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RABBI BEN-ZION UZIEL: HIS THEORETICAL AND LEGAL
RESPONSE TO THE RISE OF THE MODERN JEWISH STATE

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Thesis submitted in partial fulfillment of
the requirements for Ordination

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This thesis is dedicated to my wife Laura.

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DIGEST

This thesis examines Rabbi Ben-Zion Uziel's theoretical and halakhic response to the rise of the sovereign and predominantly secular Jewish state of Israel. A Religious Zionist and a prominent leader of the Orthodox Jewish community during the formative years of the Jewish state, Uziel, while embracing the imperfect realities of Israel as it existed in his day, attempted to develop the halakhic and political foundations for the "Torah true" Israel of tomorrow. This was no small task, for the *halakhah* does not speak to many of the issues that confront the new state. Compounding the halakhic silence on many areas essential to running the modern Jewish state under its guidance is the fact that a mechanism for halakhic legislative innovation, in our times, is inoperative, and for all practical purposes nonexistent. Confronted by this reality, yet committed to living within a halakhic framework, Uziel sought, through the interpretation of texts, the means by which to translate the Zionist vision into a Jewish legal reality.

Rabbi Uziel was a great innovator, but he did not work in a vacuum, and to fully understand his work, it is important to place him in historical context. Thus, Chapter One is an overview of the Orthodox community's response to the challenges which nascent Israel posed, with a focus on the proto-religious Zionist Rabbi's: Alkalai, Kalischer, Mohilever, and Reines as well as Uziel's

contemporary, Rabbi Abraham Isaac Kook. Also, included in this chapter is an introduction to the central halakhic challenges the new state created.

Chapter Two begins with an outline of Uziel's life, moving from there to an analysis of Uziel's religious Zionist theology. This is done in part through a comparison of Uziel with those religious thinkers mentioned in Chapter One. Central to this chapter is an exposition of Uziel's messianic theology of Redemption, the cornerstone of his Zionist philosophy. Also included in this chapter is a comparison of Sephardic and Ashkenazic approaches to the *halakhah*.

Chapter Three is an analysis of Uziel's halakhic response to the modern state. The three legal areas addressed in this chapter are: Judicial Procedure; Labor Law; and Women's suffrage. This chapter illustrates Uziel's halakhic approach to the contemporary issues of the modern Jewish state. It also offers insight into how Uziel's religious Zionist theology influenced his halakhic reasoning.

Chapter Four concludes the study with an evaluation of Uziel's success in answering halakhic questions in the spirit of religious Zionism, as well as an evaluation - through the lens of Uziel's writings - of the ability of the *halachah* to offer a sufficient framework for a modern state.

CHAPTER ONE: *The Orthodox response to Zionism*

Jewish Nationalism and the resulting renascent state of Israel created a number of interesting and difficult challenges for Orthodox Judaism and its traditional halachik foundations. Is the creation of such a state permitted according to Jewish law? If so, what should the relationship of the *halakhah* be to the State? In this chapter we will explore these fundamental challenges to Jewish Orthodoxy created by the rise of the modern, predominantly secular state. In doing so, we will trace the history of the Orthodox community's response to the rise of Jewish Nationalism, with a primary focus on the religious Zionist response.

The root question whose answer colored the religious community's response to every other issue which arose in their interactions with secular Zionism was; does traditional Jewish belief, in any way, countenance a Jewish national revival outside of the messianic perimeters outlined in the liturgical and literary canons of tradition? While the answer to this question was varied, one can generally place the response of the traditional Jewish world into two categories, those that looked affirmatively towards the rising national consciousness, seeing in it, to greater and lesser degrees, the hand of God, and those who rejected it completely, as *chilul HaShem*, the desecration of The Holy Name.

