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"The Philosophical Theories of Yeshayahu Leibowitz on the Need for a Separation of Religion and State in Israel."

This thesis contains three chapters and its goal is to discuss the philosophical positions of Yeshayahu Leibowitz on the need for a separation of religion and state in Israel. This was to be done through a detailed and annotated translation of two of essays from the years surrounding Israel's independence, and an analysis of the current state of religious and secular relations in the state fifty years later.

Chapter One introduces the reader to Leibowitz and his life work and achievements, as well as elaborates on his philosophical and theological positions in other areas. Chapter Two contains annotated translations of two key early essays from 1947 and 1952 that chart his philosophical development to his final conclusion that there is a need for a separation of religion and state in Israel. These are translated from a Hebrew collection of essays he published entitled *Yehadoot, Am Yehudi, v'Medinat Yisrael*, which also served as the primary source for this thesis. The annotations are made to highlight his own connection to Jewish religious law and his writing style in terms of the religious audience he was attempting to persuade. Chapter Three highlights a 1959 essay he wrote detailing his call for a separation of religion and state, and applies it to current tensions in Israeli society today in Israel's fiftieth year between religious and secular Israelis.





**"NO GREATER ABOMINATION": THE PHILOSOPHICAL THEORIES  
OF YESHAYAHU LEIBOWITZ ON THE NEED FOR A SEPARATION OF  
RELIGION AND STATE IN ISRAEL.**

**SCOTT TURBERG AARON**

**Thesis Submitted in Partial Fulfillment of  
Requirements for Ordination**

**Hebrew Union College - Jewish Institute of Religion  
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**אדר י"א, תשנ"ח/1998  
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This thesis is dedicated according to the three foundations of *Pirke Avot* 1:2 upon which the world is sustained: *Torah*, *Avodah* (Divine Service), and *Gemliut Chasadim* (Acts of Loving Kindness).

To Rabbi Leonard Kravitz, for all of his hard work both with this thesis and in the classroom, and for teaching me that all Jewish learning is *Torah*;

To Dr. Sue Dickman and the staff of the Edgar M. Bronfman Center for Jewish Student Life at New York University, where I worked concurrently while writing this thesis, for all of their support, patience and recognition of this task as an act of *Avodah*;

And to my beloved wife, Donni, for her patience, understanding, extra effort and most of all her love during the nine months that it took to produce this thesis. Her sacrifices for me were true *Gemliut Chasadim*.



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## I. The Life and Impact of Yeshayahu Leibowitz

Yeshayahu Leibowitz (1903-1994)<sup>1</sup> was born in what is now Riga, Latvia, and raised in a home which was, according to him, "a Jewish world in which Judaism and European culture were interwoven."<sup>2</sup> He was schooled at home as a boy in traditional Jewish texts while receiving a secondary education in the secular world. Leibowitz's family fled to Berlin in 1919 in the midst of the civil war that engulfed Latvia as it fought for independence from Russia. There he studied chemistry and philosophy at the University of Berlin and received his Ph.D in 1924. He continued medical studies in Germany, but was forced to finish his M.D. in Basel, Switzerland, in 1934 when anti-Semitic policies were adopted in German universities after the Nazis took power in 1933. After receiving his M.D., Leibowitz settled in Palestine in 1934 and joined the faculty of Hebrew University in Jerusalem where he became one of the most popular lecturers on the campus. His courses covered a variety of areas of scientific thought, including the history and philosophy of science and the physiological basis of the mental processes. He also fought in a unit of religiously observant men that he helped to organize during the 1948 War of Independence. He was appointed professor of organic and biochemistry and neurophysiology in 1961, and his career scientific research work was with chemical enzymes and saccharides and the physiology of the heart's nervous system.

His distinguished career as a scientist and teacher was more than enough to

1. ישיעו ליבוביץ Cover photo credit: ASAP, Israel Talby, from the Encyclopaedia Judaica CD-Rom Edition, "Yeshayahu Leibowitz," Judaica Multimedia (Jerusalem:1997). The title quote is from the sentence, "From a religious standpoint there is no greater abomination than an atheistic-clerical regime." Leibowitz, "A Call for the Separation of Religion and State," reprinted in Eliezer Goldman, Yeshayahu Leibowitz: Judaism, Human Values and the Jewish State, Harvard University Press (Cambridge: 1992), at 176.

2. Id at ix.



qualify him in 1993 for nomination for Israel's highest civilian achievement award, the Israel Prize for intellectual and cultural achievement.<sup>3</sup> Leibowitz was much more than an academic scholar though. He was also a strictly observant Jew and an accomplished תלמיד חכם<sup>4</sup> whose study groups on Jewish texts were very popular throughout his life. He published several volumes of commentary on Torah and other texts, and was a regular דרשן<sup>5</sup> for the popular periodical *Jerusalem Report* on the Torah portion of the week as well as on a variety of religious textual topics for the Broadcast University on the Israeli radio. He was notably also a scholar of the works of the RAMBAM with whom Leibowitz clearly resonated as a man of both Jewish and scientific letters.<sup>6</sup>

Leibowitz operated from the same premise of faith as the RAMBAM, namely that G-d's laws, both written and oral, were pure vehicles for service of G-d, but not for cognitive understanding of G-d. To attempt to impart a cognitive understanding of G-d's wants for human relationships through Jewish texts was going beyond their intent; To Leibowitz, the texts were meant to impart Jewish religious law as a vehicle for better serving G-d and nothing beyond that.<sup>7</sup> Accordingly, for Leibowitz, to attempt to discern G-d's will for any human issue

3. He declined the nomination for the award as discussed below.

4. Scholar of Torah and Jewish textual knowledge. See e.g. *Brachot* 5a.

5. Interpreter of Torah. M. Jastrow, *A Dictionary of the Targumim, the Talmuds and the Midrash*, Verlag Choneb (New York: 1926), p. 326.

6. RAMBAM is the acronym for Rabbi Moshe Ben Maimon (1155-1200 CE), also known as Maimonides who was a physician, a thinker, a leader, and the author of the *Mishneh Torah* and one of the greatest Jewish philosophical works, the Guide for the Perplexed, among many others. Leibowitz was heavily influenced by the RAMBAM's philosophy and published several commentaries on him. The only one available in English though is The Faith of Maimonides, Adama Press (New York: 1987).

7. "The doing of the Torah, the world of the *halachah* (Jewish religious law), is not a means; it is the end itself. This, however, can only be known to a man who has reached true knowledge; and, in order to reach true knowledge, he requires a purification of his faith in G-d from what is held by most people to be faith in G-d, and what is, in fact, faith in 'something other than G-d.'" Id at 25, quoting *The Guide to the Perplexed* 3:51.



through Jewish religious law was to lose sight of the purpose of that law as the formula for G-d's service and not as G-d's formula for serving each other.<sup>8</sup>

This belief in both the purity of the *halacha* and, conversely, of its susceptibility to corruption by its human utilizers motivated Leibowitz on a life-long crusade to speak against its abuses by the modern government in a variety of areas of national life. Leibowitz was vehement in his criticism of the state and its religious political institutions.<sup>9</sup> For example, an area in which he was continually in opposition to the both government and the national culture was on the question of religious nationalism. It was his view that a religious ideology that held the modern state of Israel, its lands or any of its institutions as holy or as a part of a divine plan were arguably engaging in *avodah zara*, or idol worship. Such a sanctification of a historical event was a confusion of religion and politics and allowed for a gross abuse of religious values in the name of religious action.

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8. Leibowitz developed an original and controversial view of Judaism. He argues that Jewish religious texts have no cognitive content and so express no claims about the world or our place in it. The only function of these texts is to summon people to serve G-d and to provide the instruments (the *halakhic* commandments) for doing so. He maintains that the Bible (Torah she-be-Ktav) derives its status as a holy text from rabbinic literature (Torah she-be-al-Peh), which confers this status upon it. **Leibowitz also claims that the Halakhah and Jewish religious texts generally do not supply a source of moral or social values. The only function of the Halakhah is to provide a means for serving G-d. Social and moral issues are relevant to the role of humanity in the world, while Torah is concerned with the connection of humanity to G-d. He summarizes his approach by stating that Judaism is theocentric rather than anthropocentric.** Shalom Lappin, "Yeshayahu Leibowitz: 1903-1994," *The Jewish Quarterly* 41 no. 3 (Autumn 1994) at 70, emphasis added.

9. Leibowitz was an outspoken opponent of the first Prime Minister of Israel David Ben Gurion's belief that religion in the modern state would be subordinated to the needs of the state. The state was obligated to provide for religious needs, but in turn it conceded control to the state and its institutions. "I understand very well why you demand the separation of religion from the state. You want the Jewish religion to be reinstated as an independent factor with which the political authority will have to contend. Therefore I shall never agree to the separation of state and religion. I want the state to hold religion under its control." Ben Gurion to Leibowitz as reported by Leibowitz in "The Religious Significance of the State," Goldman at 216.



Equally problematic for Leibowitz was that such sanctification allowed Jews to replace Judaism based on Jewish religious law with nationalism. So, for example, he "urged his fellow-Orthodox to... not be tempted by the idol-worship of national symbols, particularly the *kotel*, the Western Wall."<sup>10</sup> But he "called to task also secular Jews who, in spite of not honoring the *Mitzvot*, focused upon the *kotel* as a sacred object, placing in its ancient stones notes to G-d as if it were "Express Mail" to Heaven."<sup>11</sup>

But for Leibowitz, morality was separate from commandment. The gravest danger for him was "the absurdity of seeking traces of the Divine in the phenomenal world" such as at the *kotel*,<sup>12</sup> but he in no way denied the very real human obligation of moral and ethical behavior. Leibowitz's cultural position as a social critic "came from his humanism. Leibowitz lived in two realms of discourse. His critique of Israeli society came from his total solidarity with the destiny of Israel.... Leibowitz fought against making G-d an instrument for ethics, but he was not opposed to having the tradition sensitize you to ethical concerns."<sup>13</sup>

For example, Leibowitz was among the earliest and most vocal of the opponents to the occupation of the captured Jordanian and Egyptian territories after the 1967 war. He believed that the extent of moral violation that the Israeli military would have to inflict on the Palestinian populace to hold the territories would "lead to the establishment of a political structure combining the horrors of

10. Israel Zoherman, A Review of "Why Are People Afraid of Yeshajahu Leibowitz?" 60, no. 4 *Jewish Spectator* (Spring, 1996) at 55.

11. Id.

12. Hillel Halkin, "Israel Against Itself," *Commentary* 98, no. 5 (November, 1994) at 34.

13. David Hartman, "Reflections on Yishayahu Leibowitz," *Tikkun* 9 no. 6 (November-December, 1994) at 58, 60.

Lebanon with those of Rhodesia - the state of a people possessing a common national heritage will turn into a state of imposed rule over two people, one ruling and the other ruled. In such circumstances, national conflicts become social conflicts. The Arabs will be the nation of workers and the Jews will be foremen, clerks, and police in a state dominated by security police. It is unlikely that human rights and civil freedoms can exist even in the Jewish sector."<sup>14</sup> His writings began to reflect that belief as early as the Kibiyeh incident and continued through the rest of his life, growing more critical with each new national

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14. "Occupation and Terror," Goldman at 238-239. Such social inequality is still a consistent problem in the state of Israel. See e.g. "Israeli Learns Some Are More Israeli Than Others," The New York Times, March 1, 1998, A1; "Peled Criticized For Racist Remark," Haaretz English Internet Edition, March 2, 1998, [http://www3.haaretz.co.il/eng/htmls/2\\_1.html](http://www3.haaretz.co.il/eng/htmls/2_1.html).



Arab-Israeli conflict where moral behavior was sacrificed for a national reason.<sup>15</sup> His opposition to Israel's military activity beyond the defensive was so deep that he publically encouraged Israeli soldiers to refuse to serve in Lebanon on moral grounds during the 1982 incursion. As a result of his controversial criticisms of national policy, there was such a strong public opposition to his being a 1993 nominee for the Israel Prize that Prime Minister Yitzchak Rabin refused to attend the ceremony to present it to him. Leibowitz then declined the prize rather than

15. Kibiyeh was a Arab village that was attacked by the Israeli military on October 14, 1953, in retaliation for terrorist attacks by Arab infiltrators. Over 45 homes and 50 civilians were killed in this raid and the Security Council of the United Nations issued the first of many condemnations against Israel for organized military action against civilian targets as a result of this attack. In an essay originally published in two parts in 1953 and 1954, Leibowitz raises moral and ethical questions to the issue of Jews able to commit such an atrocity, the first such act by Jews in a military position of power and superiority since biblical times, and compares it to the story in Genesis 34 about the retaliation against the city of Shechem for the rape of Dinah. Leibowitz points out that in both of these there is the "the frightening problematic ethical reality: there may well be actions which can be vindicated and even justified - are are nevertheless accursed." "After Kibiyeh," Goldman at 189. In short, he was saying that the Jews having their first taste of real power in modern history were experiencing an historical reality, namely that power corrupts ideals and can eventually replace ideals.

In 1993, 40 years later, Leibowitz was again raising this issue as he had done countless times in the interim. The Israeli government expelled a number of suspected Hamas terrorists without trial from the territories to Lebanon in response to a series of terrorist bombings claimed by Hamas. The suspects were left in the middle of the no-man's-land between Lebanon and Israel, but they refused to leave and demanded to be allowed back in to Israel since they were expelled without due process of law. Ongoing peace talks with Arab nations were stalled and world opinion, including that of many Jews, was against Israel during the several months that it took to negotiate a solution to this issue. During this time Leibowitz was interviewed by *Tikkun* magazine editor Michael Lerner, who commented to Leibowitz that one reason some Jews were pulling away from Judaism was because of belief that it "sanctifies the current government and practices of the State of Israel." Leibowitz responded that "[t]o sanctify the state of Israel is pure idolatry. - *avodah zarah*. The problem that we face is that there are many people who are enamored of being Jewish, of their Jewishness, but for them this has no connection with Judaism. So this becomes a nationalism that quickly falls into idolatry and self-deception. Israel is not a state of Judaism - it is simply a secular state whose problems have nothing to do with Judaism." "Leibowitz on the Expulsions," *Tikkun* 8 no. 2 (1993) at 42.



"cause the Prime Minister this awkwardness."<sup>16</sup> Most of his political and ethical opposition was not religiously grounded though. "His was a moral critique but it did not grow out of prophetic morality. It derived from human decency."<sup>17</sup>

Leibowitz's theological and moral critiques, while clearly distinct in his own mind, often seemed intertwined to the public as with the issue of the occupied territories. Clearly he morally feared an Israeli Vietnam that would also produce an Israeli apartheid-era South Africa, but he equally opposed the occupation on theological grounds. Religious nationalist movements such as *Gush Emunim*<sup>18</sup> were Leibowitz's sworn theological opponents whom he likened to the followers of Shabbetai Zevi,<sup>19</sup> followers of a false messianic redemption that actually led Jews away from true Judaism while claiming to lead them towards it; "For *Gush Emunim*, the land and its conquest are becoming the core of

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16. Leibowitz, quoted in Henry Foner, "It Happened in Israel," *Jewish Currents* 48, no.10 (November, 1994) at 11.

"Prof. Leibowitz did live long enough to hear his words practically echoed by Prime Minister Yitzhak Rabin when he spoke of the Sept. 15, 1993 formal launching of the Israel-Palestinian peace process as freeing the people of Israel from precisely the type of horrors of occupation envisioned by Leibowitz." *Id.*

17. Hartman at 58.

18. GUSH EMUNIM ("The Bloc of the Faithful"), A spiritual-political movement established for the purpose of implementing its belief that the establishment of the State of Israel constitutes the "Beginning of the Redemption" which will lead to the ultimate complete Redemption by settling the entire area west of the Jordan. Although their program includes Zionist education, political propaganda, *aliyah*, settlement, and social aims, in practice they have confined themselves to the question of settlement in the areas liberated in the Six-Day War. Encyclopaedia Judaica CD-Rom Edition, "Gush Emunim," Judaica Multimedia (Jerusalem: 1997).

19. SHABBETAI ZEVI (1626-1676), the central figure of Shabbateanism, the messianic movement called after him. "Shabbetai Zevi," *Id.*



the faith, and for them the people of G-d are the people of the divine land."<sup>20</sup> To those who understood his rational distinction between human morality and divine service, Leibowitz's "two realms of discourse"<sup>21</sup> were philosophically sound. But often the lines between his politics and his theology blurred for the secular Israeli: "It was Leibowitz's politics rather than his theology that made him a

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20. Leibowitz, "*Lishmah* and not-*Lishmah*," Goldman at 71-72.

After all that has been said about the 'religious' and pseudo-religious and even halakhic reasons for maintaining Jewish rule over the territories and their Arab inhabitants, and for the annexation of the territories to the state of Israel, I have nothing to add to what already appears in the Scriptures, the same Scriptures to which the national religious fools appeal for support of their lust for conquest. Two thousand six hundred years ago the prophet Ezekiel foresaw *Gush Emunim* and the arguments of its rabbis and leaders. His words read as though he knew in advance the words and terms they would use, and he already gave them a reply which penetrates to the heart of the matter.

'Then the word of G-d came to me saying, Son of Man, They that inhabit these waste places of the land of Israel speak, saying, Abraham was one man and yet he inherited the land, but we are many; the land is given us for inheritance. Therefore say to them, thus says the Lord G-d; You eat with the blood and lift up your eyes towards your idols, and shed blood; and shall you possess the land? You shall stand upon your sword, you carry out disgusting deeds, and you defile every man his neighbor's wife; and you shall possess the land?' (33:23-26)

These words were not meant for Ezekiel's own generation only. He said them to all generations, and especially to the generation of the 'liberators of the Holy Land' in our time. The Jewish people have legitimate claims to this country. But these claims have no 'religious cover.' To speak of the divine promise to Abraham and his issue as a gratuitous gift, to ignore the conditions of the promise, and to disregard the obligations it confers on the receivers is a degradation and desecration of the religious faith. Leibowitz, "A Jewish or an Unpartitioned State," Goldman at 236.

21. Hartman at 58.



nationally known figure."<sup>22</sup>

Be that as it may, Leibowitz also wrote on such religious issues in the modern worlds as faith, prayer, science, women's roles, individual and social duties and many others. The focus of this thesis though is his opposition to the use of Jewish religious law as a basis for law and policy within the modern state of Israel. As so much of his predictions about the practical impact upon the national morality of the occupation of the territories came true, so has much of what he predicted would happen to the Jewish religion and its laws if they were politicized by the modern government. In this area though, unlike others where his theology remained consistent, Leibowitz is seen as having retracted an earlier attitude of moderate accommodation of the needs of the religious in governmental affairs to a later complete separation of religion and state. "Many believe that Leibowitz's views on the relation of religion, state and and society have undergone great changes. Some go so far as to refer to the early Leibowitz and the later Leibowitz. They find a serious discrepancy between the earlier emphasis on adapting the *Halakhah* to conditions of political independence and the later call for separation of state and religion; between the initial concern with the religious significance of the state and the eventual insistence upon the secular

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22. Hillel Halkin, "Israel Against Itself," *Commentary* 98, no. 5 (November, 1994) at 33.

It is a fact that Leibowitz, most of whose writings were concerned with religious issues, was largely ignored in his lifetime by Israel's religious community, while becoming a guru for part of its secular Left. One reason for this, I have always suspected, was that, as a hyper-rationalist who aimed many of his sharpest barbs at the neo-Hasidim associated with Martin Buber and his followers, Leibowitz made Judaism seem so drudgingly joyless an affair that his nonobservant readers could happily congratulate themselves on their wisdom in having avoided it. Jewish ritual and belief, as described by Leibowitz, are an unrewarded exercise in unquestioning obedience to the incomprehensible commandments of an unfathomable G-d, a formula that undoubtedly salved more than one secular conscience for knowing and caring nothing more about them. Id.



character of the state."<sup>23</sup> It is this later insistence of Leibowitz that the state's secular character as the best political vehicle to preserve Judaism's sanctity that is the focus of this thesis. This is done through an examination of two of his earlier essays advocating adaptation of religious law that were written during the first years of independence, and an analysis of the current national controversies regarding religion fifty year later within the state of Israel from the perspective of his later calls for a complete separation of religion and state.

