

## DEMOCRACY AND HALAKHAH—A PHILOSOPHICAL PERSPECTIVE

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**T**he return of the Jewish People to the historical scene requires halakhah and Jewish philosophy to attempt to reconstruct or renew Jewish political philosophy. Countless new issues have arisen in recent years, at the center of which are political challenges—external ones related to politics, morality and halakhah—and internal ones, which require us to bridge between Zionism, halakhah and democracy. These issues were tragically highlighted by the peace process and became one of the most serious focal points of controversy and confusion facing our society. Controversy—between opposing approaches, which, despite the polarity of their conflict agree that it is impossible to bridge between Judaism and democracy; confusion—in the hearts of all those who believe in the necessity for one of the two approaches. These painful problems are not only theoretical but touch upon the most basic fabric of our shared lives. Below, I will try to assay the main fronts along which we struggle with this issue, and will accordingly formulate my response to the alternative ideological positions that will reveal the different aspects of the problem.

Many studies have been devoted to the renewal of Jewish political thought in which attempts were made to bridge between modern political institutions and halakhic and classical philosophical categories. I would like to discuss the fundamental and general conflict, and not the possible continuity that indicates their

commonality. Similarly, I will try to bridge the political perspective and the Jewish categories, basing my efforts on the claim that the political perspective needs a different outlook.



The essence of democracy is commonly seen as protecting the rights of the individual from the heavy-handedness of government or the coercive aspect of the law beyond what is legitimate. But this type of view fits only one aspect of democracy: the aspect that is turned inward, which can be characterized as the micro problems aspect. We must add another aspect, one that is turned outward, which relates to the macro problems.

In order to elucidate this topic, I will describe two models of democracy. The two have a common basis but are totally different in the problematality that they present. The first model is that of a network of roads and traffic laws. This is a network of roads traveled by private cars. Our primary goal is to enable drivers to reach their destination. In order to achieve this goal, we must achieve several intermediary goals, foremost the prevention of road accidents. Therefore, all traffic laws should be geared to this dual goal: (a) to prevent injuries via the setting of speed limits, rights of way, etc.; (b) to enable the individual's quick and easy access to his destination. About this system of laws one may rightfully say: "Pray for the welfare of the kingdom, for without due respect for it, each person will devour his fellow man alive" (*TB Tractate Avot* 3:2). The function of the kingdom, of the political framework, is to prevent man from harming his fellow man, intentionally or unintentionally. Nevertheless, the first priority of the system is to prevent man from being caught in the clutches of government, which ostensibly exists to protect him from his dangerous fellow man.

This is a good, albeit partial, model. Understanding the essence of democracy requires the use of an additional model, the model of public transportation, which relates to establishing a collective direction for public transportation vehicles. The difference between

the models reminds us that society acts not only inwardly, but also, and perhaps one should say primarily, outwardly. This activity is directed towards both nature and other societies. Though peaceful and cooperative, this activity contains more than a modicum of violence and conflict of interests.

When we focus on this area of activity, we sense how incomplete and distorted our first description of the goals of democracy was. The first model would be perfect if it referred to an ideal state, which must organize the sum total of activities of its individuals. However, we must solve another type of problem. For example: how we should determine our collective action when faced with several alternatives. In this case, it is not sufficient to rely on laws that organize the movements of individuals, but rather we must decide on some collective course of action.<sup>1</sup>

The basic assumption of democracy according to the public transportation model is clear: determining a public transportation route based on a personal decision is not possible. Neither have we any intention of following the arbitrary opinion of any specific person, and our decision must therefore be a joint one. Against the backdrop of this model, the main problem of democracy becomes clear to me. I will describe this problem via an analogy with a dilemma facing a group of people who must use common public transportation in order to reach their destination.

Imagine a group that must leave a dangerous place and reach some destination in the dark of night using a dangerous mountain road. One of the passengers is convinced that the route chosen will result in a car accident because of a rock slide that occurred on the road, of which only he is aware. This passenger is absolutely convinced that the chosen route will lead to his death and to the death of the other passengers in the vehicle. What should he do?<sup>2</sup>

Undoubtedly, it is his right and obligation to protest, to explain, and to try to convince the others of the correctness of his position. This is the basic substance of the commandment of reproof: "You

shall surely rebuke your neighbor" (Leviticus 19:17). But let us assume that the other passengers are not convinced. Our hero is completely convinced, but he does not, nevertheless, succeed in convincing the others of the correctness of his position. Practically speaking, he has three possible courses of action:

- (1) His conscience, as he understands it, requires him to save his friends, even against their will. For him this becomes a moral task of the highest priority. This act of saving is of the utmost necessity even if it can only be achieved through violence for example, harming the vehicle or the only person who knows how to drive it.
- (2) He does not want to harm anyone, but the instinct for survival leads him to try to flee, to desert his friends and save his own life.
- (3) The sense of responsibility leads him to the awareness that he is prohibited from deserting his friends. This is the meaning of mutual commitment. The objective of the group requires his presence, therefore from their perspective his leaving is a dastardly act of desertion. An unwritten contract requires them to continue with the joint activity.<sup>3</sup>

Understanding the conclusions issuing from the dilemma of riding in a public vehicle and applying them to understanding the actual reality before us will help us relate to the specific problems of democracy and to understand the first ideological conflict. The first alternative characterizes the actions of an underground. However, here one must distinguish between two types of acts: (1) unauthorized violent acts, which basically involve taking the law into one's own hands; (2) changing the face of history through illegal actions. In spite of reservations regarding the first type of act, which results in harming innocent people, in terms of the danger to democracy the second type of activity is even more dangerous. If, for example, damage to the buildings on the Temple Mount were to cause far-reaching political changes, this would mean that members of the underground would be forcing me to enter into a war whose declaration I was not a partner to, either directly or indirectly through the representatives of the legitimate government of Israel.



The above example teaches us a central principle for understanding democracy within the framework of halakhic Jewish thought and reveals the second philosophical conflict. This is the conflict with the same people for whom democracy is a foregone conclusion, and more precisely a function of the relativity of truth and values. Their opinion can be summarized as follows: since there is no 'true' position, and every opinion is in essence subjective, expressing its holder's viewpoint, no one has the authority or justification to force his fellow man to behave according to a position which is not his own, or to accept an opinion which is not his own. Democracy is the only political system that reflects the relativity of values and affords everyone the freedom to follow his own arbitrary whims—which is its only truth. Proponents of this approach sometimes claim that this connection goes both ways; i.e., a relative position is democratic, but at the same time, another position, for example the absolute religious position, is not democratic.

A religious position cannot agree to the "relative" description. As R. Nachman of Bratzlav [1772-1810, founder of the Bratzlav Hassidic Sect in the Ukraine] taught, this position is expressed in the words of the wise man: "The fool does not desire understanding but only to air his thoughts" (Proverbs 18:2; *Likutei Moharan*, A). **The religious position is based on the belief that there is a preferred viewpoint from which one can receive a true worldview and an absolute set of moral and religious values. However, this does not mean that a religious position cannot be democratic; rather, that the justification of democracy for it will be different. To a certain extent, one can say that someone who believes in the relativity of values is a proponent of democracy as an a priori position. In contrast, the religious person sees democracy as an a posteriori position.**

For a priori democracy, the ultimate ideal is the absolute freedom of the individual, the self-realization of the individual in whatever direction he chooses. All possible directions are equally valid, with no reason to prefer one over the other. The ideal state is the one that

This is the gravest crime against statehood and holds the greatest danger to our public existence.

