether or not societal order has been perfected" (Nissim of Gerona, 1976: 191). The purpose of religious law is thus seen to be entirely focussed upon metaphysical achievement. In truth, no separation between ritual, economic, family and criminal facets of Jewish law may be claimed in Nissim's system, as the sole purpose of all these branches is solely connection with God. Thus the value of political law may be seen to be instrumental, while that of divine law is intrinsic.

A consequence of this division of roles is that the Torah judge is far more limited in the scope of his powers than the secular leader who is conferred with "great power" to provide for social order (Nissim of Gerona, 1976: 191). In reality, a precedent for Nissim's understanding is to be found in the 13th century work of the Talmudist and biblical scholar Moses Nahmanides, himself a resident of Gerona whose traditions were inherited by Nissim. In his commentary on the Pentateuch, Nahmanides notes several incidents of leaders pronouncing two classes of laws "statutes" (*chukim)* and "ordinances" (*mishpatim).* In particular, the cases of Moses who "made for them a statute and ordinance" in Exodus 15:25 and Joshua who "made for them a statute and an ordinance in Shekhem" in Joshua 24:25 are singled out. The common understanding of numerous biblical commentators including Rabbi Solomon Isaaci, Obadiah Sforno, Samuel ben Meir and Abraham Ibn Ezra is to identify these laws with commandments given by God elsewhere in the bible and only taught at this point (Veirito and Bassin, 2005: 195-6). However, Nahmanides understands these as laws created by the leaders of the nation without divine decree in order to protect political order and stability. Commenting on Exodus 15:25 he states:

> Moses established customs for them concerning the regulation of their life and affairs-until they came to an inhabited land… '[And Joshua set down] statutes and ordinances in Shekhem.' Here, too, the expression refers not to the statutes and ordinances of the Torah, but rather to directives for the socio-political order (Nahmanides in Veirito and Bassin, 2005: 195-6).

This idea is expanded by Nissim of Gerona to apply as a course of action necessary in all times and situations. Indeed, in this way secular laws are not to be understood as a move

away from religious law; rather they are perceived as a necessary component of the system which is sanctioned and expected by Torah law (Hellinger, 2009: 57).

It is noted the violent nature of man, which is the starting point for Nissim's political model cannot be held in check by the lenient punishments and high burdens of evidence found in the Talmud's criminal law. Thus, Nissim (1976: 194) maintains that "punishing criminals in this way alone would completely undermine political order; murderers would multiply, having no fear of punishment." A similar understanding may be found in the Talmud itself. In *Mishnah Makot* 1:10 the actual use of the death penalty is discussed with the opening comment "A Sanhedrin that puts a man to death once in seven years is called destructive." In contrast, "Rabbi Eliezer ben Azariah says that this extends to a Sanhedrin that puts a man to death even once in seventy years. Rabbi Akiva and Rabbi Tarfon say: Had we been in the Sanhedrin none would ever have been put to death." The Mishnah closes with the evaluation of Rabban Simean ben Gamliel who states that the lenient opinions of his contemporaries "would have multiplied shedders of blood in Israel" (Kehati, 1974: 106-7). This Mishnah may be understood as reflecting upon the competing values of mercy in judgement (seen as the primary concern by Rabbi Eliezer, Rabbi Akiva and Rabbi Tarfon) and the need for societal order (regarded as more important by Rabban Simean ben Gamliel).

In truth, Maimonides also acknowledges the need for political intervention in order to compensate for the lenient nature of Talmudic criminal law (see section 3.4 *supra)*. However, Ravitzky (1998: 61) notes that this is "almost completely confined to matters involving bloodshed." Instead, Maimonides gives far greater authority to the religious judges to deviate from the law in order to ensure its chief values are upheld. In limiting the king and other secular authorities from doing the same, Maimonides sought to prevent the monarchy from "expanding into a parallel legal system which would compete with Torah law." Indeed, Ravitzky also understands the religious charges given to the King in Maimonides' system as aiming to prevent a de facto separation of roles from occurring. In contrast, Nissim's king is given far reaching powers to ensure societal order, which is by definition not achievable through the application of Torah law alone.

Despite the king's expansive mandate, the starting point for justice lies with the religious court system that aims at the attainment of an outcome which is "intrinsically and truly just" (Nissim of Gerona, 1976: 193). In the ideal situation, social order may be preserved through the use of this law alone, thus Nissim states that "the administration of justice is first the duty of the Sanhedrin, and only thereafter the duty of king as well" (Nissim of Gerona, 1976: 195). The role of the secular regime is then to step into the breach rather than to usurp all judicial roles from the religious court system. Indeed, Nissim understands the flaw in the request for a king in I Samuel 8: 5 to be the desire of the people for the king's regime to fulfil all judicial functions alone:

> Since the people had been commanded to appoint a king… how, then, did they sin in asking for one? I believe that their sin consisted in wanting adjudication between persons to be mainly the charge of a monarch…they thought that their affairs would be better under the rule of a king than under that of a magistrate…thus they said "Appoint a king for us, to judge us like all other nations"(I Sam. 8:5)…had they sought a king for the sake of military affairs they would have

> committed no sin…they wanted adjudication to be the charge of the monarchy rather than of Torah judges…He [Samuel] was displeased not by their request to "give us a king"…what bothered him was the addition of "to judge us" (Nissim of Gerona, 1976: 193).

Fundamental to Nissim's dualism is the understanding that secular political authority serves to create the order, which is a precondition for the realisation of Jewish spiritual life. As such, any situation whereby all authority, religious and secular, is usurped by the king is unacceptable.[21] In utilising the far-reaching powers given to him, the secular leader is to act with "the intention of furthering the observance of the Torah and its commandments" (Nissim of Gerona, 1976: 194-5). In this regard, the Bible's emphasis upon the value of the preservation of life, which can only be ensured within a working political structure, is seen as the first factor motivating political action. Thus, Nissim (1976: 198) asserts that in administering justice and creating legislation the king's intention should be "to advance the realisation of the commandment 'though shalt not murder' and prevent its disregard." Similarly, Hobbes maintains that the need for a sovereign authority emerges through the understanding that the mere existence of laws and values is not enough to ensure adherence to them. As Hobbes (1973 [1651]: 87) argues, "Covenants, without the sword, are but words, and have no strength to secure a man at all." The recommended response to this concern is the establishment of a sovereign leader who will inspire fear at transgressing the law. This authority is to preserve the safety and order of society as well as providing the *polis* with defence against external threat. In reality, this is a necessity of universal significance applying to all societies at all times.

4.4 Universalism and Uniqueness in Nissim of Gerona's Political Thought

In relegating Torah law solely to the realm of ritual, Nissim allows for a transfer of politics to the secular sphere. Moreover, as the political system is shed of the religious purpose it holds for Maimonides, it moves beyond uniquely Jewish application. Indeed, Torah law alone is the distinctive system belonging to the Jewish people, in contrast "the institution of kingship in Israel and among all other nations is the same, insofar as they both require political order" (Nissim of Gerona, 1976: 190). Moreover, Ravitzky (1998:62) explains that "the dualism of the religious and political structures corresponds to the dual status of the Jewish people, both particular and universal." In creating this model, Nissim allows for the preservation of the Jewish understanding of is mission as uniquely mandated by the divine, while enabling the emergence of a politics that can evaluate itself against and assimilate the best components of surrounding models.

Baer (1965: 207) further places the thought of Nissim of Gerona in the context of the work of Alfonsio di Validulid of Burgos. An apostate, Alfonsio's book "*Righteous Teacher"* written circa 1340, is seen as the first attempt to compare Jewish law with surrounding European systems. The conclusions reached condemned the failings of Jewish law as a proof of its illegitimate religious worth. It is noteworthy that Nissim accepts that de facto inferiority of Jewish law in its instrumental purpose. However, it is maintained that this stems from the fall of the Jewish

[21] Thus, the political order created by the Kings of the Northern Kingdom, who banished the practise of biblical Judaism would be seen as a violation of the mandate of the king.

republic and the absence of a Jewish king. Indeed in his Eleventh Homily, Nissim (1976: 192) notes "That is why some of the laws and procedures of other nations may be more effective in enhancing political order than some of the Torah's laws. This does not however, leave us deficient, since any lack regarding political orders was corrected by the law of the king."

As the power to enact legislation and administer justice in a manner that would ensure the functioning of society was vested in the office of the king, the stagnation of Jewish political law is to be understood. Moreover, despite the roles of the Exilarch and Nasi in the Talmudic and Geonic periods, no opportunity for the practical implementation of a full political order by Jewish leaders had existed following the fall of Judea in 70 CE. As such, the flaws that mark the Jewish political system are to be seen as the product of its purely theoretical character. This admission of practical inferiority in the Jewish political system is unacceptable in the model of Maimonides, which draws a religious purpose to the role of the king. In reality, the *Code* of Maimonides stands out as a unique attempt to formalise political laws. Later, codifications such as the 14th century works of Rabbi Asher ben Jehiel (The Rosh), his son Rabbi Jacob ben Asher (the Tur) and 16th century *Shulkhan Arukh* of Rabbi Joseph Karo (the Beit Yosef) and its glosses provided by Rabbi Moshe Isserles (The Rema) focus only upon issues experienced in practise. These are limited to ritual worship and purity, basic monetary disputes and family law (Berkovitz, 2002: 177-190; 2012: 128-151). Thus, medieval Jewish political law had not developed for over a millennium and could not lay claim to practical relevance, as was recognised by Nissim.

Despite their practical limitations, Nissim nevertheless argued for the inherent worth of the Torah's law as a means of achieving spiritual connection. This is encapsulated in his indistinct notion of achieving the "cleaving of the divine spirit" and "a divine outpouring" to man through their application. Moreover, the intrinsic value of Torah law is seen as a reflection of its "innately just" purpose (Nissim of Gerona, 1976: 189, 191-3, 204). This latter argument was adapted by Methathias ha-Yitzhari, the disciple of Nissim's primary student Hasdai Crescas. In his commentary on the *Ethics of Our Fathers,* written in 1400 ha-Yitzhari argues that despite practical superiority of European legal systems, the true value of Torah Law is to be found in its "supernatural effect" on mankind (quoted in Ravitzky, 1998: 63). Here, the societal failings of Torah law are seen to be compensated for by a superior effect in a "mystical, magical" realm. However, ha-Yitzhari does not utilise the political solution of the king's regime as is articulated by Nissim.

In reality, a more limited role for the political deviation from Torah law in the name of political order was developed at the communal level by Rabbi Shimon ben Aderet ("The Rashba") in 13th century Spain. However, the chief contribution of Nissim of Gerona was to contextualise this allowance within a larger conceptual framework. Thus it is concluded:

> At a time when Israel has both king and Sanhedrim, the Sanhedrin's role was to judge the people according to just law only and not to order their affairs in any way beyond this, unless the king delegated his powers to them. However, when Israel has no monarchy, the magistrate hold both kinds of power, that of the judge and that of the king (Nissim of Gerona, 1976: 210-11).

Ultimately, the developments of individual communal autonomy that marked the post-Geonic period are seen as a necessity of reality, deriving from the ideal order of judicial dualism. The

value of this model as a legitimate alternative to the ideals of Maimonides has particular worth in the case of contemporary Israel, which claims to seek a distinctively Jewish character, while adhering to democratic principles. The separation of the ritual and political realms of Jewish Law by Nissim may allow for a means of resolving this tension in practise. Moreover, the system created by Nissim may be seen as a necessary foundation for the radical model articulated by Don Isaac Abravanel.

Section 5: Don Isaac Abravanel

5.1 Context

Deep differences in political conceptions notwithstanding, both Maimonides and Nissim of Gerona may be seen as supporting the notion of a monarchy dependent upon religious authorisation. Indeed, a similar pro-monarchist stance was maintained by the majority of Jewish medieval and renaissance thinkers (Ravitzky, 1998: 85). Talmudic support for the office of king as an ideal position explicitly commanded in the Pentateuch is a chief factor eliciting this stance. Moreover, messianic longings were fundamentally linked to the restoration of the Davidic dynasty in both the Talmud and Maimonides' Code (Blitzstein, 1982: 15-20). Furthermore, a similar king-centric position was to be found in the prevailing cultures in which the Jews found themselves. Additionally, both Christian and Muslim kings were generally active in defending the Jewish population from attack. This resulted in the perception, from the Jewish point of view, of the monarchy as a protective political agent acting against a threatening religious agent in the Church or Mosque. Thus, by the 15th century most religious thought came to accept the Platonic notion of the 'philosopher-king' as developed in the system of Maimonides (Strauss, 1987: 95-99). Ravitzky (1998: 87) identifies the predominant understanding of the 15th century as focused upon "an idealistic and utopian stance on political life in general and monarchic regimes in particular". A logical extension of this idealistic tendency would be to eliminate politics completely focussing instead upon the type of supra-historical utopia envisioned by Maimonides (see Section 3.5.5 *supra*). However, the potential to renounce the need for monarchy as an instrument for the attainment of this vision had not yet appeared. Ironically, it was Don Isaac Abravanel, a figure fully entrenched in the politics of his time, who would frame a completely anti-political model towards the attainment of this end.

A philosopher, statesman and biblical commentator, Don Isaac Abravanel (1437-1508) presided over the finances of the Kingdom of Portugal under King Afonso V. Renowned for his commentary on the Bible, Abravanel also wrote works on the *Haggadah, Pirkei Avot* and Maimonides' *Guide* (Netanyahu, 1998: 1-5). He fled to Spain in 1483 after having been accused of taking part in a conspiracy against the king, where he rose to senior rank in the service of Ferdinand and Isabella. Following the expulsion of the Jews from Spain in 1492, Abravanel found refuge in the Kingdom of Naples, later moving to the Republic of Venice once more rising to significant rank in economic and political affairs. Whereas Maimonides engagement with the royalty of Egypt fostered a respect for monarchy; in contrast Abravanel's mistrust of the unchecked power of the king stemmed from his two-fold experience as trusted advisor turned exile in Portugal and Spain. Instead, the republican aristocracies of the Italian

City-States were seen as providing better safeguards against the abuse of power. Nevertheless, the key thrust of Abravanel's approach is marked by a fundamental critique of all political activity.

5.2 Foundations of Abravanel's Anti-Political Philosophy

In radical divergence with the Aristotelian stance of natural political order maintained by Maimonides, Abravanel regards the polis as a completely artificial creation. What is more, Nissim of Gerona's portrayal of political order as a means of holding the destructive tendency of man in check is rejected by Abravanel. Rather, the polity itself is conceived as a mechanism of destruction. Baer (1965: 249-56) notes that this approach clearly echoes the thought of Seneca and early Christian thinkers including St. Augustine and Thomas Aquinas. For Abravanel politics is not a consequence of mankind's fall from Eden, but is itself the incarnation of the fall itself. Indeed, commenting on Genesis 3:22, Abravanel (1964a: 35) remarks: "The first man sinned in that he was not satisfied with the natural things that He [God] has placed before him [man]." From this perspective the Book of Genesis portrays the continuing fall of humanity, which rejects the contentment to be found in nature and instead perverts its path on earth by turning to material pursuits. In this regard, Abravanel argues that (1964a: 36) "they [early mankind] wished to transform their natural manner and seek to create artificial instruments for their own use…Adam and all of his offspring were immersed in a desire for luxuries, and became submerged in them." In this pursuit tools, industry and eventually society are created to facilitate what is seen to be an artificial state of life. The ultimate outcome of this path is seen to be the emergence of war as a means of gaining greater control of material resources. This foreign reality is epitomised by the sword itself, conceived by Abravanel (1964a: 62) to be "an artificial implement, made in order to destroy natural entities." Ultimately, it is the *polis* that represents the living embodiment of human failing for Abravanel.