A key part of understanding the early Leibowitz essays is understanding his concurrent life experience. He was serving in a unit of observant Jews in the War of Independence, and was seeing first hand the problems that observant Jews were having in integrating into the national defense force. Unique situations never before encountered by Jewish religious law or at least not in 2,000 years began to crop up - fighting on the Sabbath, women as soldiers, guard duty versus prayer requirements, and others were very real questions for observant Jews in the military. Rabbis who were relying on a Jewish legal system with no direct experience with these issues tended to avoid them rather than issue a needed decision, and indirectly encouraged observant Jews to leave the fighting up to the non-observant in order to avoid these problems. From this Leibowitz foresaw a parasitic trend of the observant taking unfair advantage of the non-observant that would corrupt a future Jewish nation if the religious law, which had not known

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23. Goldman at xxii. Goldman disagrees with this distinction between an early Leibowitz and a later Leibowitz as neglecting "some conceptual distinctions as well as the implications which developments in Israeli society and polity have had for Leibowitz." *Id.* The author of this thesis respectfully submits that precisely because of these implications that it is fair to distinguish Leibowitz as such. Even Goldman notes an evolution in Leibowitz's thinking by his life experience and finally a "turning point" after Kibiyeh in 1953 which clearly indicated to him the moral depths that a nationalistic Judaism could justify. For Leibowitz, the step from justifying military atrocities for the sake of the faith to accepting justifications for corrupt religious concessions as part of the state apparatus was a small one, and complete separation was now mandated. *Id.* at xxii - xxvii.



sovereignty in 2,000 years, was not expanded to meet the needs of a sovereign state. The first essay from 1947, translated here from the Hebrew, addresses these concerns and predictions. The second essay from 1952, also translated here from the Hebrew, tackles the need for *halachic* innovation even more forcefully as the early years of the reality of the state made the discrepancies between the observant and secular communities all the more acute. As noted above, Leibowitz opposed the creation of any state ministry that was in charge of religious issues and this was in direct opposition to Ben Gurion's plan and the subsequent reality. He equally opposed the subsidies and exceptions given to observant Jews within the law to curry the political support of the religious parties. But by the time the second essay was published, he most opposed the shift from *halachic* avoidance during the formation of the state to the corruption of the *halachah* through the politics of the now-formed state. In this essay can already be seen his formulating view that religion would need to separate from the state to remain divine and pure in its practice.

In these two early essays, Leibowitz was writing at that point for a religiously educated audience, advocating his position to other observant Jews. His writing is interspersed with biblical and other traditional textual citations as well as turns of talmudic phrases and puns. His sentences are also long and verbose, reflective of the style of Germanic higher education of which he was also a product. Eliezer Goldman's translations of these essays that were published in 1991 were edited for the American secular Jewish and non-Jewish audience, condensing many of his sentences and removing many of his textual references, examples and proof texts. These current translations, in an attempt to express Leibowitz in a style truer to the author and his originally intended



audience rather than the contemporary reader, are annotated to explain these references while maintaining them. To a reader cognizant of the current morass of political discrepancy in Israel over the balance of power and privilege between observant and secular Jews today, these essays from Israel's earliest years may resonate as eerily accurate.

## II. Translations of Two Selected Essays of the Early Leibowitz

### The Social-Political Reality as a Religious Problem<sup>24</sup>

#### A.

The deliberations and the investigations on religious and state questions have lately been in our camp, yet many of them are taken of the quality of religious thought, and as far as the "truth of the matter" this is but a sociological inquiry. The religious problems continually come to attention, although not from their strength itself since from within a situation sociology defines itself: The standing question in its present configuration - What is the place of religion in society? What is the social function of religion? The religious position in this argument is potentially significant according to many - it is an attempt to demonstrate the necessity within religion for the sake of a base of an improved social existence, and also an attempt to stem the cultural destruction and the social-political holocaust of our days from the emptying of the modern culture of religious content; an aspect of "Behold, is it that G-d is not close to me that I have found these evils?" or "Only there are no G-d fearers in this place and they will kill me."<sup>25</sup> And contrary to that is the current secular or anti-religious approach which denies the social-political necessity of the religion, seeing religion as an intrusive factor and harmful in the forming of the proper social-political order, pursuant to the famous sayings of Karl Marx.

Yet, the common aspect of both arguments - where both of them are the same - is that they do not deal with religion, but rather with the *efficiency of religion* regarding social-political functions, which both sides see as a supreme

24. Originally printed in "העובד הדתי", # 4, 1947; reprinted in יהדות, עם יהודי, ומדינת ישראל Schocken Publishing, Tel Aviv: 1979, pp. 98-108.

25. Deuteronomy 31:17; Genesis 20:11. Denotes here a society void of religious values.



values. From this aspect, there is no substantial conclusion from this controversy concerning religious awareness - unless Man can see religion as more than *a means and a tool* to acquire other purposes. Proof of this - non-religion is a principle, and understanding this thing disqualifies itself from filling a religious standpoint in the above question- not because of the answers that it strives to reply to in the question under discussion, but rather because agreement itself on the present question lowers religion to a "mixing and slaughtering"<sup>26</sup> level of the political function.

We shall attempt to deal with religion and society not as a question for the significance of the society of the religion, but rather as a question for the significance of the religion of the society. However, this inversion of the formulation of the question signifies what is between the sociological interest and the religious interest. Boundary markers between sociological and religious categories are a foundation for clarification of the question of religion and society. In our social reality - the hegemony of the labor movement in Israel - and in our pedagogical-cultural problematic, the perceived problem is the problem of socialism and religion. *Religious socialism* - this is the vision (or perhaps only the catchphrase?) that defines the position of the religious man in this problematic according to the views of the best thinkers in our midst and according to the education systems of important streams in the labor movement and the religious youth movement. Much of the meaning of the two linked concepts in this catchphrase make it difficult to understand and criticize. Socialism is the intellectual category, since it is in the definition of observations and knowledge whose factors work to shape the society's image; It is also the

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26. For mixing see e.g. Exodus 30:25 and for slaughtering see e.g. Genesis 43:16. Here it denotes a pragmatic level of function.



category of the will- since it is in the programmatic definition of a particular social order; and it is also an historical category - since with its name we call upon movements and upon labor and deeds; that we did or we will do or that we are doing. Over and above this, in the area of each one of these categories we stumble over these revealing variations and contradictions: Saint Simonism<sup>27</sup>; Marxism above all the 150 reasons by which it is interpreted; Fabianism<sup>28</sup>; Soviet Russia; English trade unionism; Labor settlements in the land of Israel, etc. Each of these does not mirror the other - and what equivalent aspect repeats in them? And as far as the religious concept - one cannot estimate all of the numerous revelations that encompass them. These are two diverse worlds and each is remote from the other, and there is no possibility of the meeting between them except from an axiological distinction only, that is to say from the worthy evaluation of each matter as an objective or as a means. That which is common to all which is called "socialism" - is the vision of social value as ultimate value, the vision of perfecting society as a supreme duty, and the worth of all things attaining its usefulness as itself for its ultimate end. However,

27. Saint-Simon, Claude Henri de Rouvroy, Comte de (1760-1825), French socialist, born in Paris. At the age of 16 he went to the United States to fight in the American Revolution. When he returned to France, he supported the Revolution there, giving up his title. He is considered one of the founders of modern socialism. His writings present arguments in favor of a social organization directed by men of science and industry for the benefit of the whole society. The students of Saint-Simon organized and popularized his ideas after his death, and his principles became known as the philosophy of Saint-Simonianism. His major work is *Le nouveau Christianisme* (The New Christianity, 1825). "Saint-Simon, Claude Henri de Rouvroy, Comte de," Microsoft (R) Encarta. Copyright (c) 1994 Microsoft Corporation. Copyright (c) 1994 Funk & Wagnall's Corporation.

28. Fabian Society, a British socialist educational organization that advocates social change through democratic reforms. It was founded in London in 1884 by a group of middle-class intellectuals who rejected the Marxist theory of class struggle but wished to promote equality for all through collective ownership and democratic control of the nation's resources. Believers in peaceful and gradual change, they named their group for the ancient Roman general Quintus Fabius Maximus Cunctator, who wore down a powerful enemy by using delaying tactics and avoiding decisive battles. "Fabian Society," Microsoft (R) Encarta. Copyright (c) 1994 Microsoft Corporation. Copyright (c) 1994 Funk & Wagnall's Corporation.



the "religion" is also in the totalitarian area of values: the common denominators in all its revelations of the religious consciousness is seeing the awareness of G-d and the cleaving to Him as the objective and the evaluating of all the works of Man from the aspect of their being an expression or a means for its attainment, or - the opposite - indifference to the side of a religious perspective or far from it. From this aspect it is certain that Man will see the religious mind as the way leading to the socialist demand, and even as the necessary condition for its implementation; Yet by this he defines himself *as a socialist* and also as a non-religious man, since his religiosity is conditioned on his socialism. Just perhaps the vision of socialism is like the active implementation of "and you will walk in His way"<sup>29</sup> and proof of a perfect worldly realm as terms for the achievement of the kingdom of Heaven; However, this position is *religious* and not socialist. This reversed value scale restricts the merging between religion and socialism. Two people, obligated to one thing and working for its sake, will each of them will be utterly diverse, if it is a measuring stick for each one of them in a truly different axiological measuring stick. Also the sociological requirement and the religious requirement have a totally different signification when expressed as a "socialist" or as a "religious" man, and the man is not defined but rather from the aspect of the purpose that he sees for himself or for Man in general and not his reasoning concerning the efficacy of the various means for achieving his purpose. Also of "religious socialism" it is impossible that both partners will have an equal right from an axiological point of view and do not purposefully flee from the first vision or the second as an inferior means to it. Therefore there cannot be seen in "religious socialism" a resolution to our problems - rather it is *the problem itself*.

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29. Deuteronomy 28:9. This phrase means keeping G-d's commandments and is the condition for G-d's continued care.



**B.**

We ask: Is society a religious problem? Are the needs and the functions of the societal organization religious functions? Is there in it a religious consciousness and within the religious command any kind of an obligation by those who possess them to hold a certain position on social questions and the state? There is no doubt that these questions have different aspects, and there are religions in which these aspects appear together as one. One can argue that religion is only a relationship with G-d ("and I, a relationship with G-d is good for me", "a relationship with G-d they desire"<sup>30</sup>), and all of them are religious revelations or are but symbolic expressions for this relationship or methods to arrive at it; therefore there is no religious situation that is not conditioned on some kind of societal situation and is not influenced by it. Also one who expands the concept of religion and its commands over a broad area of life knows that there are things which are also positively or negatively irrelevant from a religious standpoint: not for deciding the question of suitable medical treatment for a particular disease from a religious scale, nor for the question of a particular technical method to build a particular bridge above a stream - these two are given for estimation from the point of view of efficacy alone. Is the technical meaning of the term "organization" of relations between a man and his fellow and the individual to his community something something moving out of the framework question of efficacy and lifting it to the degree of religious duty? And one may say - There is nothing like it: indeed the question of society escapes that frame, and indeed the prophet's definition to "desire a relationship with G-d"<sup>31</sup> is an implication of a desire like social justice. However this demand of social justice - what is the sociological meaning? Does an obligation flow from it concerning a

30. Psalm 73:28; Isaiah 58:2.

31. Paraphrase of Isaiah 58:2.



certain order and negatively for another order? And again we will not recall with a prophet the definition of the religious "good" and "G-d's desire from Man<sup>32</sup>" like righteous acts and benevolent love. However "righteous acts and benevolent love<sup>33</sup>" have in them the same value itself and the same weight, and the same validity and the same meaning also in relation to a master and his servant in a society established upon slavery ("if I despised the justice of my slave!"<sup>34</sup>), also between an employer and his hired worker in an individual *capitalistic* society, also between comrades for work and entitlement in a *socialist* regime. *So from here there is nothing to determine from this a religious-ethical demand because of any specific social-political program.*

A forceful expression for the total perfection of the fundamental social-political position in the Jewish religion is found in the words of the RAMBAM, "because Man cannot reason the truth and cannot do the good deed when he is sick or hungry or escaping from his enemy.<sup>35</sup>" Yet also the author of "Duties of the Heart<sup>36</sup>" represents undoubtedly a legitimate line in the Jewish religion, and there is no doubt that he saw in Man the essence of the man precisely in his ability to reason the truth and to do the good deeds also when he is sick, also when he is hungry, also when he is escaping from his enemies.

32. למה דרשית את-אלהי העם II Chronicles 25:15 Possibly a play on words from II Chronicles 25:15 "Why have you sought after the gods of the people" which are uttered to King Azariah by an unnamed prophet after he himself worships the gods of his mercenary army from Seir. The prophet foretells his defeat for this transgression after G-d had already told Azariah through a prophet what he desired of him. Possibly also a paraphrase of Micha 6:8. מִה-יְהוָה דֹּרֵשׁ מִמֶּךָ - What does the Lord require of you - which would correspond with the quote in the next sentence from the same verse.

33. Micah 6:8.

34. Job 31:13.

35. *Moreh Nebuchim* or "The Guide for the Perplexed," III:27, Shlomo Pines translation, University of Chicago Press (Chicago: 1963) at 511.

36. Bahiya Ibn-Paquda wrote this 11th century Jewish ethical treatise that combined rational thought and Sufi mysticism.



Yet we did not engage in the question of the place of society in the religious abstract, but rather its place is questioned *in the Torah*, in the embodiment of the religion in its solid system of commands and tangible acts. Apparently our question would appear to be solvable by itself, a standpoint of "let us bring a book and see:<sup>37</sup>" Here is the *Torah* arranged and firmly established as a social-political document, the beginning from commandments commented upon in the written Torah and ending with legal rules and judgements that are condensed in the books of *acquisitions, laws and judgements* of "the strong hand<sup>38</sup>" and in the *Shulchan Aruch* section *Choshen Mishpat*!<sup>39</sup> This is the answer heard by the majority of our group - and this is nothing but pushing it away with a straw<sup>40</sup>. On the contrary - the *Torah* with its specific commandments from it sets us up in the presence of grasping problems from the political perspective in the most critical form. We still do not know if the *Torah* in all of its social codes and political ramifications deals with the society and the state *from the start or after the event*: we do not know if the *Torah* is intended to give us the duty of the establishment of a particular social-political order, defined by its commandments, or *maybe it is not given in its laws except in relation to a specific order as an existing situation*. For example, to what is this thing to be

37. נתי ספר ונחזי

38. Rambam - היד החזקה - another name for the *Mishneh Torah*.

39. SHULHAN ARUKH ("the prepared table"), name of a code written by Joseph Caro, similar in form to the *Arba'ah Turim* of Jacob b. Asher, but more concise and without stating any sources. The book is in fact a halakhic synopsis of Caro's previous commentary on the *Turim*, the *Beit Yosef*. It is divided into the same four major sections as the former: *Orah Hayyim*, concerning the daily commandments, Sabbaths, and the festivals; *Yoreh De'ah*, dealing with various subjects, such as dietary laws, interest, purity, and mourning; *Even ha-Ezer*, on marriage, divorce, and related topics; and *Hoshen Mishpat*, dealing with civil and criminal law. Encyclopaedia Judaica CD-Rom Edition, "Shulhan Arukh," Judaica Multimedia (Jerusalem:1997).

40. דחיה בקש Talmudic expression meaning "to dismiss with a vague or paltry reply." Jastrow, p. 291.



compared?<sup>41</sup> To a commandment "do not plow with an ox and a donkey"<sup>42</sup> Are we to deduce from it that it is our duty to base our agriculture on the strength of an animal and to produce the opportunity for a negative commandment,<sup>43</sup> that is to say that it is forbidden from the *Torah* to establish the agriculture upon the production, mechanization and automation of an animal that is used like a source of material energy and voiding this commandment, or maybe the commandment is only directed for the possibility of the use of the animal's strength to serve us, and we do not have any obligation to produce this situation? There is no doubt that all intelligent people decide here according to the second alternative, yet this is not an easy decision in relation to the social-political law that is in Israel's *Torah*, the assumption that a particular order is already alive and stable: *Parshat Mishpatim* assumes the establishment of slavery as a reality and regulates it, labor laws presume hired labor and regulates it, rules of fraud presume private trade as a given and regulates its earnings, and so on. And here is our historic situation that we do not exist in a given order - as partners for undertaking the establishment of the government of Israel from anew we stand before the duty of creating this framework, and the religious-social problem takes on the form of three alternatives: 1. Whether our religious duties (receiving the yoke of *Torah* and commandment) obligate us to attempt to establish its reign by having a place for the realization of the social-political legislation of the Jewish religious laws in the present? 2. Perhaps this Jewish religious legislation is but a model in the words of the *Torah* to show how its aim is carried out by the society in a framework of causal data, and accordingly it is upon us to create the direction to aspire to rule more justly for its attainment according to our understanding? 3.

41. משל למה הדבר דומה? Talmudic expression. See e.g. Berachot 7b.

42. Deuteronomy 22:10.

43. negative commandment - מצווה לא תעשה - a commandment of something you are forbidden from doing such as placing an ox and a donkey on the same yoke.



Maybe it will not be the social-political legislation of the *Torah* as intended but rather in the event of an occurrence of a particular order, and with its cancellation breaks a link of the society and the state to *Torah* and we today are free to create for ourselves a regime as our eyes' envision, and only put in it "judgement and justice<sup>44</sup>" in a suitable form for a framework that we choose?

### C.

We will discuss three alternatives, for the illumination of the social-communal reality of religious Judaism in our time. As opposed to our parents we are not placed in a framework of a set and fixed societal reality which exist and develop either by resolutely imminent lawfulness or by reason of foreign factors and powers existing outside the boundaries of our influences and our responsibilities - in a certain measure a regime in which we become masters of our own fate, and partners to the enterprise of the establishment of Israeli government by our own power and a purpose of a formation of a social-political framework, and we carry in its contents the responsibility for its nature and planning. The Jew who sees a life-programmatic of the *Torah* - or the causing of the appearance of it to be raised as if he sees in it a life-programmatic - he could not escape today from giving a clear answer with the excuse that the regime has compelled upon itself resolutely outside factors, and he is forced to answer two questions: the first - and the essence of our essay: Does a religious program include within it specific and positive programs regarding the social-political regime, or maybe the religious man from Israel<sup>45</sup> can agree that his religion is

44. Ecclesiastes 5:7.

45. אדם מישראל - Midrashic idiom for a Jew. See e.g. Deuteronomy Rabbah II:10. Leibowitz repeatedly uses this idiom in his writings as denoting a Torah-observant Jew.



nothing but a matter "between a man and himself" (Religion is Private!<sup>46</sup>), in conformity to the law of the secular-liberal regime of today? The second: if such a social-political order "exists" according to the Torah - *what is it?*

Three alternatives that were formulated in the prior section answer these two questions in their own way, and they have three representatives - knowingly or unknowingly - among the religious communities at the present time. The first and the third seems at first glance like two extremes of religious thought and two contradictory approaches, but in truth they indeed have a common side - both of them free men from Israel<sup>47</sup> *in the present time* from religious obligation and religious duty regarding the social functions and political existence. We would not be mistaken if we would say this, because it is the way of the Jewish religion in the communal life at the present time - as it is reflected in the societal behavior of the great majority of those who see themselves as religious Jews and are so seen by others, in the political attitudes of institutional officials of the religious community and of many other factions and organizations, their spokesmen and their standard bearers - expressing the third attitude, seeing a world of social and political problems, the national organization and international relations, the economic order and economic form and etc. - as indifferent from a religious perspective and without relation to Torah and religious law; accordingly the religious man in the present time is permitted to do with them as is good in his eyes - to carry on his tradition without obligation to religious criticism, to carry on according to convention, according to his convenience, according to his personal interests or according to all political or social ideologies that are proper

46. In the Hebrew reprint (see note 24), this is written on page 102 in German - "Religion ist Privatsache!" Given Leibowitz's philosophical training at the University of Berlin in the early 1920's, this may have been an nod to his teachers there.

47. See note 45.



in his eyes - and not have all of this damage his religious integrity in any way. Certainly this is not a position fixed through consideration and initial thought, however it is from a state of mind that is in the subconscious, from the perception that indeed there is no relation of *shmetah* (as a symbol for social problems)<sup>48</sup> to Mount Sinai (as a symbol for "religion").<sup>49</sup> It is accepted and acknowledged, for example, to see as a criterion for a man's religious position the butcher shop that he is in to buy meat, but it is not a criterion for his position as to Zionism or anti-Zionism, for war and for peace, for an economy well-established upon private enterprise and upon the labor of the hired worker in contrast with the economy well-established upon cooperation in capital and cooperation in labor. There are clear and precise instructions and religious direction concerning things that are between a man and himself and a man and G-d, but there is no required meaning and religious direction concerning political and socialist questions, and religious Jews do not usually feel a need for a decision according to the Torah in this area. It is a sufficient comparison between efforts that invest in establishments and bodies and individuals, the acknowledged ordained authorities in the eyes of the Jewish religion and its legitimate representatives, on the problems of Kosher slaughtering (unified or separate<sup>50</sup>) amongst their positions - or lack of positions - on the problems of the draft in a period of war, on the indispensable problems for the people and the state and for the individual as a

48. Exodus 23:10-11; Leviticus 25:1-7, 18-22; Deuteronomy 15:1-11. These laws were about the release of financial and land debts with fellow Israelites as well as Israelite indentured servants every seven years apparently in order to maintain a social equilibrium.