Most of the citizens of the state are not aware of this, but this type of crime against statehood can be carried out in more subtle and sophisticated forms; for example, when someone assumes the right to conduct negotiations that are forbidden by law or the government, or engages in external politicking, or performs actions that may obligate me without consulting me and without taking my opinion into account, either directly or indirectly via my chosen representatives.

The second position is that of the deserter, the emigrant, but also of the person who says "there is a limit," and in the name of this limit refuses to participate in the collective activity. Maybe we can allow ourselves to indulge in the luxury of not participating with everyone else in activities that we perceive as invalid. To my mind, there is no doubt that this is not a valid position first because of the fact that someone who doesn't totally commit himself to the decisions of the collective invalidates himself from participating in decisions that determine the course of action. Debating political positions is permissible, but the fundamental principle of democracy must be acceptance of the authority of the collective. There are limits to the pact that binds us to the collective, but partial, conditional agreement is impossible.

It seems to me that true democracy means a sad but conscious choice of the third alternative. I will try to illustrate this with a parallel example. Even if we know with absolute certainty that the evacuation of Sinai is a historic catastrophe and a strategic danger, and even if we are sure that going to war in Lebanon is dangerous and will lead to catastrophe, we must heed the voice of the authority upon which we have decided. This is the meaning of the political pact that serves as the basis of our democratic life. This is also the meaning of excommunication, which the sages both decreed and accepted upon themselves in the case of someone who refuses to relinquish his position in the face of the majority.

belongs in the realm of the jurist. But public transportation routes cannot be determined through a legal decision. They comprise a real-life dilemma, the type of dilemma faced by physicians.<sup>4</sup> How can I decide between different physicians? Should I apply the "incline towards the majority" principal? Perhaps. But not because this principal is germane to the matter at hand. I would decide according to whether a certain probability seems greater if I were to follow the majority of the physicians, but I can't claim that the majority is always right. Real life is, of course, even more complicated than this.

The problem of choosing a physician begins to resemble the real-life problem facing us when the whole family has to make this medical decision, and each physician has his own advocate among the members of the family. Here, the absurd becomes, in my opinion, the only way out of this complex situation: a posteriori democracy. Conducting a vote among the expert physicians or among non-expert family members cannot determine a precise diagnosis of the patient, but it can decide the course that should be chosen.

Everyone must, of course, study the problem and, as objectively and devotedly as possible, express his opinion and attempt to convince others of its validity. Convincing others is one of the obligations of the believer because of his shared responsibility, and because the decision to be reached is a collective decision and he will have to pay the price of its mistakes. Nothing can save him from the inevitable tragedy that exists in uncertainty. Therefore, he has no recourse other than to depend on the democratic decision, although in and of itself it is absurd.

The model of the physician lets us examine the problem from a different angle. So far, we have examined the matter from the perspective of the patient. Now we must consider the matter from the viewpoint of the physician. For the physician, decision-making in the face of uncertainty involves not only an existential dilemma, but also a moral dilemma. Let us imagine the dilemma facing the

provides the individual with the most possibilities for self-realization, and maximum freedom to choose his path. Relativism is the most important gift given to man.

Inherent in the above is an assumption with which we do not agree. It is true that we live in a state of doubt, of uncertainty. But on the other hand, the position of one who is faithful to halakhah, who both decides and accepts halakhic decisions, is his conviction of absolute subjective certainty in the face of the objective uncertainty around him. I will illustrate the differences between the two approaches briefly and at the expense of precision, by highlighting the differences between two possible models.

The first model, erroneous in my opinion, is the model of the jurist, the judge and perhaps the legislator. That which is officially determined by an authoritative body is the binding law, or in other words the sole truth. If a controversy arises, it can be decided by a majority opinion: "incline towards the majority" (Exodus 23:2). This model does not honestly describe the religious and moral reality, nor even the political one. The correct model is not the model of the jurist, but the model of the physician, and only someone who has faced a real medical problem can completely appreciate the dilemma facing us. The normal situation is one where different physicians propose different diagnoses of a problem, different prognoses as to its expected development, and even different ways—at times contradictory—to resolve it. It is the patient's right and obligation to be the final arbiter; he must decide among them. In this kind of situation, the talk about different options, patience, and the freedom to decide seem to be meaningless, absurd babble, and seem like rubbing salt in the wound.

In this type of situation, the disputants are not having an objective argument. Although all are deserving of respect, in actuality, some of them are dangerous and some are helpful. I must discover this and determine, to the best of my understanding and with the help of God, what I should do. If we return for a moment to the model of establishing traffic laws for private vehicles, it would seem that this

a war symbolized by Kamtza and Bar Kamtza (*TB Gittin* 55:2), according to which the destruction of the Second Temple was caused by a fierce argument between Kamtza and Bar Kamtza. Thus Rabbi Ya'akov Ariel writes: "Residents who think that it is forbidden to abandon their territory are not allowed to resist with force or place themselves in a situation in which they will be compelled to respond with force."<sup>7</sup>

The correctness of this conclusion does not absolve us of our obligation to consider its reasoning, a significantly problematic endeavor. Thus Rabbi Ariel writes: "And according to this, it can be said that a struggle is permitted only if there is a chance that through it he can fulfill a commandment, but if there is no chance of fulfilling a commandment, there is no benefit to the struggle, and then it is prohibited."<sup>8</sup> However, this ruling was rightfully qualified by the claim that those carrying out the evacuation are not sinning, because they come in the name of the majority: Rabbi Ariel further states: "And the struggle with representatives of the majority who are only doing their duty is not justified." This statement holds true only if those representatives do not harbor criminal intentions: i.e., the majority is not involved in some extraordinary conspiracy of evil. The problem with this analysis is that concepts such as 'deputy of a transgression' and 'conspiracy of evil', etc., can be defined only within the framework of a binding pact. We can imagine situations in which there are no extenuating circumstances. If acceptance of the position of the majority is based only upon the concentration of power in its hands, then, says Rabbi Ariel, "it seems that the majority, since it has the power, is permitted to overrule the minority." But suppose that the opposition is able to thwart the decision of the majority, for example in the case of large military units that do not agree with the decisions of the majority. Should we now say that since there is a benefit to the struggle, is it permitted?