Abravanel finds within scripture a rallying point for his anti-political stance. Indeed, the tale of Babel found in Genesis 11:1-9 is perceived as the ultimate warning against political life. Commenting on the nature of the sin involved Abravanel states:

> The generous gift of their creator did not suffice for them, but they sought to misappropriate it setting their sights on acquiring the skills to build a city and make themselves political instead of natural people…with all that this entails- fame, office, rulership, imaginary honours, the delight of gathering possessions, violence robbery and bloodshed….Formerly they had all been one people, enjoying a natural unity as they all shared the same language and the same natural customs. Yet they were not satisfied with this, and sought to create a polity and artificial unity, by founding a city and other artificial things (Abravanel, 1964a: 98-100).

For Abravanel human political association represents not only the rejection of divine natural gifts, but also a profound hubris in an attempt to create an artificial legacy. Indeed, the biblical account in Genesis details the primary ambition of the builders of Babel in these words "let us make for ourselves a name [*sheim*], lest we be dispersed on the face of all the earth" (Genesis, 11:4). God is depicted as responding in correspondence to these motivations, as Genesis 11:8 states that God "dispersed them from there [*sham*] on the face of all the earth." Cassuto (1953: 168-9) notes the play on the Hebrew words *sheim* (name) and *sham* (there), claiming

that the dispersion is a direct response to the presumptuous aspirations of Babel's founders to create their own artificial legacy.

Ravitzky (1998: 92) notes that the very establishment of human sovereign authority is seen by Abravanel as an affront to the power of divine directive. Moreover, it is claimed that all regimes necessarily seek to expand, leading to an inevitable clash of powers. Thus, in Abravanel's perspective the unity of Maimonides' model and the co-existence proposed by Nissim are impossibilities. Instead, the institution of monarchy is seen as the most dangerous form of humanity's adoption of politics.

5.3 Abravanel's Critique of Monarchy

Despite a general rejection of all political organisations, Abravanel nevertheless draws distinctions between what are conceived to be varying degrees of evil. In this regard the institution of monarchy is viewed as an unmatched destructive force. Appeal is made to direct experience and observation in this rejection of the office of king: "Look around and observe the countries ruled by kings, notice their idolatry and abominations. Each king does exactly as he sees fit, and the earth is full of violence on their account" (Abravanel, 1955: 54). Going further, Abravanel discards the distinctions made by other thinkers between constitutional and unconstrained monarchs. Commenting on I Sam. 8:4-6 Abravanel (1955: 56) states that "a king *per se,* of whatever type he might be, constitutes a great evil and a serious transgression."

A consequence of this rejection is an uncomplicated understanding of the Prophet Samuel's disapproval of the nation's request for a king in I Sam. 8. The problem with the request is purely that a monarch cannot be held in check and will necessarily pose a challenge to the realisation of Torah law. This understanding is in sharp contrast to the forced readings of Maimonides who regards the fault in the contemptuous tone of the request, and Nissim who understands the issue to be that the people wish for the proposed king to hold all judicial powers instead of sharing them. Conversely, an onus rests upon Abravanel to explain the biblical command for a king in Deuteronomy 17: 14-15. The first component of Abravanel's reconciliation of these verses is to understand the ambiguous Hebrew expression of the Hebrew "*s'um tu'sim aleikheh melek*h" (Set, you shall set upon yourselves a king) as indicating permission rather than a directive (Abravanel, 1955: 62). Although this type of double expression is usually rendered as emphatic language consistent with a command, thus: You shall *surely* set upon yourselves a king. Precedent is found for understanding it as an allowance by the Talmudic sage Rabbi Nehorai whose opinion is recorded in the Babylonian Tractate of Sanhedrin 2b). In contrast to Rabbi Judah who argues that the verse indicates an explicit directive, Rabbi Nehorai maintains that this is a concession granting permission for such a position to be created in the future, even though it is not an ideal state. In truth, this approach is reinforced by Samuel's lengthy warning to the people of the "manner of the king" in I Samuel. 8:11-18 (Leibowitz, 1996: 175-180).

Nevertheless, the strange allowance for an institution argued to be so dangerous must be explained by Abravanel. In this regard it is expounded:

> The Torah wishes to forecast how the Israelites would display their ingratitude for all the divine help they had received…by asking for a king. They would not make such a request because they

> stood in need of one, but simply to imitate the practises of the surrounding nations…In such an event God commanded that they should not elect a King as they wanted but "you shall surely set over yourselves a king, whom the Lord your God shall choose"…The desire to have a king constitutes no worthy deed in itself, but proceeds, rather, from unworthy motives. But once the people have given expression for the desire, unworthy as it is, it can only take place in the manner outlined by the Torah (Abravanel, 1955: 62-3).

Thus, Abravanel understands the passage concerning the rule of the king in Deuteronomy to be a case of the Torah predicting the future request of the people. Though monarchy is an evil, it is seen as an institution that the nation cannot be prevented from desiring. As such, the Pentateuch seeks to limit to the greatest extent possible the authority that a Jewish king would possess. Nevertheless, the failings of this institution are seen to be inevitable as is demonstrated in the case of the pagan kings of Northern Israel.

Abravanel (1955: 63) claims that a similar case is to be found in blood lust that may occur in the course of war. In this regard, the Pentateuch (Deut. 21:10-15) seeks to prevent rape from taking place in foreign territory, by creating a means for a captive woman to become a legally recognised wife. It is argued that the Bible does not command soldiers to take brides from the battlefield "but merely provides for such a situation" (Abravanel, 1955: 63). In truth, the choice of example utilised by Abravanel may be seen as indicative of his disdain for the institution of monarchy. Indeed, numerous other examples of permissive procedures are to be found in the bible, yet Abravanel chooses to explicitly link the desire for a king with the desire to sexually assault a captive in war (Leibowitz, 1996: 135-142, 175-180).

Furthermore, in rallying against the office of King, Abravanel directly contradicts statements supporting monarchy in the biblical books of Proverbs and Ecclesiastes. In response to the claim that such works are beyond question as Talmudic tradition ascribes their authorship to King Solomon, Abravanel (1955: 70) writes "the existence of a king is…very harmful and involves tremendous danger…Even if King Solomon praised the institution of kingship he spoke on his own behalf. But how can we ignore what is self-evident." In order to illustrate the bold and uncommon nature of this comment Ravitzky (1998: 94) quotes Rafael Berdugo, a preeminent religious authority in 18th century Morocco who claims that "never had we heard such statements from any sage."

The influence of Nissim of Gerona's teachings as a necessary foundation for Abravanel's model is noted by Harvey (1992: 87). By divesting the monarch of the religious duties given to him by Maimonides, Nissim allows for Jewish kings to be understood in the same manner as all other secular leaders. As such, the institution may be seen as merely one of several possible governing models created by man. Furthermore, Abravanel is able to point to the far-reaching powers vested in the king by Nissim as cause for alarm as the monarchy is seen to pose an existential threat to Torah Law. Indeed, it is maintained that a king would not ever be satisfied by the "legitimate" power assigned to his office. Instead, a drive towards tyranny is viewed as the inevitable outcome. Ravitzky (1998: 89) notes that "the two ideas introduced by the Ran…are both applied by Abravanel to illustrate to just what an extent human beings are at the mercy of the arbitrariness of kings." Thus the kings of Northern Israel, who are regarded as the disappointing exception to Maimonides, are conceived as the norm by Abravanel.

Consequently, better means of limiting the powers of kings are sought out and prescribed by Abravanel.

5.4 The Venetian Model

The profound effect of the Venetian model upon Abravanel is noted by Netanyahu (1998: 82-87, 166-175). This last destination among the numerous rises and exiles of Abravanel would serve as a prototype for a potentially more controlled system of political authority. Originally the doge of Venice enjoyed virtually limitless power and often sought to create a dynasty. However, the Revolution of 1032 which led to the ouster of the Orseolo dynasty brought about political reform. In addition to a new doge, two councillors were instated in an attempt to limit de facto hereditary monarchies from emerging (Keahey, 2002: 107).

The Republic of Venice did not possess a single codified constitution, instead a variety of written and oral laws and traditions demarcated the mechanics of its government. The earliest of these was the *Promissione*, or doge's oath, while numerous others were adopted in writing and custom overtime (Brown, 2006: 195). The government structure of Venice may be seen as forming a pyramid with the General Assembly at the base and the doge at the apex, these were separated by tiers of committees and councils created to curb the abuses of power. Directly above the general assembly was the Great Council, which in turn was outranked by the Forty and the Senate with the Ducal Council sitting alone below the Doge (Brown, 2006: 196).

The root of all authority in Venice was embodied by the *Concio,* a general assembly which elected the doge and enacted new laws. While, this authority was to be shared among the population, wealthy families dominated its proceedings in actuality. The *Concio* met rarely and only to vote on the choice of Doge and ratify basic legislation (Brown, 2006: 203). More regular representation for the state's nobility took place via the *Maggior Consiglio* (Great Council). The Great Council assumed its lasting form in the Venetian governmental framework with the passing of a special act in 1296 (Brown, 2004: 297). This body elected all magistrates and all members of other more elite councils and settled disputes arising between them. Additionally, the *Maggior Consiglio* held extensive legislative and judicial authority, with the power to pass laws, issue punishments and grant pardons for convicted criminals (Lane, 1984: 97). In time the legislative functions of the Great Council diminished as the Senate assumed a dominant role in the passing of laws. However, the Great Council still maintained its position as the chief appointer of virtually all officers of state (Lane, 1984: 96).

Despite its importance, the large structure of the Great Council served as an obstacle for thorough deliberation on all topics. As such the task of investigation and discussion was delegated to various smaller councils of which the *Quarantia* (the Forty) was the most significant (Lane, 1984: 96). The primary task of the Forty was to prepare legislation regarding budget and finances for approval of the Great Council. Moreover, the Forty served as the highest court of appeal in the Venetian judicial system. The later introduction of the senate diminished the role of the Forty. The two bodies acted in unison when possible, but significantly the three *Capi* (heads) selected to lead the Forty held substantial power and formed part of the inner-most government along with the doge and Ducal Council (Brown,

2004: 298). The inner senate consisted of sixty members, elected by the Great Council. Each outgoing senate elected a sixty member strong body known as the *Zonta.* Together these 120 members formed the larger senate in which the core of the administration lay (Brown, 2006: 205). Although the senate enjoyed limited judicial and elective powers its primary responsibility was legislative.

Above all of other assemblies was the Ducal Council. The Ducal Councillors were responsible for delegating tasks to all lower councils and were bound by these decisions. The six members of the Ducal Council represented each of the districts of Venice and held office for a period of six months to a year, with re-election only possible after a period of two years from the end of their term. They served as binding advisors to the doge, without whom no decisions could be taken. In 1223, the *Signoria,* a new executive body, was formed consisting of the Ducal Council, the three heads of the Forty and the doge. Lane (1984: 97) maintains that the *Signoria* functioned as the key instrument of government action, responding to impending emergencies, dealing with foreign powers as well as overseeing that the tasks of the various councils were being properly carried out. Although, the doge's powers became increasingly ceremonial over time, the office of doge maintained its status as the personification of the state with administration of foreign relations and oversight over judicial affairs essential to the role (Lane, 1984, 91-92).

The Venetian model may be viewed as a mixed system of government exhibiting characteristics of a limited monarchy in the office of the doge, with aristocratic attributes in the senate, Forty, Great and Ducal Councils. Moreover, very limited democratic traits may be found in the General Assembly of all citizens. Nevertheless, the will of the Venetian nobility dominated all other aspects leading Brown (2004: 297) to argue that the constitution of the Republic took the dominant form of a rigid oligarchy. However, Lane (1984: 101) dismisses this portrayal, maintaining that the term oligarchy is appropriate only when a small volume of nobility overwhelms the will of the rest. Instead, it is asserted that Venetian politics involved the participation and reflected the interests of the full spectrum of the nobility. As such it may be labelled an aristocracy in its primary form.

Significantly, all office holders were liable for the abuse of their powers. A separate group of officials, the State Attorneys were granted far reaching jurisdiction in order to enforce the equivalent of Venetian constitutional law. Their primary function was representing the interests of the community. This included penal functions as well as ensuring restoration of state property. As such focus was placed upon corruption regarding state funds, violations of maritime law, investigating charges of bribery in the courts. Moreover, the State Attorney's had the power to intervene should a particular state body or council act in violation of its procedural regulations. Proceedings would then be suspended and a charge could be brought against the offending body or individuals in the Great Council. In the event that a member of the Ducal Council was failing to uphold his responsibilities to the state, charges could be brought against him and the matter would be judged by the Forty. Similarly a suit against the members of the Forty could be brought before the three heads of the Forty and the Great Council. This intricate system of checks and accountability between the various councils and

officials of Venetian government was to serve against any form of corruption in the absence of an independent supreme court (Lane, 1984: 101).

5.5 Limitations on Power

The complex network of power structures and the liability of public office holders to be held accountable for abuses of power found in Venice were praised by Abravanel. Commenting on Exodus 18:13 he refers to the various "councils that actually operate at present in the large city of Venice" as reflecting a biblical ideal (Abravanel, 1964b: 157). Indeed, it is maintained that the judicial system established in the desert by Moses on Jethro's advice (Exodus 18) was to follow a similar structure. Abravanel understands that Moses created four parallel councils each responsible for a different area of governance. Moreover, it is asserted that Moses delegated the selection of members of these councils to the nation as a whole (Abravanel, 1964b: 157-8). Additionally, commenting on Deuteronomy 16:18 commandment to appoint judges, Abravanel claims that these were to be locally appointed officials not chosen by the king: "it is not fitting that they be appointed and authorised by the king…Rather every tribe should appoint suitable judges in each of its cities" (Abravanel, 1964c: 155). Strauss (1987: 125) argues that for Abravanel any reduction in centralised authority is seen to diminish the risk of the abuse of power.

Moreover, the creation of term limits and mechanisms of oversight are regarded as vital to the control of power by Abravanel. Indeed, the Italian City-States, which exhibit these features, are praised for overcoming corruption:

> We see the cities of Venice…Florence…Genoa…Siena and Bologna…that are not ruled by kings, but rather by a leadership of people who are chosen for a fixed term. In those honest countries there is nothing crooked or perverse (Abravanel, 1955: 63).