Of the two approaches, initially, the overwhelming response of the Orthodox community was negative. Walter Laqueur in his seminal work, A History Of Zionism writes that "...the Orthodox, ... with some notable exceptions regarded it (Zionism) as their mortal enemy...an unmitigated disaster, a poisonous weed, more

dangerous even than Reform Judaism."¹ The origins of the Orthodox opposition to Zionism are complex, a combination of a number of factors social and psychological as well as religious and theological.

On a social or psychological level, since emancipation and the breaking down of the walls of the ghetto, traditional Judaism had been in the process of erecting a barrier of its own, constructed out of the religious and spiritual fiber of traditional halakhic observance, to replace the walls of the ghetto. The purpose of this spiritual ghetto was to protect itself from the "free thinkers" and the threat they posed to their traditional way of life. The paradigm for this new wave of isolationism and conservatism was Rabbi Moshe Sofer, the *Hatam Sofer*, renowned Torah scholar, Rabbi of Pressburg, and leader of Moravian-Hungarian Jewry until his death in 1839.² An opponent of the ideas of the enlightenment and its Jewish counter part, the Haskalah, the *Hatam Sofer* stressed the "supremacy of Torah study, upgrading established custom to the status of Biblical and Rabbinic injunction and berating the 'enlightened' Jew as a negative character altogether."³ As a recognized halakhic authority, the *Hatam Sofer* ruled on a wide range of issues, thus ensuring that his ultra-conservative world view would live on far after his death. This was especially the case with his famous slogan, "New is forbidden by the Torah". Based on the Biblical injunction against partaking of the new produce before the Omer is offered

¹ Walter Laqueur, *A History Of Zionism*. (New York: Schocken Books, 1989) , p 407.

² Moshe Unna, *Separate Ways*. (Israel: Dep. for Torah Ed., WZO, 1987) , p. 12.

³ *ibid.*, p. 13.

in the Temple on the Passover, this ruling became "an ideological principle and a guide to all contemporary spiritual and public problems."⁴ With "New is forbidden by the Torah" and attitudes like it as a guide for how the Orthodox community should respond to the changing world around them, it is no wonder that in spite of the integral part the yearning to return to Zion plays in the literary and liturgical framework of traditional Judaism, Zionism was initially rejected by the Orthodox, who saw it as a heretical movement, a product of a secular society hostile to religion.

On a religious/theological level, the Orthodox response to Zionism had to be reconciled with the fact already alluded to that, "throughout all the centuries of Jewish dispersion until modern times, Zion, hardly less than the Deity, functioned as a binding integument of Jewish religious and social experience. Rabbinic literature, the prayer book, medieval literary treatises, all display a uniform preoccupation with the Holy Land...and a yearning of the People Israel for the ravished cradle of its nationhood."⁵ But, in spite of the central place Zion played in the religious sensibilities of Orthodox Judaism, the Orthodox rabbis quickly built a fence around their Zion of messianic redemption, and the Zion sought by the Zionists. And, as part of their religious retrenchment, established religious ideals like the Toraitic commandment to settle in the Holy Land (*mitzvat yeshuv Eretz*

⁴ *ibid.*, p. 13.

⁵ Howard M. Sachar, A History Of Israel (New York: Alfred A. Knoff, 1982), p. 5.

Yisrael), the meaning and purpose of exile (*galut*), and Jewish nationhood (*Am Yisrael*) were defined (and some times redefined) in opposition to Zionist ideology.

In regards to the Biblical injunction to settle in the land, Laqueur writes that, "According to their (i.e. Orthodoxy's) spokesmen, there was a difference between the obligation to live in *Eretz Yisrael* and the duty to settle there. Orthodox Jews were exempt for a variety of reasons, such as physical danger, economic obstacles, the difficulty of giving an orthodox religious education to their children, or the impossibility of studying the Torah in *eretz yisrael*."⁶ As for *galut*, a quote from a more recent ultra-orthodox British Rabbi will suffice to sum up the prevailing attitude of exile, even today, among the anti- Zionist religious camp: "We are in *galus* for our sins. We have been elected by Divine providence, and must lovingly accept our silence."⁷