It seems to me that the principle of accepting the majority opinion is different. Every discussion of halakhic obligation is carried on according to accepted practice, within the framework of the principles of the Responsa literature. But here, the problem before

anesthesiologist who is part of a staff of specialists gathered to perform an operation. Let us assume that in opposition to his colleagues, this physician is convinced of the grave danger inherent in the operation. May he walk out, or must he participate in the operation? On one hand, how can he endanger the life of another person? But on the other, how can we allow the physician, and likewise other experts on other occasions, the right to veto performing the operation. We again face the three basic alternatives mentioned above, where the only solution is participation in implementing the majority decision, even if it fundamentally opposes our opinion.<sup>5</sup>

This is undoubtedly one of the lessons we learn from the story of Akhnai's oven (*TB Bava Metzia* 59:2). I do not want to begin a discussion about all the possible ways of understanding this case. In any event, according to one possible interpretation, this is a clash between a formal administrative principle and a substantive principle of truth. Even though a heavenly voice was supposedly heard testifying that Rabbi Eliezer was right, the halakhah goes according to the sages because of the principle of majority rule. The great innovation lies in the fact that Rabbi Eliezer was excommunicated for not accepting this principle concerning himself. In other words, he was required to accept the mistaken decision even though it was opposed to his own certain truth.<sup>6</sup>

The dilemma that the Greater Land of Israel faithful faced at the time of the withdrawal from Yamit indicates a variation of the second alternative. [As a result of the Camp David peace agreements with Egypt in 1978, Israel withdrew from the northern Sinai area called Yamit. The withdrawal met with resistance on the part of the settlers.] Undoubtedly the precedent of the evacuation of Yamit was guided by drawing a red line: under no circumstances would the resistance to evacuation develop into a civil war or an active uprising against the legal government of the state. This is the most important lesson for us to learn from the civil war in the Land of Israel in the first century C.E. that contributed to the destruction of the Second Temple and the Jewish Commonwealth by the Romans,

who do not accept the yoke of Torah and the Commandments. The direct pressure that suppresses passive resistance is only formal in nature. Passive resistance is important as a protest, but it cannot be a mandatory element in our acceptance of the majority opinion.

Even though I am almost sure that the proponents of a priori democracy will reject anyone who dares to propose another position or will view him as someone who has removed himself from the pale of civilization and culture, I am convinced that a posteriori democracy is the legitimate approach. It lies at the core of the statement that claims that democracy is not the best or most successful form of government in existence, but it is the least dangerous form of government. **For people who believe in a certain ideal, whether it is the Torah or socialism or any other 'ism', democracy cannot be the ultimate value, but it can be a strategy of ultimate value that should not be relinquished.**

If the truth were laid out before us, and if uncertainty weren't an integral part of our reality, we would not need to deal with the issue of resolving doubts. But this is in essence the definition of the days of the Messiah. This is the meaning of life in a world that does not have revealed miracles, a world in which we have to adhere to the ground rules of conflict resolution under conditions of uncertainty and controversy, and this is the democratic way. These ground rules are a posteriori democracy, to which we are committed.

In the last few years there has been a lively debate concerning the issue of Jewish political thought. With which type of political government does Judaism have an affinity?

In his controversial book *Jewish Theocracy*, Gershon Weiler claims that Judaism views itself through a very special prism: "The Jews are a nation that dwells alone, the only nation on earth for whom the Lord is their king and therefore they do not merit an earthly kingdom."<sup>9</sup> If I can summarize Weiler's ideas, he tries to teach us that the love of God and the love of Torah are expressed by total political castration, by the complete impossibility of political

fruitfulness, since political productiveness is diametrically opposed to the basic instincts of Judaism, at least ever since the period of the Return to Zion [from Babylonia] in the days of Ezra [in the sixth century B.C.E.].

The response to this thesis issues from reality, not philosophers. Reality has proven that the truth is a little more complicated, and has itself disproved the theory. To continue with the earlier image, a different Jewish approach is now portrayed, not as a eunuch but as a political rapist. From this we learn that the problem we face is not an easy one; and in any case, that the diagnosis of the “doctor” is based on error.

It is well-known that there is some sympathy between some secular camps and thinkers and the Neturei Karta. They don't even consider this paradoxical. Judaism that deals with and takes into account current problems is thought to be unfaithful to its historical tradition. This is part of an unwritten covenant between opposite extremes who are interested in divvying up the playing field in a winner-take-all game. The principle of self-definition absolves us of the need for approval by opponents, but we must stress that we are convinced that in our struggle for a theory and practice that is simultaneously Jewish and democratic, we are continuing the true Judaism. And we must protest against the vocabulary that our opponents use. The fiery and momentous arguments in our national life bring many of us closer and closer to political pornography. One example of this spreading practice is the word ‘Khomeinism’. Like pornography, this usage also causes the dehumanization and delegitimization of the opponent, through the use of insulting and unfair associations.

These attacks are the flip side of a grave reality. The value system, including the moral value system, has collapsed. I speak here not of practice but of principle. Grasping democracy is like hanging onto our last hope. It provides its defenders with the vanished values conscience. In my opinion, this is too little. Without a system of moral values, democracy has no meaning. On the other



hand, democracy, like all other values, is dependent on religious faith, even if the naive believer in democracy is not aware at times of its transcendental origin.

More precisely, I would say that our commitment to democracy stems not from a value system, but from a pact. In my opinion, sufficient attention is not always given to the ideological distinction between these two approaches. **There is a difference in principle between the natural rights theory and the pact theory. A posteriori democracy is based on the pact theory, on the commitment to follow fair ground rules.** On this matter, my approach is close to that of Hobbes, but I want to be precise about its understanding. The principle of monarchy is based on the need for a political regime in order to prevent the anarchy of “one devouring his fellowman alive.” In this context there is no fundamental difference between forms of government as long as they preserve stability. The function of government is a primary function—to prevent civil war and keep society from turning into a jungle. The function of democracy is a secondary function—an attempt to prevent any uprising against the government and the regime. **For those of us who are faithful to the Torah, democracy is a vow that obligates us. Since we are not interpreting halakhah for messianic times, but rather for our non-messianic age, religious Judaism must explicitly declare that it upholds democracy, and will do so even when it constitutes the majority in the State of Israel. It is a posteriori philosophically but not politically. A posteriori democracy obligates the religious person and each and every one of us, including our political parties and factions, both externally and internally, in our relationships among ourselves in our shared state.**

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And now to the second part of my essay, which analyzes the problems from the perspective of Jewish philosophy.

What is the a priori political regime according to Judaism? I have no doubt that it is anarchy, in the positive and utopian sense of the word. By the term 'anarchy' I do not mean contempt of the political framework, but, rather a yearning to obviate coercive government and zealousness for an ideal society not governed by political authority. This is anarchy based on the belief in the kingdom of God, the original and utopian vision of the nation. **The anarchy of a society that does not need the coercion of government but suffices with belief in God is the a priori solution.** Any other solution is an adaptation to harsh reality. Both the kingdom of yesteryear and the democracy of today are a posteriori, the best possible solution from a moral perspective in the given situation.

Nevertheless, I would not be completely truthful if I didn't mention that even democracy has an a priori aspect. I would say that, schematically, **halakhic and religious authority have three sources, which in combination create the halakhah: the written sources, the sages and the nation.** R. Kook taught us that there is no real gap between the inner will of the nation and the law. This gap between the ideal nation and the actual nation is precisely the gap between a priori democracy conceived and born in sanctity, and a posteriori democracy, which is a strategy for action in the real world, governed by uncertainty.