The constraints found in Venice and other Italian polities are seen as an archetype that should be applied uniformly. Thus, in a passionate tirade Abravanel (1955: 64) argues against the unchecked power of other forms of government:

> Why shouldn't any government be temporary, from year to year, more or less? When the turn of other officers came, they should take their place and examine whether their predecessors had betrayed their trust…and why shouldn't their powers be limited and ordered according to law?... Since they are destined to give an account of their behaviour, they will be fearful of other people.

Accordingly, a system of government is to be measured not in terms of its effectiveness. Rather, its value is seen as a reflection of the constraints against power that it is able to establish. In truth, this may be seen as a natural outcome of Abravanel's understanding of the polity as an artificial and undesirable entity with tremendous destructive force. Indeed, for Abravanel there is no optimum use for power as all material pursuits are regarded as a corruption of man's natural purpose. Furthermore, man's natural state is seen as offering a better form of protection than the *polis*, which necessarily breeds violence and war in an effort to expand. Thus, the primary objective of political theory should thus be to constrain authority rather than prescribe for its best application.

As such, Abravanel favours a system that disperses authority in a variety of institutions. Commenting on I Sam. 8:4-6 Abravanel (1955: 67) argues that "it is more likely that an

individual ruler will sin and transgress…than that many people will transgress when they are jointly appointed leaders. For if one should transgress, the others will protest." Here, the very existence of joint office holders and concurrent institutions are seen as limiting the prospects of the abuse of power. In his work *The Myth of Venice in Italian Renaissance Jewish Thought,* Melamed (1983: 401-403) asserts that Abravanel's portrayal of Israel's governing structure in the Second Temple era follows the democratic structure of Venice, while omitting its aristocratic centre. Thus, a mixed system is portrayed which combines constitutional monarchy with an aristocratic Sanhedrin and local judges directly chosen by the local population.

This is not to say that Abravanel views such a system as an ideal. Instead, a romantic image of the extra-historical return to a natural state free from political structures is envisioned (Regev, 1987: 169-187). Consequently, Abravanel rejects eschatological visions of a return to monarchy as are maintained by Maimonides. Rather, it is God who is to rule alone over a united mankind. In Ravitzky's (1998: 96) rendering Abravanel's utopia "uproots all institutions and all nations, restoring universal man to nature and to monotheism." Yet it is this same extra-historical aspiration that allows Abravanel to find contentment with the more limited pursuit of a system of governance which guards against abuses of power.

Section 6: Modern Responses

The rise of political Zionism in the late 19th century gave new significance to the theoretical models advanced centuries earlier by Maimonides, Nissim of Gerona and Don Isaac Abravanel. Religious life led in the absence of exploration into large-scale questions of social and political organisation was now challenged by the birth of the political Zionist movement of Theodor Herzl. In particular, Ravitzky (2003: 271) stresses the implications of the movement and the state that it would eventually bring forth. From the perspective of Jewish religious traditions in the 19th century the notion of the modern State of Israel could only be considered as an absurd ideal. Indeed, The emergence of such an entity is argued by Ravitzky (2003: 271) to be outside of all that is envisioned in the corpus of religious literature "whether legal, philosophic, mystical or messianic." Thus it is maintained that the modern Israeli State "took the source by surprise." Specifically, It is the combination of (i) Jewish Political Independence, (ii) in a biblically identified 'holy land' (iii) without a messianic arrival and (iv) achieved through the directives and work of self-proclaimed 'secular Jews' that places modern Israel outside of previously imagined possibility. In Kuhnian terms the state may be seen as presenting a 'crisis' for the previous paradigms of religious Jewish thought (Kuhn, 1970: 66-76).

Consequently, the new Zionist movement forced questions of religious and secular authority as a practical issue for Jewish religious discourse for the first time since the Geonic era. Hazony (2011: 2) explains that, in responding to the challenge of Zionism, the leading Jewish thinkers of the late-19th and 20th centuries:

> didn't just add a philosophical element to their Jewish writings; they offered, each in his own way, engagements with modernity that literally reshaped Judaism itself, inspiring new religious movements, sharpening and deepening existing ones, and giving bold and creative new voice to the Jewish religious spirit.

Of relevance to this study is the consequence that these responses had for the paradigms balancing religious and secular authority established by Maimonides, Nissim of Gerona and Abravanel. In truth the rise of political Zionism may itself be seen as a response to the emergence of European nationalism in the wake of the French Revolution. Thus the role of "the Jewish Question" in 19th century Europe will be explored as a necessary component for understanding both Herzl's Zionism and the religious responses that it elicited.

6.1 The Jewish Question in 19th Century Europe

The emergence of European nationalism resulted in a new self-understanding for citizens *vis-a-vis* the states in which they found themselves. Hitherto, the state had existed as an extension of the ruler; now however national identity became an integral part of the lives of individuals. One consequence was that the place of minority groups within this new state became a cause of increasing tension. In particular, the desire for emancipation among European Jewry led to much debate about their position in society. Writing in 1843 Bruno Bauer sought to examine "The Jewish Question" arguing that no place could be found for Jews within a Christian Europe. Bauer had concluded that no possibilities for Jewish emancipation could exist without a forfeiture of Jewish religious identity (Maiden, 1987: 25). The central tension in this account is to be understood as emanating from two categorically exclusive conditions. Indeed, It was maintained that the very nature of a Christian state is necessarily prejudiced towards other faiths. Moreover, those who adhere to such creeds cannot by definition be granted equal rights in a state that does not recognise their beliefs. Thus "So long as the state is Christian and the Jew is Jewish, the one is as incapable of granting emancipation as the other is of receiving it." In Bauer's model only the denunciation of these religious identities could enable emancipation. As such, the state must become a secular entity as the holder of creed must become a secular being in order for 'the Jewish question' to be resolved (Maiden, 1987: 26-27).

Published in 1844, Marx's "On the Jewish Question" sought to counter the conclusions of Bauer's treatment of the subject.[22] In his response, Marx contended that the type of emancipation described by Bauer was achievable without the denial of religious identities. Importantly, it was asserted that the question was not universal in nature, but dependent upon the nature of the state in question. Specifically, the German example in which Bauer writes is described as lacking sufficient institutions to render it a political state at all. Instead, the German state was regarded by Marx to be a theological entity, one which was necessarily at odds with those who adhered to other faiths. Conversely, in the constitutional framework of France, the question was to be understood as "a question of constitutionalism," specifically regarding the incomplete condition of political emancipation granted to the Jewish French population at the time. Nevertheless, because the "semblance" of a Christian state religion remained within France, the same tension that existed within the German example was said

[22] In truth, the ambition of this work was far larger, seeking to move beyond the realm of political emancipation (the issue raised by Bauer) to the more important issue of "human emancipation". It is for this second focus that Marx's "On the Jewish Question" endures as a work of significant theoretical influence. Nevertheless, this larger focus is beyond the scope of this study.

to still be present in a much smaller scale for French-Jewish emancipation (Marx, 2012 [1844]: 7-10).

Ultimately, Marx (2012 [1844]: 10) argued that it was only within the United States that the 'Jewish question' is a purely secular-political one. Indeed, the developed political institutions of the US at the time, were seen to allow for the possibility of the state relating to religion in a manner disconnected from theology. This example is said to prove the possibility of political emancipation even while one holds onto religious identity. Marx further contended that the secular state is not fundamentally at odds with religion, but in fact presupposes it. The state does not disregard religious affiliation or property; rather it is able to relate to individuals as entities beyond these qualifications. However, such freedom was insufficient for Marx (2012 [1844]: 20-36) who desired a full 'human emancipation' and not merely a political form. Moreover, it was maintained that political emancipation may serve as a barrier to true human emancipation. Indeed, Marx contended that political rights rest upon the assumption of protecting interests against trespasses by others. As such, rights serve as a barrier of separation between individuals, granting only the freedom from outside intrusion. This is regarded as a perversion of 'true freedom', a form that is dependent upon positive interaction and relations with others within human community. This latter stage is regarded as the higher goal in Marx's thought and is developed more fully in his latter works (Maiden, 1987: 35).

Maiden (1987: 24-25) places Marx's position in opposition to the two dominant trends of 19th century thought towards Jewish emancipation. The first 'enlightened' version regarded emancipation as a means towards full Jewish integration into German society including the adoption of Christianity. This model as articulated by Wilhem Von Humbolt, advocated the strong appeal of German values and culture as a means of undermining Jewish institutions and ultimately identity. Conversely, the 'conservative' approach demanded that Jews renounce their faith and "amend their ways" by adopting Christianity as a prerequisite for entering German society as equals. As such, the ultimate aim of both approaches was not the inclusion of Jewish-Germans but the creation of a new group of Germans who had previously been Jewish.

In contrast, Marx rejected the need for change in order for Jews to be granted political recognition. What is more, Marx inverted the formulation posed by contemporaries – finding fault in the state rather than the individual. For Marx, the failure of the state to grant emancipation to its Jewish population was a reflection of the inadequacy of German political structures at the time. In response, Marx called for emancipation granted with neither the preconditions of the 'conservative' approach, nor the expectations of 'enlightened' thinkers (Maiden, 1987: 29-30). As such, Maiden (1987: 23) maintains that Marx's fight for Jewish emancipation was in essence an attack upon the absolutism that defined the political structures of 19th Century Europe.

6.2 Herzl's Zionism

In reality, the same tensions posed by the growth of European nationalism that led Bruno Bauer and Karl Marx to pen their solutions to 'the Jewish question' also engendered an internal

response within European Jewish communities. Chief among these reactions was the founding of the modern Zionist movement by Theodor Herzl. A highly integrated member of Austrian society, Herzl served as the literary editor of the Paris based paper the *Neue Freie Presse*. In reality, Herzl's family background serves as an illustration of the type of integration brought about by renunciation of the Jewish creed spoken of by Bauer. A proudly secular Jew, Herzl had been a member of the German nationalist *Burschenschaft Albia*, a fraternity with the motto "Honour, Freedom, Fatherland" (Cohn, 1970: 101-103). Nevertheless, two events in 1895 redefined Herzl's understanding of the prospects of full Jewish integration in Europe forcing him to create a new answer to 'the Jewish question'. The first such incident was the trial of French army captain Alfred Dreyfus on charges of spying for Germany. The affair elicited public outrage dividing much of Europe as questions over Dreyfus' actual guilt were seen to be secondary to his Jewish ancestry. Ultimately, Dreyfus was found guilty by a unanimous decision of a panel of seven judges and sentenced to the maximum possible sentence – permanent exile in a walled prison. Among those who claimed a miscarriage of justice were future French Prime Minister Georges Clemenceau and noted writer Émile Zola in his famed open letter *J'accuse* (I accuse). Dreyfus was eventually exonerated of all charges in 1906 having been imprisoned on Devil's Island in French Guinea. Nevertheless, the incident had a potent effect upon Herzl who had been present for Dreyfus' public degradation on 5 January 1895 (Cohn, 1970: 101-103).

A second significant event was the appointment of Karl Lueger, leader of the anti-Semitic party of United Christians, as Mayor of Vienna on 14 May 1895. The rise of the Austrian anti-Semitic movement had been triggered by large-scale Jewish immigration from Eastern Europe. In 1860 6 000 Jews resided within Vienna, by 1890 that number exceeded 100 000 (Cohn, 1970: 107). The election of Lueger had resulted in a crisis as various movements and high voices in the clergy opposed his confirmation, calling upon the Emperor to deny the confirmation. Despite this opposition, Cohn (1970: 106-7) maintains that the election itself was enough to alter Herzl's perceptions surrounding the viability of Jewish integration and acceptance within Europe. A new understanding was reached by Herzl, marked by the belief that only a Jewish national homeland could resolve the 'Jewish question' in Europe.

6.2.1 Herzl's Vision

Published in 1896, Herzl's pamphlet "*Der Judenstaat*" advanced the reestablishment of a Jewish State as the only viable solution for European Jewry's inability to gain recognition and acceptance as full citizens (Hazony, Y., 2006: 357). Within this conception all issues affecting individual Jewish Europeans and isolated communities were grouped together into one central concern. Furthermore, Herzl insisted that this issue was one that must be addressed at the international level, insisting that "the Jewish question [is] neither a social nor a religious one, even though it sometimes takes these and other forms" (Herzl, 1988 [1896]: 86). Instead, Herzl (1988 [1896]: 87) called upon "the civilised nations of the world" to come together in order to resolve the plight of European Jewry as an "international political problem". This necessity was seen to be the result of vain efforts at integration. Indeed, Herzl believed that even Jews who had been "loyal patriots" giving of themselves in service to the national cause of their European home-states whether in science, arts, commerce, or in the military were still

"decried as aliens" by their countrymen. In essence, the notion of Jewish emancipation had been a chimera as mistrust, exclusion, persecution and pogroms had continued to dominate the relationship of European majorities to their host Jewish populations. In order for Jews to cease being an anomaly amidst the nation-states of Europe they required a nation-state of their own. In Herzl's (1988 [1896]: 153) assessment Ottoman-controlled Palestine, the Jewish "historic homeland" would serve as the ideal setting for this new national venture.

Noteworthy is Sharansky's (2006: 102) observation that the creation of a new Jewish homeland would serve to allow full integration for those of Jewish descent who chose to remain in Europe. Indeed, any Jew who chose to remain in his European homeland despite the existence of a Jewish state would be making a "profound" declaration of his loyalty to his European identity. Through choosing to remain in France or Germany, a Jew would be declaring himself first a Frenchman or German and only a Jew as a secondary characteristic. As such, no suspicions surrounding the true allegiance of Jews who remained in Europe would exist allowing them to "assimilate in peace" (Herzl, 1988 [1896]: 94).

The nature of the Jewish state initially envisioned as a necessity was developed in Herzl's 1902 novel "*Altneuland*" (Old-New Land). Here a utopian vision of the type of society achievable in Palestine was presented. The novel centres upon two visits to the imagined Jewish state, reflecting a radical transformation of society within a twenty-year timeframe. The protagonist Friedrich Löwenberg is taken upon a guided tour of this idealised future state in which the best of existing European ideals are adopted. The envisioned society was described as following an economic model integrating both liberal and egalitarian economic principles. This system termed "mutualism" by Herzl features public ownership of natural resources and agricultural projects along with social welfare provisions, while still promoting entrepreneurship. A medley of cultures is described with city parks modelled after those of England, ministries after those in Germany and Belgian style streets. At the same time the state would include a Jewish character with plays and novels composed dealing with Jewish themes and rabbinic figures becoming "supporting figures" of society through educational programmes. The result is termed a "Mosaic mosaic" by the novel's protagonist with the best of ancient and modern values, traditions, cultures and achievements forming the basis of an ideal society (Sharansky, 2006: 107-8).