This insistence on passivity in response to exile was, to a large degree, based on the commonly held religious belief that to attempt to end the exile was in effect to force the hand of God, a sin of the highest order, explicitly forbidden by the Talmud. The bases for this theological stance is found in *masechit, Ketubot*: 111A, in a discussion about oaths. Based on a reading of Psalms 2:7, 3:5 and 5:8, the Talmud argues that Israel made three oaths to God regarding the end of exile and the Redemption: "One, that Israel shall not go up [all together as if surrounded] by a wall (i.e. that they may not seize Jerusalem by force); the second, that whereby

⁶ Laqueur, p. 408.

⁷ *ibid.*, p. 408.

the Holy One, blessed be He, adjured Israel that they shall not rebel against the nations of the world; and the third is that whereby the Holy One, blessed be He, adjured the idolaters that they shall not oppress Israel too much'.⁸ Thus, according to this Talmudic passage, to create an independent state by political means before the coming of the *mashiach* (messiah) is to violate one, if not two of the aforementioned oaths, in as much as it can be seen as a "revolt against the nations of the world" for an attack on Jerusalem. Redemption would only come when God willed it, and not a second sooner. The *galut* was a reflection of God's will and *galut* would end only as it was prophesied in the Bible, miraculously, the climax and at the same time, the final act of history. As we shall see, this passive understanding of *galut* and Redemption became one of the main dividing lines between the anti-Zionist Orthodox, and those who supported Zionism.

The anti-Zionist Orthodox understanding of Jewish nationality represents a complicated interplay of social and religious factors. In that sense, Reform and Orthodoxy's response to nationalism were similar. Simply put, both sought to separate the spiritual aspects of Jewish nationality from its corporal elements. For Reform, "Zion" became Germany, America, or where ever Jews lived, and Jewish peoplehood became merely a particular expression of a universal faith - monotheism

⁸ *Talmud Bavli, masechit, Ketubot*, trans. by H. Freedman, edit. by I. Epstein (London, Soncino Press, 1990) p.111A. See also Mark Washofsky, "Halakhah and Political Theory: A Study in Jewish Legal Response to Modernity", *Modern Judaism*, (October, 1989), p. 301.

- not an ethnic identity.⁹ While the Orthodox never abandoned "Zion" as their ultimate home, it remained more as a messianic promise than a tangible goal to be pursued. This made their position close to the Reform stance, in as much as both saw any move toward a renewal of a Jewish national identity, especially connected to a return to "Zion", as against the very foundations of their perspective theologies. Orthodoxy never embraced universalism as a surrogate for a particular Jewish identity, however, similar to Reform thought was the ideology expressed by one of the founders of *Augudat Yisrael*, the ultra-orthodox (anti-Zionist) wing, Isaac Breuer, who "regarded the Jews as a *religious* nation, i.e. a nation different from all other in as much as religion was its only content." From this perspective, Zionism, with its emphasis on nationality over religion, misconstrued what was the essence of Jewish existence, "depriving the Jewish nation of its real culture content by borrowing modern nationalism from western Europe."¹⁰ Zionism, then, along with bastardizing the religious understanding of Jewish peoplehood, represented the "free thinking" philosophy of the secular world, itself an anathema to Orthodoxy.

While the majority of the Orthodox leadership reacted negatively to beginnings of Jewish national renewal, there were a few Orthodox thinkers who saw in the first stirrings of Jewish nationalism the seeds of Redemption. Of these early visionaries,

⁹ See Michael A. Meyer's *Response To Modernity*, (New York, Oxford Press., 1988) pp. 293-295. for Reform Judaism's initial response to Zionism.

¹⁰ Laqueur *ibid.*, p. 408

two 19th century thinkers especially stand out as forerunners to what became Religious Zionism: Rabbi Yehudah Alkalai; and Rabbi Zvi Hirsch Kalischer.