A priori democracy is rooted in Jewish sources. In the words of R. Kook: "None of us, no political party or organization, or faction . . . should decide that he possesses all truth and justice."<sup>10</sup> Thus one should not fight for one's ideas through coercion. As Rabbi Kook says: "One should not want to or conceive of, in our terrible situation, physically forcing his opinion on his friend." This type of democracy is expressed in the fundamental viewpoint that the laws of the king are based on the will of the nation. The relevance of the laws of the king in a modern democracy was expressed by R. Kook, who wrote: "In addition to this, it seems that in a time when there is no king, since the laws of the monarchy relate to the general condition of the nation, the legislative privilege regarding these laws reverts to the nation. Every judge in Israel is empowered with the

us is the result of an extra-halakhic reality and of the pact of which we became explicit or implicit signatories when we created and renewed the partnership that this reality established and preserves, a reality not limited solely to the halakhic framework.

True, our reaction to a specific extra-halakhic reality, if it is right, becomes part of the corpus of halakhah and receives halakhic authorization. The classic example of this is the principle of *dina d'malkhuta dina* [the law of the land is the law] with its authority and its restrictions. This is another aspect of our basic claim that for us democracy is an a posteriori system. Some of the concepts and the principles that we need are defined by extra-halakhic definitions. It seems to me that we need to formulate a new principle for behavior based on 'the law of the land is the law', even if we still can't apply the norm of 'the law of the king' [this biblical term (1 Samuel 8:11) denoting the royal privilege was later employed by the medieval rabbinical authorities to describe the local legal system as opposed to the halakhic system.] Consensus for this is not guaranteed in every situation and at any price, but despite everything, it is generally accepted, even if the limits are not entirely clear.

This problem should be addressed within a different conceptual framework. This is expressed by the second aspect of the issue: passive resistance. Ostensibly, the obvious conclusion is that those who think that it is forbidden to abandon their territory are not required to accept the authority of the majority and are allowed to resist passively. This is undoubtedly the last legitimate limit on our activism. Some are of the opinion that they are not obligated, and perhaps even not permitted, to abandon the place unless they are forced to do so. Nevertheless, we need not agree which types of force and coercion cancel passive resistance. The coercion need not be expressed in deed; for example, that every resister will be forcibly dragged away. This is the only way according to halakhic criteria. But the actual coercion already took place when we were forced to sign a treaty that was not based on Torah law or the law of the king, and to take into consideration the reality of members of our people

law of the king concerning some of the laws of the kingship, especially those dealing with the leadership of the nation.”<sup>11</sup>

This principle is based upon the laws of the king, an issue to which we will return later on. Here I would like to add that this understanding of democracy is based on an additional principle, an important innovation of R. Kook: the establishment of ongoing emergency measures that allow the cancellation of commandments for the purpose of saving the entire community.<sup>12</sup>

Nevertheless, it is self-evident, since there was no necessary emergency measure as worthy of an instruction to transgress a Torah law as that of saving the Jewish people [*Klal Yisrael*] . . . and for the needs of *Klal Yisrael* it is obvious that the court will recognize emergency measures. And one may also assume that there is even no need to ask permission from the courts a fortiori for saving the life of an individual that involves the transgression of the Sabbath.

This democracy that R. Kook envisioned is based upon the idea of a community whose members are united on the principle of observing Torah and the commandments. As we will see, these categories cannot help us here, because the real democracy that we are living in does not follow this principle. But it is possible to attenuate it, and this attenuation is at the basis of the position of some of the followers of R. Kook. Behind the democratic perspective of R. Kook, there is a theological underpinning—the belief that Divine Providence accompanies the nation of Israel, or more precisely, the conviction that the general will of the nation has an element of absolute truth or of the imperative, even though this will at times seems to contradict what I would expect from the normal application of halakhic principles or Jewish thought. According to this principle, a religious status can be attributed even to a democracy based upon a public that does not observe Torah and commandments. This may have been expressed in R. Kook’s statement: “The a posteriori of man is the a priori of God.”

Nevertheless, it is difficult to accept this position, especially when fateful decisions are made by a majority based on the votes of non-Jews. I do not totally negate this position, but I want to present an alternative that also takes into account an extreme actual situation that cannot be explained or accepted in the usual framework. There is an additional motif in the thought of the students of R. Kook. They have an alternative approach. Sometimes historical development is perceived as not one continuum of progress but as occasional regressions or declines, like the incident of the golden calf after the exodus from Egypt. In other words, it is possible for decisions that are not consistent with Jewish sources to come from the majority. We cannot accept these decisions as halakhically binding, even though they seem to be the decisions of the Jewish People.

This analysis is correct with regard to other proposals as well. We will illustrate this fundamental thesis with another example. One of the most important and popular attempts to describe the Jewish political tradition links the theory of democracy with the idea of the covenant.<sup>13</sup> Even though identifying democracy with the idea of the covenant is philosophically tempting and difficult to resist, it seems to be a categorical abstraction that prevents us from appreciating the full meaning of the issue. Despite the similarity, we must differentiate between the two positions, not because they are unrelated, but because we need both of them, side-by-side.

In order to demonstrate this, we will avail ourselves of the philosophical categories that R. Soloveitchik [1903-1993; Torah scholar who developed the method of study used in modern yeshivot in America] used in his book *The Man of Faith*. In this essay, we are faced with two comprehensive approaches that describe the two aspects of Jewish existentialism. According to one aspect, we are part of the modern world with its goals and values. According to the second aspect, we have our own unique Jewish values. According to the first, there is a partnership with all of mankind; according to the second, the Jewish People is “a people that dwells alone” (Numbers 23:9). According to this dual classification, R. Soloveitchik reviews

in his essays different phenomena that take on a dual meaning. These phenomena represent the different dimensions of human existence. Among these pairs of concepts, the political dimension is most prominent.

A study of the essay reveals that R. Soloveitchik contrasts two politically laden concepts, the pact and the covenant. These concepts are parallel but not identical. It is a mistake to assume that these concepts are the same. We must accept as fact the tension between the two concepts. Behind them lies a more incisive distinction related to the goal of political activity.<sup>14</sup> One can say that the natural community is minimalistic—whatever this minimal content may be—while a covenantal community has a goal beyond this minimum. This goal is connected to the existential experience of man and is the focus of his religious commitment. **The pact creates the basis for liberal democracy and is implicitly based on a minimalist principle. The covenant, in contrast, is maximalist, and is based on the attempt to realize within society, a model of a more complete life, a commitment to a common goal. This commitment can sometimes lead to contradiction with the principles deriving from our minimalist viewpoint.**

Our discussion so far has taught us that our relationship to the question of democracy in practice is not possible within a single theoretical framework, but only within the framework of a conflict of theories.