Notably, Herzl's vision did not include the adoption of Hebrew as the uniform dialect. Instead, *Der Judenstaat* advocates the use of whichever language "proves itself to be of greatest utility…without compulsion" (Herzl, 1988 [1896]: 143). In *Altneuland*, a multi-lingual society is described with German the primary language employed. Moreover, this multi-cultural emphasis is extended to all aspects of life in Herzl's vision. The open society envisions no conflict between Jewish and Arab inhabitants, with all citizens (including women) enjoying full voting rights. Furthermore, numerous key posts are held by Arab citizens including one of the novels protagonists an Arab engineer from Haifa named Rashid Bey (Avineri, 2009: Internet). A central story-arc in the novel is the emergence of a new racist party in the 1923 electoral campaign that wishes to rescind citizenship and voting rights from all non-Jewish inhabitants. The party is headed by a character named Geyer (German for a flesh eating bird) and is modelled upon the Viennese mayor Karl Lueger. In contrast to Geyer's racism, liberals justify

the uniform application of equal rights upon both modern, universalistic values and traditional Jewish sources. Ultimately, the liberals win the election and a shamed Geyer flees the state (Avineri, 2009: Internet).

The image of dying plants is used to depict the state of European Jewry at the end of the 19th century; however Herzl maintained it they could become like plants that are saved "if transplanted to the right soil". Beyond mere survival such conditions were seen as enabling a hitherto unimagined opportunity for the Jewish people to flourish (Sharansky, 2006: 108). Ultimately, Herzl's vision of the Jewish State is one that moves from an act of necessity in response to the question of European Jewry, to an opportunity for creating an ideal society that would thrive culturally and economically, while promoting the rights of all its citizens. However, this secular utopian vision would prove even more difficult for the mainstream Jewish religious institutions of Europe to accept.

6.3 Religious Responses

Ratzabi (2008: 115) identifies two key issues for religious thinkers in their response to Herzl's Zionism. The first was of a religious-legal nature regarding the *halakhic* permissibility in working with secular people in general. The second larger constraint was theological and tied to the limitations placed on all projects of self-determination by the Talmud. Indeed, a key debate over the role of Jewish national autonomy is intrinsically linked to a passage in the Tractate of Ketubot 111A of the Babylonian Talmud. Here, the principle of the "Three Oaths" is established. Citing the threefold repetition of the chorus "I adjure you oh daughters of Jerusalem" in Song of Songs (2:7; 3:5; 5:8) the Amoric sage Rabbi Jose ben Hanania attributes his own homiletic interpretation of the phrase. It is explained that the adjuration refers to three divine charges given from on high following the fall of the Temple in 70 C.E. The first two are tasked to the Jewish people, who are both forbidden from (I) returning to the holy land *en masse,* and (II) from rebelling against the "nations of the world" under whose authority they will now reside. The final charge (III) is given to these nations who are adjured "not to oppress Israel too greatly." Although this passage is considered by many authorities to be *aggadic* (legend) and non-binding in nature, it was held as an argument against Herzl's political Zionism by many in the Orthodox community. Furthermore, the secular and later socialist agenda of the majority of the Zionist movement's leadership was seen as a threat to the established religious way of life in Europe (Glinet & Shilhav, 1991: 67-70).

In contrast, the reform movement rejected Herzl's Zionism as an affront to its conception of the Jewish national purpose. Indeed, the notion of serving as a "light unto the nations" (Isaiah, 49: 6) was understood to require the Jewish people to be dispersed throughout the world in order to interact with other nations and together build a more moral world. As such, the exclusivism of Zionism was seen as an affront to the universalistic thrust of Judaism. Thus, the 1885 Pittsburgh Platform, which outlined the core beliefs of reform Jewry at the time stated: "We consider ourselves no longer a nation, but a religious community, and, therefore, expect neither a return to Palestine… nor the restoration of any of the laws concerning the Jewish state" (Quoted in Hazony, 2011: 99). A similar argument was made by Rabbi Samson Raphael Hirsch, leader of mainstream orthodoxy in Germany (Hazony, 2004: 88). Thus, reform Jewry

rejected Herzl's vision for its exclusivity, while ultra-orthodox Jewry rebuffed it for seeking to break the insular nature of Jewish communal life.

However, distinct religious Zionist responses also emerged. These include the pragmatism of Isaac Joseph Reines, which was overtaken by the meta-historical messianism of Abraham Isaac Kook. This in turn was radicalised under his son and chief interpreter Zvi Yehuda Kook, founder of the *Gush Emunim* movement. Despite the dominance of both Kooks' thought in the religious Zionist movement, other branches exist in various incarnations. A short overview of Joseph Soloveitchik's treatment of the state as a matter of religious significance short of messianic value will be undertaken as a counter-balance to the messianic view. Moreover, attention will be given Eliezer Berkovits' model of the Jewish state as a "god-centred republic" as a model of religious centralism that opposes theocracy. The relevance of each of these models lies in their implications for the relationship between secular and religious authority within any form of sovereign Jewish entity. As expressed at the outset, neither the legitimacy of contemporary Israel nor its true democratic standing are the subject of this enquiry. Instead, the focus of this section is the change in Jewish religious responses to secular authority as a consequence of both Political Zionism and the establishment of the state itself.

6.4 Religious Zionism

Responding to the theological challenge of Herzl's vision, two distinct "Religious-Zionist" models emerged. The first advanced by Rabbi Isaac Joseph Reines excised any link between Political Zionism and metaphysical understandings of history. Instead, Herzl's movement was approached solely as a political solution to the "existential plight" of European Jewry. It was thus maintained that the Zionist cause did not violate the spirit of the "Three Oath" Talmudic teaching. Indeed, Herzl's movement was not to be understood as an attempt at renewed Jewish spiritual life on a national scale, but rather as a desperately needed means of ensuring physical survival. Based upon this understanding Reines established the Mizrahi[23] Organisation in Vilna following the Fifth Zionist Conference in 1902 (Ratzabi, 2008: 116). The purpose of the Mizrahi movement was thoroughly pragmatic in nature looking to ease the plight of European Jewry and combat assimilation. Writing in 1899 Reines explained:

> Zionist ideology is devoid of any trace of the idea of redemption…In none of the Zionists' acts or aspirations is there the slightest allusion to future redemption. Their sole intention is to improve Israel's situation, to raise their stature and accustom them to a life of happiness.... How can one compare this idea with the idea of redemption (quoted in Ravitzky, 1996: 33-34).

This divorce of all meta-historic symbolism from Zionism, served to portray the movement in a manner non-threatening to the religious establishment of the day. Cast in such a light, the secular authority of the proposed state may be understood through the previously established models of Maimonides, Nissim of Gerona and Abravanel. Basic legitimacy may be given to the secular leaders of the proposed state consistent with Maimonides' category of the irreligious kings of Israel.[24] Furthermore, they may be seen as serving a fundamental

[23] An acronym for *Merkas Ruchani* – literally "Spiritual Centre".
[24] See section 3.5.3 *supra*

pragmatic need of security according to Nissim of Gerona's model of dualism. According to Abravanel the legitimacy of the regime would be relative to the sum of constraints of power imposed upon leaders and officials therein. Thus, Reines' view results in no substantial change to the archetypal models explored in this study. However, It is in relation to a messianic conception of the state that new criteria for understanding and legitimising secular rule are found.

A second branch of religious Zionist thought emerged through the writings of Rabbi Isaac Kook. This new understanding conceptualised the Zionist cause and the state it sought to build as a vital component of bringing about a messianic age. Kook understood the Zionist movement to be an instrument of divine direction in history and called upon religious Jews to acknowledge its full significance (Hazony, 2004: 98). In contrast to Reines' pragmatic political model, the starting point of Kook's ideology was mystic, drawing upon the *kabbalistic* branch of Jewish teaching. For medieval rationalists like Maimonides, the messianic era represented a return to Jewish political life with sovereignty in the biblical land of Israel leading to full religious revival. Conversely, the mystic traditions drawn upon by Kook conceived of eschatological redemption in terms of bringing harmony to a metaphysical order. Within this system changes in historical reality are to be understood as a reflection of a move towards greater divine unity (Ratzabi, 2008: 116). Borrowing from Hegel's understanding of historical evolution, Kook conceived of a divinely led dialectic with an ultimate messianic synthesis. As the first Chief Rabbi of Palestine, serving from 1921 until his death in 1934, Kook became the focal point of the Religious Zionist movement effectively marginalising adherents to the pragmatic approach that had founded Mizrachi (Hazony, 2004: 98-100).

6.5 Kook's Zionism

In their introduction to their investigation of Kook's thought, Kaplan and Shatz (1994: ii) emphasise the fact that the diverse and eclectic work of Kook rests upon a unifying understanding that all of physical reality has a divine source. This "principle of unity" is claimed by Kaplan and Shatz to be "the root of all else in Rav Kook's thought." In truth, Kook is not the first Jewish thinker to accept this understanding, he is however unique in his willingness to take it to its logical conclusion. For Kaplan and Shatz, the foundation of Kook's significance lies in his belief that "since all things derive from one divine source, all opposition, discord, and conflict are illusory; in the profoundest vision of things, all reality is one and unified" (quoted in Singer, 1996: 10). On one level this understanding translates to a broad tolerance as all ideas and modes of cultural expression are seen as representing some aspect of divine truth. Moreover this results in a dismissal of all theoretical models that claim to be complete in themselves. In Kaplan and Shatz's words Kook understands truth as "too great, too rich, and too multifaceted to be grasped or exhausted by any one particular theory" (Kaplan & Shatz, 1994: 4). It is precisely this principle of unity that is said to allow Kook to negate any real distinction between secular and religious agents and domains.

A distinction is drawn between the agenda of Kook in approaching secular knowledge and that of medieval Jewish thinkers. In contrast to the latter, it is claimed that Kook is not

interested in “synthesising or harmonising truth claims made by Judaism with truth claims propounded in secular works.” (Kaplan & Shatz, 1994: 5). Instead, for Kook the chief religious challenge was in developing a “controlling vision” allowing “all things” to be seen as both holy and “fitting into a teleological scheme.” Thus Kook’s work and outlook is rooted in a need to fully appreciate the significance of the supposedly mundane from the perspective of a greater divine design. In Kook’s own words the primary task of religious thinkers *vis a vis* secular models of thought is to “view the profane through the looking glass of the holy” (quoted in Singer, 1996: 12). In achieving such a goal, exposure to cultural diversity is seen as essential in order to develop and stimulate a broader vision of the divine. This openness towards an array of thought, writing and performance is a dramatic break with the rabbinic consensus of Europe at the time, which permitted such endeavours only insofar as they directly advanced a clearly identified religious goal.

At the same time Kaplan and Shatz (1994: 5) acknowledge the limited application of this principle by Kook himself who is said to have “gleaned his secular knowledge in a relatively casual and unsystematic way: from reading periodicals, studying selected digests, and conversing with individuals who were more at home in secular thought than he was”. Rather, the predominant function of Kook’s openness was to allow at last for a divinely ordained role for secular zionists. Indeed the blatant rejection of the tradition and its divinity on the part of the Zionist movement’s leadership simply could not be countenanced by other religious thinkers. Beyond merely accepting the role of secular and anti-religious actors, Kook is seen as having incorporated them into a larger messianic vision of Zionism. In this regard, a broader context of Jewish messianism particularly strong in the 19th century was vital to Kook.

6.5.1 Messianic Precursors

Despite the absence of explicit reference to a messiah in the Hebrew Bible, Waxman (1987: 175) notes that eschatological belief in the redemption of the Jewish people became a vital component of faith in the Talmudic period. Indeed, the Talmud abounds with speculative discussion over the nature of the *Mashiach* (lit. the anointed) – the messiah said to be a descendent of the biblical King David. Indeed, the final chapter of the Tractate of Sanhedrin of the Babylonian Talmud is dedicated to the topic of the messianic age. The key value that messianism came to play in Jewish religious belief is reflected in its placement as one of the thirteen foundational beliefs of Judaism listed by Maimonides.

Speculation around the timing of the messianic arrival became a recurring pursuit throughout the centuries for communities suffering through particularly adverse conditions. Already the talmudic sages R. Shmuel Bar Nachmani and R. Yonatan (B.T. Sanhedrin 97b) as well as Maimonides had explicitly forbidden attempts to calculate the timing of messianic arrival. Nevertheless, such pursuits remained a feature of Jewish life throughout Europe (Waxman, 1987: 176). Of relevance to the state of 19th century questions of Jewish nationalism was the widespread belief that the Hebrew year 5600 (1840) would be marked by the arrival of the *Mashiach.* Underpinned by apparent roots in the Jewish mystical tradition (*Kabbalah*) and its chief work the *Zohar,* this belief spread quickly in communities throughout Europe, Asia and

Africa (Katz, 1983: 310). In anticipation of this momentous event the students of Rabbi Elijah of Vilna (the Vilna Gaon) journeyed from Lithuania to the cities of Safed and Jerusalem in Palestine. Waxman (1987: 176) explains that this act was supported by their teacher, the Gaon, who intended to make the pilgrimage himself. The approval of one of the leading religious scholars of his generation is indicative of the authoritative air given to the belief of 5600 as the year of the Messiah.

A noteworthy precursor to the messianic understanding of Zionism was Rabbi Zvi Hirsch Kalisher (1795-1874). As a Polish-born *halakhic* sage, Kalisher broke with much of Eastern European orthodoxy by refusing to reject modernity out of hand. A believer in the redemption of 1840 Kalisher wrote to Anselm Mayer Rothschild (the head of the Frankfurt branch of the Rothschild family banks) asking for financial assistance from the family in his messianic endeavours. Most significantly, Kalisher's messianic understanding was rooted in a natural process of redemption driven by human agency. Indeed writing to Rothschild he claimed:

> No one should think that the redemption of Israel and our Messiah, whom we await each day, will arrive through God's sudden decision upon Earth saying to His people, "Go out," or that He will suddenly send His Messiah from Heaven…The beginning of the redemption will be through natural causes and by the will of the governments to gather some of the dispersed of Israel to the Holy Land...Then, when many of the dispersed of Israel will be in the Holy Land and Jerusalem, the Merciful One will comfort us to bring about for us complete redemption and everlasting happiness (Kalisher, 1964: 211-212).

Here, Kalisher describes a process led by human intervention. Starting with international consensus on Jewish immigration to Israel that will itself elicit a Divine response. Defending his position Kalisher later cites the 13th century sage Nahmanides' comment on Song of Songs 8:12 where the same redemptive process is outlined (Waxman, 1987: 187).

These sentiments were echoed by Kalisher's younger contemporary Rabbi Yehuda Alkalai (1798-1878). Writing in Ottoman controlled Sarajevo, Alkalai similarly understood redemption to be a multi-staged process dependant upon human volition. Based on this belief, Alkalai called for the establishment of a tithe to be established upon the entirety of the Jewish diaspora in order to repair Jerusalem as preparation for the messianic arrival. This was to be complemented by an initial *aliyah* (immigration to the holy land) of 22 000,[25] while Alkalai called upon all Jewish families to send one child to Palestine to lay the ground work for messianic arrival. The significance of 1840 was maintained by Alkalai, even after widespread disappointment set in when redemption did not arrive. Responding to this disillusion, he instead claimed that 1840 marked the beginning of a century of redemption realised in stages. The key feature of this process would be the progressive return of Jewish life to biblical Israel from the corners of the world.

In delineating this approach Alkalai drew upon the Talmudic tradition of two messiahs. While the ultimate redeemer was to be a descendent of King David (*Mashiach ben David)* the

[25] This figure is based upon the Talmudic teaching that the Divine Presence (*Shechinah)* does not rest upon a population of less than 22 000 (Waxman, 1987: 189).