49. Sinai symbolizes religion as the place where G-d made the communal covenant of the law with all of Israel throughout the generations. See Exodus 19 and 34.

50. Proper kosher slaughtering is often fraught with different interpretations of correct standards, and at the time of the founding of the state of Israel a concern was raised as to whether an official communal standard could be set that that would have governmental authority and meet every interpretation of Kosher. Even in Israel today, there are many ultra-Orthodox Jews who will not eat meat that is certified kosher from a governmental religious inspector in the belief that this standard is not strict enough.



member of the people and as a citizen of the state. Religious unity in our day recognizes - not in ideology although in actuality of life - in Torah *for a man* from Israel<sup>51</sup>, but not in Torah for the people of Israel.

The historical formation of this psychological state is known and understood to us well. The distinction between the world of four cubits of the individual<sup>52</sup>, given to put it in order according to the religious law, for its social and political world, that does not include in its framework the religious arrangement, - beginning it under compulsion with a result of continuing it, as usual, of one's own free will. The lack of tools and utensils for shaping an independent political and social order during the many hundreds of years diminished the discovery of religious life predominantly in an individual authority, an examination of "go, my people, come into your chamber,<sup>53</sup>" and this habit forced upon us the opposite to be natural, and until today, when we went from "our room" and we acquired for ourselves a certain control over the factors and the powers shaping the image of a state and a society and we deal with our own hands in creations of order, and religious Jewish partners for these deeds - yet it is ordinary for them to limit their religious horizon with private and personal religious relationship boundaries and to be involved in politics and social needs as if there are no requirements and no prohibitions from the aspect of Torah applicable to them (that religious phraseology and the application in quotations and phrases of the Rabbis were not enough to impart to the politic a religious disposition.)

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51. See note 45.

52. Four cubits is a common Talmudic distance of separation. It is similar to the modern notion of "personal space." See e.g. *Brachot* 18a and *Shabbat* 5a.

53. Isaiah 26:20. G-d tells the Jews to hide safely in their rooms while he protects them and cares for them. Leibowitz seems to infer with this verse that we never learned to care for ourselves if we were always being cared for by others.



It is possible to find the moral-religious obligation for this position of the formal Jewish religion and of its leadership, if we can explain this position as an expression - maybe a subconscious expression - to access the formulation in our third alternative. It might be that the Torah does not deal with politics and with society except *post factum*, and there is no state law and social ramification or designated details and purposes except towards a certain social reality and certain economic terms that were existing in that time and are not existing today: a king of Israel with *Urim and Tumim*<sup>54</sup>, an authoritative *Sanhedrin*; man from the mouth of man from the mouth of Moses our teacher and residing in the granite chamber<sup>55</sup>, the land partitioned for the tribes, "all of you upon it,"<sup>56</sup> a patriarchal agricultural economic state, a primitive economy (loans only as assistance for the poor) and etc. Perhaps only upon a realistic background of the social framework and technology as this work gives it is the political law and socialism of the Torah, however we do not have leaders from the past to establish this framework. However perhaps today, in the absence of the constituting terms of the theories to validate the social-political laws of the Torah, there are no enforcements and no prohibitions next to any kind of an existing social regime nor are any likely to rise, and no position in the state and the society of man any religious meaning, and it is not a given to be determined according to a decision of Jewish law. We are not too proud to decide on the great theological questions of a purpose for the Torah's commandments - if they are aimed at the individual or the community, if

54. *Yoma* 73a & b. In Numbers 27:21 G-d tells Moses to teach Joshua to consult the *Urim and Tumim* of the priests for difficult decisions to know G-d's will. This has been applied in Jewish religious law to any king, albeit only for difficult decisions that cannot be resolved amongst the people.

55. *Middoth* 5:4; *Sanhedrin* 86b. The seat of the Sanhedrin. This also refers to the chain of legal tradition described in *Pirke Avot* 1:1.

56. כולכם עליה



sociology is a religious problem, if the social law of the Torah is "law to begin with" or "law post factum," and similarly; it has perspectives both ways, and even in the legitimate social historical framework we could unravel paths of thought differently bent to two sides. Therefore we do not have authority to disqualify the religious preparation of a man or of a community that is not concluding from the Torah political and social conclusions in the form of religious law to deeds in relation to today. In another manner of speaking: we are thankful that a man could be a proper Jew without a religious social and political program.

What are we talking about? When this man or this community in their way and in their doctrine are precise about protecting the boundaries of religious existence - like a personal experience and an array of individual and private relationship - between the political and social systems about their problems and their functions. There is no contradiction from a greater outcry, whether from the logical perspective and the ethical perspective, from which a combination of a lack of a positive program for social governance according to the Torah with an organized appearance in the political world for the sake of a struggle about "religious requirements," about a state "according to the Torah." The result is not a religious struggle except for *political clericalisms*.

A few years ago we were worthy to see in appearance before a divided community for the land of Israel a delegation of official leadership and community delegation of the Jewish religion, and according to whose requirements that the Hebrew state established its basis on the Torah. We will imagine for ourselves that the society of established nations was from an association of terms of seriousness and strictness for this delegation and for the



proposition and were questioning it: "Our Rabbis asked, what is the perceptible meaning of a state according to the Torah, and what will be its law? This is a democratic state, the governing authority stemming from the basis - the people - developing and rising upwards, or an autocratic government, the governing authority in it flowing from the elite? Will its authority be chosen or appointed, and through who? Will there be an existing state armed forces, armed and included within the legal functions that are also for the management of war in a time of need, or a neutral state and pacifistic that does not recognize war as a means and as a political system? Will there be a state economy based upon private enterprise, a judge who does what is good in *his* eyes, and upon an institution of hired labor, or will it be a socialist economy or communist?" All sorts of warnings were raised in response about the political requirement according to the Torah, and only a delegation that thought about the questions *today* and arrived at the conclusion that they have in their hand evident and affirmative answers amidst the insights of the Torah and Jewish law - the apparent authority on a *religious-political* basis. In fact this delegation represented the religious communities and organizations that got their Zionism through religion by expropriating the religious and social boundaries of life from the control and direction of Jewish law, a Judaism whose teachings are condensed into the "*Shulchan Aruch*,"<sup>57</sup> that did not judge and could not judge even once from the political and social questions of a regime of an independent Hebrew society today, since *all of the questions today were not existing* in the Tsfat of the

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57. See note 39.



rabbinic author<sup>58</sup> and not in the notes of the Cracow rabbi<sup>59</sup>. Even if we could have asked the delegation questions like these to be clarified with not just hypothetical answers and that were based in the Hebrew state according to the Torah, they had nothing except a scratchy wordy slogan without real political substance. A participatory religious society at work in a national political movement of the people, and in the shaping of an independent political government, phrasing the catchwords: "the land of Israel for the People of Israel based upon the Torah of Israel," perhaps in this economy in a generation and a half there will not rise in its midst a man or an organization or movement that interprets those words for a *meaning of the "Torah of Israel" besides the land and people of Israel in the present*, in a time that it does not have in its hand a chapter of law that is only about a man from Israel<sup>60</sup> and his individual and private reality, and not have closer to us any understanding for the need for new legislation intended for government and society and not want to set in place religious law like this. A lack of religious and state and social programs in a

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58. Joseph Caro (1488–1575), author of the *Shulhan Aruch* who resided in Tsfat.

59. Moses Isserles (1525–1572), Polish rabbi and codifier, one of the great halakhic authorities. His works include the *Darkhei Moshe*, to the *Beit Yosef* of Joseph Caro, notes and supplementary or laws, mostly by Ashkenazi scholars, not given in the *Beit Yosef*. Isserles had begun to write a commentary to the *Turim* of Jacob b. Asher, but while he was engaged in this task the *Beit Yosef* was published. He then wrote his *Darkhei Moshe ha-Arokh* to *Orah Hayyim* (Fuerth, 1760) and *Yoreh De'ah* (Sulzbach, 1692). He later abridged it and it was published on all four parts of the *Tur* (Berlin, 1702–03) with the title of the *Darkhei Moshe ha-Kazar*. Isserles utilized the *Darkhei Moshe* as a basis for his glosses on the *Shulhan Arukh*, the *Haggahot* or *Ha-Mappah*. It contains explanations, supplements, additions, and includes the customs of the Ashkenazi scholars ignored by Caro. At times Isserles decided against the view of the *Shulhan Arukh*, ruling in conformity with Asher b. Jehiel and his son Jacob, rather than with Isaac Alfasi and Maimonides as does Caro. By spreading his *Mappah* ("tablecloth"), so to speak, over the *Shulhan Arukh* ("Prepared Table")—which had codified Sephardi practice—he in fact made that work acceptable to Ashkenazim as well as Sephardim. The *Mappah* was first published with the *Shulhan Arukh* in the Cracow edition of 1569–71. Encyclopaedia Judaica CD-Rom Edition, "Moses ben Israel Isserles," Judaica Multimedia (Jerusalem:1997).

60. See note 45.



religious society appear as a faction and as a political movement, bereft of a *religious struggle* of all of its value and measure. It does not appear as a struggle about a particular perspective, comprehensive and inclusive, of the community's life, as an attempt *like a petty-minded attack on small details*. This is the great final conclusion for the Jewish religion in our generation in the direction of its movement, according to what has been formulated as the third alternative.

For the sake of preventing a widespread misunderstanding in religious explanation and propaganda, particularly with the youth and the Labor Movement, it should be stressed that "*Choshen-Mishpat*"<sup>61</sup> does not have the complete statement for all of the political and social questions under discussion here. "*Choshen Mishpat*" deals only with the arranging of relations between human beings within a framework of a certain given order as a permanent fact. It does not touch at all the basic question, whether this order exists of necessity and is imposed upon us a priori by reason of the Torah, or if we are free to build with our social existence upon another foundation totally and to materialize upon it the legal and ethical aims expressed in Jewish law. The actual societal questions of the social structure and the state, and of the rights and obligations of the individual not with regards to his fellow, but rather with regards to the great anonymous ones - state, society, people, homeland - *they do not have precedent in decided Jewish law* in *Choshen Mishpat* and do not have authority to decide based on them today except through new legislation. The rabbinic establishment in our time decides according to the *Shulchan Aruch*<sup>62</sup> and in any case only with matters dealt with in the *Shulchan Aruch*, and abstains from new legislation - as far as dodging any obligation that they should judge in matters where it would be

61. Section of civil and criminal law in the *Shulchan Aruch*. See note 39.

62. See note 39.



impossible to rely upon the *Shulchan Aruch*. From here the moral or ethical weakness and conceptual helplessness of *the rabbinate* in coming to judge problems like Hebrew labor, the draft and the like, which flow from the origination of the unique reality of our day - namely the lack of a fixed and accepted social-political framework and a situation of a formation of a new order. Therefore the remaining religious society with all of the decisive questions of our generation are like a flock without a shepherd, without any religious guidance.

For a truly clearer and transparent sense of the first extreme alternative - of looking at the political and social legislation of the Torah as a legislation "*at the beginning*." According to this approach, we are obliged to receive the yoke of the Torah and commandments in which are included the social-political laws of "*mishpatim*," "*behar*," "*shofteim*"<sup>63</sup> and all of the oral laws<sup>64</sup> based upon it, to aspire and to work to create from them an exemplary order and exemplary conditions, that the Torah assumes their existence as a given fact and that only in their framework does it have a place to realize the Jewish law as it is, as it was written and as it was spoken. According to our present reality, when these conditions do not exist and they are not in our hands to establish them, then all independent political activity and national government is forbidden to us, which would bring for us the cause of necessity to another order, until a spirit is poured upon us from above... to what example would that event would resemble? To the sacrificial service - which is dependent on the Temple being upon its foundation and in its place, on a hereditary priesthood, on a purified Temple and its tools and

63. Three Torah portions containing the bulk of rules for daily communal living - Exodus 21:1-25:18, Leviticus 25:1-26:2, and Deuteronomy 16:18-21:9 respectively.

64. Tradition holds that Moses received two Torahs at Sinai - The written law and the oral law that was an elaboration on the written law and could be added to by the sages of each generation. The *Mishna* and the *Talmud* are written compilations of the oral law. See *Pirke Avot* 1:1.



its attendants and etc, and in the absence of these conditions not only is there no force to the laws of sacrifices but we are *forbidden* to sacrifice a sacrifice until the Temple is rebuilt, may it be soon in our day.<sup>65</sup> With this it is forbidden to us today to establish a political and social framework for ourselves, since it will not be for us *like religion and like law*, and it obligate us to continue our society's existence in the holes and in the cracks and the crevices of the Gentile society, for which we are not responsible, and there every man from Israel<sup>66</sup> may fulfill within four cubits the commandments *placed upon him* - until the coming of our righteous Messiah. It is hard to negate an approach like this from a religious or ethical standpoint - if its possessors are consistent in their way and in their method - and it is possible to find *for individual religiosity* this source and this basis as a Jewish historical legitimization. However all who would participate in the modern national-political movement, in building the land and in developing the independent political and social institutions of the Yishuv,<sup>67</sup> reveal with their action that they despise this approach and negates it. Few among religious Judaism represent religion with this method amidst clear understanding and words of commentary, so if not specifically then the general principle is stated. It is possible to find an echo for this approach in the position of a great teacher who was asked by Hebrew farmers in the land of Israel to judge a matter which originated in modern settlements, and answered them: "Why do you become farmers? Be shop keepers like your able fathers"...

#### D.

65. A sentiment found in *Baba Metziah* 28b that is now found at various points in the liturgy as well. See e.g. the traditional weekday *Tefillah*.

66. See note 45.

67. This is the Hebrew word for "settlement" that became the name of the Zionist communities that were settled in Palestine before the formation of the state of Israel.



It remains for us to clarify, the second part from the third alternative approach that counts for us the aforementioned. What are the answers that this approach gives us, or is it capable pending the time given to us, upon the fateful question today before the Jew who sees in the Torah a life-program?

According to this approach, no Jewish law is but an *example* in the hands of the Torah, which indicates the view about the specific *intention*, and it is up to us to clarify this direction *and to aspire for an order which comports according to our understanding for the sake of attaining of an eternal purpose.*

A great difficulty is revealed to us in this way: The suitable order according to our understanding - the understanding of whom? It is obvious that different men could understand and describe for themselves "an extremely suitable order" - in very different forms, and to aspire consequently to different orders.<sup>68</sup>

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68. This parallels the thinking of Rabbi Mordecai Kaplan (1881-1983) whose views on Judaism as a civilization were published just thirteen years before this essay in his book Judaism as a Civilization. "He defined Judaism as an 'evolving religious civilization,' attempting thereby to aid in the adjustment of world Jewry to the social and intellectual conditions of the 20th century. He maintained that as a "civilization" the Jewish people possess all the characteristics of land, polity, and culture subsumed under that designation, but that in each aspect of civilization radical adjustments in Jewish social theory and polity are essential. Therefore, while Kaplan has always been an ardent Zionist, he has equally insisted that the creative survival of the Jewish people in the Diaspora is both possible and desirable. His theory of nationalism has been open to the impact of changing conditions, even though it consistently prods world Jewry to formulate a covenant as a transnational people and create the instruments for its implementation." Encyclopaedia Judaica CD-Rom Edition, "Mordecai Menahem Kaplan," Judaica Multimedia (Jerusalem: 1997). Kaplan's theories asserted that as a civilization it was natural that Judaism should evolve in different forms to suit historical and cultural needs and that each different form was therefore valid. This is a direct contradiction of the traditional viewpoint that Jewish religious law is holy and therefore unchangeable except for specifically permitted situations. Leibowitz may well have been familiar with the thinking of Kaplan at the time he wrote this essay.



It is clear, for religious workers, pioneers and soldiers who bear the yoke of responsibility for the state and for fulfillment of service and duty, and their social ideas and aspirations which change them a lot from those of the prior generation, which lacked a national independence and governmental responsibility, and whose typical representatives were house holders in the Jewish towns and men who knew only Torah as a livelihood. Also in the past, in the traditional Jewish framework, existence was changed conceptually - and even contrary to each other - in understanding "the spirit of Torah," its intentions and purposes of its commandments, and they were together - in spite of their disagreements - and they were sanctified as the sanctified of the generations and supported legitimate expressions and discoveries of the Jewish Torah. Here it is sufficient to mention the gulf that appeared as a barrier to the practical commandments in the eyes of our philosophers in the Middle Ages and as educational-pedagogical resources for human need, and amidst the views of the Kabbalists<sup>69</sup> as mystical symbols and even magic, that their performance had an impact in higher worlds - and yet in spite of this, from an historical examination of the Israelite religion, these words are both of the living G-d.<sup>70</sup> We too today will not be able to decide a priori which conception is legitimate: a social and political vision as religious categories which require in the present an ordering according to the Torah and Jewish law, or the view of Jewish law in its definite form, which does not include political and social problems, and an absolute revelation of Israel's Torah, and the drawing back from the religious problematic

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69. Kabbalist is the term for those who practice *Kabbalah*. "'Kabbalah' is the traditional and most commonly used term for the esoteric teachings of Judaism and for Jewish mysticism, especially the forms which it assumed in the Middle Ages from the 12th century onward." Encyclopaedia Judaica CD-Rom Edition, "Kabbalah," Judaica Multimedia (Jerusalem: 1997).

70. From *Eiruvim* 13b - אלו ואלו דברי אלהים חיים. There is a dispute of Jewish religious law between Hillel and Shammai, and a heavenly voice declares them both proper interpretations with this phrase although it declares Hillel the correct one.



in the political reality. Between the two approaches today there is no theoretical compromise, and in practice various contradictory conclusions flow regarding religious obligations and commandments today, and there is no doubt that this thing will become more in our generation to a state of a definite breach within the Jewish religion.

What is required is the development of Torah and religious Jewish law for the social and political problems of today *in the spirit* of the written Torah and the tradition and according to *examples* of Jewish law that will be shaped with conditions and with other reasons - There is no choice except to rely on *one's own* understanding of the spirit of Torah and the intention of the commandments and its goals. Each individual for knowledge, amidst a collective internal conflict, will strive to reach in his hands a committed practical solution from this point of view.

### **The Religion in the State and the State in the Religion**<sup>71</sup>

This essay is from one who wrote those lines about the problem of the Sabbath,<sup>72</sup> as a indication of the general problem of the actual life of the religion of Israel - of *the Jewish law - in a framework of reality of the political Jewish state of our day*, which provoked many disputed responses both orally and in writing, a segment of which were also on the pages of this journal. And thus an echo in them of repercussions also in discussions and in other clarifications

71. Originally printed in "בטרים" 148/149 (1952); reprinted in עם יהודי, ומדינת ישראל Schocken Publishing, Tel Aviv: 1979, pp. 121-145.

72. The Hebrew text cites the following volume in a footnote as the apparent reference to a previous piece on the Sabbath that Leibowitz authored: 108 עמ' ר' לעיל, 1951, קכ"ח, "בטרים". This reference is only apparent as the author of this thesis was unable to find an original copy of the בטרים volume to confirm this point, but is consistent with the fact that Leibowitz published many articles on a variety of subjects in this journal in the early 1950s. Goldman at xii.



about religious problems of Judaism in this time. From this debate it has become clear that this was actually study before deed:<sup>73</sup> clarifying relevant Jewish law was accomplished as dependent on clarifying fundamental ideas about the religious situation of Judaism by historic revolution together with the carrier of this Judaism - the people of Israel. Here a test will be made to determine the chapter subjects<sup>74</sup> in clarifying this *through religious approaches*: amidst viewing the Torah as primary and eternal, given that all the history of the people of Israel felt this changing framework - to distinguish between the realistic historical-national visions as primary, given that the Torah is but one of its revelations.

However there are two possibilities of different perspectives on questions of religion and state: a social-political perspective and a religious perspective. The first deals with the political, the social or the national function of the religion; what is its place in organized society, what function does it fulfill in the establishment and perfection of it, and corresponding to it - how must the state and the legislation apply to it and to its requirements? The second deals with the religious function of the state, of the society and of the people: What is its place in the religious consciousness, what are the functions which they fulfill in the religious destiny, in recognizing G-d and doing His will, and corresponding to it - how must the religion relate to the state and its requirements and its needs?