Ostensibly, this approach seems to be expressed by the RaN [R. Nissim Gerondi]. I will try to explain why this is not so. The conflict between the theories comes to the fore in the duality that the RaN developed between halakhic law and the laws of the king. I will illustrate the impact of the RaN's theory with a detail that sheds light on the general principle. In the literary legacy of R. Y. I. Herzog, there is a letter dated 21 Av 5698 (1938) that was sent to him by R. Hayyim Ozer Grodzenski [1863-1940, a founder of the Orthodox movement Agudat Yisrael and opponent of Zionism]:

Concerning the creation of a constitution based on Torah rule in the Jewish state in matters of civil law . . . it seems from the RaN's Responsa that there were special royal courts in addition to the courts that judge according to Torah law, because in reality it is difficult to run a country properly if a thief can discharge his obligation by paying double while someone who admits to the fine can be entirely exempt, and therefore it is necessary in cases like these to enact regulations such as those where the court would flog and punish, etc.<sup>15</sup>

This way of relating to the State of Israel from the viewpoint of the laws of kingship is insufficient. It relates to the dialectic between two principles within Jewish thought and halakhah. It is undoubtedly the ideal basis for a Jewish state; nonetheless, this ideal position cannot be applied without problems. **Facing reality confronts us with a difficult dilemma: alienation from Israeli courts and turning them into 'Gentile courts' on one hand, and granting halakhic authority to the laws of the state and transforming them into the laws of Torah on the other. The ramifications of these alternatives are either abandonment of the vision of true Jewish law or the false attribution of religious approval to a reality that is alien and even contrary to the Torah.**

The laws of the king confront us with an internal Jewish dialectic, while here we face a dialectic with an external position that obligates us. This is the focus of R. Soloveitchik's approach, which contrasts the internal Jewish covenant with the external pact.

The modern approach of R. Soloveitchik, which distinguishes between two different goals of society, is rooted in the tradition of classical Jewish philosophy. Maimonides also distinguishes between two different goals for the state. One is improving the body, the second is improving the soul. I do not think that it is necessary to elaborate on this issue. On the other hand, I would like to pause for a moment to develop these ideas within the teachings of R. Yosef Albo (hereafter the RYA).

In the teachings of the RYA, we find law classified into three types, or in other words, classification into three types of political organizations, each based on different fundamental principles. These three types of law are natural law, rational law and Divine law. In *Sefer Ha'ikarim*, Article A, Chapter 8, the RYA writes:<sup>16</sup>

The purpose of natural law is to distance injustice and to foster fairness so that people will refrain from theft, robbery and murder, in a way that allows people to exist within society and everyone be spared wickedness and injustice.

The purpose of rational law is to distance the disgraceful and to foster the proper so that people will stay away from disgrace. . . .

And the purpose of Divine law is to direct people towards the achievement of true success, which is the success of the soul and immortality . . . and to also inform them of true evil so that they can protect themselves from it, and to train themselves to abandon imaginary successes . . . <sup>17</sup>

Indeed, it could be said that we are looking at three different types of belief, each of which is founded on a different principle and directed towards a different goal. This classification teaches us that even if we accept the authority of the Divine law, we are nevertheless also subject to the authority of the natural and rational law.

Furthermore, at times these different doctrines relate to the same realm. For example: "And it [the Divine doctrine] will also assume the ways of fairness so that the political collective will be mended in a proper and complete way, so that evil will not prevent their collective system from achieving true success and will not distract them from trying to achieve mankind's ultimate success and goal, which is the purpose of Divine law; and with this it takes precedence over the rational one."<sup>18</sup>



Maimonides, and in his footsteps the RYA, presents us with a dialectic political thesis without developing it. What is indeed missing in the neat schema of the RYA is the possibility of the existence of conflict between the different doctrines, like in our situation today. This potential conflict is expressed in the writings of R. Moshe ben Yoav, the 15th century Italian commentator, author of the commentary, *Etz Ha'hayyim*. In his commentary on the story of the Tower of Babel, R. Moshe ben Yoav posits that the people of the generation of schism wanted to nullify Divine law and conduct themselves solely according to political law. They thought that "human perfection is achieved through the best political conduct that maintains the collective. Therefore, they built a city and a tower, established customs, made themselves a reputation for preventing dispute and divisiveness from infecting the collective, and abandoned Divine Providence, which was the current custom with its justice and fairness."<sup>19</sup>

Has Jewish philosophy intensified the problematality of this conflict? It should be noted that political philosophy did not have to confront the actual conflict, since the regime was Gentile.<sup>20</sup> This is true of halakhah as well, and for that reason the halakhic category that was developed was, as we will see below, 'the law of the land is the law' (*dina d'malkhuta dina*). Despite this, we find reference to this question during the period in which the attitude to political thought changed completely, at the end of the Middle Ages and the Renaissance. This reference is associated with the great debate that erupted in the late Middle Ages concerning the status and rights of the monarchy, particularly concerning the relation between the monarchy and the church.<sup>21</sup>

In the polemics surrounding this question, the disputants referred to various biblical verses. The confrontation between King Saul and the prophet Samuel became the model for the confrontation between Emperor Henry IV and Pope Gregory VII at Canossa in Italy. This example is found in the letters of Gregory and in the writings of Agidius the Roman. Dante, who took the opposite position and was opposed to this interpretation, devotes a chapter in the third part of

his book *De Monarchia* to rebut this commentary. Something similar is found in the writing of Marcellus of Padua, who claims that, among other things, Samuel was a judge, and therefore one cannot draw conclusions about the relationship between monarchy and the church.<sup>22</sup>

The great Renaissance man Yohanan Alemanno may refer to this question. He talks about conditions that the king must fulfill, as expressed in the verses that prove the dependence of the king. This dependence is multifaceted, a constitutional dependence on the written Torah and the oral Torah: "He shall have a copy of this Teaching written for him on a scroll by the levitical priests" (Deuteronomy 17:18).<sup>23</sup> This is subordination with the concrete instructions: "But he shall present himself to Elazar the priest, who shall on his behalf seek the decision of the *Urim* before the Lord" (Numbers 27:21). This is also complete subordination, as described in the story of Samuel and Saul.<sup>24</sup>

Renaissance philosophy was close to formulating the problem. In my opinion, it didn't do this. The discussion of this problem is found, however, in the halakhic literature around the principle, 'the law of the land is the law' (LLL). An entire body of literature was written about this principle. In order to explain it, the sages offered several opinions.<sup>25</sup>

Without getting involved in a detailed analysis of them, let me state that a survey of the sources teaches us that the *Rishonim* [the great halakhic arbiters and Talmud commentators from the beginning of the second millennium up to modern times] developed several alternate theories. If we summarize them, we will discover that we are facing basic alternatives that are already clear to us from the previous discussion. As we will soon see, these positions all have their parallels and practical ramifications in contemporary reality. Let us review them briefly:

I. The basic law: the first option predicates LLL on a more fundamental law. R. Ya'akov Antoli [thirteenth-century physician and commentator whose works were influenced by Maimonides]

expresses this in his book *Melamed Ha'talmidim*, p. 72a, in his commentary on *Parshat Mishpatim* (Exodus 21-24). Antoli views the legal role of the king as developing the ideas inherent in the commandments that are incumbent upon all the descendants of Noah, including the commandment to "practice justice." The details of these laws are infinite. Antoli limits the validity of this principle to "any general law that he [the king] decrees in his land that does not contradict anything in the Torah."

It is also possible to explain Rashi [R. Shlomo Yitzhaki (1040-1105), leading commentator on the Bible and Babylonian Talmud] this way. According to Rashi, authority stems from the force of the law, from the force of the Noahide doctrine. Thus writes Rashi (*TB Gittin* 9b): "All contracts which were written up ... by a Gentile court ... are valid because the law of the land is the law ... and because Noahides have been commanded to have a system of civil law." In my opinion, Rashi does not explain the reason for LLL in this section, but rather teaches us one of its basic conditions, which we may refer to as the reflexivity condition. In order for a legal act to be valid, it must also apply to the person who performs it.<sup>26</sup> But this does not explain the source of the authority of monarchic law. It may be possible to explain the words of Rashi, as does Professor Shilo, according to the approach of R. Ya'akov Antoli, although in my opinion the matter needs further clarification. According to this approach, the monarchic law is based on a more fundamental law. And indeed, by accepting the principle of 'the law of the land is the law', we Jews revert to a more fundamental stratum of law that remains in potential, dormant but not lost. This stratum may become actual, and come back into active existence.