Though a contemporary of the *Hatam Sofer*, Rabbi Alkalai's reaction to early Jewish nationalism and the zeitgeist it emerged from was considerably different. Born in Sarajevo in 1798, Rabbi Alkalai spent his childhood in Jerusalem where, among other things, he became a Cabalist. He returned to the Balkans in 1825 as rabbi of Semlin, the capital of Serbia.¹¹ There he witnessed the nationalization of the Turkish empire. His proto-Zionist views reflect his Cabalist leanings as well as the rise of nationalism which he witnessed. They first surface in 1838 with the publication of a small pamphlet, "*Shema Yisrael*". There, Alkalai calls for the establishment of Jewish colonies in the Holy Land as a precursor to the coming of the Messiah, an idea at radical variance with the traditional passive stance towards messianism. Arguing that "self-redemption was justified by "proof texts" from the tradition," Alkalai "invoked an ancient Jewish myth...that the days of the Messiah were to be ushered in by a forerunner of the true miraculous Redeemer. This first Messiah, the son of Joseph, would lead the Jews in the wars of Gog and Magog; under him, they would conquer the Holy Land by the might of the sword."¹² After the blood libel of Damascus in 1840, Alkalai became convinced that for security and freedom the Jewish people must look to a life of its own, within its ancestral

¹¹ Arthur Hertzberg, *The Zionist Idea* (New York: Meridian Books, Inc., 1960), p. 103.

¹² *ibid.*, p. 103.

home."¹³ To that end he wrote a number of books and pamphlets which outlined his views. Alkalai was mostly ignored in his day, but some of his ideas, like his call for the establishment of a national fund to purchase land, were latter actualized by the secular Zionists. Also, his messianic theology of self-redemption would be, in one form or another, the path most future religious thinkers would take to justify their support of Zionism. (It is also worth noting that Alkalai called for an "Assembly of Elders" as part of his national plan, an idea Uziel addresses at length in his writings.)

In many ways Rabbi Zvi Hirsch Kalischer's life mirrored that of Rabbi Alkalai. Born in Prosen in 1795, Kalischer lived through the nationalization of the Prussian and Russian empires, witnessing two failed attempts by Poles to establish their independence. Thus he, like Alkalai, saw first hand the force of Nationalism which was sweeping Europe. And, like Alkalai, Kalischer transforms the zeitgeist of his time into a Jewish doctrine of national redemption. Also similar to Alkalai was Kalischers belief in a Redemption in stages, the first of which was to be brought about by human initiative. Thus, early in his career he wrote in a letter to the Rothschild family in 1835, "the beginning or Redemption will come through natural causes by human effort and the will of the governments to gather the scattered of Israel into the Holy Land."¹⁴

¹³ *ibid.*, p. 104.

¹⁴ *ibid.*, p. 110.

Latter, in 1860 Kalischer was influenced by an obscure society in Frankfurt which sought to foster Jewish settlement in the Holy Land. Though the organization floundered, his experience with them gave him the impetus for his most significant work, *Derishat Tzion*, which was published in 1862. And, unlike Alkalai's many literary ventures, Kalischer's book was relatively well received among the Hebrew reading intelligentsia, including Moses Hess, who quotes Kalischer in his work, *Rome and Jerusalem*.¹⁵

There are two main points to Kalischer's work. The first premise which we have already mentioned was that the Redemption will come in stages, in a 'this worldly way.'

The redemption of Israel, for which we long, is not to be imagined as a sudden miracle. The Almighty...will not descend from on high and command His people to go forth. ... The bliss and the miracle that were promised by His servants, the prophets, will certainly come to pass...but we will not run in terror and flight, for the Redemption of Israel will come in degrees and the ray of deliverance will shine forth gradually.¹⁶

To defend this pictures of gradual redemption, Kalischer, in good rabbinic fashion, offers Biblical proof texts from Isaiah (27:6, 12-13 & 11:11). These text's show, according to Kalischer, that "Israel would not return from exile at one time, but would be gathered by degrees," and that there will be two stages of Redemption, "a first and second ingathering...the function of the first will be to pioneer the land, after which Israel will blossom forth to a most exalted degree."¹⁷ Again, we hear

¹⁵ *ibid.*, p. 110.