Indeed, is it not spoken about the social-political problems, that in the face of the position of the state of Israel on account of the reality of Jewish religion in

73. הלמוד קודם למעשה - Talmudic idiom "I.e., one is first judged for learning, and then in respect to the fulfilment of precepts." Footnote 26 to *Kiddushin* 40b.

74. ראשי פרקים - Talmudic idiom for subjects. M. Jastrow, *A Dictionary of the Targumim, the Talmuds and the Midrash*, Verlag Choneb (New York: 1926), p. 1240.



proximity and on account that it be involved in the new political reality of our generation in the historic tradition of generations, that also its planning and formation were religious. Indeed it speaks about the problems of *the religious*, that in the face of the religious Jewish position and on its account, it is involved in the national-political reality; upon *the crisis of religious Israel*, that there is no precedent except in the destruction of the Second Temple. One of the great paradoxes of Israelite history is the fact that not only the destruction and the exile but also the liberation and the ingathering of the exiles are within the bounds of catastrophic events for Torah and for the Torah's Judaism, and were accomplished as tests and examinations for the two of them. Just as in the generation of Rabbi Yochanan ben Zachai<sup>75</sup> it was necessary to give an answer about the critical question: was there for them a legitimate continuation for Torah in Israel without Temple sacrifice? - and they succeeded to give this question an affirmative answer its time and its generation - so it is an affirmative revolutionary change of our generation that gives an answer to the question: Is it a possible legitimate continuation for Torah in an Israel that is not in exile and without a foreign government over it?

### 1. The Social-Political Function of the Religion

The religious problem is received by us as an expression for a specific social-political situation. The question in its current form today is presented thus - what is the benefit of religion to attain the political, social and national goal? The discussion is not on religion itself, but rather on the effectiveness of the religion to satisfy social needs, as it is said: The discussion is not totally

75. Rabbi ben Zachai is credited with negotiating the establishment of the first academy of study in the town of Yavneh with the Romans during the siege that ended with the destruction of the Second Temple and the sacking of Jerusalem in 70 CE. It was at Yavneh that the transition of Judaism from a sacrificial cult to a textual religion began.



religious but rather sociological; the standing question in this form is received and agreed upon through all of the camps. The opinion called "religious" in this debate implies mostly this - an attempt to prove a need for religion for its basis and its existence as a corrected social discipline generally and for the existence of the people of Israel particularly: The attempt to prove that the great political, social and cultural crisis of our generation originates in the draining of the social consciousness of religion from society with a lack of religious values in its authorized basis of the social-political organization. This is the argumentation and the conjecture of religion and religiosity, that has in it vulgarism; That it nevertheless has uses in it for didactic needs. Even Abraham our father did not abstain from using it, when compelled to explain the meaning of "fear of G-d" to the Gentile Avimelech, king of Gerar: "Only there is no fear of G-d in this place - and they will kill me"...<sup>76</sup> and that old cynic Voltaire, some 4000 years after Abraham our father, saw in this in all its simplicity the real basis of the religion - as something that has in it a *need*: "If G-d does not exist - from necessity He would be invented."<sup>77</sup> However he forbade his guests and those who came to his house to express out loud in the presence of his servant doubts about theology and the immortality of the soul, from fear that after hearing these words that they, thinking that there is no law and no judge,<sup>78</sup> would arise in the night and murder him.

The secular or anti-religious position in this argument is expressed usually as denying the social-national need of religion, in an attempt to prove that the

76. Genesis 20:11.

77. Francois Marie Arouet (1694-1778), French writer and philosopher, who was one of the leaders of the Enlightenment. "Voltaire," Microsoft (R) Encarta. Copyright (c) 1994 Microsoft Corporation. Copyright (c) 1994 Funk & Wagnall's Corporation.

78. לית דינא ולית דיינא - Leibowitz used the Aramaic here from Rashi. See Rashi's Commentary to *Baba Metzia* 119a.



attainment of social and national purposes is not dependent in any way on the acceptance of religious values and a religious life-style, going as far as seeing religion as a disturbing and harmful factor in the shaping of the character of the proper social-political order - in the spirit of the saying: "Religion - opium for the masses."<sup>79</sup>

However the common factor between these two arguments - their mutual exit-point - is the need of state, society and nation that the two sides see as superior values. From this standpoint this argument has no religious content, and the two contrary positions - even the opinion held to be "religious" - and also the conclusions of the argument that there is no advantage to religion and that it does not increase or decrease the perspective of religious consciousness. For the religious consciousness, religion is not a means or an instrument to attain all other goals, and certainly not social-political-national aims. It is the end through which all the other problems of Man, his needs and his gratifications are arranged from its perspective: As means if they are required or - at least - beneficial to attain the religious objective, indifferent concerning it or inhibiting it or preventing it. The basic struggle between the different attitudes in all the areas of life and consciousness is not in the different estimation of the usefulness and the benefits, but rather in the axiological plain, in other words in the world of values: The line which distinguishes and decides between the various approaches is determined by evaluation of things as an end goal or as an end consciousness.

This thing is exceedingly conspicuous in the religious consciousness and requirement or anti-religious requirement. For example: a view of social values

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79. Karl Marx, Critique of Hegelian Philosophy of Right (1844), found in Baron, J., A Treasury of Jewish Quotations, Jason Aronson (Northvale: 1996), p. 405.



as ultimate values, a vision of improving the society or of making it great and the glorification of the nation as a supreme duty, and the evaluation of everything from an effectiveness standpoint as a way to arrive at these values - this vision and this value makes a person without religion, even if he is persuaded that the religion above its assets and its institutions are tools and instruments to improve the society and to maintain the nation. Even if the person were to see in religious awareness and the religious life style necessary conditions for the realization of his goals and his social, political and national vision - here is the definition of himself as a Socialist, as a Nationalist, and etc and together this people is like a non-religious person, since his religiousness is conditioned on something that is outside it, a standpoint of "love that is dependent on a thing."<sup>80</sup>

The religion is totalitarian in the area of values: the common denominator in all the manifestations of the religious consciousness, and in every form of the embodiment in its institutions and operations, is a vision of the awareness of G-d and a cleaving to it as its first and only purpose, and the evaluation of all of a person's deeds from the point of view of the expression of it or a means to attain, or - the opposite - indifference to the religious purpose moving away from it. Therefore, in the Torah portion "*Vayera*"<sup>81</sup>, in which Abraham our father defined a "fear of G-d" for Avimelech king of Gerar as he defined it, when a "fear of G-d" returns and classified it not between Abraham and Avimelech but rather between Abraham and G-d himself, in a position that it is the supreme expression of the religious recognition and deed - in the *Akedah*<sup>82</sup> - "Now I know that you fear G-d

80. *Pirke Avot* 5:16 - paraphrase of definition of love as a transient thing instead of a permanent thing i.e. lust versus true love.

81. Genesis 18:1-22:24.

82. Genesis 22 - the story of the test of Abraham to sacrifice his son by G-d's command.



and would not withhold your son, your only one, from me."<sup>83</sup> Here fear of G-d does not appear as a platform and basis for other human values, but rather as the supreme value from which all the human values are rejected.

Accordingly, a religious man is not at all interested as a religious man in an argument about the social-political-national meaning of the religion: The religious position does not require for its basis the proof of the benefit which the religion brings to the state. That position would not be spoiled nor weakened nor undermined here if it proved that the religion is not an efficient tool to achieve any purpose, even if this purpose is the state, the society or the nation. The religion - as a consciousness and an act - is the religious man's own purpose, and according to an expression of the RAMBAM (in his commentary on chapter "*chelek*") only "a weak-minded person requires for a purpose another purpose."<sup>84</sup>

The religious man could be involved with total objectivity and with political efficacy of the religion, and he has no need at all to twist the facts or to hide the eye from reality, in order to prove a certain thesis in this interpretation in any matter in contention.<sup>85</sup> From an historic-empiric examination there is no proof at all that the religious consciousness and the acts which flow from it help it in a time or in a place an answer for social, national and political problems. We have not found among the Gentile nations nor in Israel that the social-political organization, which is based upon religious values and directed by religious institutions, will be better improved and freer of internal contradictions and opposition, from controversies and from crises, from exploitation and robbery

83. Genesis 22:12.

84. See also chapter 2 of Leibowitz's *Faith of Maimonides*, Adama Press (New York: 1987).

85. Leibowitz uses the word *משנה* here as a pun on the traditional style of discourse for religious men.



and bloodshed, from all revelations of hatred, desire and honor, or of recklessness and frivolity - from which social-political organizations lack religious content and foundations. Truly, without a fear of G-d, there are murderers, but even murderers fear G-d. From a religious standpoint and outlook, that Torah was only given to Israel to serve as an instrument of support for its national needs, this is disqualified. The religious Jew will reject this as an insult and a depreciation of honor from the Torah's point of view, that it is not the purpose of the Jewish people to keep the Sabbath, but rather that the purpose of the Sabbath is to keep the Jewish people.<sup>86</sup> Moreover: Only a superficial believer that has a creed or doctrine, rule or law, order or improvement, be it human or divine - which is qualified to redeem the individual or communal Man from his subjugation to his essence and his character and his desire and their necessary consequences. It is precisely the religious Jew who knows that even the manifestation of G-d's presence and the giving of Torah and "we will do and we will hear"<sup>87</sup> was not strong enough to change anything in human and social nature that was set by the wilderness generation: This wilderness is eternal.

In our renewed independent social-national reality it is obvious that Torah of Israel is not a tool and utensil for a state or for its basis - like the example of a strong military, a reformed economy, an advanced administration, etc - except one from a stumbling block and the extremely hard stumbling blocks in more positions which stand before the way of our state. Today Jewish religion does not unite us but rather it divides us; today it is not a guide at all for solutions to our political problems and to satisfy social needs but rather makes satisfying these needs much harder as they appear simply according to their political, national and

86. Achad Ha'am, *Al Parshat Derakhim*, Berlin (1920), found in Baron, J., A Treasury of Jewish Quotations, Jason Aronson (Northvale: 1996), p. 427.

87. Exodus 24:8.



social point-of-view. The awareness of these facts are not burdensome upon the consciousness and upon the conscience of religious Jews - on the conditions that are for them *a religious point-of-view from the perspective of political problems and an essence of communal need*. So the great and decisive religious question is whether there truly is a valid religious point-of-view like this in the religious community with regard to the state of Israel, its problems, its needs and its services.

## **2. The Religious Function of the State and the Society**

*This question is really the religious aspect of the religious and political question, and is to present a religious problem and not as a political problem, that is to say not as a problem for the political meaning of the religion, but rather for the religious meaning of the state. Is the state a religious problem? Does the very essence of the existence of the state with all of its problems and its social-political-national functions influence the religious thought and its embodiment in the way of life of the religious person? And on the Torah of Israel embodied in Torah and practical commandments - what is the place in which are specified the commandments that are between a man and the state, and how are these commandments harmonized with the commandments that are between a man and G-d and that are even between a man and his fellow?*

A lack of an answer to these questions is the essence of the genuine religious crisis, before which is religious Judaism in the state of Israel. We are not standing before the social-political problems of legal ordering of the relationship of religion and state - a given problem for the treatment of proper political tactics. We stand in the face of a crisis amidst the Jewish religion itself,



like that which is embodied in the Torah and in the commandments, in the laws and in the statutes, in the traditional way of life and lifestyle that is sanctified as the sanctification of the generations, a crisis that cannot be defeated except by religious tradition. A fateful mistake of the official religious Jewish establishment and the religious communal representatives is that this crisis is only a manifestation of relative strength in specific communities, and that this can be solved through cunning political tactics that will bring the state and its constitution and its law to positions acceptable to religion. There is in these assumptions a complete ignorance of the issue, that this crisis is not the relationship between religion and the state but rather in the religion itself - accounting and criticism that are not at all dependant on the state and its position and the police but rather in the religious strengths hidden within the religious community itself.

A political-governmental reality places the religious man or the religious community before two fundamental questions: 1) the principal decision - acceptance or rejection of the politic and sociology as components and portions of the spiritual world and world of deeds; 2) in the event of an affirmative decision - an orientation of the politics and sociology according to the religion, and this question contains in itself many others: Is there in the religious consciousness and in the religious command any obligation of those who possess it so as to take a specific position in social and political questions? Does the religious man have the obligation to see himself as a son to his people and a citizen for his country - not only in fact but also in theory; not only as an expression for an existing fact, that flows from necessarily specific conclusions, but rather as an obligation and casting responsibilities upon himself? Is the



religious man permitted to be content with this so that he fulfills his duty towards the state by keeping its laws, *whatever they may be*, in payment of the taxes that the existing law imposes on him, in the mobilization for armed forces at the time that the state drafts him - or maybe he is accountable to himself for the quality of these laws, the ordering of the taxes, for war and for peace, and he is obligated to invest from his strength and his vigor, from his intellect and his time in their proper arrangement according to the *religious* teaching and direction - if indeed there exists teaching and direction like these? Or maybe there is no religious obligation for the organizational social problems and the political order, just as surely there are no meanings like this for other technical and organizational questions, such as: how to build a house- from stone or from cement? How to treat an inflammation - with penicillin or with sulfa? These questions are not given for a decision but rather to examine the efficacy and the benefits, and the decision of the engineer or doctor are not dependent on and are not influenced from the religious or non-religious decisions, at any rate not more influencing than the musical taste of the cook on his decision of how to prepare lunch. The most the engineer or the doctor could conclude from his religious consciousness, that it is upon him to make his decisions on what is the most effective or what is best - *according to how he understands good or efficient*; but regarding this awareness the engineer or the doctor would arrive at that decision without any religious basis. Is the change in the technique of the social organization and the political order of an *essential* nuance from the technique of the organization of a building or way of healing, to the extent that the social organization and the political order places upon the political-citizen specific religious obligations and definitions and sets its social, political and national positions?



There is no doubt, that in these questions there are facets either way, and not all religions are equal. There are religions that the two aspects appear to be teamed or in competition with each other - and Judaism is that type of religion. It is possible to claim - and it is possible to find many supports for it in Judaism - that religion is only a *nearness to G-d*,<sup>88</sup> and maybe this expression is an original Hebrew term for the concept expressed in the foreign term "religiosity": "And as for me, a nearness to G-d is good,"<sup>89</sup> said the poet in Psalms; "They desire that G-d should be near"<sup>90</sup> - this description is how Isaiah describes religious people. If this nearness is religion, and if all religious revelations are symbolic expressions of how to reach it - it is possible to claim that this supreme "good" is not dependent on any social situation and is not influenced by it. There is no doubt that this was the original Christian position, and so we will see that it is also the religious position of the Far East, to the level that we know and understand it. Even in Judaism there is one legitimate line that follows all our Tradition and our history, a line that is not connected at all to the religious perfection of Man through the Torah in categories borrowed from the social-political-national reality; on the contrary, in connection to this a flaw was created, according to that conception, in religious perfection. It is possible to discover the source for this line in several psalms; it occupies a weak position in ethical literature and in our books of piety, from "Duties of the Heart"<sup>91</sup> to "Path of the Upright,"<sup>92</sup>

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88. קרבת-אלהים.

89. Psalm 73:28.

90. Isaiah 58:2.

91. See note 36.

92. Moses Hayyim Luzzatto (1707-1746) wrote this famous ethical treatise which "uses as a framework the famous *baraita* of R. Phinehas b. Jair (Sot. 9:15). Luzzatto instructs the reader in the path of ascent from the forsaking of sinful ways, through moral behavior, to the peak of prophecy and contact with the divine spirit." Encyclopaedia Judaica CD-Rom Edition, "Moses Hayyim Luzzatto," Judaica Multimedia (Jerusalem: 1997).



literature that is undoubtedly one of the most clear and radical expressions of religious Israel. In this ethical and religious perfection there are no borrowed religious tradition categories from the political and social world, the social order or the law, the political or the economic, war or peace, freedom or subjugation; none are here except *Man and his G-d*. This Jewish religion as perfection is not in need of the Israeli people as a political-national entity, and so much the more so not for the improvement of the political system of this people. It is doubtful, if in "Duties of the Heart" and in "Path of the Upright" the word "Israel" is found at all. However, no less legitimate and no less established in Judaism is the opposite line, which views the society and the technique of the organizational relationships between a man and his fellow and an individual to the community as something which goes beyond the boundary of useful questions, and which raises them to the rank of a duty that is actually religious. The prophet who spoke of a "nearness to G-d" defined the meaning of this "nearness" as precisely *social justice*. However this demand of social justice - what is the political and social meaning? Do obligations flow from it as a specific order and negate other orders? If it instructs the political man and firmly affixes the program, is he distinguished by that? And if we remember another prophet who defined "good" and of what G-d seeks from man in three things, that two of them are "acts of justice and love of piety" - here it is said that "acts of justice and love of piety" which are not socially defined from the political program perspective and the perspective of specific social-political-national action. This requirement of "acts of justice and love of piety" has equal value and equal meaning also in relation between a master to his slave in a society established on slavery ("If I despised the legal cause of my slave" said Job);<sup>93</sup> also in relation between the employer to his hired worker in a society of a free market and private capitalistic

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93. 31:13.



property; also in relation between society for privilege and to labor in a socialist order; and it is very, very necessary also between collective members for life on a kibbutz<sup>94</sup> - according to what our eyes see today. From here it is not to infer from this traditional religious requirement any specific social-political program, and from here the big mistake and a source of weakness of the community of the organized Jewish religion is the thought that it may be able to fulfill the communal duties of the state and the society in our day in a verbal proclamation about the order of "the righteousness of the Torah" or "prophetic justice" - without any attempt of the definition in what this justice needs to be in questions of *tangibility* which stand to be decided in the state and through the state. Therefore the religion of Israel in the state of Israel will be seen as lacking substance and as unadaptable to be a factor and a guide on substantial questions of our generation.

The greatest thinker in Israel decided "that Man does not learn the truth and does not do good deeds when he is sick or hungry or running from his enemies."<sup>95</sup> Disease, poverty, a lack of security - These are social-political problems and they are not dealt with and improved except in the way of a social-political apparatus. We find that the RAMBAM introduced social-political correction as a condition for the religious perfection of Man, and these conditions are identical to the Four Freedoms of Roosevelt.<sup>96</sup> There is no doubt that from the mouth of the RAMBAM Aristotle spoke, however due to the fact that these words were

94. "The kibbutz... is a voluntary collective community, mainly agricultural, in which there is no private wealth and which is responsible for all the needs of the members and their families." Encyclopaedia Judaica CD-Rom Edition, "Kibbutz Movement," Judaica Multimedia (Jerusalem: 1997).

95. See note 35.

96. These principles of freedom - expression, worship, want and fear - were declared to be fundamental to all people by President Franklin D. Roosevelt in 1941. These principles were later incorporated into the Atlantic Charter, which served as a agreed postwar plan amongst the Allies for the world order and as the basis of the United Nations. Here Leibowitz is stating that the RAMBAM's philosophy incorporated these same ideas 800 years prior to Roosevelt.



spoken through the RAMBAM, they acquired a legitimacy in the world of Jewish thought - and let its origin be whatever it is. The historical-realistic legitimacy was decisive of the appropriate expression that the RAMBAM occupied in the world of thought and deed of Judaism and its tradition. However also the writer of "Duties of the Heart,"<sup>97</sup> representing undoubtedly a legitimate line in the Jewish religion, and no doubt that if he had seen the sayings of RAMBAM he would have said that the strength and the quality of Man is embodied in religious perfection - he precisely is capable to learn the truth and to do good deeds even if he were sick or hungry or being chased by his enemies!

However we are not dealing with the question of the place of the society and the state in the religious abstract, but rather its place in the Torah, in the religion embodied in the formed array of commandments and deeds - *in Jewish religious law*. As already explained (aforementioned on page 101)<sup>98</sup> that we are not able to apply the consolidated Jewish religious law upon our social-political reality unless we first clarify for ourselves if we are obligated to see in the directives of the Torah concerning society and state as law from the beginning or law after the fact: Did the Torah intend to establish a specific social-political order, defined in its commandments, or perhaps these commandments were only intended for a certain order given as an existing fact?

However, greater than this: The Jewish religious law in its definite historical form - and not precisely in civil law, except still more in ritual law prohibitions and permissions, in the arrangement of the life-style and the traditional way of life - *presumes the exile among the nations or the existence*

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97. See note 36.