Nevertheless, there is, in my opinion, a structural similarity between this position and that of R. Yitzhak the Tosafist [a commentator and head of a yeshivah in France], the famous RY, who bases LLL on universal laws of the king. According to him, there is indeed a universal, political quasi-commandment incumbent upon the Noahides, and the authority of the king over us stems from this commandment.<sup>27</sup>

**II.** The second principle is the antithesis of the first principle. According to it, LLL is a de facto principle. R. Eliezer of Metz [twelfth century commentator in Germany, whose book *Yerei'im* is one of the few complete Tosafist texts to survive] states, “And this is the reason that its law is law, for this is one’s land and one is not allowed to reside in one’s land except if he follows its laws.”<sup>28</sup> This position is also expressed in the *Geonic Responsa* (Assaf edition), 66: “When God empowered the governments in His world, He empowered them to do whatever they chose over people’s property, even that of the Jews, as it is written, ‘they rule over our bodies and our beasts as they please.’” This is an authoritative position, but it seems to me that it is based on the recognition and acceptance of the realities and the limits of resistance to government, which can eventually bring man to sacrifice his life for the purpose of sanctifying God’s name.

**III.** The third position is based on what I shall call the symmetry principle. We can understand it by using a contemporary example. The rabbinical courts act according to Torah law, but their authority derives from the laws of the state, based on the meta-principle of legal sovereignty. We can apply this reasoning symmetrically. For us, the authority of the laws of the state stem from a religious principle. We are looking at two symmetrical pictures, each a mirror image of the other. This is not absurd. Two can share a ground floor, even though each perceives the unexposed foundation in a different fashion. One bases the authority of the state on the halakhah, the second bases the authority of the halakhah on the state. This is paradoxical, but not contradictory.

This is the basis of the claim of Rabbeinu Tam, who thought that “the halakhic mechanism for expropriating property according to the LLL is similar to that used in other rulings, such as for *Tikkun Olam* (improving the social order), and for preserving peace.”<sup>29</sup> In many places we found variations on this type of perspective, which base the authority of the laws of the state on the principle of “whatever the courts deem ownerless is considered ownerless,” i.e., that which is deemed ownerless by Jewish courts.<sup>30</sup>

IV. The fourth position once again brings us to the pact theory. The most prominent proponent of this approach is the Rashbam [R. Shimon ben Meir (1085-1174), a grandson of Rashi and brother of Rabbeinu Tam, was one of the first Tosafists; only his commentary on the Torah is extant], who posits that the authority of the king is a function of the fact that the citizens accept the king of their own free will: “That all the subjects of the kingdom willingly accept the laws of the king and his edicts and therefore they are bona fide (Jewish) laws, and one who takes possession of his fellowman’s property according to the law of the king in practice in that city is not guilty of robbery (*TB Bava Batra* 54b, Citation: And Samuel said).<sup>31</sup>

Prof. Shilo would also like to understand Maimonides’ position this way. Maimonides says: “What is being discussed here? We are talking about a king whose coin is in use in those countries where the citizens of the country have agreed to accept him as their master and that they be his servants” (*The Code of Maimonides, Hilkhos Gezeila Va’Aveida* [The Laws of Theft and Loss] Chapter 5, Law 18). We have here an unwritten contract between the king and his subjects, expressed by the acceptance of the coin minted by the king. It seems to me that we have here a position that brings us back to a factual situation. The words “agreed to accept him” seem to be an a posteriori acceptance, a kind of resignation that gives up on independence, not a willing acceptance of authority.<sup>32</sup>

These models from the early sages can teach us a lot about LLL and also about their political theories. I will not get involved here in the interesting topic of whether or not to apply the principle of LLL to the State of Israel, a topic discussed at length in modern halakhic literature.<sup>33</sup> The approach that I have called ‘a posteriori democracy’ is based on the fourth model, which assumes that LLL is the result of a social pact, of accepting the political authority since it is acceptable to the nation. This approach is also related to what we have called the symmetry principle. We maintain an ultimate commitment to halakhah, and within it we find the roots of loyalty to LLL.

There is something tragic in the use of this classic category. It determined our relationship to the laws of the governments in the various diasporas. But we may have no other option but to apply it to the political reality in the State of Israel as well. We face a difficult dilemma. On one hand, there is our alienation from the Israeli law courts, transforming them into “non-Jewish courts,” but on the other, we grant halakhic authority to the laws of the state, transforming them into Torah law. To put it another way, the abandonment of the dream of true Jewish law, or a false attribution of religious approval for a reality estranged from, and even opposed to, the Torah.<sup>34</sup>

Our democratic commitment places us in a difficult dilemma. **How should we view the laws of the state—as laws of the king, or as ‘the law of the land is the law’? The laws of the king are an extension of halakhah, while LLL refers to a confrontation with another system, with situations in which we cannot agree to the legislation.**<sup>35</sup> The solution may be found in an intermediary stage, with the State of Israel encompassing both sides, kingdom and LLL. Our relationship to the state and its laws is entwined with the struggle between these two principles.<sup>36</sup>

Despite this realistic response, we must try to construct a complete conceptual, political alternative, based on the combination of classical halakhah and the laws of kingdom.

## NOTES

1. Undoubtedly, defining collective activity is not easy. Nonetheless, we must try to clarify this concept, which is of ultimate importance in any discussion about political activity. It seems that the rather over-used definition, according to which the adjective ‘collective’—meaning that the end product is greater than the sum of individual results—is not wrong. In order to facilitate the correct understanding of this concept, I will distinguish, via terminology borrowed from the field of logic, between two kinds of group activity—collective activity and distributive activity—and I will illustrate with the parable of the Chinese picture. Let us assume that a group of people was involved in a single activity, for example spreading out a colorful scarf. We would then be looking

at a distributive activity, and nothing more. If by combining actions we wanted to achieve a result that is greater than the sum of all of the individual actions, this would be a collective activity. For example, if we wanted to combine the spread-out, colorful scarves to spell out a message or a gigantic picture when viewed by someone observing from a distance, we have something happening on a different level, beyond the individual level.

This difference is frequently emphasized in halakhah. We are used to distinguishing between partnership and community. The outstanding example of a community is undoubtedly *Knesset Yisrael* [the Jewish community] and is prominently expressed in the writings of Rabbi J. B. Soloveitchik and Rabbi A. Y. Kook. In Hassidism, it is a central tenet of the Sfat Emet [Rabbi Yehudah Leib Alter].

These perspectives were very widespread in the early days of political Zionism, prominent examples being the philosophy of A. D. Gordon and Achad Ha'am. The main problem of contemporary Zionist thought relates to the fact that collective categories have lost a lot of their ideological force, and even more, their psychological force. This is connected with political developments, but also with what seems to be a fundamental change in basic ontological categories of thought currently in fashion.