¹⁶ *ibid.*, p. 111.

¹⁷ *ibid.*, p. 111-112.

echoes of Alkalai, and though the proof texts and the exegesis will differ from rabbi to rabbi, most subsequent religious Zionists will offer theologically similar justifications for their support of the nascent state.

The second central thesis of Drishat Tzion, was the push for colonization in Palestine and his stress on the nobility of "working the land with our own hands." He offers a number of reasons for starting agricultural colonies. He writes, for example, that the agricultural settlements could support the Torah scholars of Jerusalem and elsewhere, whose "Support is not enough to satisfy their hunger; indeed, in Jerusalem the city which should be a source of blessing and well-being, many pious and saintly people are fainting of hunger in the streets."¹⁸ He also points out that by working the land, Jews would "have the privilege of observing the religious commandments that attach to working the soil of the Holy Land." And, more importantly, "Jewish farming would be a spur to the ultimate Messianic Redemption." For, as he argues, "as we bring redemption to the land in a 'this worldly' way, the rays of heavenly deliverance will gradually appear."¹⁹

Although Kalischer was better received than Alkalai, for the most part, his call for Jewish renewal in Palestine was ignored. His efforts did help spur the French group, Israelite Alliance Universelle to establish an agricultural school outside of Jaffa in 1870, and his writings were picked up by later Zionists, religious and

¹⁸ *ibid.*, p. 113.

¹⁹ *ibid.*, p. 114.

secular, but he witnessed few results in his day. His experience was, in that sense, not different from most of the forerunners of Zionism, who were prescient in their views, but not well received.

While the religious community was mostly closed to Jewish Nationalism, Zionist currents in the secular world were beginning to gain momentum, dragging, as it were, certain religious elements along with them. The reasons for Political Zionism's relative success are numerous. Walter Laqueur writes that:

The Jewish national revival which took place in the nineteenth century, culminating in political Zionism, was preceded by a great many activities and publications, by countless projects, declarations and meetings; thousands of Jews had in fact settled in Palestine before Herzl ever thought of a Jewish state. These activities took place in various countries and on different levels; it is difficult to classify them and almost impossible to find a common denominator for them.²⁰

The scope of this paper does not allow for an in-depth discussion of the roots and causes of political Zionism. Suffice it to say that by 1896 and the publishing of Herzl's famous book, Der Judenstaat, political Zionism was a nascent reality, which would ultimately lead the way to the promised land through diplomacy, hard work and eventually war.

Though they often shared a messianic tendency with the religious Zionist thinkers - a messianism based on the optimism of the age, not on Jewish proof texts - the political Zionists had little in common with their religious proponents. This was especially true of Herzl, the father of political Zionism. The son of a clothing

²⁰ Laqueur, p. 10.

merchant, Herzl came from a family and social class which was "fully assimilated" culturally to its surroundings in Budapest.²¹ Unlike some political Zionist thinkers, Herzl was not hostile to religion. However, he operated in a secular milieu where religion was just one of many issues to be considered rather than the foundation from which everything else must be built. Thus he argued in Die Judenstaat that though religion would have its proper place, it "should not be allowed to interfere in the administration of the state. They (the priests) would be kept within their temples as the army would be kept within their barracks. ... (And) Every man and woman would be undisturbed in his faith as in his nationality."²² This is familiar rhetoric for one brought up in a western democracy where separation of religion and state are taken for granted, but such thinking was generally foreign to Jewish tradition (Mendelsohn being the primary exception) especially in the context of Orthodoxy as a response to modernity. Herzl however, the consummate politician never gave up trying to garner the support of the Orthodox community, pursuing various religious leaders for their support. Laqueur writes for example that, "Herzl had invested much effort in winning over Moritz Guedemann, the Viennese chief rabbi, but without much success."²³ With Rabbi Guedemann as well as other Orthodox figures, the cultural and religious gulf between the two camps was just too wide even for the resourceful and energetic Herzl to breach, for at every turn

²¹ *ibid.*, p. 87.