98. This corresponds to section "B" of the translation of the previous essay in this thesis.



*of foreign authority in our land as such a given that one cannot question it; it makes the lack of an independent national government of the people of Israel and the lack of civil rights and functions for a Jew the condition and the assumption for the very possibility of its existence and for the particular identity of itself - at any rate in a measure that it is destined to exist in this form in this world and in this time, as it says in a real existence and not in a utopic world of a hypothetical time.*

Now to a place of the great problematic of the Jewish religion in our historical situation - as a partner to the work of the established Israeli state *in this time.*

### **3. The Ideal State and the Real State in Torah and Jewish Law**

We have reached the formulation of our problems in a clear and concrete form: the clashes between the new reality of the Jewish people as an independent national political entity itself, amidst the presumption of *reality* of the Jewish religious law about the conditions and causes of its existence of the Jewish people in the historical present. In its framework of *religious* discussion there is no need to emphasize that precisely in the presumption of *reality* of the Jewish law, we are engaging in it and not in the conceptual and factual assumptions which are not in conflict in that community which sees itself avowed and continually committed to the acceptance of the yoke of the kingdom of Heaven i.e. the yoke of Torah and Jewish religious law.

A shaping of the Torah in to the form of Jewish religious law, the consolidation of this Jewish religious law as certain legal precedents - this is the



*historical* process, and it occurs in all places and in all times upon the background and foundation of certain assumptions that originated from the actual conditions of that place and of that time. This is the last formulation of the Jewish religious law, in the form that it alone arrived to us as an embodiment of Judaism, as a way of life and as a traditional routine that was dedicated as a sanctity of the generations, occurring upon the background and foundation of one reality, which - even if it is not said explicitly - it is the necessary element for the very possibility of existence of this "Torah order": the lack of a national and functional independence for the Jewish people and a lack of a citizen's duty and function for the Jew. The awareness of this basic fact is not dependent at all on its metaphysical assumption of Man upon the source of the Torah. Man could reject the explanation of the Torah as the work and achievement of "the national genius of the Jewish people" or as the manifestation of a "Jewish spirit" and any other form of pseudohistorical or methodological interpretation of secular historiosophy; Man could always remember the origin of the concrete and formulated laws and statutes, the same Torah that was written in black fire upon white fire<sup>99</sup> and almost two thousand generations before the creation of the world<sup>100</sup> - and with this Man could not hide from himself the fact that the shaping of this Torah in Jewish religious law and the shaping of this Jewish religious law in its special character in the *historical* process did not occur in an empty vacuum but rather in a certain reality and amidst the assumptions of this reality.

99. "Resh Lakish said: The scroll that was given to Moses was made of a parchment of white fire, and was written upon with black fire and sealed with fire and was swathed with bands of fire, and whilst he was writing it he dried his pen on his hair, and as a result he acquired a lustrous appearance." *Midrash Rabbah* - Deuteronomy III:12.

100. "The Rabbis held that the decision to give the Torah was made nine hundred and seventy-four generations before the Creation, and it was given twenty-six generations after the creation; thus a thousand generations after the decision was made." Footnote 3 to *Midrash Rabbah* - Song of Songs V:14.



Our exile amongst the other nations or foreign governance over us in our land was a condition for the formation of decided Jewish religious law - that is an assumption that is not made explicit anywhere; on the contrary - it opposes the *theoretical* origin of a Torah order. However, it expresses the historical reality - and not only of the Diaspora period, but rather the overwhelming measure of the reality of the second temple period, the period of shaping the doctrines of the biblical scribes and sages of the *Mishna*,<sup>101</sup> and influenced in a compelling manner the formulation of Jewish religious law.

A "Torah order," like that which has become crystallized in the decided Jewish religious law, its way of life for Man, that a citizen of the state and his obligations are not included in its life plan; it is an order for a community free from defense problems, internal and external security, foreign affairs, the maintenance of an army and police, self-production to sustain its needs, a political apparatus, and even a legal apparatus for the citizens that operates with governmental authority. More than that: everything from this set of laws was planned and arranged from the beginning as a way of life for a community that does not carry and does not need to carry a burden of a national function in a governmental-political form. However no community - and in this category no community in the world - and no individual could exist without an apparatus of social-political governmental services, and are not free to be rid of the

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101. The second temple period ranged from after the return from the Babylonian Exile to its destruction by the Romans in 70 CE. The distinction that Leibowitz is making of this period is that after the return from the exile the Jews were never completely autonomously governed. They remained under some form of foreign control or influence during that entire period and had to govern their internal affairs in this light as well. The appointment of the high priest became a highly political issue during this period as well as various efforts to utilize the Temple for worship of other gods of the dominant political powers. This differs greatly from the first temple period, and Leibowitz is positing that the authors of the *Mishna* who survived the destruction of the Temple but had lived in this vassal country would have been influenced by living in that political reality in how they interpreted religious law.



maintaining of this apparatus and the functional operations in its power, except if there would be *one* factor which will establish this apparatus and operate these functions; It follows that foreign rule became a condition and an assumption for Jewish communal life according to the settled Jewish religious law in its historic embodiment.

There is from the religious perspective in the beginning of the *Shulchan Aruch, Oruch Chaim*<sup>102</sup>- laws of early morning rising, section one: "I have set G-d always before me;<sup>103</sup> one should become as strong as a lion in the morning to worship his Creator." However Man could not rise in the morning to worship his Creator and could not always rise in the morning, and not even go to sleep at night upon his bed in order to arise in the morning - if he could not fulfill that which makes possible the necessary condition of sleeping and awaking. And these conditions are not natural givens but rather are attainments of planned and extensive work developed through a lot of effort and exhaustion: required is the enormous apparatus of societal maintenance and the order of a kingdom - that if a man fears his fellow-man his life will be swallowed up<sup>104</sup> - in order to give to the individual man and the communal Man the necessary minimum security for all forms of activity in life and the minimum supply of necessities making possible life itself. It follows that a way of life according to the Torah could not originate in laws of rising in the morning, but rather needs to begin in a program for the societal order, for supplying the social needs and for the maintenance of communal services *based on the Torah*.

102. See note 39.

103. Psalm 16:8.

104. Paraphrasing *Pirke Avot* 3:2 "R. HANINA, THE VICE-HIGH PRIEST, SAID: PRAY FOR THE WELFARE OF THE GOVERNMENT, FOR WERE IT NOT FOR THE FEAR THEREOF, ONE MAN WOULD SWALLOW UP ALIVE HIS FELLOW-MAN."



This thing, certainly, was also known to Rabbi Joseph Caro; however he depended on another factor, which supplied the framework and the basis to live without being in need of Torah law and the sections of the *Shulchan Aruch* - upon the Turkish Governor, that sat in Acre and his authority encompassed the city of Tsfat,<sup>105</sup> and he was the person in charge of administration and security, for social peace and societal welfare. Accordingly, Rabbi Joseph Caro could concentrate on other things - for all the things that are in the *Shulchan Aruch* are about the Four Pillars.<sup>106</sup> From the point of view of our subject, there is no value to the question of whether the government of the Turkish Governor was a rule of justice and virtue and societal improvement, a rule which created proper conditions for worshipping G-d for people that were within the boundary of his rule, or if this administration depended on the mechanism of bribes of *היניצירי*,<sup>107</sup> that in it practicing religion was only possible by substantial devotion and self-sacrifice. Rabbi Joseph Caro at any rate was not responsible for a state and a society, that was the necessary basis and the framework for the possibility of a way of life that he taught according to the Torah. It follows that life according to this Torah was dependent on conditions and on assumptions which were not determined according to the Torah, and certainly the *Shulchan Aruch* - in its form and in its shape according what it is - a cooperative creation between Rabbi Joseph Caro with the Turkish Governor, and if not for this partnership Rabbi Joseph Caro would have been forced to direct his strength and his mental focus to the subjects

105. Acre, also called Acco, was the seat of the Ottoman empire's government in Palestine from 1516 to 1917, and Caro authored the *Shulchan Aruch* in Tsfat during the early part of the Ottoman reign.

106. See note 39. The Four Pillars is the collective name of the four sections of this legal code, but is also the name of the earlier legal code compiled by Jacob ben Asher (1270?-1340) that Caro was trying to update with his text.

107. Meaning of word indeterminate.



that were taken care of by the Turkish Governor, and would have been compelled to include them in his *Shulchan Aruch* and even to precede the other subjects under discussion there. Through this way would the *Shulchan Aruch* have been received a very changed form from that which it was received, since that would have included political and social subjects, rule and administration and their establishment as functions and duties for the individual and for the community in Israel, and that would not have been possible except upon fulfilling other functions and duties that are laid upon a Jew and upon the Jewish people when they are regarded as exempt from the political-governmental functions.

Rabbi Joseph Caro did his work in truth - as a prince of Torah and as a spiritual and communal leader to Israel. He fulfilled "I have set G-d always before me," in filling every sector of life with religious content, that ruled over a Jewish man and the Jewish people, and in exploiting it for this purpose even if it flowered from a sector that Israel did not control and so was not obligated to control. However the situation of the Jewish religion is completely different in our generation, which has become a participant in the responsibility for all the sectors of life and yet it stands - at any rate in Jewish religious law - in the *Shulchan Aruch* of Rabbi Joseph Caro as a life program, even though that this program is not arranged according to the Torah as a sector solely *upon the reckoning of other sectors*. This modern Jewish religion maintains "I have set the



non-religious Jew always before me" and depends on him to do the dirty work<sup>108</sup> in many sectors of life that itself is responsible for them, and he will make it possible for religious Jews to serve G-d in their usual way in this sector which it has chosen for itself by reason of habit and custom. This action is not the fulfillment of Torah but rather its perversion and desecration of the Name of Heaven.<sup>109</sup>

These words do not come to teach about the *Shulchan Aruch*, but rather to teach about the totality of Jewish religious law - about all of its origins and manifestations, from the *Mishna* and the *Gemara* and up to RAMBAM and up to it all. The *Shulchan Aruch* was designated from the beginning to be nothing more than a collection of legal procedures in its time, with no state and no authority in Israel. However in the original Jewish religious law, at whose center stands the vision of the kingdom of Israel, upon its king and its military, its authoritative and judicial institutions, its order and its laws, does not make it possible to apply religious law to national Israel in 1948 and afterwards, to its problems and its duties and its political and social manifestations. The state of vision and the religious law has no word or even half a word for the reality of the state of Israel in our day. The state of Tractate *Sanhedrin*<sup>110</sup> or "the laws of kings and their

108. העבודה השחורה - a derogatory modern Hebrew slang term that literally means "black work" in reference to Arabs and is similar to the American slang term "nigger work." While seemingly racist on Leibowitz's part, it probably was meant to highlight a larger ethical issue for the reader. Leibowitz was very afraid of the ethical jeopardy Israel was in if it became reliant on Arab labor instead of doing its own labor. This became exceedingly apparent after the 1967 war when Israel occupied the Palestinian territories. "He predicted that after a few years of occupation not a Jewish worker or a Jewish farmer would be left. The Arabs would be the working people and the Jews the administrators, inspectors and officials." Goldman at xxix. At the time Leibowitz wrote this essay in 1952, such an inequity between Arab and Jew was already beginning to form in the society of the new state, and here Leibowitz is warning of a similar inequity between Jew and Jew.

109. שם-שמים.

110. The tractate of Talmud that deals with a governmental system for Israel.



wars" of the RAMBAM<sup>111</sup> never was and never will be the framework of history of its realistic conditions and factors: its existence was outside social-political history, its exit was the holy and its content as holy and metaphysical factors were mixed in its administration, and its world is another world - a world that in it changes its order of creation, as in understanding its national legend, as in the point of view of the RAMBAM.

The religious thought and consciousness in Judaism and revelations in Jewish religious law from ancient times recognized only two forms of a state in Israel as legitimate from a religious standpoint and thought only of those and arranged only for them: on the one side - the form of the distant past, "kingdoms of David and Solomon,"<sup>112</sup> that are only in their semi-mythological image, fruit of a tradition of popular legend which influences religious thought - a kind of prehistoric Judaism; on the other side - the form of the end of days, "the kingdom of King Messiah,"<sup>113</sup> that as a vision of the end of days is not attributed to the reality of our existence - resembling post-history of the Jews. The religious thought and the religious law in Judaism did not dwell on the concept and did not consider from a world of possibilities, that the independent innovation and the national restoration would be accomplished in the historical present through the Jewish people as it is, in the years 1948-1952 (so it needs to read. And not תשי"ח

111. A section of the *Mishneh Torah*.

112. The kingdoms of David and Solomon have always been held by Jewish tradition to be the pinnacle of Jewish civilization, and the traditional model for an Israel after the coming of the Messiah.

113. The Messiah here refers to the human leader from the line of David who would reinstitute the kingdom of Israel at G-d's choosing. This kingdom would succeed in not only recreating the glory of David and Solomon, but would also gather all of the Jews into Israel from exile and see the Temple rebuilt after the defeat of all of Israel's enemies. G-d's law would reign supreme and G-d would be acknowledged by all as the true G-d.



- תשי"ב)<sup>114</sup>, and in a conditional framework and the reasons, the possibilities and the needs, the duties and the obligations, the strengths and the physical and mental factors, the technicalities and the spiritualities, the actual existence in this time in the Jewish people and in their whole world, without a manifestation of G-d's presence (like that foreseen in the popular perception) and not even with Man's improvement (as foretold by the RAMBAM). From this reality Jewish religious law was not intended to regulate the actuality of an independent national government of the Jewish people *in the historical present* from other than that actual kingdom envisioned only as a part and as a manifestation of an ideal world - of a past long hidden in the foggy imagination, or of a future without definition - and not dwelling upon the concepts of these possible realities in the real world framework of this time. The helplessness and weakness of the Jewish religion in our generation is to not realize the origins of the real state of Israel in a desperate effort to see this state and its duties and needs in the mirror of thought that has never considered the possibility of the fulfillment of its existence.

The transition of religious thinking and existence from the world of the ideological hypothetical to the world of the reality of the state of Israel from 1948 and on is not possible without innovations for the present, in custom and in the religious way of life and in Jewish religious law itself - on the strength of the authority that was given by the Torah for this innovation and on the strength of obligation that requires it to be done. Religious Judaism that links the new historical reality of the Jewish people is not able to refrain in this generation

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<sup>114</sup>. This comment is in apparent recognition by Leibowitz of his belief that the modern state of Israel is a secular creation of human historical will and not part of a Messianic redemption of the Jews by G-d. The secular world does not count with Hebrew symbols, so it would not be appropriate for Israel to be any different lest the use of Hebrew symbols support the inappropriate sanctification of the state.



from making the decisions not only on the standpoint of "children of Torah" but also on the standpoint of "builders of Torah".<sup>115</sup> The Jewish religion will not be able to desist from the arrogance and from the responsibility that are in this fact and will not be able to solve the present problems according to the Torah through contemplation on the past alone - not in the near past and also not in the far past. It is a mistake to assume that the crisis of the Torah in the present was caused through the position of the later generations alone and that the way out for us is from the confusion in the verse "For ask now of the days that are past."<sup>116</sup> Indeed, there are already available those who want to destroy the claim of the foreignness of traditional religious thinking regarding the problems of the realistic state by pointing at the traditional form of King David, returning to combine legends of the sovereign and the commander, a herald of the Torah and a decisor of Jewish religious law, and from this example they claim proof that this consciousness is not separated between two worlds, and they claim that we will also learn from this example. However the legend is told that King David went to war according to the *Urim* and *Tumim*,<sup>117</sup> and it is difficult to understand how could a religious defense minister or religious head of the military of our day, seek a way and a command to administer the armed forces and the war according to the Torah, to produce an advantage from this example of King David.

However, it is more important to see what was written in the great pact of

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115. Apparently playing on a verse from *Brachot* 64a that reads "R. Eleazar said in the name of R. Hanina: The disciples of the wise increase peace in the world, as it says, And all thy children shall be taught of the Lord, and great shall be the peace of thy children. (Isaiah 54:13) Read not *banayik* [thy children] but *bonayik* [thy builders]." "Builders" is a metaphor for scholars who promote peace and stability in the world through their teachings of knowledge and enlightenment. Here Leibowitz apparently means both Torah-observant Jews and their rabbis.

116. Deuteronomy 4:32. Leibowitz is saying that reading this Torah verse as a commandment does not allow for the possibility that life was imperfect in the past and that presently correctable mistakes were made then.

117. See note 54.



Ezra and Nehemiah and the men of the Great Assembly, that they introduced the Torah in Israel in the beginning of the Second Temple, and what was *not* found written in it - in another manner of speaking: what was dealt with and what was not dealt with at that time? It dealt with differentiations from foreign peoples, with Shabbat, with leaving the land fallow, with contributions given to the priests and the sacrificial service; it does not deal with the tools and devices of the national political organizations that are essential for the existence of the communal body that were followed after these commandments. If we were able to ask Ezra and Nehemiah about this, they would answer with sincerity and with simplicity, that in this they trust in the great king in Achmata<sup>118</sup> or in Shushan<sup>119</sup> and upon his representative governor across the river.<sup>120</sup> This thing in itself is not flawed or damaged, and is simply the realism of a renewed legislature in conditions and in the given parties. However this thing will be overturned for *distortion of the Torah*, as the accident of this government that has taken advantage of it in order to mold the eternal Torah in the form of Jewish religious law that is not practical but rather in one of two ways: upon the background and upon the basis of this foreign rule, or in a utopic world whose needs and possibilities are not the needs and possibilities of our world reality. We discover that from this side of our realistic world, the foreign rule of those without Torah becomes a condition for life according to the Torah, and we are constantly discovering that this Jewish religious law is above the details and precision like those which are shaped and decided upon a background of foreign rule, and regarded as legitimate and as binding for the generations.

118.Capital of Media. Ezra 6:2.

119.Capitol of the Persian-Median empire of King Ahasuerus. Esther 1:2-3.

120.This is the eupemism used repeatedly in Ezra chapter 4,5 and 6 for biblical Israel and Jerusalem by the various Persian officials discussing their occupation of it and its activities.



The resultant of the foreign fact on the development of a Jewish religious law that does not have any reality without foreign governance, a characterization of it even for the doctrine of the Scribes and the Sages who also worked even though they were in the shadow of foreign rule, whether Greek or Roman. It reaches one stage of expression in the *Mishna*, in every segment that does not deal with the order of things between Man and himself, between Man and G-d, between Man and his fellow, (in the literal sense of the concept), but rather the order of affairs of the communal Man - of the state and the society organized in a governmental manner, that it is the frame and the basis for the affairs of the individual Man. It seems that this *Mishna* was not intended in any way as a regulation for the order of a state and society in a world whose character and human nature are like what they are, but rather it was intended for an idealic and utopic world: therefore one cannot learn from it how to lead and direct the state of Israel in our era according to the Torah.

In our hand is Tractate *Sanhedrin*, the magnificent system of governmental and judicial order of kingship and courts and appointing judges, of definitions of the authority of the kingdom and the courts, of laws of property and fines and capital, and of court-enacted executions according to the testimony of two witnesses and a warning and, after investigation and examination, under conditions and under detailed and accurate restrictions - and all of which was never intended to serve as a blueprint for government and for a judiciary for a realistic state in the historical reality other than at the end of days.<sup>121</sup> Not only this that Jewish religious law engages in details in which it says explicitly that they never were nor never would be (such as a stubborn and rebellious son and a

<sup>121</sup> אחרית-הימים - The time of the messianic redemption when the Davidic monarchy is supposed to be restored along with its supporting institutions.



condemned city<sup>122</sup>) *that all* this magnificent structure never was and never would be until after the nature of the world and human nature would be changed, and for the present time the Torah deposited the welfare and the preservation of Man and of society in the hands of other factors. The proof of the matter is that after all the detailed and exact arrangement in capital offenses law, Jewish religious law decides: "A murderer against whom the evidence was not conclusive, or who was not warned or has only one witness or an enemy that accidentally killed one of his foes, the king is permitted to execute them and to improve the world *according to the needs of the time*; He may execute many on one day, hang them and leave them hanging in order to cast fear and destroy the power of the wicked of the world.... The only purpose of appointing a king is to execute justice and wage wars."<sup>123</sup> We therefore learn, that all the great array of judgement through a court of law of seventy that sat in the granite chamber<sup>124</sup> and of courts of twenty-three<sup>125</sup> that in the Temple court and on the Temple mount and that in each tribe and each city<sup>126</sup> and all its items and precise details and its limitations and restrictions of this adjudication they have nothing that binds the hand of the wicked *nor do they have any manner of realistic kinds of justice*, that here is *the king* who is appointed "*to execute justice!*"<sup>127</sup> If this is so, why is it stated throughout the entire Tractate *Sanhedrin*? Today, one must say - for a depiction of a utopic-messianic existence, an expression of an eternal ideal; however for the real world Torah itself appoints a king who is liberated from all these items, details, limitations, restrictions and restraints "according to the needs of the

122. It states in *Sanhedrin* 71a that even though both of these are condemned to death and destruction in the Torah (Deuteronomy 21:18-21 and 13:13-16), such a thing could never actually come to pass as there would be some possible redemptive quality to save them.