Talmud in the Babylonian Tractate of *Sukkah* 52b[26] also discusses the role of another redeemer *Mashiach ben Yosef* (The anointed descendent of Joseph). This latter messiah is said to play a lesser role in preparing the world for ultimate redemption before giving way to the descendent of David as the final source of deliverance. Though insufficiently expounded upon in the talmud, this teaching of two messiah's served as an important basis for an elongated and multi-faceted redemptive process for Alkalai (Waxman, 1987: 181).

Addressing the ban of the Three Oaths in *Ketubot* 111a, both Kalisher and Alkalai insisted that no "rebellion against the nations of the world" was to take place. Instead, the Jewish return to the holy land was to unfold with the approval and assistance of the international community (Waxman, 1987: 180). It is noteworthy that in writing to the Rothschild family, Kalisher's request was for the purchase of a large portion of land to be given to Muhammad Ali, the Egyptian ruler who then controlled Palestine, as compensation for land in biblical Israel to be given to Jewish immigrants. The chief legacy of both thinkers for religious Zionism post-Herzl lies in their emphasis upon messianic redemption as a natural process achieved through human agency. In truth, neither envisioned that the agents involved would be secular Jews who did not believe in the messiah; nevertheless their overall approach served as an important precedent for Kook and others.

6.5.2 Messianic Zionism

At the onset it must be noted that the role of Kook's son, Rabbi Zvi Yehuda Kook as his father's chief disciple, confidant and interpreter has led to the appropriation of Abraham Isaac Kook's work by the radical *Gush Emunim,* (Block of the Faithful) movement led by his son. This movement came to prominence following the 1967 Six Day War and subscribes to a belief in settling the Occupied Territories as a divinely mandated obligation in order to ensure the coming of the messiah. The spiritual home of the *Gush Emunim* movement is *Yeshivat Mercaz Harav,* the religious seminary headed by both Abraham Isaac and Zvi Yehuda Kook. Thus, there is great difficulty in extricating the thought of the father, from the movement of the son. Moreover attempts to isolate and apply academic standards to Abraham Isaac Kook's thought such as the major Hebrew study of Benyamin Ish-Shalom in 1990 and the work of Kaplan and Shatz (1994) published by New York University Press have been largely condemned by this branch of the contemporary religious Zionist camp (Singer, 1996: 8, 13). However, it cannot be claimed that Abraham Isaac Kook did not hold the beginnings of the state to be a part of a divine messianic process. Indeed, writing in 1920 Kook stated:

> We are invited to a new world full of supernal splendour, to a new era that will surpass in strength all the great eras that preceded it. The entire people believes that there will be no more exile after the redemption that is ***presently commencing***, and this profound belief is itself the secret of its existence, the mystery of God revealed in its historical saga, and the ancient tradition attests to the light of its soul that recognises itself and the entire genealogy of events until the last generation, a generation longing for imminent salvation (Kook, 1993: 185, emphasis added).

Commenting on Kook's writings, Singer (1996: 14) notes his emphasis upon a multifaceted redemptive process as inherited by Zvi Hirsch Kalisher and Yehuda Alkalai. Indeed, it is never

[26] See also Jerusalem Talmud *Sukkah* 5:2

asserted that the messiah has in fact arrived, rather only that the state marks the beginnings of a larger process. This is contrasted to the adherents of the messianic cult within the *Lubavitch Hasidic* movement which perceives of the messianic arrival as a single transformative event with the group's proclamation "we want *Mashiach* now". It is noteworthy that this movement also believes that human action can bring about the redemption. However, instead of political deeds the *Lubavitch* movement emphasises *mitzvot* (religiously mandated deeds of worship) such as the donning of phylacteries and the missionisation of irreligious Jews as the means for bringing about the messianic era. Conversely, adherents of messianic Zionism relate to the phrase used to describe Israel in the official prayer for the welfare of the state, "the first flowering of our redemption." (Waxman, 1987 : 184).

According to Zvi Yehuda, his father's teachings are centred upon a vision of the State of Israel as a beginning of the messianic era. Here issues of sovereignty and territory are seen as definitive while the moral character of the state is largely ignored (Waxman, 1987: 182). In this conception the entirety of the state and its institutions are to be understood as intrinsically holy "without any blemish at all," Moreover even the state's "government and army are holy" in and of themselves (Z.Y. Kook, quoted in Singer, 1996: 14-15). Here the return of Jewish national life within the borders of biblical Israel is seen as definitive proof of God's guiding hand in history signifying the start of the messianic era. This steadfast conviction is echoed by other leading messianic zionists. Indeed, Shlomo Aviner, rabbinic leader of the religious West-Bank settlement Bet-El writes "we affirm the absolute certitude of the appearance of the redemption now. Nothing here is in the realm of the secret or hidden." (Aviner, 1975: 63).

6.5.3 The Sanctity of Biblical Land

Schwartz (2006: 68) expounds upon two understandings of the role and sanctity of the land in religious Zionist thought. The first (I) is an instrumental approach viewing the land as a fundamentally mundane entity. Instead biblical Israel serves only as the location allowing for the full realisation of *halakha* and holds no metaphysical meaning. Additionally, the land was also perceived as serving as the location of a cultural and religious renaissance. Here the influence of 19th century nationalism is emphasised by Schwartz (2006: 68) who explains:

> Those who espoused this approach…saw the motherland (*moledet*) as an important factor in developing a *volksgeist*. To them, the advantage and importance of the Land are mainly instrumental, and are measures inasmuch as they foster a connection with the Jewish nation. This connection is first and foremost the realisation of *halakha.*

This instrumental approach is contrasted to a second understanding (II) rooted in ontological and essentialist understandings of the land. Followers of this approach regard the land as intrinsically holy from a mystical or metaphysical perspective. Importantly the land is presented as an independent being, holding a will of its own. The combination of the land's "independent mystical quality" (*segulla)* with the "national particularity" of the Jewish people *(seggulat am yisrael)* is seen to bring about a special meta-historical result. Thus, Schwartz (2006: 68-69) explains that this understanding starts at the apex of the instrumental understanding.

Commenting on this second conception, Tal (2014: 144) outlines a transition from a holiness of time (the era of redemption already envisioned by Alkalai and Kalisher) to a holiness of space. The result is that the biblical land of Israel becomes fetishised as the vehicle for redemption. The notion of holiness of the land, a talmudic principle based upon the understanding that only certain *mitzvot* could be performed therein,[27] is seen by Tal to have morphed into a view of the land as the incarnation of "meta-historical holiness." A reinforcing component of this view is the role of biblical passages and locations such as the patriarchal burial site of Qiryat Arba – Hebron. Indeed, after the Bible in Genesis 23:24 records Abraham purchasing the site it is reinforced that the "field, and the cave that is therein, were established to Abraham as a fixed possession." Tal (2014: 145) notes that such biblical roots serve as a means of transforming the need to control the land from a theological principle to a "practical, political necessity." A key issue in this regard is whether the conquest of the biblical land of Israel is to be understood as a divine commandment. The 13th century biblical commentary of Moses Nahmanides serve as an important precedent for a claim in the affirmative (Tal, 2014:144-146). Writing on Numbers 33:53-54, Nahmanides claims that God's call for the children of Israel to enter the land of Canaan constitutes an eternally relevant directive to conquer and control the territory constituting biblical Israel. Moreover, Nahmanides asserts that this is coupled with a prohibition of leaving the boundaries of the land "We should not leave it in the hands of any other people or allow it to lie waste" (quoted in Tal, 2014: 145). In March 1979, the Council of the Chief Rabbinate led by Ashkenazi Rabbi Shlomo Goren ruled that there does in fact exist a prohibition to withdraw from any of the territories comprising parts of the biblical Holy Land once they are under Jewish control. This ruling was based upon this statement of Nahmanides, as well as an interpretation of Deuteronomy 7:2 which prohibits the Children of Israel from making covenants with the Canaanites. Despite public opposition from then-Sephardi Chief Rabbi Ovadia Yosef, this decision nevertheless serves as a vital foundation for the *Gush Emunim* movement (Tal, 2014: 146).

6.5.4 Messianic Role as Grounds for Legitimacy of Secular Authority

Significantly, writing in a post-1967 Israel, Zvi Yehuda contended that the messianic process had progressed since his father's death prior to the state's establishment. In particular the conquest of Jerusalem and the West Bank is seen as a form of "spiritual liberation" for the land itself. Rooting himself in an understanding of messianic arrival as a human driven process Zvi Yehuda further gives quantifiable measures for success in the socio-political context of land-controlled, farms-planted and settlements-built. Thus, in a radical departure from the emphasis of traditional European *Yeshivot* upon Torah study as the sole-worthwhile pursuit; Zvi Yehuda called upon his students to leave the seminary in order to serve in the army and settle the land. Indeed, he asserts that "leaving the yeshiva to settle the land of Israel is not a waste of Torah study time, but Torah itself." A relationship of mutual-dependance is thus prescribed by Zvi Yehuda who claims "Torah, war, and settlement are three sides of a triangle. And how incredibly privileged we are to be assertive in all" (all quoted in Singer, 1996: 15). This entails not only an ever-increasing drive to 'build-up' the promised land, but a divine

[27] Principally agricultural regulations such as that of the *Shemitah* (Sabbatical) and *Yovel* (Jubilee) years.

prohibition to undermine this progress through ceding territory. It is through this belief that Waxman (1987: 185) differentiates the radical messianism of the *Gush Emunim* from more moderate religious zionists:

> The radical messianists not only believe Jews must participate in the messianic endeavour- all religious Zionists believe this; the radicals also that if Jews do not take every opportunity available to them to establish Jewish sovereignty over all of Eretz Israel, they are defying Judaism and impeding the fulfilment of the messianism.

Moreover, as the secular state's validity derives only from its role in the messianic mission any action taken by its government to undermine the messianic process must be construed as illegitimate (Waxman, 1987: 186). This view may be seen as advancing a new understanding of the role of secular authority, unprecedented in the works of Maimonides, Nissim of Gerona and Abravanel. Here a metaphysical divine role for Jewish secular leaders is advanced. Two consequences follow from this position, the first is the provision for a far greater role for the State's non-religious government than is granted in any of Maimonides non-ideal models, or even Nissim's dualism. For the *Gush Emunim* secular authority serves not only to correct imperfections of a divine legal system (as is argued by Nissim of Gerona),[28] but instead it functions as an agent of a divine plan for historical destiny. Here the secular Zionist movement and the government of the state it produced are validated as agents of the divine, perhaps best defined as unwitting messianic emissaries. What is more, Nissim of Gerona's understanding of secular rule and policy complementing the divine law is lost as all is consumed within the framework of an impending messianic moment. Similarly Abravanel's respect for a regime as the product of its constraints on leadership is sacrificed in the name of an unfolding utopian vision, one which he himself might see as an ideal. Moreover, By rooting legitimacy in this divine mission, Zvi Yehuda divorces authority from popular consent. Thus, the role of the Israeli electorate as the basis for the authority of the Knesset is seen as immaterial. Rather, proponents of this view are seen to dismiss the role of democracy and popular consent as an inherently "non-religious" value (Tal, 2014: 137). Such a view is radical even in terms of Maimonides who acknowledges the political legitimacy of even the idolatrous Kings of Israel,[29] who are seen enjoying consent of the people as a ground for legitimacy, despite failing in their divine directive (Ravitzky, 1998: 28).

In positioning the rightful authority of government as agents of a certain divine plan, the followers of this brand of radical messianism are unable to accept the return of territories won in Modern Israel's wars. Indeed, the Sharon administration's decision to unilaterally withdraw from Gaza in 2005 may be seen as representing a particular moment of crisis for this branch of radical messianic zionists (Rynhold & Waxman, 2008: 11-37). The failure of the government to abide by their supposed messianic directive is a challenge that continues to erode the faith placed in secular leadership by this bloc.

[28] See Section 4.3 *supra*
[29] See Section 3.5.2 and footnote 20 *supra*

6.5.5 Alternative Readings of Kook

While, the *Gush Emunim* identify themselves as the successors of Abraham Isaac Kook's teachings, this claim is contested by many. In particular, Gellman argues that Kook's understanding of the beginnings of the messianic era were rooted in a spiritual and moral understanding of the state's potential, an ideal completely divorced from territorial ambitions (Singer, 1996: 17). This conception is shared by Warren Harvey who stresses Kook's description of the restoration of Jewish national life as "a return to Mount Sinai" (quoted in Singer, 1996: 16) This claim is understood by Harvey to mean that the inhabitants of the state were to "act in accordance with stricter standards of morality" and were to "enter the land in peace, build it up in peace, and govern it in peace." For Ravitzky (1990: 11-37) Zvi Yehuda is seen as having distorted his father's teachings from the realm of "hope, yearning and deep faith" to a deterministic scheme that does not allow for the prospect of reversal or failures. Thus, Ravitzky (1990: 35) notes the irony of Kook's messianic vision no longer serving as "a critical and normative standard for empirical historical reality, demanding the betterment of its ways." Instead it is contended that the *Gush Emunim* have transformed it into "a protective and sheltering model to justify and defend historical reality as it is." (Ravitzky, 1990: 36). As Singer (1996: 13) explains the tight nexus between Rav Kook, Zvi Yehuda and the *Gush Emunim* has made it immensely difficult to establish Abraham Isaac Kook as a modernist and moderate. As such, Singer (1996: 14) claims that for messianic zionists "Zvi Yehuda serves as a beacon" while for the more pragmatic Zionism of the modern orthodox "he stands as a stumbling block."

6.5.6 Other Religious Zionist Models

Tal (2014: 146-156) contrasts the "political messianism"[30] of the *Gush Emunim* with a more limited view of the state, held by many other religious zionists. This opposing view places emphasis upon the role of "rational and socio-ethical self-restraint" in relating to the sanctity of the land. Moreover, vocal proponents of this outlook maintain that such an approach is precisely that as is demanded by the *halakhic* tradition. Thus, peace-negotiations premised upon ceding occupied territory are accepted by this branch of religious zionists, who place emphasis upon historical rather than "meta-historical self-understanding".

In particular the *Oz Veshalom-Netivot Shalom* (Paths of Peace) movement founded in 1975 is seen as a leading group within this second trend of religious Zionism. Followers maintain belief in the sanctity of the land, but assert that territorial boundaries are to be understood as historical realities brought about by "political, strategic as well as moral considerations" thus they are subject to necessary transformation. Leaders of the movement including Uriel Simon, Moshe Unna and Yosef Walk promote the role of ethical considerations seen to be rooted in the spirit of the Torah in negotiations. Indeed, these are seen to take precedence over even military criteria in establishing a lasting peace as it is asserted that a prolonged state of imposed rule over Israel's religious and ethnic minorities only erodes the state's democratic, ethical and Jewish identity (Tal, 2014: 148-156).