²² *ibid.*, p. 93.

²³ *ibid.*, p. 393.

political Zionist ideology confronted basic Orthodox religious values. We have already seen how the Orthodox community reacted to calls from within for pre-messianic Jewish national renewal. The same arguments surfaced again in regards to Herzlian Zionist policies. Even Herzl's hope that Zionism would, once and for all cure anti-Semitism, one of his main justification for the need for a Jewish national home, was seen as contradictory to tradition. "If they regard us as aliens," Rabbi Guedemann writes, "we ought to accept the challenge." In other words, anti-semitism was part of the burden the Jewish people had to bare, a consequence of exile (which was the Divine will) and a part of what it meant to be God's chosen people. Who was Herzl, one could imagine Rabbi Guedemann asking, to deny God's plan and with it the essence of what it meant to be a Jew?

As Political Zionism continued to make inroads into the lives of the Jews of Europe and to a lesser degree, Palestine, the Orthodox opposition to it intensified culminating in the formation of the religious party, *Agudat Yisrael*. More important for our study however, is the rise of religious Zionism and its interactions with the Jewish National movement, to which we now turn.

Though Alkalai and Kalischer's voice fell mostly on deaf ears, as the 19th century grew to a close, interest in Zionism among certain Orthodox groups in Eastern Europe and in Israel, grew. This awakening of a religious nationalist element only intensified in the first years of the 20th century as the plight of Jews in Eastern Europe worsened. Of those rabbis who supported political Zionism from its

inception and who worked to develop its religious counter part, Rabbi Samuel Mohilever, Rabbi Jacob Reines and Rabbi Abraham Isaac Kook stand out; Rabbis Mohilever and Reines for their practical role in the formation of the *Mizrachi* movement, and Rabbi Kook for his spiritual presence and his messianic/theological writings, which became the basis for much of the pro-Zionist Orthodox communities support for the developing state.

Mohilever was born in Lithuania in a small village near Vilna in 1824. There he gained a traditional Jewish education, distinguishing himself "as a brilliant student of the traditional Talmudic curriculum." After a brief stint as a merchant, Mohilever returned to the rabbinate, serving increasingly more important post until his death in 1898.²⁴ Though Mohilever showed interest in the Holy Land, it was not until the Russian pogroms of 1881 that his interest was developed into a program of practical Zionism. Tens of thousands of Jews were displaced because of the pogroms, fleeing over the Russian border into Galacia. There, in Lemberg, the capital of Galacia, a conference of Jewish leaders was held in order to resolve the refugee crisis. Among those present was Mohilever who suggested that the refugee problem be solved by resettling the displaced in Palestine. He was ignored in Lemberg, but from there he traveled to Warsaw where he helped organize "the first formal section of ...*Hibbat Zion*."²⁵

²⁴ Hertzberg, p. 399.

²⁵ *ibid.*, p. 400.

Hibbat Zion was a predominately secular group which worked towards the setting up of agricultural colonies in Palestine. Mohilever's participation in the organization established his willingness to work along side the secular for the common cause of Jewish national renewal, a stance that eventually would become the *raison d'être* of the religious Zionist movement. It was not, however, an easy relationship for him to maintain, and in 1893 he broke it off and founded his own organization, *Mizrachi* (*merkaz ruhani*).²⁶ In Mohilever's day, *Mizrachi* never attained real status as a force in Zionism. It would take the leadership of Isaac Jacob Reines, to turn *Mizrachi* into the Religious Zionist movement.²⁷