123. Maimonides, *Mishneh Torah*, The Laws of Kings and Their Wars, 3:10, 4:10.

124. See above note 55.

125. *Sanhedrin* 42a.

126. Phrasing in Leibowitz's original text is directly from *Sanhedrin* 16b.

127. See note 123.



time!"<sup>128</sup>

So it is with the Jewish religious law itself - all the while that it was a living, active and creative entity - knowing full well the realistic assumptions and considering them, and not seeing any contradiction to its authority coming from Sinai.<sup>129</sup> This explanation of the innovations and modifications in Jewish religious law appears as the phrase "at that time they said...."<sup>130</sup> And it is not an accident that this formulation was widely in the laws dealing with communal issues, matters of state and government, whose realistic historical frameworks changed - they were not things between Man and himself or his maker or his fellow, that were founded upon Man's eternal nature and relations that are foundations in an eternal nature. For example: In the five hundred year period (586-104 BCE) when there was no monarchy in Israel there became integrated into Jewish religious law the fanciful image of a righteous king, subordinate to the judicial institutions of the Torah as one Jew among many and judged like any other Jew; however when the monarchy in Israel was actually renewed it was immediately apparent that these royal laws assumed an idealistic reality - a king in the legendary image of King David or in the image of the messianic king - and they did not comport with the qualities of a king in the historical-realistic actuality, and that each attempt to make them comport (as the attempt of King

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128. Id.

129. Referring to the Jewish religious law's presumption that all authority in it stems from the Torah being given by G-d at Sinai. *Pirke Avot* 1:1.

101. "באותה שעה אמרו" See e.g. *Sanhedrin* 19b.



Shimon ben Sheitah )<sup>131</sup> ended ruining also the institution of the Torah and the monarchy - and immediately Jewish religious law was altered ("At that time they said: A king may neither judge nor be judged; testify, nor be testified against.")<sup>132</sup>

Similarly: during the 420 years (586-167 BCE) that Israel did not go to war and lived its life and kept the Torah and the Sabbath under the protection of kind Persian or Greek kings. Upon the basis of the realistic assumption *that the Jewish people does not make war*, the Sabbath laws could be formulated, which denied the possibility of making war on the Sabbath - to speak truly, this *absolutely* prevents war, for war is not given over to installments. The force of these laws as Torah commandments are beyond doubt, and accordingly - in arriving at a moment of a test - Torah-observers did choose to die with their women and their small children and not to transgress them. Proving that this first Jewish religious law was established upon an erroneous assumption in reality and that one could not keep the Sabbath if one could not fight in its defense - the religious Jewish law was changed and fighting was permitted on the Sabbath.

Similarly: "At first" - that is to say when there was no real-life war situation for the Jewish people - It was possible to set up orders of battle on Shabbat, without consideration to the reality of war ("they used to leave their weapons in a

131. Shimon ben Shietah was a head of the *Sanhedrin* who called King Jannai to testify in a murder case against his slave citing the law that a master was responsible for his servant. King Jannai came under duress believing the law to not apply to a king. When he stated so in court, the other judges were afraid to speak in agreement even though they did agree with the king even when Shimon challenged them directly. As a result, the angel Gabriel smote them all and the king's opinion was amended to become the law under discussion here. *Sanhedrin* 19a/b. Jannai is believed to be Alexander Janneus (103-76 BCE) and since he was not of the Davidic line, this rule is assumed to only apply to non-Davidic kings. Footnote 23 to page 19a, The Soncino Talmud on CD-Rom, Davka (Chicago:1995).

132. *Sanhedrin* 19b.



house that was nearest to the town wall");<sup>133</sup> the reality of war does not allow for such measurement of distance and forced an immediate change in the Jewish religious law ("At that time it was ordained that men in such circumstances shall return to their places with their weapons.")<sup>134</sup> And similarly: "When murderers multiplied, the ceremony of breaking a heifer's neck was discontinued.... When adulterers multiplied, the ceremony of the bitter waters was discontinued."<sup>135</sup> The law of breaking a heifer's neck is an explicit commandment from the Torah,<sup>136</sup> and the laws of the suspected wife with all their details and fine points occupy an entire chapter of the Torah,<sup>137</sup> and the two of them form a complete section of the *Mishna* - and nevertheless they do not have authority except against a background of a certain hypothetical reality: that the life of a man is costly and precious, and finding him "slain in the land... lying in the field, and it is not known who has slain him"<sup>138</sup> shocks the society; that a spirit of purity and modesty rests within a family and with a community and upon men and women alike, and an ugly deed - or those which appear ugly - of one woman spoils this spirit. However, in the historical reality, the life of a man is made valueless ("Was it that bloodshed became a minor matter to them" even in the Temple itself!)"<sup>139</sup> and the atmosphere of lewdness and lust dominates the world (Hosea 4:14)<sup>140</sup>, and in any case these commandments lacked any meaning or force and were annulled.

104. *Eiruv* 45a. This allows the carrying of weapons for defense by a town guard against bandits on Shabbat.

134. *Id.*

135. *Sotah* 47a.

136. Deuteronomy 21:1-9.

137. Numbers 5.

138. Deuteronomy 21:1.

139. *Yoma* 23b.

140. Here Leibowitz includes the citation in his Hebrew text.



A strength of the social and political reality as an assumption for deciding Jewish religious law is evident even in later Judaism. Of all Jewish religious philosophers, Don Isaac Abravenel (1437-1508) is unique as the only one who thought and wrote about a state and politics, about king and kingdom, with ideas related to our modern political ideas that have meaning and significance in the social reality of the modern era, in as much as he was opposed to all who preceded him - did not identify the concept of the state with imaginary creations of the religious and mythical idealizations and not with the power and authority of the medieval period, but rather with a knowledge of Portugal in the fifteenth century - which established the first overseas colonial empire, the Spain of Ferdinand of Aragon - the first great European power, Naples and the principalities and the Italian republics of his generation of Machiavelli ("The Prince" was written a few years after the death of Abravenel). From here Abravenel evaluated the conclusions of absolutely different beliefs and opinions, and this thing distinguished him immediately from all of his predecessors as to his aptitude to indicate his extreme piety and conservatism in all matters: He repelled all attacks on the accepted Jewish religious law (for example, on the laws of kings of Maimonides) that "you shall certainly place a king above you" as an obligation, and decided "that this is not a public commandment" at all.<sup>141</sup>

However we were witnesses to the tragic phenomenon - or perhaps tragicomic? - when the question of capital punishment was discussed in the legislature of the state of Israel of 1952. Religious delegates attempted to base their position or religious positions on this penetrating question of a real state of Israel according to differing arguments of the Sages in Tractate *Makot*: "Were we members of a *Sanhedrin*, no person would ever be put to death" versus "you

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<sup>141</sup>. Source of quote indeterminate.



would multiply shedders of blood in Israel."<sup>142</sup> And it did not occur to these people how meaningless their argument was in the perspective of our reality: that behold, Rabbi Akiva and Rabbi Tarfon from one side and Rabbi Gamliel from a second side did not judge except on what *they were likely* to do or what *they might be needed* to do in a utopic *Sanhedrin* in a hypothetical time, and not judge on a thing as people actually responsible for world peace and social betterment or as a people whose theoretical decisor was a real decisor for life or death. The one actually responsible and the one who had the power to act was the Roman Procurator, who did not depend upon the view of the Torah and the Sages, and who with all considerations upon their intention and goals of penal laws and capital punishment that were in the Torah were utterly free from the psychologically oppressive influence of the consciousness of making a decision for life or for death. And so we found in another capital punishment case, that Rabbi Ishmael said to Rabbi Akiva "and so because of your interpretation of 'woman and woman' we will take out this one to die by fire?" and Rabbi Akiva on the other hand might respond after him, that if his interpretation of the letter *vav* would decide an issue of human life, there would be doubt if this was his interpretation.<sup>143</sup> However a member of the legislature of our days and of our state - even if he is a member of the religious front - does not stand in the place of Rabbi Akiva in B'nai Brak and Rabbi Tarfon in Lod and Rabbi Gamliel in Yavneh, but rather precisely in the place of the Roman Procurator in Caesarea, and he is not permitted to rely upon these Sages - except he is compelled to ask himself a paradoxical question, which never was and never could be dealt with under Jewish religious law: how must the Roman Procurator conduct himself

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142. *Makot* 7a.

143. *Sanhedrin* 51b. Rabbi Akiva reads a letter "ו" differently than Rabbi Ishmael in a key piece of legal text on capital punishment at great dispute, only to have it pointed out that the difference only means one form of death over another.



according to the Torah?

The religious problem in our state of Israel - the state from the year 1948 and on, our restoration and our national governmental independence *in this time* and in the present historical reality - it is a problem to lead and to manage the state, to assure its peace and its security and to carry out its essential services based on the Torah "*according to the needs of the time*,"<sup>144</sup> and this thing is not given to be done according to Jewish religious law which is not raised upon the knowledge of possibilities of "this time." The historiosophy of the Jews and of its embodiment in Jewish religious law recognizes only a threefold division of the history of the Jewish people: from monarchies and independence in the ideal past - exile and foreign governance in the realistic present - monarchies and independence in the ideal future; and only these three possibilities were settled and intended according to Jewish religious law. However the G-d of this nation is the master of history and not its tool, and he is not subjugated to historiosophy - and not even to religious historiosophy, and he makes possible a fourth historical reality, that the Jewish religious law did not consider: Israeli sovereignty and independence in a world that was not liberated and is in the midst of humanity - Jews and non-Jews - that could not have found their improvement.

From now religious Judaism stands in the face of a fateful religious decision, and it is impossible to grasp on a rope at both ends; impossible to find a positive connection from a religious standpoint to the state of Israel in this time amidst dependence on religious thought and Jewish religious law, which do not allow the possibility of existence of this state. This logical and ethical contradiction is among the disturbances of organized Jewish religion, whose

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144. Maimonides, *Mishneh Torah*, Laws of Kings and Their Wars, 3:10.



attempt at effective spiritual and political leadership is to integrate the Jewish religion into the state of Israel and then makes judgements that the state will not endure on its political problems, its functions and its services from a standpoint of enquiries of Jewish religious law.

#### **4. The Jewish Religion and the State of Israel**

Our national-political restoration and with the return of the national-societal functions to our hands, in *this* time and in *this* framework of reality - in a world that is not redeemed by either a redemption of soul or of body, still is given over to the control of spiritual and physical factors which controlled it before - this event and the essence of its possibility were not anticipated in the religious consciousness of Judaism, and the religious actions were not adjusted or directed to them or towards them. Therefore we are witnesses today not to social -political conflict between the religion and the state on the questions of their regulation of reciprocal arrangements, but rather to a crisis in the midst of the Jewish religion itself, according to what is embodied in the Torah and in the commandments, in the laws and statutes, a crisis that is not given to settlement in the way of proper political tactics or through appropriate legislation from a political rationale, a crisis that cannot be surmounted except through religious decisions amongst the religious community itself. In the framework of life, that the Jewish people and the individual Jew are themselves responsible, now includes the social and political problems - the order and the law, the administration and the governance, the economy and the supply, the technical and the traffic, foreign relations and treaties and agreements between nations, internal and external security, war and peace, the military and the police - and immediately we find the traditional "rule of the Torah", that was a perfect and complete way of



life for the generations of Israel under foreign rule, is defective in too much and in too little: it is defective in overabundance - from its positive and negative commandments of the decided Jewish religious law does not allow a place and a possibility for a man to do his obligations as a soldier, as a policeman, as a administrator, as a clerk, as one entrusted on communal peace, on its security and on satisfying its needs, and in general as a citizen who bears a responsibility for the existence of the state accordingly for its needs and its functions "*according to the needs of the time*";<sup>145</sup> Deficient in too little - due to the fact that this Jewish religious law does not sketch any kind of line and does not give any kind of a directive from the perspective of problems of the state and society and their services "*according to the needs of the time*" - i.e. *this time*.

Therefore the Jewish religion is obligated and compelled to decide between two fundamentally contradictory approaches, each of which is given over for argumentation and justification according to the sources and traditional ideas and the historical-reality of Judaism. However a solution through combination or blending of these approaches is impossible. From the two approaches which are opposite and contrary, the choice between them will set the position and the fate not of the religious Jews as a community alone but rather of the Jewish religion itself.

1. It is possible that the habit and the life-style that has been determined for Jews through the Jewish religious law, as it was decided and formulated in the 2500 year period,<sup>146</sup> that they were what the Torah originally required and by

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145. Id.

146. This time frame apparently refers roughly to the beginning of Babylonian exile until the founding of the modern state of Israel, as prior to the exile was the last time that Jew were autonomously governed.



which the Torah intended to obligate them to Israel. This Torah is a complete Torah, comprehensive of all existence and conditions of existence of Man, however only in the utopic world of the past or the present: It was given to those who ate the Manna<sup>147</sup> or to those worthy of the days of the Messiah. However in the present reality this Torah is not the Torah of life, by which one can construct the elements and the basis for human existence, which are the state and the society, except that it is content in establishing a superior building upon foundations that the Torah does not have; It shapes a form of life that is possible only in the framework given through other factors - whether by the hands of Heaven or by the hands of Man. In the establishment of this framework through the Torah it is impossible to deal with until the coming of the Redeemer, and therefore it is imposed upon the people of Israel from the Torah to survive in the present with the holes and cavities and cracks and breaches of the Gentile society, that it has to use as a basis for life through the Torah. Meaning, that it is forbidden to renew the state of Israel in the present and to place governmental duties and responsibilities upon the Jewish people with the same as conditions and on causes as they are, and this very action itself is raising a hand to strike upon the Torah of Moses and a revolt on the authority and the rule of the Torah on

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147. The bread that G-d sent each day to feed the Israelites in the desert. Exodus 16:4-5.



Israel. From here we have the essential position of the Neturei Karta,<sup>148</sup> who view this state as a foreigner, disqualify the essence of its existence and make every effort to withdraw from it, its aspects and its services.

2. It is possible - as against this - that precisely from a religious standpoint and from a standpoint of a spirit of the intention of the Torah there is a holy obligation and a central function - in this generation as in all the generations - to realize first national liberation and the political restoration itself of the Jewish people as a first and essential condition for the possibility itself for the *real* restoration of the Torah as the Torah of life, and not have to accept the alternative of the reduction of the Torah and an existence of its commandments in the boundary of four cubits of humanity<sup>149</sup> or Shabbat boundaries of the community,<sup>150</sup> but rather in the event of decisive physical force that from it there is no escape. Therefore a state itself in our national land - let its form be what it will be and let its defects and flaws be what they will be - a state of Israel is real, and it does not have any of the religious duties and obligations of an individual Jew towards this people to be nullified on account of the sins and evils of the

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148. NETUREI KARTA, group of ultrareligious extremists, mainly in Jerusalem, who regard the establishment of a secular Jewish state in Erez Israel as a sin and a denial of God, and therefore do not recognize the State of Israel. Their name, which is Aramaic for "guardians of the City," derives from a passage in the Jerusalem Talmud (Hagigah 76:3) stating that religious scholars are the guardians and defenders of the city.... Neturei Karta broke away from Agudat Israel in 1935 when the latter attempted to restrain extremist demands for an independent ultra-Orthodox Jerusalem community completely separate from the rest of the "Zionist" community.... The name Neturei Karta was first used in 1938 by a group of youths, including members of Hevrat ha-Hayyim, who violently opposed the Jewish community's levying of the voluntary defense tax, *kofer ha-yishuv*.... During the War of Independence, Neturei Karta opposed the creation of a Jewish state and Israel's control of Jerusalem, and tried to bring about the internationalization of the city. Encyclopaedia Judaica CD-Rom edition, "Neturei Karta," Judaica Multimedia (Jerusalem: 1997).

149. See note 52.

150. There is a basic distinction in Jewish religious law between private and public space and the limitations on activities in each of these realms on the Sabbath. See *Shabbat* 2a.



people. That is to say, that a Jew is commanded by the Torah to worry about the service and the development of this state, and he carries the religious responsibility for its existence and its welfare no less than the fulfilling of the duties of the religious imperative cast upon him. However all those who are already of this opinion say - consciously or unconsciously, the same whether they expressed it or suppressed it - that the Jew seeks a great portion from the system of justice and laws that has set the religious reality until today, as created after the fact, that has no validity for the framework of the religious reality in the independent national framework due to the fact that this system from the beginning was only intended for the historic episode of the exilic reality into which the Jewish people would be free from national duties and obligations and civic functions.

It is permissible to emphasize that only the decision for the side of the second approach makes possible and justifies the existence of a religious-political movement in the state, the position of "religious requirements" for legislative institutions and the operations of the state and a communal struggle upon "the rule of Torah" in the governmental organized political and social institutions. If this decision be lacking, the struggle of religious Judaism in the state is bereft of any completely logical, moral and religious basis .

However what is the position of the majority of the officially organized Jewish religion and of its traditions and its spiritual and political delegations in the state? Official Jewish religion with all of its division - except for the Neturei Karta - consciously avoids the necessary decision between two possible and legitimate attitudes and refrains from taking any clear position; it went on a path



which is no path, combining opposing and contradictory assumptions stemming from the combinations of the two individual attitudes. It combined the religious obligation of the state to a parallel restriction for a religious obligation exception to its service, the combination in the political reality of the state and the society with the casting of aspersions on its secular character.<sup>151</sup> And not only did it not refrain from this aspersion, even though its *side never proposed a sensible option for shaping the state and society through the Torah*, for those revelations of the Torah for which this community stands for do not recognize the modern state and do not consider it. Through this the Jewish religion arrives at a position of a lack of clarity and a lack of honesty, that ends in a path of destruction. There is not from this end a tangible meaning and interpretation of the Torah for the standpoint of the state of Israel and the Jewish people *in the present*, in the time that the decided and known Jewish religious law deals only with an individual Jewish *man* and his particular and personal existence in the Jewish people in a *utopic* reality. The organized Jewish religion never dealt, and does not deal today, with explication of religious legislation in relation to social and political matters in the present, nor does it reveal any wish to set the religious law like this; on the contrary - it is convenient for it that the state of Israel will remain *secular in its essence and core* and administration through "free thinkers," and as long as an *appearance* of the traditional Jewish religious law be maintained with all of its ante-political and anti-political revelations, that the religious minority can maintain itself as a specific sect in this political framework. The lack of a clear program for the entire state, together with the appearance as a religious political party (or block of parties) in the state - this thing negates all of its traditional religious worth and value from the religious

151. Apparently an allusion to the exemption to military service for religious students in traditional seminaries arranged by the ultra-Orthodox parties after the founding of the state and still in effect today.



struggle in the state. It does not appear as a struggle about a particular point of view - general and comprehensive - of the community's life, but rather as a series of petty attacks on individual freedom.