[30] A term borrowed from Simon Dubnow's 1958 work *Nationalism and History* (Waxman, 1987: 191)

Outside of the state, other models of orthodox religious Zionism have developed. Significant in this regard is the role of American Modern Orthodox leader Joseph B. Soloveitchik who lent support for the Jewish state in 1956. In so doing Soloveitchik broke with the stance of his family, a distinguished rabbinic dynasty in the Lithuanian school of Talmudic analysis. For Soloveitchik the emergence of the state was a sign of divine intervention, a godly "knock on the door" demanding of human attention (Soloveitchik, 2006). However, unlike others, Soloveitchik did not equate this with the emergence of the messianic era. Instead, it was a significant moment in God's role in history, but not more. Indeed, Schwartz (2006: 63) characterises Soloveitchik's approach through the insight that mankind is fundamentally unable to comprehend the "all-encompassing framework of being." This appraisal led Soloveitchik to spurn attempts at achieving partial understandings of the divine plan for history, believing them to be fundamentally misguided. In this regard (Schwartz, 2006: 64) compares Soloveitchik to Wittgenstein's early thought, in that he does not deny the possibility of a metaphysics. Rather, it is asserted that even if metaphysics does exist it is beyond human comprehension. Soloveitchik instead followed the path of Religious phenomenology as established by Rudolph Otto, Max Scheler, and Reinhold Niebuhr. Bound by the limits of human perception Soloveitchik is willing to contend that the arrival of the state and the protection it provides for Jewish life[31] is of some type of divine significance. But to claim knowledge that it is in fact the dawn of the messianic age is seen as imprudence (Schwartz, 2006: 64-66).

Soloveitchik's rejection of metaphysics is a radical departure of the mainstream religious Zionist understanding. Indeed, Schwartz (2006: 67) describes the thrust of both Kooks' thought to be a "metaphysical, causal, and teleological historical philosophy and historiography." History in this regard is seen as a "progressive march towards redemption." Thus, reflecting on the European Holocaust, Zvi Yehuda Kook understood it as serving a vital role in the historical advancement. The three chief results of the Holocaust for Zvi Yehdua as summarised by Schwartz (2006: 67-68) are:

> (1) Disengagement from Foreign Lands. Since the Jewish people refused to leave the Diaspora, God forced them to.
>
> (2) Training of the refugee-survivors for the task of redeeming the Land of Israel. The almost suicidal struggle of the ghetto uprisings in the Holocaust was reintroduced (successfully this time) in the under ground struggle which led to the establishment of Israel.
>
> (3) A cathartic event which ripened nationalist sentiment and create awareness of national psychological characteristics. The Jewish people realised that its "inner life" continues to exist even under threat of annihilation.

While such explanations were widely accepted by a large proportion of religious zionists, these were precisely the type of metaphysical speculations that Soloveitchik rallies against.

Schwartz (2006: 69) identifies this rejection of grand meta-historical readings as a chief reason why his thought was never internalised into the consciousness of the religious Zionist

[31] The phrasing employed by Soloveitchik is that Jewish blood is no longer "*hefker*"- A *halakhic* legal term meaning free for the taking, usually only applicable to lost, ownerless property.

movement in Israel. Soloveitchik's refusal to provide the comfort of certitude of an unfolding messianic age ensured that this thought was in some way foreign to a generation of religious zionists raised on Kook's world view. Moreover the fact that despite supporting the modern state of Israel, Soloveitchik nevertheless personally chose to stay in the United States ensured that he would not be seen as a direct contributor to the Israeli dialogue in the same way as the Kooks. This was further amplified by the fact that the thrust of his philosophic work remained "the ethos of the individual living under Jewish law" (Hazony, 2011: 100). Thus, Soloveitchik, considered a giant of Torah knowledge, was proudly looked upon as a religious supporter of Zionism, although his teachings were never fully internalised in the same way. Ultimately, Schwartz (2006: 67-69) notes a reversal in this trend in the recent past as thinkers within the religious Zionist movement have sought a mechanism by which territorial concessions and an end to occupation and settlement policy can be understood. Indeed, the respect afforded to *halakhic* determinants of legitimacy of secular rule and not messianic conceptions ensures that the views of Soloveitchik, a *halakhist par excellence* are entirely compatible with the established models of Maimonides, Nissim of Gerona and Abravanel.

6.6 Eliezer Berkovits

A final unique response to the rise of Zionism, relevant to this study is the model of Eliezer Berkovits (1908-1992). As is noted by Hazony (2011: 2), through a long career, Berkovits penned nineteen books on a diverse range of subjects, covering "the rabbinate, the Holocaust, Zionism, the status of women in Judaism; the emergence of the Eastern- influenced, drug-experimenting counterculture of the 1960s…and the failure of Israeli utopian movements such as the kibbutzim." Like Soloveitchik, Berkovits' teachings never achieved popularity within the Israeli religious Zionist world. Moreover, unlike Soloveitchik whose thought was definitive for modern-orthodoxy within the US, no such following was ever achieved by Berkovits. However, the past decade and half has seen a renewed interest in his work as potentially offering an innovative approach to modern questions that is still faithful to the traditional sources of *halakha.* This wave has resulted in the republication of many of Berkovits' chief works including *Essential Essays on Judaism* (2001)*,* an initial collection of articles covering the full scope of Berkovits work; *God, Man and History (2004),* Berkovits' systemic account of biblical theology and its implications for law and nationhood; *Faith After the Holocaust* and *With God in Hell* in 2006, Both explorations into the challenge of theodicy for Jewish religious belief; and *Not in Heaven (2010),* Berkovits' examination of the nature and function of the *halakhic* system.

6.6.1 Foundations in Consequence-Based Ethics

Hazony (2011: 115) explains that the starting point for Berkovits's approach to Zionism is an understanding of morality rooted in deed and consequence. While, conceding that Berkovits does not ever provide a systematic account of ethics separate from *Halakha,* nevertheless Hazony (2011: 63) asserts that the bulk of his writings "are infused with a distinctive set of assumptions that amount to a systematic rejection of the Kantian style in ethics." Specifically it is the role of Kant's cognitive imperative, which evaluates morality in terms of intention that

Berkovits argues against. In reality, this approach is seen as underpinning the vast majority of Jewish ethical writing in the 19th and 20th centuries. Yet, in formulating his own moral vision Berkovits draws attention away from attempts at identifying a system of absolute intentions to guide all actions. Rather, Hazony explains that "what is important is not intentions, or even "actions" as such, as much as the consequences of action." Thus, for Berkovits the values elucidated in the prophetic and rabbinic tradition serve as a framework for a desired state of life achieved through human action. Expounding on these ideas in his 1959 work *God, Man and History,* Berkovits (2004: 138) explains:

> Judaism is not an "idealistic" or "spiritual" religion, but a human one. It is a religion for the whole of man. It aims at relating life in its entirety to God. It is not, therefore, so much a religion of creed as it is the religion of the deed on earth. The intellect or the soul may be satisfied with the creed; the whole man, however, may serve God only through the deed.... However, in order to be, the deed must be effective; and it must be so in the place where it belongs—in the external world, in history (Berkovits, 2004: 137-138).

An important result of this consequence-based ethics is a move beyond personal action to that of the collective as a realised moral order is dependant upon more than the sum of individual decisions. Rather the focus is upon the ethical ramifications of societal conduct. This perspective represents a further break with the Kantian tradition, which frames morality around the autonomous choices of the individual.

In truth, Berkovits notes the significance of individual actions in achieving a realised order of moral worth. However it is maintained that this is not enough to establish a moral society. Instead, attention is drawn to the fact that even the Jewish ideal of the *tzadik,* the wholly righteous individual, is forced to act within the parameters of his society:

> A man may be a perfect *tzadik* with nothing but good deeds to his credit, yet he cannot but share in the fate of the nation to which he belongs. And if the nation as such lives foolishly and is unable to manage its affairs competently and well, all will suffer within the nation, even the innocent; as all will benefit—even those whom you may think that they do not deserve it—from a just and honorable administration of the group or the state (Berkovits, 1945: 142, quoted in Hazony, 2011: 106-107).

Thus, for Berkovits Judaism in its truest form is a matter of collective action and not individual creed. In Berkovits's (2004: 137) words "For the deed to be effective, it must not remain the act of an individual, but must become that of a community."

The conclusion reached by Berkovits is that humanity's moral advancement is not dependant upon a new ethical doctrine, but instead by the exemplary actions of a society committed to the realisation of an ethical order. It is in this light that he conceptualises the notion of the Children of Israel as God's "treasured people…a kingdom of priests and a holy nation"(Exodus, 19:5-6).[32] For him, the central task of the people is to create an archetypal moral society to be replicated by others. Specifically, concentrating on the notion of "holiness" (*Kedusha)* in his work *Man and God: Studies in Biblical Theology* (1969: 245-246) Berkovitz utilises the full gamut of its usage in the Hebrew Bible to understand its meaning. For Rudolf Otto holiness is synonymous with the impenetrable distance of God from man-the *Mysterium*

[32] The phrase "chosen people" does not actually appear in the Bible.

Tremendum as explained in his 1917 work *The Idea of the Holy.* In contrast, Berkovits locates holiness in ordinary life, as the "dedication" of the mundane human experience to divine connection (Berkovits, 1969: 245-246). The task of living as a holy nation is thus one that requires full dedication of a people's pursuit to moral concerns. It follows that the realm of the spiritual cannot be limited to the study hall and synagogue. As Hazony (2011: 119-120) explains "holiness is not achieved, in Berkovits' view, by ignoring profanity and celebrating its absence, but by focusing all the areas of public and private life on that which is 'right and good in the eyes of the Eternal.'" What is more, it is asserted that:

> If an exilic Jewish community is without control over such far- reaching, genuinely existential concerns as defense and economics, it has assuredly been rendered flatter, less representative of the human condition, and therefore less capable of fulfilling the central aims of a holy nation. It is, literally, less holy (Hazony, 2011: 119).

This project is one that is beyond the grasp of the individual, family or even community, instead its realisation is dependant upon active involvement in all aspects of corporate life. However, such a pursuit relies upon the existence of an independent people, responsible for its own destiny. For Berkovits, the distinction between community and nation is precisely what the Zionist movement provides – sovereignty.

6.6.2 Exile and the Religious Need for Self-Determination

The need for the existence of an exemplary people derives from Berkovits' emphasis upon deeds as definitive for the establishment of a moral order. Individuals acting in isolation are not believed to be enough for this realisation, nor are entities without control over all aspects of human life including economic and political issues. At the same time Berkovits (1973:140) discounts the notion of universalism, claiming that "mankind is not a group; it is not a historical entity." Rather, humanity as a whole is conceived of as "an idea, an ideal." Ultimately, it is explained that it is the dream of Judaism to build an ethical order within the "all-comprehensive" grouping that is humanity, while "the instrument of its realisation in history is the people." Through this understanding Berkovits' conception of Judaism is one that does not greet the arrival of the state as an obstacle to a long history of tradition and observance in exile. Instead, the establishment of modern Israel is seen as an opportunity to return to the *raison d'etre* of the Hebrew faith of the Bible.

Many religious thinkers, including those within the reform community as well as the German orthodox leader Samson Raphael Hirsch, rejected the Zionist movement as undermining their understanding of the Hebrew Bible's mission. For them, the notion of serving as a "light unto the nations" (Isaiah, 49: 6) required the Jewish people to be dispersed throughout the world in order to interact with others in building a moral vision. For Berkovits such a belief was fundamentally flawed as communities in exile lacked the experience of dealing with the most difficult questions of sovereign life – those of societal structure, systemic inequality, macro-economic and environmental concerns, the use of force and self defence balanced against human life and dignity. The defining issues of modern life are fundamentally beyond the realm of the isolated community in exile (Hazony, 2011: 120).

Outside of the religious world, other leading interpreters of the Jewish condition held suspicions of the Zionist movement. Indeed, Martin Buber, Frans Rosenzweig and Hermann Cohen all denied the value of sovereignty asserting that it denied the universal moral aspirations of the Jewish tradition. For Cohen, Jewish exile in the first and second centuries marked the beginning of a different type of messianic history allowing the Jewish people to become an "entirely universal nation". Writing in 1916 in response to Jewish nationalism Cohen (1971: 168) remarks:

> We are proudly aware of the fact that we continue to live as divine dew among the nations; we wish to remain among them and be a creative force for them. All our prophets have us living among the nations, and all view "Israel's remnant" from the perspective of its world mission.

This view is based upon a reading of Jewish history as a process of transformation from an isolated local historical entity to a far more important state of serving as a "divine dew" capable of ensuring collective progress "among the nations". For Rosenzweig (1985: 331) this was expressed through the notion of having achieved "eternity within the midst of time". Here it is asserted that Jewish dispersion amounts to a freedom of the mundane pursuits inherent in running a state, allowing for the nation to strive for higher "eternal" models of existence. In contrast, European nationalism's emphasis upon the nation-state is regarded as a chimeric attempt to ensure immortal status through the constant of the fixed collective state. The fallacious nature of this pursuit lies in the constant flux that marks the nation within the arbitrary borders of its territory. Accordingly, Jewish national ambitions amounted to a regression of its destiny, from a stature of a people of "eternal" ideals to one that tries to root itself in a fixed historical entity. Giving up an eternity achieved, for one imagined.

Such claims were rejected by Berkovits who saw diaspora life as fundamentally inhibiting the very spirit of Judaism. Indeed, exile is defined by the "the loss of a Jewish-controlled environment" (Berkovits, 2002: 162). Without sovereignty the religious creativity necessary for Judaism to adapt and flourish is denied, resulting in "paralysis" and "decline" (Hazony, 2011: 133). As Berkovits (1976: 142-143) explains:

> With the loss of national sovereignty, there were no more political problems with a bearing on national survival to confront the Torah.... Judaism was forced out of the public domain into the limitations of the private one. Broad layers of the Torah were thus pried away from the comprehensive life of a normal people, for which they were originally intended. The vital link between Torah and reality was severed in the exile of the people.

Most significantly, this severance is symbolised by the proliferation of legal codes as a primary component of Jewish religious life. Berkovits (2010: 135) goes far to praise the innovative "genius" of the great codifications of Jewish law, specifically Maimonides' *Mishnah Torah.* In truth, he regards it along with the *Tur* of Jacob ben Asher and the sixteenth century *Shulhan Arukh* of Joseph Caro as critical works in the survival of the religion. However, despite their necessity they are regarded as sharp diversions from the original intention of the oral law as a fluid, transmitted and spoken tradition. Such codes became the foremost source of religious guidance, replacing the role of human judgment by individuals forced to grapple with competing values within the tradition. it is admited that these human decisions are difficult in

nature, nevertheless they are said to ensure that the larger spirit of the religion is preserved as its laws are applied to ever changing reality. This meeting of tradition and the fluid realities of life is seen as the essence of religious law, in Berkovits' (2010: 132) words, "halacha is the result of the cooperation between the eternal written word and the timely spoken one." In contrast, codifications represent rigidity as nuance and flexibility is lost. Indeed, this understanding is seen to have guided the talmudic sages from refusing to canonise the oral tradition, until necessity required that its teachings be written down or lost to history. The transformation of oral law into a fixed code which could be studied without reference to all the debates inherent in the tradition is seen as placing "shackles" upon *halakha's "*creative vigour" (Berkovits, 2010: 136). Such are seen as the sacrifices of exile to Berkovits, who believes that the creative period of the Mishnah would be the counter-factual to life in exile.