However, we need not assume the actual existence of this type of reality. Even if 'totality' is only in my consciousness, it can serve as an important and fundamental value for me. In any case, the political problems that we must confront are real, and also exist on the distributive level.

2. For the time being, I will not deal with the semantic meaning of the term 'knows'. We could ask the same question if we exchanged this term for 'believes', 'thinks', etc. But I specifically want to ask the question using the term 'knows' in order to emphasize the acuteness of the problem. The status of any private knowledge is not relevant. There is a fundamental difference between knowledge (I know that ...) and opinion (I think that ...). One can say that knowledge is absolute in the sense that it is certain and immutable. We know for example that ..., if we are able to prove that. ... However, in the majority of cases this is not the situation, but rather we think that we know that. ... In this instance one must distinguish between two different situations. Do we know that we know, or do we just think that we know? No one can escape this dilemma.

In any case, there is no practical difference for our discussion. Maimonides was convinced that he knew with mathematical certainty certain philosophical axioms. But he knew that they could not be 'known' to everybody, as the average person cannot overcome various impediments, cannot devote the intellectual effort, emotional strength and perhaps even the time, to arrive at the correct, true and grounded solution to the problems. My democratic position requires me to take into account and to decide even on the basis of those people who think that they know the solutions, even though they really do not 'know'

them. My democratic position must not be based on skepticism regarding opinions in general, but rather on the commitment to live together despite my absolute inner conviction of the justness and correctness of my position.

3. This list of alternatives seems to be exhaustive. The third alternative is a decision that is diametrically opposed to the moral decision in the first alternative. I do not see how to bridge between them. Other options seem to be only different variations of the three basic alternatives. For example, one can think of all sorts of forms in which my violent resistance (Alternative A) is expressed, or of ways in which I can desert (Alternative B). It is very important to emphasize that other forms of resistance, for example passive resistance—even suicide—may be a means of preventing others from taking the dangerous step. Despite the variations in their formulation, I have no doubt that these are the only three existing alternatives. Nevertheless, we must emphasize that continuing with the group must also be perceived by our hero as suicide.
4. Concerning the difference between a doctor's advice and an order from a king, see the beautiful comment of R. Yitzhak Yehuda Shmelkish of Lvov in *Beit Yitzhak*, cited in Avraham Kariv's book, *Shabbat Oo'moed B'drush Oo'vekhassidut* [The Sabbath and Holidays in Commentary and Hassidism], (Tel Aviv: Dvir, 1966) p. 229.
5. A different opinion that is close to the second alternative is expressed in a halakhic decision. See: R. Eliyahu Katz "Etika Refuit B'mabada," *Tehumin* 3 (1982): 177, concerning "a pharmacist who is against supplying a drug suggested by a psychiatrist." There the halakhic decision determines that the pharmacist "is not obligated to do so, and is even prohibited from doing so."
6. These perspectives bring us back to the problem implicit in our discussion up to now: the distinction between security considerations—danger—and moral, fundamental considerations—prohibition. I will not determine which is graver. In any event, I want to claim that we are subject to the decisions of a posteriori democracy. But these matters are not only of a theoretical nature. They relate unfortunately to a real situation concerning which we will have to express an opinion. This is the problem of retreating from parts of the Land of Israel, and even dismantling Jewish settlements there. Concerning this issue, see the article by R. Ya'akov Ariel "Ma'avak Yamit B'r'i Ha'halakhah," *Tehumin* 3 (1982): 402-410.
7. Ibid., p. 410.
8. Ibid., p. 408.
9. G. Weiler, *Jewish Theocracy* (Tel Aviv: Am Oved, 1977) p. 88. I would like to note here that the anti-state direction in political thought has deep roots. Different philosophical systems struggle between two options: the attempt to redeem reality on one hand and the escape to individuality on the other. This distinction discerns between different approaches within the same tradition.



This is, in my opinion, the difference between the approach of R. Yehuda Hassid and the approach of his follower R. Eliezer of Worms. This is the difference between the approach of R. Israel Salanter and the Navahrudak system. An important parallel is found in medieval philosophy between the Platonic political thought of Alfarabi and the *Hanagat Ha'mitboded* of ibn Baje. Maimonides aligns himself with the tradition that believes in the possibility and necessity of politics.

At the same time, we must emphasize that the relationship to politics is influenced by the religious relationship to life in this world. Negation of this world brings us to the classic Christian position. A reaction against it can be found in the philosophy of the Renaissance. Without a doubt, Maimonides presents an intermediary position. This position can be understood better by the relationship to excesses. The Renaissance has a clear direction of anti-asceticism and an affirmation of wealth, the economic parallel to a political position with no commitment to the world to come.

10. See his article "Et Ahai Anokhi Mevakesh" in *L'netivot Yisrael*.
11. See: Rabbi A. Y. Ha'Cohen Kook, *Mishpat Cohen* (Jerusalem: Rav Kook Institute, 1966) p. 114 (15). R. S. Yisraeli's essay, "Samkhut Mosdot Memshal Nivkharim B'yisrael," in *B'tzomet Ha'torah V'hamedinah* (Alon Shvut: Zomet Institute, 1991) pp. 14-24, also published in his book, *Ammud Yemini* (Tel-Aviv: Moreshet, 1966), pp. 52-63.
12. See: Kook, *ibid.*, 143.
13. Concerning this issue, see the collection D. Elazar, ed., *Am Ve'aida* (Jerusalem: Reuben Mass, 1991).
14. According to R. Soloveitchik, natural society consolidates itself around the issue of the distribution of work. "It isn't good for man to do work by himself" (*Man of Faith*, p. 23). In this, R. Soloveitchik follows classical political philosophy. A prominent expression of this approach is found in the writings of Maimonides. However, beyond this basis, there are additional sources for a person's community needs. Earlier, R. Soloveitchik related to glory and splendor. These concepts have special significance in his writings, but we can really extend them and speak generally about the psychological needs of man as an additional origin of society.
15. See: R. Y. I. Herzog, *Tekhukah L'yisrael al-pi Ha'torah* (Jerusalem: Mosad HaRav Kook, 1989) 2, p. 75, note 10. Also see his essay "*Likrat Medinah Yehudit*," in *B'tzomet Ha'torah V'hamedinah* (Alon Shvut: Zomet Institute, 1991), p. 11.

The RaN's idea gained renewed importance in the words of Don Yitzhak Abarbanel, who was known to oppose the entire concept of monarchy. This position is close to the position of R. Kook mentioned above. See *ibid.*, in note 5, the comment of R. Herzog who recommends a tripartite division: law, appraisal—an additional level of law—and the law of the king. This view

actually links the position of the RaN with the position of Abarbanel. These are two dimensions of the laws of kingship: an extension of the law from a utilitarian perspective and the consolidation of public law.