This criticism does not come to disqualify proper religiosity or correct Judaism, whether of the individual man or of the community, which do not derive from the Torah and are sociological and political in practical form in relation to the present. It is already in our introduction to our clarification that conforming to one legitimate line in Judaism allows one to be a proper Jew without a religious political and social program. However with what are these things said? - When this Man or this community is consistent in its ways and with its methods, and is strict about keeping the religious boundaries as a spiritual experience and as a system of the person or the individual, relations between it and the political reality are its problems and duties. As against this there is no more glaring contradiction, whether from a logical standpoint or from an ethical standpoint, than a combination of the lack of an actual program for a social-political order according to the Torah with an organized phenomenon in the political world for the sake of a struggle about "religious requirements" and "a state according to the Torah." *The result is not a religious struggle but rather clerical politics.*

This position degrades the honor of the Torah and the religion not only in the eyes of the secular community, but even in the eyes of the religious community itself - particularly in the eyes of the religious youth. Religious Judaism presents itself in the form of a parasite, the beneficiary of the existence of the state and its social services without having to bear its ethical and religious responsibilities. A frightening symbol for this position is the smuggled



"thanksgiving to God for giving us life"<sup>152</sup> and the *Hallel* without a blessing in the prayer for Independence Day<sup>153</sup>. The Jewish religion appears in the state of Israel as a sectarian matter of a small group, which does not have a prophetic vision at all about shaping the form of the completed state, and bases its existence and separate way of life upon the "free-thinking" of other Jews and the "free-thinking" of the political state. This sect aspires to receive from the hands of the secular state the possibility to live a particular life, also if this possibility came to it only by virtue of the non-performance of the Torah by the state itself and by the

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152. שחריינו

153. Israeli independence day is May 14th and corresponds to the 5th of Iyar on the Hebrew calendar. The official prayers for Israeli independence day were first formulated by the Israel Chief Rabbinate in 1949, but ultra-Orthodox rabbis vehemently refused to allow the addition of the *Hallel* blessing and the "*Shechyanu*" as these would give a Jewish legal status to the day parallel to a religious miracle holiday like *Chanukah* or *Purim*. Note the result:

The morning service includes the Sabbath festival introductory Psalms, *Nishmat*, the *Hallel*, and the *haftarah* (Isaiah 10:32–11:12) that is read on the last day of Passover in the Diaspora, but without the accompanying benedictions. *Tahanun* is also omitted as on all festive days. From the moment of publication many religious elements in Israel felt that the Chief Rabbinate's order of service represented an inadequate and halfhearted expression of the historic nature of the occasion. Criticism was directed against the omission of the benedictions before the *Hallel* and *haftarah*, of the *She-Heheyanu*, and of the reading of a special portion of the Torah. These omissions have been demonstratively remedied in some orthodox congregations in Israel, chiefly those of Ha-Kibbutz ha-Dati and the Army rabbinate. The former has printed its own *mahzor* under the imprimatur of the Army chief chaplain, Rabbi Shlomo Goren, and Rabbi Elimelech Bar-Shaul of Rehovot, prescribing the recital of *She-Heheyanu* over *Kiddush* and *Al ha-Nissim* in the *Amidah*. Three persons are called to the Torah, the portion read being Deuteronomy 7:1–8:18. Some synagogues read Deuteronomy 30:1–10. These deviations from the official order of service in respect of the *Hallel* and *She-Heheyanu* benedictions were also authorized by Rabbi Meshullam Rath of the Chief Rabbinate Council in a responsum in 1952 to an inquiry of Rabbi Judah Maimon, the minister of religious affairs. His ruling reflected the actual opinion of most members of the Chief Rabbinate Council including Chief Rabbi Isaac ha-Levi Herzog. The order of service finally adopted by the council represented an attempt to placate the objections of the more orthodox circles to any changes in the liturgy. The religious establishment continued to maintain this "no-change" attitude even after the Six-Day War when the demand grew to give appropriate expression to the restoration of Jerusalem and the Temple site in the daily prayers and even to the abolition of the Fast Days commemorating its original wresting from Jewish rule. Encyclopaedia Judaica CD-Rom edition, "Yom Ha-Atzmaut," Judaica Multimedia (Jerusalem:1997).

At the time Leibowitz wrote this essay though, 1952, there had not even been an attempt made to remedy this inequality. The *Seder Yom HaAtzmaut* of the 1983 *Siddur Rinat Yisraeli* (*Ashkenaz*), which is one of the official prayerbooks of the Israeli Chief Rabbinate, still lacks the blessings that



majority of the people living in it.

The organized Jewish religion consciously compromises with intent on the Sabbath in the state and with the people, and they exchange the Sabbath of a sect of Sabbath-observers in its framework of a populace of Sabbath violators whose work on the Sabbath supplies the needs of the sect. Religious Jews do not abstain from the benefit of electric light and from the water supply on the Sabbath with the stipulation that our friends will free us from work on the Sabbath in the electric plant and in the water-pumping station, i.e. that *other* Jews will work on the Sabbath. Religious Judaism wants the existence of police services on the Sabbath, with the stipulation that *other* Jews will be policemen. It wants the benefit of an Israeli navy, with the condition that *other* Jews will be sailors. It makes peace with the recruitment of girls for the armed forces, as long as the girls of *other* Jews form its corps and their girls are exempt.<sup>154</sup> It votes in the legislature on behalf of testimony privileges and inheritance privileges for the woman, with the stipulation that the state does not force upon the rabbinic courts the law that Religious Judaism itself consented to for state courts.<sup>155</sup> It demands and attains that students of Torah be exempted from the draft, amidst the hope that the Israeli Defense Forces - that it itself wants to be maintained - will be maintained through *other* young men that do not study Torah.<sup>156</sup> It exults the sacred land, and yet it confiscates it from Israel and sells it to Gentiles for the

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154. Ultra-Orthodox women, who are not regularly allowed to attend religious institutions of higher learning like men, are still exempt from military service under the current system of conscription as the military is believed to violate the woman's traditional place in religious society and to offend religious rules of modesty.

155. Women are not allowed under Jewish religious law to serve as witnesses for legal proceedings nor in most cases to permanently inherit property.

156. See note 151.



sake of a fiction of the Sabbatical year;<sup>157</sup> and one faction of Religious Judaism, their perception being as more zealous and strict and austere in the commandments, are not ashamed from the search itself for the possible way for two hundred farmers to fulfill the actual commandment of the Sabbatical year, with the stipulation that one hundred thousand other Jewish farmers should not proceed on this path.

And yet Religious Judaism wonders about the decline in its respect and about their alienation from the center of many Israelis - and of the religious youth in particular - from the Torah!

### **5. The Religious Implication of the State of Israel**

The negative aspects of Religious Judaism endangers the religious degeneration, ethically and communally conditioned with the competence to decide a clear and specific decision about the state in its present reality and about its positions and implications of national-state functions and of civic duties for Man and for community, that in reality define from a spiritual standpoint in religious faith and from a practical standpoint - with keeping the commandments. This decision is does not have the implication of a literal declaration, and also

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157. See note 48. It is considered acceptable under traditional Jewish law to sell Jewish-owned land in Israel temporarily due to a responsa issued in 1889 by Rabbi Issac Elchanon Spektor of Kovno for the settlers in Palestine who were faced with this issue. The Chief Rabbinate chose to follow it when the state was founded, but there has always been opposition to this ruling as lenient. The concern in 1889 was that if the land was allowed to lie fallow, the land would return to desert wasteland and the colonies would be ruined. Rabbi Spektor ruled to "permit the work in the fields, by selling them to the Muslims for a period of two years only. After that period, the vineyard and the fields go back to the owners; and the sale must be to Muslims only and may take place during the coming summer.... My opinion is, therefore, to follow my above mentioned suggestion [sell the land to non-Jews]. Furthermore, the work in the fields and vineyards is to be done by non-Jews...." Encyclopaedia Judaica CD-Rom edition, "Sabbatical Year and Jubilee," Judaica Multimedia (Jerusalem:1997). Today the Chief Rabbinate still follows this ruling although there is continued controversy within ultra-Orthodox circles as to whether it is too lenient.



could not remain within the definition of things that are in the heart: it needs to be embodied in a constructive form, tangible and practicable, for the administration of the state and the existence of its services and to satisfy the community's needs according to the Torah, according to that Religious Judaism from insight of requirements of the Torah concerning *this* state, that is not the legendary state or the utopia that burdens the discussion in the crystallized and decided Jewish religious law. Were the religious community to decide, according to its self-scrutiny and its standpoint of knowledge and from its religious conscience, that *this* state is unfit from the Torah - it is obligated to go in the way of the Neturei Karta. If the religious community finds that from this its religious obligations can be integrated in the political - national reality of independent Israel in the present and that this state is the framework that has fulfilled a religious plan, then this is the arena that it needs to conduct within it the struggle for the fulfillment of the Torah - to purify, beginning with itself and afterwards to all of Israel, what it is intended to wrestle with: what is the actual plan of the Torah of Israel for the state and politics, for law and order, for property and the economy in the reality of this time, a plan which demands and makes possible through its operation Israeli society and the religious community in its society, and not (Heaven forbid) a plan that is not nationally designated but rather for a sect of Torah observers and its commandments in a framework of a secular people, satisfying through its Torahless order the possibilities for this sect to fulfill its teaching. The plan needs to commit Religious Judaism itself, *and it* needs to be prepared to carry out in its hand and through its associates - and not through *other* Jews - in the completed state, if it will be and for when it will be the strength to carry it out with its hands.



Religious Judaism is obligated to deliver a statement to itself and to announce clearly to every Jew, what it plans to actually realize in *this* state of Israel from a political, directive, legal and economic standpoint - not in the form of absolute principle but rather *in practice* -, and what form it will be in for the state and the society in its government of that same Torah that this community stands for *in actuality* only after this selection is authorized by the religious community to set up requirements and demands for the state and the society, and only so there will be for it the traditional and psychological possibilities to fight a war of reality upon the government in this state. As against this it has to disqualify also from the traditional standpoint and also from the political-communal standpoint any intended "religious requirement" and designated for the secular state and society precisely and that direction is nothing except to release religious Jews from their obligations and responsibilities towards the state and the society.

Wretched and ridiculous is the argument of the official Religious Judaism, that the religious plan for the administration of the state already exists and rests *in potency*, but it cannot be allowed to be revealed *in actuality* until Religious Judaism becomes the majority and reaches control of the government in the state. This argument not only is lacking in honesty, but concerning it and its results our Sages of Blessed Memory spoke: "He who wishes to lie will postpone testimony."<sup>158</sup> Similar to it is a second argument, frequently heard from the mouth of the spokesman for Religious Judaism - that the state and its institutions are obligated to prove first the desire to listen to the Torah's point of view and to pay attention to it in their authoritative institutional directives, and so it will be given to them the required responses. The Torah is not an oracle which responds

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158. Unable to find textual source.



only to those who ask, but rather it is a life plan presented as an eternal demand for the Jewish people, that has to be brought before the state and to fight for its realization. The actual religious plan - for the state itself and not for the needs of the sect itself within the state - will be received or not received according to the majority in the state in this time, however this plan - and only it - is capable at any rate to function today as a delight of salvation for Religious Judaism: as a huge lever for educating the youth, as a means of explanation and construction acquisition in the community, as a basis for organizing and strengthening the polity of Religious Judaism for the longed-for government.

The working and realization of this plan is not feasible from an attitude that its whole essence is nothing except conservatism alone - conservatism that ceases to continue to serve as a means for preserving values and is turned into an objective and a purpose for itself. This plan is conditioned on an independent religious initiative of the religious community: it is not possible except against the background of new religious legal decisions in every one of the areas of community life that is not governed by existing Jewish religious law because they are not included in the framework of life that such Jewish religious law envisions. However, now it will be found in the framework of religious קטואליות<sup>159</sup> problems through the historical fact of our national political rise in this time - before the coming of the Messianic redemption. These religious legal decisions require considerable deviations from the religious customs and lifestyle which were crystallized in the absence of an independent state and other nonreligious citizens and were legitimate according to the Torah and were sanctified by sacred generations, and nonetheless were nothing except temporary provisions: because each of them *in practice* according to the Torah, that are perfectly valid as if

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159. Meaning of Hebrew indeterminate.



given from Sinai, are nothing except temporary provisions: "*according to - the changing - needs of the time*;"<sup>160</sup> The *eternal* Jewish religious law written in the Torah of black fire that is upon the surface of white fire,<sup>161</sup> and it is *in the heavens* - and from there it will not be given to us except to learn what we need to be a form of Torah, which is "not in the heavens"<sup>162</sup> and it is a life teaching to each generation and to each location. This is a temporary provision of our generation even though a law of Torah will be as if it was given from Sinai.

The subject of Jewish religious legal decisions of our generation could be only from an organized religious community, which bears in actuality the yoke of duties of the state and society and accepts upon itself these duties and feels in its body and soul the Jewish religious legal problems stemming from them. It is not possible to expect anything in this area from the side of the official institutions of religious instruction, due to the fact that they are in the psychological fetters of the traditions of those generations, which did not have the social and political order of the Jewish people given in their hands to shape - to maintain or to change; therefore they were exempt from the necessity for innovative religious legislation according to independent decisions and responsibilities, and they became accustomed only to religious legal decisions according to Jewish religious law that was weighted by its own decisions, i.e. to produce religious decisions *on its precedent* alone: to analogize one thing to the other for I am speaking only of those in accordance with the adopted practice.<sup>163</sup> However our generation did deeds *without precedent* in our history and unanticipated from this

160. Maimonides, *Mishneh Torah*, Laws of Kings and Their Wars, 3:10

161. See footnote 99.

162. Deuteronomy 30:12.

163. Leibowitz writes this in Aramaic with Talmudic paraphrasing from several unrelated verses to apparently emphasize the internalization and stagnation of Jewish religious law. cf: *Kreitot* 21a, *Brachot* 19a, *Yoma* 26a



religious consciousness, that assumed a foreign government over us as a given reality and could not think otherwise - at any rate within the historical framework. In the decisive religious questions of our generation it is impossible *to judge* according to Jewish religious law, rather you have *to enact* Jewish religious law. However the test of the last years proves that the official religious institutions are not qualified from a psychological perspective to deal with religious problems arising through the new social-political reality, lacking any type of precedent that is discussed in the decided Jewish religious law, problems asking for courageous religious answers and independent spiritual initiative. From now on, the responsibilities and the obligation to decide in this time returns and falls upon the original religious authority - that is the entire Torah-observant community, that each doctrinal institution is nothing except its messenger and not coming except from its strength.

And the religious community may not say today: "What have you to do with the secrets of the All-Merciful,"<sup>164</sup> to escape from these responsibilities! They may not say, that it is not upon them to decide according to their understanding and knowledge and conscience to bear these responsibilities of decision, and let them not attempt to give these evasive reasons as an argument that the Master of history is He who gave the Torah, and just as he changed our position and our fate so he will show us the way we will go in it, and therefore - as long as Jewish religious law was decided in the accepted and traditional way we cannot say a word that we did not hear from our rabbis. This argument can only be justified by the miracle of the Messianic redemption, that in it will be visible and

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<sup>164</sup>. *Brachot* 10a. This story comments on the verse Isaiah 38:1 and the exchange between the prophet and King Hezekiah. The king attempts to explain his sin of bring childless by saying he saw only unvirtuous children coming from him in a vision, and Isaiah is reported to have replied with this verse.



recognizable the finger of G-d, may His great name be magnified and sanctified. In *this* generation of worldly and spiritual darkness - in Israel and in the whole world - miracles are not made for us and the Messiah's footprints are not seen; on the contrary, in the generation of "*hiding the face*,"<sup>165</sup> that such as it is not found in history, we ventured on our self-knowledge and our each of our small achievements and points of righteousness, to redeem ourselves. Therefore, only Neturei Karta, who nullified from the beginning this operation, are authorized to refuse to receive upon themselves the obligation and the responsibilities for the new independent decision making, until a spirit from the sky pours upon them. However that religious community, which took a portion in a great act of boldness and benefits from the fruit of its success, they are not free to unwrap from upon itself the ethical and religious responsibilities emanating from their act.

Faced with these responsibilities, maybe the religious community began to wonder about its actions in the last generation and doubted, if it did well with its participation in our national recovery and in the removal of the parapet, which had been established in the shadow of the exile and foreign governments from around the life of the Torah and the tradition? Upon this let it be said, that precisely *this is the possibility*, and here in this place is the real religious implication of our national recovery: the liberation, the independence and the statehood are that which caused the religious Jew and Religious Judaism to stand in the face of decisive obligations, that blurred and concealed them in the exile and the foreign governments. Now taking out the Torah from the artificial glass house, that in it it grew and was nurtured - from the same world where it was easy for a Jew from a

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165. Apparently an illusion to Deuteronomy 31:18 where G-d says that He will hide his face from the world as the consequences of its turning away from Him come to bear. Given the year that this was written by Leibowitz, he probably is referring to the Holocaust.



spiritual and mental perspective and conscience to be a Jew according to the Torah, and because he was free then from the function of establishing the basis and the framework of life according to the Torah. Surely those who reason that the Torah desires to privilege its keepers with a life in the world-to-come through the renunciation of this world to other factors, and that it is permissible- or even commanded - for a Torah-observant Jew to base his existence and the possibilities of a Torah existence upon that will be set through Gentiles or through Torah-defying Jews, and although this allows him to take advantage of this reality for the purpose of its religious perfection. However all the thinking that we were not given a Torah except to mold it based on this world, that is the first condition for the fulfillment of the Torah is the acceptance of national and societal obligations and civic duties through the Torah-observant community and its possible formation for the fulfillment of these obligations.

Now - and only now - Religious Judaism will be examined, if indeed a *life of Torah* is in its hand, that the foundations themselves will be for the maintenance of Man and the society. During a long historic period nothing was required of the Jew except the strength *to suffer* for the sake of the Torah; from here and onward it is asked from us something difficult and hard - *to act* according to the Torah. In the past nothing was required of us except the physical heroism to know to die for the Torah; from here and onwards it is required from us the supreme heroism to know to live according to the Torah.

Happy is the generation that attains it, that places upon it the strength that is in its responsibilities upon fulfillment of the duties bound in it.



### III. The Later Leibowitz - A Call for Separation

The previous essays offered a progression of concern about the incapability of the modern governance of Israel with traditional Jewish law. Leibowitz was concerned in the 1947 essay with the lack of response to the coming state's unique circumstances by the rabbinic leadership of the day in then-Palestine as part of the Yishuv.<sup>166</sup> He was able to show that as opposed to the various versions of socialism then being politically jockeyed about as a basis for the impending state, religion was not presenting itself as viable due to its intransigence to adapt to the new reality. Leibowitz's sense that Jewish religious law would not provide the tools to govern a modern socialist state can be clearly seen here as based on the lack of response of the rabbinate to the unique questions being given them in such areas as defense and agriculture. He argued for an evolution in Jewish religious thinking that permitted the individual encountering the unique life that the new state would present to be able to rely on their autonomous experience to make religious choices within the tradition until the rabbis and Jewish religious law caught up with the new reality. He sensed that it could be many years before that actually happened. This is important because when this first essay was published there was no state yet nor government nor political autonomy, but there was the struggle for and anticipation of it in the near future. Leibowitz was projecting based on the rudimentary experiences of quasi-national behavior that the Jews in Palestine were encountering through the activities of the Yishuv and the formation of the resistance cells that would become the military during the war of independence the following year. This put him as a religious man in a unique situation of realization of the social future of the hoped-for state for religious Jews at a time when that future state itself was still in doubt, and he was advocating for religious Judaism to adapt to meet that

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<sup>166</sup>. See note 67.



anticipated reality.

By 1952 though, after only four years of independence, Leibowitz had seen enough of the new state's growth to raise grave and angry concerns in his second essay about the place of religious Judaism in Israel. Ben Gurion and the secular political leadership which were in political power during those early years maintained a socialist vision of the state that manipulated religion for its own needs. The political result was the formation of a ministry of religion that was charged with incorporating Judaism into the modern state through control over personal status issues such as identity, marriage, divorce and other areas. The practical result was to treat religious Judaism as a living museum, subsidizing religious education and authority and exempting religious participation in the military while granting concessions in other areas such as dietary laws and neighborhood religious life. In a curt sense, the thought was that by keeping this outdated group entertained and happy they would in turn stay out of the daily political affairs of the modern state. The result as far as Leibowitz was concerned was a parasitic relationship between religious and secular Jews that exempted and even paid religious Jews to avoid their modern civic responsibilities whenever they even remotely conflicted with Jewish religious law.

His second essay here is filled with disdain for such a lack of national duty when so many secular Jews had to bear the extra burden that religious Jews avoided. This is especially true for the religious Jews who did not even recognize the state's existence on religious grounds. Neither did he and this was especially piquant for him - This state is not the Messianic state and therefore should not be accepted or rejected on that level but rather embraced as a politically autonomous



home for Jews in the current reality. Accordingly, religious and secular Jews should equally bear civic duties and strive to find ways to meet them other than simply exempting one partner at the expense of the other. That religious Jews accepted this political bribe rather than strive to preserve the integrity of Jewish religious law through adapting it as had been historically done in the past to meet new realities was the most frustrating to him of all. He scorned in this essay the excuses that were being presented by religious Jewry that they had actually designed an system of leadership for the modern state, but that it was not worthy of public discussion as long as the populace was not really interested in obedience to the Torah which was clear to them because they did not have political control. "Wretched and ridiculous is the argument of the official Religious Judaism, that the religious plan for the administration of the state already exists and rests *in potency*, but it cannot be allowed to be revealed *in actuality* until Religious Judaism becomes the majority and reaches control of the government in the state." Fifty years later, the religious community has more political control than at any time in Israel's short history and the result is the deepening of the gap between religious and secular Judaism and the realization of Leibowitz's gravest concerns.