The transformation of Judaism to a private, communal and codified religion in exile is thus seen as the result of a desperate need to preserve it in any form possible. However, the product is a fossilised tradition, less relevant and less dynamic. As he writes:

> Living authority is always built upon tradition, but as it is alive it can exist only when there is a possibility of an organic evolution in the application of tradition. When, owing to the hard facts of Jewish history, owing to the insecurity of Jewish life, living authority was no longer practicable, and authority had to be transferred to the book, the Talmud, the records of a once-living authority, Judaism had to sacrifice the possibility of organic development; it renounced the great principle of the evolution of traditional teachings. The structure of Judaism became rigid, for it had lost its evolutionary strength (Berkovits, 2002: 157-158).

It is this understanding that leads Berkovits (1976: 141) to claim that with the nation the "Torah, too, went into exile." As is the case for the people, exile is said to represent an emphasis upon survival and self-defence for the tradition itself. Constantly under threat by external influences, and the arbitrary decrees of rulers in the Middle-Ages and beyond, the need to preserve teachings and a way of life becomes the primary focus of Jewish spiritual life. As Hazony (2011: 138) explains "exile necessitates taking extreme measures just to preserve Jewish identity and to maintain the Jews' fidelity to the original dream of the holy nation". Innovation and organic evolution are thus hindered as larger questions of national and political life are abandoned.

It is only the natural challenges that arise for a people in control of their own destiny that allow *halakha* to adapt as a relevant, living tradition. In the absence of these organic confrontations the tradition becomes paralysed. Consequently, the state of the tradition in exile is thus depicted by Berkovits (2010: 131) at the close of *Not In Heaven*:

> because of the confrontation with an essentially non-Jewish reality, halacha is forced on the defensive; unchallenged by an autonomous Jewish reality, Halacha is compelled to remain silent on issues that are vital within the structure of a national civilisation. Notwithstanding, halacha functioned successfully in exile. server the needs of the Jewish people there. But just as exile is an unnatural political and material position for the people, it is an unnatural spiritual condition for halacha. Of necessity, exile saps halacha's creative originality.

More than anything else the European modern period is seen as having left the tradition devoid of confidence. Enlightenment thinking had a unique role in turning reason, previously the

prideful centre of talmudic learning, into an enemy of the tradition challenging even the biblical record. For Berkovits, the enlightenment and accompanying emancipation represented the ultimate sign that religious life without national self-determination had rendered the *halakhic* system impotent and unable to address modern realities. The resulting crisis is described by Berkovits in his 1943 work *Towards Historic Judaism:*

> When, through Jewish emancipation, European Jews entered the circle of modern civilization and experienced the conflict between that new world and their own Jewish world of old, the rigidity which they had taken upon themselves resulted in an inability to adapt, rendering all the important problems arising out of that conflict insoluble. Jews began to share more and more in a life that was rapidly changing, while at the same time they remained in a spiritual and religious world that had lost its capacity to develop. In such a situation, all attempts at reconciliation were doomed to failure (Berkovits, 2002: 158, quoted in Hazony, 2011: 140).

Confronting this seemingly irreconcilable challenge, large numbers of Jewish adherents chose to abandon their faith. Where it survived religion remained a private, communal matter fundamentally uninterested in the larger questions of the day. For Berkovits, merely keeping the faith alive was no longer an option as its decline in exile had reached a watershed moment. Instead, a radical new approach had to be pursued in the form of a national revival in an independent state. Thus, the Zionist project represented the truest hope for both Jewish physical and spiritual survival.

6.6.3 Sovereignty as Renewal

Another area of concern for those weary of the Zionist movement was the inherent danger of nationalism. Here, the Jewish European experience of hardship and alienation as a foreign "other" amidst the collective of the state and its people had inculcated a culture of mistrust for such ambitions. As a young rabbi in Berlin during the rise of the Nazi party, Berkovits was sympathetic to such fears. Responding to them, he asserted that nationalism for its own sake was not a worthwhile endeavour. it is contended in his 1943 work *Towards Historic Judaism,* written in the midst of WWII *"*woe onto us if the degeneration of the exile should lead us to a Hebrew nationalism along the European pattern.... Not every form of *eretz yisrael* is worth the trouble, and many a form could be unworthy of Judaism" (Berkovits, 2002: 171). The envisioned state of Berkovits differed in that it was not to be idolised as an end in itself. Instead, it was conceived as the precondition for a renewed national life built around a moral vision.

It is through this perception that Hazony, (2011: 121) places the thought of Berkovits in opposition to the other dominant branches of religious Zionist thought in his lifetime. Namely the messianic branch led by the Kooks on the one side and the pragmatic justifications of the early Mizrachi movement under Isaac Jacob Reines. In contrast to Reines, Berkovits (2002: 188) acknowledged that the formation of the state in 1948 amounted to a rare moment "In which the unexpected fruits of human endeavour reveal themselves as the mysterious expression of a divine guidance which the heart always knew would come." Yet at the same time he was unwilling to go as far as Kook's determinism, refusing to say that this was in fact the definitive beginning of the messianic process. In this regard, he may be seen as exhibiting a position similar to Soloveitchik. Unlike the others however, Berkovits was willing to insist that

the rich tradition through centuries of communal life in exile was fundamentally deficient. For both Abraham Isaac Kook and Isaac Jacob Reines, the need for sovereignty emerged in response to the necessity of the moment. For Reines it was required to ensure physical survival, while for Kook it was the logical outcome of the dawn of the messianic era. However, Hazony (2011: 125) asserts that neither would claim that such was always the case. Conversely, Berkovits understands sovereignty to be an eternal, foundational requirement for the realisation of the religion itself.

Moreover, Berkovits is differentiated to other trends in religious Zionist writing through his chosen audience. Indeed, both Reines and Kook directed their writings to the orthodox rabbinic establishment as their primary audience. Hazony (2011: 127) explains that "their hopes lay not in convincing a secular Zionist establishment to recognize the religious value of the moment, but in convincing Orthodox Jews to recognize the religious merits in a pre-existing, but hitherto secular, Zionist enterprise." In contrast, Berkovits sought to grasp the implications of the moment for the creation of society built upon a unique system of morality through tradition and national debate.

Furthermore, In placing value on self-determination and not territory itself, Berkovits stands in opposition to the claims of the *Gush Emunim* movement. Indeed, the mere act of Jewish hands holding control over components of biblical Israel is seen as a divine end in itself by Zvi Yehuda Kook. Conversely, Berkovits finds value in the opportunities that come with a people controlling their own destiny. Hence, he maintains that in the generations of Roman occupation following the destruction of the Temple in 70CE, an important degree of Jewish civic-autonomy was still maintained. In this period Jamneh (Yavneh) became the seat of the Sanhedrin and Jewish authority (Berkovits, 2010: 130). During this time *halakha* is described as still functioning strongly, as the reality of hardship under heavy Roman taxation and regulations was responded to with the innovation only possible of a living tradition. Similarly, the situation of Talmudic Babylon is depicted as providing for a vibrant *halakha* even if the obligations dependent upon the land could not be fulfilled. It is only with the onset of the Geonic era and the slow decline in national unity and autonomy accompanied by widespread dispersion that the tradition began to be marked by a defensive and rigid focus. These two eras serve as important models of achieving a vibrant national dialogue of values, totally divorced from specific territorial claims. Thus addressing the Israeli-Arab and Israeli-Palestinian conflicts in the 1970s, Berkovits (1978: 161-162) calls for the "reduction of human suffering, Jewish as well as Arab" to be the defining principle used to decide territorial return.

Hazony (2011: 116-117) labours to highlight the fact that for Berkovits, sovereignty is a minimal condition allowing for a return to many of judaism's key concerns neglected in exile. However, Berkovits has no interest in a "totalist ideal" seeking to give over every aspect of civil life to human rulers driving this project. Rather, as is explained in *God, Man and History* "This kingdom of priests is not a society in which a priestly caste rules over an unpriestly populace in the name of some god" Instead, "A holy nation is a realm in which all are priests. But where all are priests, all are servants—and God alone rules" (Berkovits, 2004: 140-141) Hazony (2011: 117) notes that the chief focus is not the state as controller and director of

actions, but instead upon the society that may flourish with the freedom and responsibility that comes with it. Here we come to Berkovits' key concern as he asserts that the Bible's vision in Exodus 19:6 of "a kingdom of priests and a holy nation" is not "not a theocracy, but a God-centred republic."

In this regard, Berkovits cites the work of Asher Zvi Ginsberg, universally known by his pen name, Ahad Ha'am (one of the people). An established member of the *Hovevei Zion* movement in Ukraine long before Herzl called for the First Zionist Conference, Ahad Ha'am stood in vehement opposition to the Political Zionism of Herzl. In its place a cultural Zionism emphasising the move to Palestine as an opportunity for a Jewish renaissance, was advocated. This was not to take the form of a religious orthodoxy and observance, notions rejected by the enlightened Ginsberg. Instead, the core texts of Judaism were to serve as a basis for a new self-understanding labelled as a "moral renewal" deeply rooted in "Jewish consciousness" (Haivry, 2006: 83). This entailed the preservation and development of a Jewish spirit, in opposition to Herzl's plan which was perceived as offering only a "state of Germans or Frenchmen of the Jewish race," in contrast to such a state for Jews Ahad Ha'am sought a distinctively Jewish state (Hazony, Y., 2006: 366-7). Fighting the plan of Herzl, Aham Ha'am maintained that the only acceptable basis for the Zionist Movement was seen to be a "moral one" rooted in the renewal and development of values to take place within the future state (Ahad Ha'am, 1912: 54-60).

Ahad Ha'am's vision of a cultural renaissance serves as an important model for Berkovits. The key point of departure is that unlike Ginsberg, Berkovits believed that the national debate that would unfold could be one that both utilised and re-energised the traditional sources of *halakha.* Returned to its "authentic partner" – the autonomous life of a nation, Berkovits (2010: 136-7) calls for religious law to once more concern itself with large-scale societal questions. These are to range from the meaning of a sabbatical day of rest in a modern industrialised state that cannot simply be turned off weekly to issues of "social justice, economic honesty, and fairness." Traditional sources are similarly sought as an important component in a societal exploration around issues of labour relations and socio-economic inequality.

Reflecting on the actual role of *halakha* in Israeli society in the 1980s, Berkovits maintained that it had failed to reflectively embrace the challenges posed by the formation of a state. Thus, he claimed that it remained as a definitively protective and fossilised entity of exile, even in the heart of a modern state (Berkovits, 2010: 137). In response a call is made for a new educational philosophy in which traditional texts are taught with an emphasis upon application and relevance to all aspects of life. This further entails the ownership and passionate pursuit of all aspects of study including sciences and law but also the full array of humanities including literature and philosophy.[33] Moreover, the relevance of the tradition to a nation-state and not a community, necessitates that it adapts itself to a wider discourse capable of establishing room for a multitude of views (Berkovits, 2010: 142). Furthermore, Berkovits (2010: 151-170)

[33] Berkovits elaborates on the specifics of such an educational philosophy in his 1971 essay "A Contemporary Rabbinical School for Orthodox Jewry." Tradition, Vol. 12(1).

goes on to outline an agenda of pressing issues demanding rigorous attention if *halakha* is to have relevance in a new national debate around morality and identity. First and foremost is the need to desperately address the legal status of women in tradition as well as promote the role of women as leaders in every aspect of religious and secular life. The disadvantaged status of women in judaism is labeled by Berkovits (2010: 151) as a "disturbing" issue, requiring "immediate and courageous" attention. In truth this was a key issue for the entirety of Berkovits' career and is the topic of his final work *Women in Time and Torah* (1990) as well as his sole *halakhic* work *T'nai Bi'N'suin u'V'Get* (conditionality in marriage and divorce), which sought to rectify the gender power imbalances in Jewish marital law (Berkovits, 2008 [1966]). A further obstacle for religious tradition to overcome is a spirit of ideological fragmentation, which rose from a European divided communal existence where those who disagreed with a comunity could simply be driven out. However, confronting the need for a national dialogue all factions of religious identity are called upon to make room for one another. In particular, the Orthodox hold on matters of civil life in Israel to the exclusion of other denominations is questioned by Berkovits (2010: 161-2) who calls upon the traditional sources to "be stretched" to their limits in order to enhance "unity and mutual understanding." The dismissal of Conservative and Reform rabbinic ordination is further portrayed as simple prejudice. However, beyond merely discarding partisanship Berkovits (2010: 162-167) insists that creative solutions be found to matters of discrepancy between the denominations. Creating a uniform standard for conversion that satisfies the interests of all factions is identified chief area for such innovation.

Directly addressing the question of *halakha's* compatibility with democratic norms, it is asserted that at this point there is an irreconcilable conflict between the two (Berkovits, 2010: 170-179). Specifically, calls to impose *halakhic* rule upon the entirety of society are rejected as against the very nature of a religion created through a freely-accepted covenant with the divine. Consequently, those who seek to find their place in a democratic society of Jews, by utilising its institutions to impose religious law on all are targeted as undermining the very nature of both democracy and Judaism. Instead, Berkovits (2010: 177) argues that a democratic Jewish society must be a secular society, and thus its laws, regardless of their point of origin, must remain secular in nature. Nevertheless it is maintained that *halakha* may yet serve as a valuable source of insight and evaluation in this national debate. However, to have such relevance it must once more return to a vibrant living tradition capable of addressing large-scale societal questions and adapting to the realities of a modern industrial state (Berkovits, 2010: 178-179).

In focussing upon national potential, Berkovits moves beyond the minimalistic model of accepting secular authority to a renewed vision of returning to his perceived central vision of Judaism through it. At no stage does he suggest the imposition of *halakha* on society. Yet through the national self-determination gained in this secular state, it is believed that *halakha* can once more regain its former vibrancy lost in the diaspora. A new partnership is thus seen, in which religious authority does not merely acknowledge the role of secular rule. Instead, it seeks to innovate and revitalise itself so as to be able to serve a secularly led national dialogue around identity and values.

Section 7: Conclusion

This study sought to understand the tension between religion and state within Jewish tradition in light of historical realities, Jewish philosophy and modern religious responses. The value of this question is given practical relevance in the case of contemporary Israel as the state has grappled with tensions over the balance between religious tradition and liberal democratic norms since its formation. Moreover, this friction was given legal ramifications though the pronouncement of two Basic Laws by the Israeli legislative in 1992 which characterised the state as being both "Jewish and democratic" in nature. As expressed at the outset, neither the legitimacy of contemporary Israel nor its true democratic standing are the subject of this enquiry, rather only the relationship between secular and religious authority within the tradition itself. In this regard the perspectives of Moses Maimonides, Nissim of Gerona and Don Isaac Abravanel were chosen as archetypes of three distinct trends in Jewish legal philosophy and political structure.