16. In this text, we find two different positions in understanding the distinction between the three religions. Apparently, the RYA combined two different approaches. The relationship between them is not sufficiently clear to me.
17. It is customary to attribute this triple distinction to the influence of scholasticism and especially the writings of Thomas Aquinas. It seems to me that one should qualify this assumption somewhat, since there is no similarity between the distinctions. It is well known that Maimonides already emphasized the distinction between Divine religion and rational religion, and the RYA's view clearly stems from it. On this topic, see Y. Gutman, "Liheker Ham'korot Shel Sefer Ha'ikarim," in *Dat Oomada* (Jerusalem: Magnes Press, 1955), pp. 169-191. The differences between the approaches are obvious. For example, in the teachings of the RYA, rational religion is found beyond natural religion.
18. The RYA characterizes the different religions and distinguishes between them (Section A, Chapter 8): "Rational religion is inferior to Divine religion in many ways.
  - A. This is what we already said, that the rational religion will improve the actions of people in a way that the political collective will improve, but this won't suffice to bring perfection of understanding; i.e., religious perfection which assures the ultimate happiness of man.
  - B. Another way in which rational religion is inferior to Divine religion is that it is not able to distinguish between the proper and the improper in everything, because what we deem as proper and improper is not proper or improper in and of itself. The RYA brings the Platonic family laws as an example, "for he said that it is proper that the women of the state be shared by the heads of each group," i.e., the heads of each class, "but Aristotle denounced Plato's position on this matter; and this is the proof that no one's intelligence is sufficient to really distinguish between the proper and the improper."
  - C. The concern for individual happiness.
19. His analysis is found in the introduction to his book, *Etz Ha'hayim*, which is found in manuscript in the Montefiore Library, London, 17, p.22ff. He speaks there of three types of laws: "Be they natural, political or Divine." Undoubtedly, Moshe ben Yoav's discussion is an elaboration of the RYA's discussion. See Melamed's book, *Akhotan Ha'ktana Shel Ha'khokhmot* (PhD diss., Tel Aviv University, 1977), Chapter 1, p. 5. In my discussion on political thought during the Renaissance, I owe a small debt to this work.
20. The perception of a real state in classic Jewish philosophy is very interesting, and in my opinion very little has been done in this area. I will not present a lengthy survey of views. I will just say that Maimonides criticized the real

political regimes and thought that only in Greece did a government materialize which could be considered ideal. The medieval regimes were not like this, since they became corrupted by religious fanaticism. In my opinion, this was the basic assumption of Jewish philosophy in general, an approach that changed during the Renaissance, regarding the regimes in Florence and Venice, regimes that developed sciences and philosophy. This fact is prominent in the works of Yohanan Alemmano and Don Yitzhak Abarbanel.

21. Philo also dealt with his question. See Wolfson, *Philo*, Section 2, p. 210.
22. See: *Defensor Pacis II*, xxviii, 22.
23. In the introduction to *Kheshek Shlomo*, Alemmano qualifies this claim and grants the king secondary legislative authority, "rectifying hidden laws," i.e., in those areas in which there are no explicit laws in the Torah ("the spoken wisdom"). In this manner, Yohanan Alemmano approaches the RaN's position (*Kheshek Shlomo*, London: Montefiore manuscript 227, p. 48, Gate of Desire, Halberstat edition, 1862, p. 10b). This interpretation is necessary because of Solomon's status as a judge. According to Alemmano, Solomon was the embodiment of the philosopher-king. The king sits in the Sanhedrin "only because he is the king" and outside of it on the "hidden laws." Neither Moses nor Solomon were ideal rulers. Even Moses sinned and therefore could not lead the people when they entered the land. Abraham, however, *was* the ideal ruler, confronting his absolute opposite, Nimrod the Evil, "the epitome of evil ... as the first to rule over others not for the good of the people" (*Khaye Olamim*, Mantova manuscript 21, p. 352).
24. Much discussion about the authority of the king centered on the interpretation of the words of Jethro, who distinguished between small matters to be dealt with by the judges, and weighty matters to be brought to the king. In a later period, Abarbanel develops his democratic approach on the basis of Jethro's advice, emphasizing the difference between the advice of Jethro, who prods Moses to select ministers, and Moses, who decrees, "bring people" that is, transfers the selection to the people (*Perush Abarbanel La'torah* [Jerusalem: publisher unknown, 1949], p. 156). The interpretation of this verse is found in the teachings of Thomas Aquinas, *Summa Theologica* (P.S. Quaestio cv art. i). Aquinas takes an intermediary position. Abarbanel interprets them with a totally democratic interpretation.
25. I base myself on the conclusions of S. Shilo, *Dina D'malkhuta Dina* (Jerusalem: Academic Press, 1975) Chapter 3, p. 59 ff. To all the examples in his book, I would like to add the words of R. Azariah min Ha'adumim [the Edomite] in *Imrei Bina*, Chapter 55, concerning the obligation of loyalty to the state in which the Jews live.
26. In my opinion, here we learn an important democratic principle that can be easily demonstrated. Members of the Knesset should refrain from participating in votes that influence matters that have no direct bearing on them. Thus, for

example, involvement of Jews in the appointment of the heads of other religions, or minorities in the determination of matters pertaining to Sabbath observance would be in bad taste.

27. R. Isser Zalman Meltzer bases his position on this approach (*Even Ha'ezer*, *Nizkei Mammon*, Chapter 8, Law 5). R. Chaim Hirshenzon, in his book *Malkhi Ba'kodesh*, Section 2, Responsa 2, also adopts this approach.
28. Cited in *Or Zarua*, *Piskei Bava Kama*, 447, and see: S. Shilo, p. 63.
29. [*Responsa*] *Ba'alei Ha'tosafot*, Agus Edition, Responsa 12.
30. Rabbeinu Tam developed an additional principle for communal regulations, similar to the pact theory. According to this principle, one is obligated to heed a regulation when there is a total consensus by all members of the community.
31. See: *Or Zarua*, 5748.
32. Maimonides' position seems related to his general philosophy. We apparently have two political philosophical options related to two different fundamental worldviews concerning revelation represented by Maimonides' and RYHaL's approach. One bases the truth on the elevation of the sage, the second on God's covenant with the people. One is essentially aristocratic, the second, essentially democratic, which brings us to R. Kook's approach discussed earlier.
33. On this topic, see the survey by S. Shilo, *ibid.*, p. 104 ff.
34. Concerning the applicability of LLL to the State of Israel, see the article by Ovadiah Hadayah, "Ha'im Yesh L'medinat Yisrael Dina D'Malkhuta Dina?" in *B'tzomet Ha'torah V'hamedina*, p. 25 ff, published in his book, *Responsa Yaskil Avdi*, volume 6, p.285.
35. The principle of LLL is also characterized by its limitations. Laws pertaining to prohibitions and permits are not governed by it. Indeed, application of the principle requires adaptation. The limits of the principle fit the limits of liberal democracy.
36. This intermediate solution is undoubtedly found in the legislation of the classical Jewish community. We will cite only one of the many sources on this topic, one from the teachings of the MaHaRaM Shik: "For behold, every community within the communities of the House of Israel is considered as a partner, and each has a right to any public matter like the rest of the partners" (*Responsa MaHaRaM Shik, Khoshen Mishpat*, 19): "And in order that there not be a situation like the cooking pot owned by partners ... the custom of choosing the exemplary citizens of the town developed within all of the Jewish diasporas." Similarly, the RaShBeSh, in his *Responsa RaShBeSh*, 47, also writes: "And the exemplary citizens of the town are viewed as the representatives of all the residents of the town."