By 1959 the corruption of Jewish religious law had become so bad in Leibowitz's eyes that he was openly beyond pushing for an adaptation of Jewish religious law and had published "A Call for the Separation of Religion and State".<sup>167</sup> This is the later Leibowitz coming to full fruition. Leibowitz notes that the secular community had been calling for this to happen for some time although no party or leader had ever officially adopted it. Leibowitz, an observant Jew, not

167. Originally printed in "בטרים" 259/260 (1959); reprinted in יחדות, עם יהודי, ומדינת ישראל Schocken Publishing, Tel Aviv: 1979, pp. 155-164. References here are taken from the Goldman translation, pp. 174-184.



only calls for it in this essay but calls the existing relationship between religion and state *Hillul HaShem*.<sup>168</sup> Leibowitz notes that Israel was brought into being as a secular state by both religious and secular Jews. "The secularity of this state is not incidental but essential. The motivation and incentive for its foundation were not derived from the Torah. Its founders did not act under the guidance of the Torah and its precepts. It is not conducted by the light of the Torah.." <sup>169</sup> He further notes that everyone knows and acknowledges this secularity as the governing principle of the state, including the religious. "Whether we are religious or secular, we brought the state about by dint of our common efforts as Jewish patriots, and Jewish patriotism - like all patriotism - is a secular human motive not imbued with sanctity. Holiness consists only in observance of the Torah and its *Mitzvot*: "and you shall be holy to your G-d." We have no right to link the emergence of the state of Israel to the religious concept of messianic redemption, with its idea of religious regeneration of the world or at least of the Jewish people. There is no justification for enveloping this political-historical event in an aura of holiness. Certainly, there is little ground for regarding the mere existence of this state as a religiously significant event."<sup>170</sup>

The official religious institutions which has been functioning in Israel for over ten years as part of the government were at the heart of the matter for Leibowitz. The corruption of religious Judaism through them had only gotten worse as far as he was concerned. "The demand for the separation of religion from the existing secular state derives from the vital religious need to prevent religion from becoming a political tool, a function of the government

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168. Taken from the Prophet Ezekiel, this is a term meaning desecration of G-d's name and is a grave accusation to make in the religious community.

169. Goldman at 175.

170. Id.



bureaucracy, which 'keeps' religion and religious institutions not for religious reasons but as a concession to pressure groups in the interest of ephemeral power-considerations. Religion as an adjunct of a secular authority is the antithesis of true religion. It hinders religious education of the community at large and constricts the religious influence on its way of life. From a religious standpoint there is no greater abomination than an atheistic-clerical regime."<sup>171</sup>

This political-religious political partnership, according to Leibowitz, does nothing but demean the religion. "At present we have state - secular in essence and most of its manifestations - which recognizes religious institutions as state agencies, supports them with its funds, and, by administrative means, imposes, not religion but certain religious provisions chosen arbitrarily by political negotiation. All the while, it emphasizes its rejection of guidance by Torah.... We have a rabbinate invested by the state, which receives its appointment, authority, and pay from the secular government and confines itself, therefore, to the functions that this government allots to it. It is a religion whose position in the state parallels that of the police, the health authorities, the postal service or customs. There is no greater degradation of religion than maintenance of its institutions by a secular state. Nothing restricts its influence or diminishes its persuasiveness more than investing secular functions with a religious aura; adopting sundry religious obligations and proscriptions as glaring exceptions into a system of secular laws; imposing an arbitrary selection of religious regulations on the community while refusing to obligate itself and the community to recognize the authority of religion; in short, making it serve not G-d but political unity."<sup>172</sup>

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<sup>171</sup>. Id at 176.

<sup>172</sup>. Id.



In this essay Leibowitz not only puts the call for a separation out in the open, but in response to the arguments from the religious community that religious Jews could not live in Israel without such governmental support and protection, he presents a plan for how an Israel with such a separation could function successfully. He calls for an independent system of religious institutions, including the rabbinate, that will no longer be subordinate to a secular government. This, he argues, would give more freedom and autonomy to these institutions which would promote more activity from them as well. The funding for the institutions would come from where it always had in Jewish history, the community itself. "Even the poorest community in a remote village in Yemen or Libya maintained its rabbis, ritual slaughter, synagogues, and cemeteries, without the help of the United Jewish Appeal or an appropriation from the imam or the sultan - and never complained that this was beyond its capacity. Only in the state of Israel, which transformed religion into a function of the secular government, has the religious community been corrupted and become accustomed to financial dependence upon a secular authority."<sup>173</sup> Abolishing the state institutions, including the Ministry of Religion and the Religious Councils, would also force the non Jewish religions to support themselves as well. Even Leibowitz acknowledges though that if the voters so chose, then support could be given to any religious institution due to their constituent status as taxpayers and citizens of the state.

Such a separation also allows religious Judaism to remove itself from the regular governmental desecration of the Sabbath such as bus service. He called religious Jewish parties sitting in political coalition on the city council of Haifa

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173. Id at 178.



and voting on the bus issue the "peak" of hypocrisy. Laws accommodating the Sabbath for observant Jews would be maintained even if religious Jews were not represented as a party in the political system because public demand would support it. Religious Judaism, its integrity restored by removing itself from the political fray, would garner more credibility and support from the general population for these laws. Furthermore, he credits the military with making the best effort in accommodating religious Jews regarding the Sabbath and also the dietary laws who are fulfilling their civic duty. This is done by necessity rather than religious policy, and would transition well into a state with a separation of religion and state.<sup>174</sup>

On the question of marriage and divorce, Leibowitz advocates for civil institutions to both. As he points out, the majority of other nations in the world have these institutions and countless Jews still seek religious alternatives to them. Even if a Jew should choose a civil marriage and divorce, there is only a small danger of creating illegitimate children, *mamzermim*, under Jewish religious law as a civil marriage would not count as a marriage at all under Jewish religious law. Since illegitimacy is only defined as a child born through adultery or incest and not as out of wedlock in Jewish religious law, there is little danger of a child that would fall under the religious prohibition against married illegitimate offspring. Leibowitz notes that sexual practices in the secular community are much more liberal than in the religious community, and that the requirements of religious marriage for non observant Jews in that moral climate actually encourages adultery and illegitimate children. "Hence those who force religious marriage on people who do not recognize its sanctity are violating the proscription of placing a stumbling block before the blind. Men and women are

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174. Id at 179-180.



led into a far more serious halakhic transgression than that of living together without religious marriage."<sup>175</sup>

Religious education, according to Leibowitz, would be much better off as an independent venture. He cites the success of religious education in many western nations, including the Catholic system in the United States, where no support is given except the freedom to operate the schools. Leibowitz also argues that the arguments of those who claim that no state support for religious education would doom it reflect "the moral failing of the religious community fostered by the dependence of religion on the state. In the past, religious Jews customarily devoted great efforts to educating their children and were prepared to pay the price. A condition for religious revitalization, without which there is no future for religious education in any of its forms, is the revival of initiative and readiness of religious Jews to undertake this burden."<sup>176</sup>

Leibowitz summed up his argument by reiterating that the "separation of religion and state would involve neither withdrawal of religion to a secluded niche nor removal of religious Jewry from the political scene. On the contrary, it would signify the beginning of the great confrontation between Judaism and secularism within Jewry and the Jewish state and initiates a genuine struggle between them over the hearts and minds of the citizens. Religion as an independent force will be the principal opposition to the regime of the secular state, an opposition which can present a clear and unambiguous alternative in all areas of life of the state and the society."<sup>177</sup>

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175. Id at 181.

176. Id at 183.

177. Id at 183-184.



#### IV. Israel at 50: Leibowitz's Predicted Reality

While Leibowitz wrote other pieces reinforcing and expanding his call for a separation between religion and state, the crux of the progression of his thinking is within these three essays discussed and examined here. Unfortunately, he was never taken seriously on this topic by the political or religious communities beyond lip service, and as noted in the first section he was far better known for other areas of concern such as peace. It was simply easier to continue the symbiotic relationship between religion and state than to attempt to free them to preserve religious integrity. However, events of the past five years have born out as true many of Leibowitz's warnings about what would happen within if this corrupt system was allowed to continue unchecked. The status of relations and patience between religious and secular Jews in Israel's jubilee year are at an all-time low, while at the same time the religious minority has more political power than ever before as coalition partners in the Likud-led government. The increasing demand to assert Jewish religious law into national law by this minority as a price for its coalition membership has led to an immense social rift with a building backlash that could be socially destructive to the entire society.

The vague political plan of the religious parties for the state of Israel that Leibowitz criticized in 1952 is now becoming clear to Israel. Israeli society at large is constantly being asked in this climate to accommodate for more religion and there are signs that it will not take much more of it.<sup>178</sup> Fifty years of political support of religious Judaism has earned Israel a political environment where democracy and tolerance and civil equality are little more than abstract ideas

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178. A Gallup poll commissioned by the Orthodox Union showed that 55% of Israelis do not see the Chief Rabbinate as the most appropriate body to decide the question of "Who is a Jew." "Israeli Opinions on the Three Streams," January 29, 1998, electronic mail news summary MidEast Dispatch, <http://www.iipub.com/>.



within the ruling coalition. For instance, at a special seminar on the Jewish democratic state, Transportation Minister Yitzhak Levy of the National Religious Party, a member of Prime Minister Benjamin Netanyahu's cabinet, reportedly said: "Judaism is an end that is worthy enough to allow for a compromise of democracy. If we want to maintain Judaism, there is justification to compromise personal rights."<sup>179</sup>

An examination of the areas that Leibowitz felt were worthy of separation from the political process as they are today shows that his worst fears are being realized. Religious control of a wide variety of economic areas are causing serious resentment amongst secular Jews working in those areas. For example, religious Judaism has control over the wine-making industry in Israel due to the requirement of supervisors of *kashrut* that it be produced by religious Jews. The result is that wine produced by secular Jews cannot be certified as kosher. The Secretary of the National Kibbutz Movement, Avshalom Vilen, was recently interviewed by the newspaper *Haaretz* on this topic: "This discrimination against secular Jews... cannot be tolerated. I plan to act in all the secular kibbutzim abetting this deed to change the situation."<sup>180</sup> Meanwhile, on the same day at the kosher winery Carmel Mizrachi headquarters in Rosh Letzion, both of Israel's chief rabbis appeared in a tithing ceremony for the wine production as required under Jewish religious law. There the Chairman of Carmel Mizrachi, Avraham Ben-Moshe, stated in remarks that "the uncontrolled and unsupervised importing of wine, which is mixed with home-grown wines in a way that is not only not

179. Reported as a quote from *Ma'ariv* to the electronic mail list of the Association of Reform Zionists of America (ARZA) by Robert Orkand, January 19, 1998. See also "Democracy or Theocracy?" *The Jerusalem Report*, Vol. 8, No. 23 (March 19, 1998) at 23.

180. "Kibbutz Leader Fed Up With Religious Wine," reported in the February 9, 1998, electronic mail news summary MidEast Dispatch, <http://www.iipub.com/>.



kosher, but deceives the consumer in terms of standards and quality." The head rabbi of Rosh Letzion, Yosef Arzan, concluded the ceremony with the blessing "We all hope for the day when King David will take a cup of Carmel Mizrachi wine and with the help of G-d will merit to recite the blessing on the redemption."<sup>181</sup> These two articles published on the same day in 1998 highlight Leibowitz's concerns. If the Chief Rabbis of Israel and the head rabbi of a city, all public employees of publically funded religious institutions, appear at a religious event held by a commercial vineyard and make what amounts to an endorsement for the product while other vineyards cannot receive the same attention and support from the state due to their secular status, then the use of religion in this way demeans the faith behind it.

Equally involving the religious institutions of the state, perhaps no more contentious example has presented itself during Israel's fiftieth year than the issue of control over conversion to Judaism. This has long been under the control of the Chief Rabbinate, and for several decades they have tried to ban official recognition of any Jewish conversion not done according to strict Orthodox interpretation. This is because, among other reasons, that the Orthodox establishment has continually raised the same issue of illegitimacy that Leibowitz refuted in 1959. The compromise was always that Jews converted out of Israel by non-Orthodox rabbis could be counted as Jews for citizenship purposes, but that they would be denied the right to marriage and burial by the state if they did not undergo an Orthodox conversion later. Non-Orthodox Rabbis in Israel also agreed not to perform conversions under this compromise. However, due to the influx of Jews from Ethiopia and the Former Soviet Union, the Chief Rabbinate has required any immigrant of questionable Jewish origin to undergo conversion

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181. Id, "Wine Tithing at Carmel Mizrachi."



courses. At the same time, they have been very slow to institute the courses or to conduct the conversions. As a result, an increasing amount of immigrants have sought conversion and other services such as marriage and infant conversion from non-Orthodox rabbis in Israel.

A subsequent Israeli Supreme Court challenge to the Orthodox monopoly on life cycle events left open the possibility of official legal recognition in pending court cases of non-Orthodox Judaism and Rabbinic actions in Israel. In response, the religious parties in the Knesset brought a bill seeking to ban all non-Orthodox conversions. Because the Knesset majority was made up of the political coalition to which the religious parties belonged, the bill was expected to pass. Strong opposition from non-Orthodox Judaism outside of Israel pressured the government to try and find a solution. Prime Minister Netanyahu appointed Finance Minister Yakov Ne'eman to head a commission of rabbis from the Orthodox, Conservative and Reform movements in Israel to try and find a compromise. After a stormy period of negotiation during which the Chief Rabbinate balked at every proposal offered, a compromise based on a technicality was reached by the commission: On every Jewish citizen's identity card would be the letter "י" which would identify them as a Jew. Next to that would be a date, either their birth date or date of conversion. The source of the conversion would be kept in private government records accessible only to necessary officials.<sup>182</sup> This solution was presented to the Knesset for approval but the Chief Rabbinate and the religious parties withdrew their support almost immediately, and as of the publication date of this thesis the compromise was expected to fail and the issue would revert to the courts.

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182. WUPJ News, January 26, 1998, <http://rj.org/wupj/news/>. See also "Much Ado About Nothing? The 'Law of Hamarah,'" Midstream, vol. 44, No. 1 (January, 1998) at 24.



This issue has strongly soured relations between Orthodox, non-Orthodox, and secular Jews in Israel and around the world over the past year, and the chances of a political solution now that heals the rift are slim. Leibowitz foresaw just this rift when he addressed the connected question of marriage and divorce control in 1959. "Did religious Jewry, in its fear of *mamzerut* on the one hand and concern for the unity of the nation on the other, think of the problems that will arise the moment - perhaps not so far away - when masses of Jews from the U.S.S.R. or the United States will stream to Israel? These Jews have conducted their lives for two generations, or even more, in accordance with the legal provisions and social patterns of their countries of residence. It will not prove possible to trace their precise family status. How does religious Jewry think it could assure the unity of the nation in those conditions?" Clearly it did not think about it, nor would Leibowitz have approved of how Judaism became politically maligned in this process. He was not a supporter of Reform Judaism, which he said "empties Judaism of its religious content and reduces it to ethical humanism,"<sup>183</sup> and we can assume he did not support any other denomination that rejected the sanctity of *halacha*, but he recognized that non-Orthodox Jews could not be theologically reprogrammed like a computer just because they had chosen to live in Israel. Each Jew holds his or her own mind and thoughts and beliefs, and the infringement of religious Judaism by the government upon those beliefs is the pinnacle of Leibowitz's definition of *hillul hashem*.

The Sabbath has become another flash point in religious-secular relations. In Israel's six day work week, the Sabbath becomes the only official day of rest as well as the religious one. Stores, restaurants and other institutions often close on

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183. "The Significance of Redemption," Goldman at 114.



Saturday and secular Jews cannot use their free time to take care of needs that their schedules might prohibit them from doing during the week. More and more theaters and shops were staying open on Saturdays to accommodate secular demand, but efforts by the religious political parties in many municipalities as well as nationally have forced closings as well as imposed fines on businesses that violate Sabbath ordinances, ordinances that were enacted originally to protect laborers rather than enforce the Sabbath. For example, a fine of NIS 120,000 (about \$40,000) was imposed by a Tel Aviv court on the Ace Hardware store chain for the Saturday opening of two of its stores. This unprecedented ruling in Israel's most secular city was widely seen across Israel as the result of political pressure from the Minister of Labor and Social Affairs, Eliyahu Yishai, who is from the Sephardic religious party Shas. "The real reason why Yishai is stepping up the activities of the work laws enforcement section in his ministry is ideological - and far more dangerous: the purpose is to turn Israel into a fundamentalist halachic state whose legal system is based on traditional Jewish law, as politicians in his party and those of other ultra-Orthodox parties have frankly declared. The ideal they are aiming for is to turn Israel into one big Bnei Brak. While this goal maybe far off, it is not unattainable as far as Rabbi Ovadia Yosef is concerned. He has declared that 'in another generation or two, we will control this country.' Yishai, Rabbi Yosef's representative in the government, is making every effort to stop the development of life in the country and turn the clock back."<sup>184</sup> Again, Leibowitz's fears are being realized not only because of the legal abuse but because of the clearly angry response to it in one of Israel's largest secular newspapers. The last thing that Leibowitz would agree with in this

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184. "Ressurrection of a Once-Dormant Law," *Ha'aretz* English Internet Edition, December 19, 1997, [http://www3.haaretz.co.il/eng/htmls/1\\_1.html](http://www3.haaretz.co.il/eng/htmls/1_1.html). A "shaky compromise" was reached on this issue recently. "SHOPPING COMPROMISE IN TEL AVIV," *Arutz 7*, March 3, 1998, <http://www.arutz7.jer1.co.il/index.html>.



example is that the Sabbath is being honored through these actions.

The area of education is still a sticking point in Israel. Since the religious parties have gained political power, they have demanded more and more resources for their schools which then become a carrot for political support of the government. At the same time though, draft exemptions for yeshiva students number 29,000 in 1998 which has led to a High Court of Justice petition submitted on behalf of 15,600 university students and 1,100 high school students demanding that yeshiva students also be drafted. These secular students assert that this high exemption allowance as "a situation by which thousands of teenagers are exempt from military service while thousands of others risk their lives in the service causes frustration and feelings of neglect on the part of those who serve."<sup>185</sup> At the same time, a study on the mandated implementation of more religious education into the secular school system showed 70% of students and more than 50% of parents fear an expanded religious curriculum because they believe it will lead to religious coercion.<sup>186</sup> As Leibowitz said after warning of these exact same backlashes in 1952: "And yet Religious Judaism wonders about the decline in its respect and about their alienation from the center of many Israelis - and of the religious youth in particular - from the Torah!"

The lessons to be learned from Leibowitz on the need for a separation between religion and state are simple. As long as religion, which is a direct expression of an individual's relationship with G-d, can be corrupted for human gain, then it and anything connected to it loses credibility and respect. When

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185. "Students Protest Haredi Exemptions" MidEast Dispatch, February 5, 1998, <http://www.iipub.com/>.

186. "Secular Teachers Don't Want More Judaism," February 23, 1998 MidEast Dispatch, <http://www.iipub.com/>.



religion is connected to the state in an official capacity, that corruption can occur on a national scale as can the cost to it. After fifty years of this corruption, both politics and religion are experiencing an backlash from the society and to resolve the issue is very unclear. The triumph of the political and religious right in the 1996 elections is an indication that there is a strong need for some Judaism in the Jewish state. "A majority of Israelis may not want a halachic state,... but neither do they want a run of the mill secular democracy, indistinguishable from any other Western nation. They want a state that is identifiably Jewish."<sup>187</sup> Leibowitz knew this fifty years ago, and the process of national definition at this point will not be any easier now. "Reaching a consensus on what an identifiably Jewish state should look like will take years. But building such a consensus is one of the most important tasks the Israeli people can undertake, if the Jewish state and not merely the state, is to survive."<sup>188</sup> After the latest fiasco of the Ne'eman commission, a fiasco that Leibowitz anticipated fifty years ago, that survival of the soul of the state is in serious question. Leibowitz's answer would be the same at Israel's jubilee year as it was throughout most of Israel's history: Separate religion and state for the good and integrity of both. Perhaps now, after fifty years of social inequality and corruption of the faith, people will be willing to listen.<sup>189</sup> *Kain Yehi Ratzon.*<sup>190</sup>

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187. Evelyn Gordo, "A Jewish State," Jerusalem Post Internet Edition, January 20, 1998. (<http://www.jpost.com>)

188. Id.

189. "MK Adisu Massala (Labor) yesterday asked party leader Ehud Barak to pass legislation to separate religion and state. "Only such a law can solve the problem of the three streams of Judaism and bury the conversion bill, which offers an artificial solution, like giving Acamol to a dying man." The conversion bill is just one in a series of anti-Jewish laws the religious parties are trying to legislate, and others will follow, which will only further divide the Jewish people and increase assimilation, Massala charged." "Labor Ranks: Separate Religion From State Once And For All," Jerusalem Post Internet Edition, January 27, 1998. (<http://www.jpost.com>)

190. May it be His (G-d's) will. This is the traditional response to an impassioned prayer to G-d. See e.g. the congregational response to the Priestly Blessing in the traditional weekly *Tefillah*.



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