Central to questions of political authority in Judaism is the role of the king prescribed in Deuteronomy 17: 14-15, "Set, you shall set upon yourselves a king". Although these verses are commonly understood as a directive, the Talmudic opinion of Rabbi Nehorai recorded in the *B.T Sanhedrin 2b* maintains that this is a concession granting permission for such a position to be created in the future, even though it is not an ideal state. This stance is vital in creating room for the notion of a non-utopian political model in Jewish thought. It is noted that biblical suspicion of monarchy forms a critical part of the Jewish political tradition as the national request for the appointment of a king in I Sam. 8:4-6 is met by disdain by the Prophet Samuel, who regards it as a rejection of God. Furthermore, the religious failings of the two Kingdoms of Israel, in addition to corruption and a lack of social-justice and moral deficiencies are cited as the cause of exile in the Bible. Ultimately, the monarchy is closely linked to these events and as such, gives validity to the mistrust of the office found in earlier biblical sources. Ambivalence towards the role of a secular authority possessing powers independent of divine sanction thus defines the bible's assessment of power.

A contrasting model of governance is to be found in the Talmudic and Geonic periods where an informal division of power existed. In this period civil and religious authorities were vested in separate offices in the two Jewish centres of Palestine and Babylon. In Palestine civil authority was lay with the *Nasi* while religious authority was held by the Great Assembly. In Babylon, the Exilarch fulfilled the role of the Nasi, while religious authority was vested in the heads of the major *yeshivot* (academies of study) in Sura and Pumbedita. Ultimately, a de facto dominance of the civil offices of Nasi and Exilarch over the religious institutions resulted from the recourse that these civil leaders held to the executive powers of the dominating empires to enforce their rulings.

The immediate post-Talmudic period witnessed the destruction of Palestine as a Jewish centre. Consequently, the Babylonian community evolved into the core of all Jewish life. Civil authority continued to be held by the office of the Exilarch, while religious authority was now vested in the *Geonim.* Throughout this period, ending in the twelfth century, the Exilarch

functioned as the public leadership and representative of the Jewish community, in addition the office served as an organ for the Persian, and later Moslem empires. The end of the Geonic era marks both a reality of superior rabbinic authority as well as the dispersion of the Jewish centre of Babylon. It is this history that forms the basis to the models envisioned by Maimonides, Nissim of Gerona and Abravanel.

Maimonides may be characterised as presenting a model of an irrevocable mutual symbiosis between the functions of religion and state. This system envisions the fusion of politics and religion within the personality of either the ideal leader or within the complementing offices of king and prophet. Nevertheless, all figures of leadership including prophet and king must necessarily fulfil dual religious and political functions. Despite a lofty political ideal, Maimonides' conception allows for historical realities that do not meet these standards. These range from unacceptable usurpations of authority to an eschatological utopian society. Moreover, a complete separation of powers is prescribed as a necessary evil to ensure the integrity of Torah Law from the whims of untrusted political leaders. Such a move is a radical departure from Maimonides' belief in the king as political leader *cum* spiritual redeemer. Nevertheless, the behaviour of certain leaders, such as the monarchs of Israel's Northern Kingdom necessitates a model of separation of religious and secular authority.

As applied to contemporary reality, this perspective makes room for distinct domains of religion and state. However, such a construct emanates from a deep mistrust of the state's democratically elected leaders. A separation predicated on this assumption not only ignores the existence of a complex separation of powers in contemporary Israel, but also may exacerbate pre-existing tensions between the state's religious and secular populations. Ultimately, the unique standing of Moses Maimonides in Jewish history ensured the centrality of his thought in Jewish political theory. However, the conceptions of Nissim of Gerona and Don Isaac Abravanel represent marked departures from his model.

In contrast to Maimonides, Nissim rejects Aristotle's view of man as "political animal." Instead, conflict and violence are understood to be the prevailing norm of human nature. It is maintained that these natural instincts towards the destruction of the other are only to be controlled by the appointment of a ruler who is to create order. Beyond the universal need for stability another purpose to politics is identified by Nissim, which seeks to address man as a spiritual creature. Whereas, Maimonides believes that both are best achieved when combined in one institution and personality; Nissim maintains the need for two separate systems: Torah Law and Law of the King. Fundamental to Nissim's dualism is the understanding that secular political authority serves to create the order, which is a precondition for the realisation of Jewish spiritual life.

The domain of the king is exclusively that of societal affairs, in contrast to the "true justice" that is the domain of Torah Law. Thus, the pursuit of political order is to be judged by its effectiveness and actual impact. Conversely, Torah law must be applied in strict adherence with its divine origin, without compromise or regard to practical concern. As such, the value of Torah Law is understood in purely religious terms as entirely focused upon metaphysical

achievement. Accordingly, the value of political law may be seen to be instrumental, while that of divine law is intrinsic.

In relegating Torah law solely to the realm of ritual, Nissim allows for a transfer of politics to the secular sphere. Moreover, as the political system is shed of the religious purpose it holds for Maimonides, it moves beyond uniquely Jewish application. In creating this model, Nissim allows for the preservation of the Jewish understanding of is mission as uniquely mandated by the divine; while enabling the emergence of a politics that can evaluate itself against and assimilate the best components of surrounding models. The value of this model as a legitimate alternative to the ideals of Maimonides has particular worth in the case of contemporary Israel, which states an intent maintaining a distinctively Jewish character, while adhering to democratic principles. The separation of the ritual and political realms of Jewish Law by Nissim may allow for a means of resolving this tension in practise.

In radical contrast to the Aristotelian stance of natural political order maintained by Maimonides, Abravanel regards the state as a completely artificial creation. Furthermore, Nissim of Gerona's portrayal of political order as a means of holding the destructive tendency of man in check is rejected by Abravanel. Rather, the state itself is conceived as a mechanism of destruction. In this understanding the Book of Genesis is read as portraying the continuing fall of humanity, which rejects the contentment to be found in nature and instead perverts its path on earth by turning to material pursuits. It is the *polis* that is said to be the living embodiment of human failing as the very establishment of human sovereign authority is seen by Abravanel as an affront to the power of God. Moreover, it is claimed that all regimes necessarily seek to expand leading to an inevitable clash of powers.

Despite a general rejection of all political organisations, Abravanel nevertheless draws distinctions between what are conceived to be varying degrees of evil. In this regard, the institution of monarchy is seen as the most dangerous form of humanity's adoption of politics. In truth, Abravanel's rejection of monarchy relies heavily upon the earlier model established by Nissim of Gerona. By dissociating the monarch of the bible with all religious purposes, Nissim allows for Jewish kings to be understood in the same manner as all other secular leaders. As such, the institution may be seen as merely one of several possible governing models created by man. Furthermore, the far-reaching powers vested in the king by Nissim are seen to pose an existential threat to Torah Law. Indeed, it is maintained that a king could not ever be satisfied by the "legitimate" power assigned to his office. Instead, a drive towards tyranny is viewed as the inevitable outcome. Consequently, better means of limiting the powers of kings are sought out and prescribed by Abravanel.

In this regard the controls found in the Republic of Venice and other Italian city-states are seen as an archetype that should be applied uniformly. In Abravanel's conception a system of government is to be measured not in terms of its effectiveness. Rather, its value is seen as a reflection of the checks against power that it is able to establish. As such, Abravanel favours a system that disperses authority in a variety of institutions while providing maximum oversight over officials. In truth, Abravanel does not perceive this system as an ideal. Instead, the entirety of his work is marked by anti-political thrust which instead calls for an extra-historical

return to man's original satisfaction in nature. Nevertheless, it is this idealistic vision that allows Abravanel to focus upon the real-world limitation of the abuse of power.

Ironically, it is the anti-political model of Abravanel that may best serve as a means of reconciling the tensions between Jewish and democratic values. Indeed, Abravanel's formulation allows for a separation of spheres of religious and political authority as outlined by Nissim of Gerona. Moreover, the true value of a system of government for Abravanel is seen to be a reflection of the cumulative strength of the constraints it applies to authority. Thus, the separation of powers and accountability central to the structure of contemporary Israel's government is to be regarded as a preferable alternative to the monarchy of the Bible.

In reality, the tension of divisions between religion and state were given a new significance with the rise of the Zionist movement in the late 19th century. Hitherto, religious life had been led in the absence of large-scale issues of social and political organisation. Now, with the emergence of political ambitions under Herzl forced questions of religious and secular authority as a practical issue for Jewish religious discourse for the first time since the Geonic era.

Ravitzky further stresses the extraordinary nature of such a challenge, which can only be considered to have been irreconcilable with all that is envisioned in the corpus of religious literature. Specifically, It is the combination of Jewish political independence, in a biblically identified 'holy land', without a messianic arrival and achieved through the directives and work of self-proclaimed 'secular Jews' that places modern Israel outside of previously imagined possibility.

Rejection of the drive for national autonomy may thus be seen as a natural response within the orthodox religious world in particular. Indeed two key issues may be identified for religious thinkers in their response to Herzl's Zionism. The first was of a religious-legal nature regarding the *halakhic* permissibility in working with secular people in general. The second larger constraint was theological and tied to the limitations placed on all projects of self-determination by the Talmudic passage of the "Three Oaths" in B.T. *Ketubot* 111a. Although this passage is considered by many authorities to be *aggadic* (legend) and non-binding in nature, it was held as an argument against Herzl's political Zionism by many in the Ultra-Orthodox community. Furthermore, the secular and later socialist agenda of the majority of the Zionist movement's leadership was seen as a threat to the established religious way of life in Europe. Thus the movement was rejected and the state it later formed countenanced with no special significance given to a Jewish secular government over a secular government in exile.

In contrast to the rejection of the ultra-orthodox which saw Zionism as a threat to insular religious communal life, other religious groups dismissed the movement for the very opposite reason. Specifically, the reform movement in its Pittsburgh Platform as well as the German orthodox leader Samson Raphael Hirsch saw the drive for a nation-state as undermining the very core of the Jewish mission of serving as a "light unto the nations" (Isaiah, 49: 6). According to this understanding, the dispersion of the Jewish people throughout the world allowed for the interaction necessary for the building of an ethical world order. This view was similarly held by leading interpreters of the tradition outside of the religious sphere including

Martin Buber, Frans Rosenzweig and Hermann Cohen. Here, Jewish history was seen as a process of transformation from an isolated local historical entity to a universal people capable of ensuring collective progress together with all the nations of the world. As such, the exclusivism of Zionism was seen as an affront to the universalistic thrust of Judaism.

Despite these oppositions, unique models of religious Zionism also emerged. The first of the Mizrahi movement, founded by Rabbi Isaac Joseph Reines in 1902 excised any link between political Zionism and metaphysical understandings of history. Instead, Herzl's movement was approached solely as a political solution to the ongoing plight of European Jewry. Conceived in this manner the secular authority of the proposed state may be understood through the previously established models of Maimonides, Nissim of Gerona and Abravanel. Secular leadership could be understood in accordance with Maimonides' category of the irreligious kings of Israel. According to Nissim of Gerona this authority could further be understood as serving a fundamental pragmatic need of security, consistent with his dualism. Finally, according to Abravanel the legitimacy of the regime would be relative to the sum of constraints of power imposed upon leaders and officials therein. The same compatibility with these archetypes is also true of Soloveitchik's perception of the emergence of the state as holding some type of unknown religious significance without amounting to a messianic era of redemption.

However it is in relation to Abraham Isaac Kook's reading of the state as the onset of an eschatological process that the relationship between secular and religious authority changes. A unifying understanding of all physical reality emanating from a divine source allowed Kook to accept the role of the secular political zionists as part of a larger divine plan of messianic arrival. Here, a multifaceted redemptive process as inherited by the 19th century thinkers Zvi Hirsch Kalisher and Yehuda Alkalai is portrayed. Under Kook's son Zvi Yehuda this process was focussed upon the issue of 'redeeming' biblical land. Specifically, Zvi Yehuda's movement, the *Gush Emunim,* understand the messianic era started with the formation of the state as human driven task. In this regard quantifiable measures of success are given in the form of territory-controlled, farms-planted and settlements-built. Importantly, this entails both an obligation to continuously build up the promised land and a divine prohibition to undermine this progress through ceding territory.

As the secular state's validity derives only from its role in this mission any action taken by its government to undermine the messianic process must be construed as illegitimate. Thus this radical messianic model simultaneously provides for a far greater role for the state's non-religious government than is granted in any of Maimonides non-ideal models, or even Nissim's dualism. However its legitimacy is divorced from popular consent, a criteria of validity even according to Maimonides.[34] Instead, all understanding of division in authority is consumed within the framework of an impending messianic moment. Such a view ensures the emergence of a crisis in situations when the state's government undertakes policies aimed at returning territory won in Israel's wars. The assassination of Israeli Prime Minister Yitzhak Rabin in 1995 following the Oslo Accords and the unilateral disengagement from Gaza by the

[34] See Section 3.5.2 and footnote 20 *supra.*

Sharon Administration in 2005, may be seen as representing particularly difficult moments for the radical messianic Zionists. Consequently, the almost exclusive position of Kook's thought in the Israeli Religious Zionist world has started to wane in the past decades. This has seen a greater interest and internalisation of the work of thinkers popular among American Jewry such as Soloveitchik. Moreover, the previously marginal work of Eliezer Berkovits has enjoyed renewed interest as a model potentially offering an innovative approach to modern questions, while remaining faithful to the traditional sources of *halakha.*

The model of Berkovits centres upon an understanding of self-determination as an essential component for the full realisation of Judaism. For Berkovits, the *raison d'etre* of the Jewish creed is the establishment of an archetypal nation that may serve as a model for others. This entails control over all aspects of national life including security, labour relations as well as social and political organisation. Without addressing such issues, the model created is of no relevance to power-relations in the world. Thus for Berkovits, the religion in exile is fundamentally limited. In a fossilised state of codification without application to larger societal questions, *halakha* itself is seen as a fragment of its larger goals. This understanding leads Berkovits to view the return to Jewish national life as an eternal value capable of revitalising the tradition.

Unlike the messianism of Kook, the envisioned state of Berkovits was not to be idolised as an end in itself. Instead, it was conceived as the precondition for a renewed national life built around a moral vision. Furthermore In this minimalistic form, the focus is not upon the state as controller and director of actions, but instead upon the society that may flourish with the freedom and responsibility that comes with it. Thus, Berkovits rejects the notion of clerical rule, classifying his model as a "God-centred republic" and not a theocracy.

At no stage does Berkovits suggest the imposition of *halakha* on society. Instead he argues that a democratic Jewish society must be a secular society, and thus its laws must remain secular in nature. Yet through the national self-determination gained in this secular state, it is believed that *halakha* can once more regain its former capacity to adapt and innovate lost throughout the centuries of diaspora life. Ultimately, Berkovits portrays a new partnership in which religious authority does not only acknowledge secular rule. Rather, the *halakhic* system seeks to reclaim its lost vibrancy with the ambition of serving as an integral component in a new national debate focused on creating an ethical order. If it gains in following, Berkovits' view may yet provide a mechanism by which the tension of religious and secular authority within Judaism is not only addressed, but also used as the starting point for reflective national introspection.

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