Jacob Reines was born in Karolin Belorussia in 1839. He studied at the Volozhin yeshivah and was ordained by the leading rabbis of the institution. From there he moved to the Vilna district, eventually settling in Lida where he stayed until his death in 1915. Reines brought a distinctly modern approach to traditional scholarship which included an openness to secular learning. Indeed, like the *Mizrachi* thinkers who would follow him, he walked that fine line between the spirit of the times and traditional Judaism to which he was completely committed. His openness to secular trends exposed him to the first stirrings of Jewish nationalism. He embraced the nascent nationalist movement, allying himself with Herzl and joining the *Hibat Tzion* movement. As part of the *Hibat Tzion* movement, Reines worked with Mohilever on settlement programs for *eretz yisrael* which combined

²⁶ *ibid.*, p. 400.

²⁷ Laqueur, p. 481.

Torah study with physical labor. He also participated in the first Zionist congress. A dynamic personality, it was Reines who, convening a large conference of rabbis and Orthodox people in Vilna in 1902, laid the foundation for the *Mizrachi* party that would represent the Zionist Orthodox community in the tumultuous years that followed.²⁸

While much of Rabbi Mohilever's and Rabbi Reines's Zionist philosophy was derived from their proto-Zionist predecessors, Alkalai and Kalischer, one area of their thinking which does stand out is their view of the purpose of Jewish national renewal. Unlike their predecessors, redemption in the messianic sense was not the underlying theological premise for their support of Zionism. For them the rescue of Jews from the deteriorating conditions of their communities in Eastern Europe was the motivating force. Mohiliever expresses the motivation behind their efforts well in his address to the First Zionist Congress which his grandson delivered:

Our attitude toward those among us who do not observe the religious precepts must be, as it were, as if fire had taken hold of our homes, imperiling our persons and our property. Under such circumstances would we not receive anyone gladly and with love who, though irreligious in our eyes, came to rescue us?" Is this not our present plight, my brethren? A great fire, a fearful conflagration, is raging in our midst, and we are all threatened. Our enemies have multiplied until they surpass many millions...If brethren put our hands to us in aid...are there such among us who would dare spurn them.²⁹

²⁸ Gideon Katznelson, *The Encyclopedia Judaica*, vol. 14, p. 59

²⁹ Hertzberg, p. 402.

By comparing the plight of the Jews of Europe to that of a person caught in a house fire, Mohilever evocatively paints the picture of the Jewish people in the state of a life threatening crisis. When one's life is at risk, all other issues must be set aside.* Thus, he argues, differences of faith must not prevent the religious community from participating in the rescue operation.

"Rescue" as a justification for religious participation, though not stressed in the theology of the more prominent religious thinkers, became an early guide for the practical work of the religious Zionists for two reasons. First, though many Zionist thinkers saw redemption in Jewish national renewal, generally, such thinking was considered beyond the bounds of tradition, a breach of the injunction not "to hasten the End." (*Ketubot*. 111a). Second, the condition of the Jews of Czarist Russia was, as Mohilever had suggested a few years earlier, a matter of life and death; something had to be done immediately to ameliorate their perilous situation. Given the sensitivities of the traditional community regarding the prohibition against "hastening the End," and given the urgent need to help the Jewish masses of Russia, "Rescue" was the organizing principle best suited to unite the various elements of the religious community into action.* Thus, when Rabbi Reines was confronted with the question, "May one work together with the non-religious?" His response was, "Our whole Jewish essence is coming to naught, and our very existence is in

* This is an allusion to the halakhic principle of *pekuach nefesh* (the preservation of a life) which overrides all other *mitzvot*, and thus, by implication, all religious objections to statehood.

* It is worth noting that the obligation of a Jew to aid his fellow is a positive commandment, based on *Leviticus* 19:16 and its interpretation in *masechet Sanhedrin* 73a.

danger.” And, lest anyone was to erroneously think that the *Mizra'chi* movement was in any way, “hastening the End,” its manifesto published in 1902 and signed by Rabbi Reines, among others, makes clear that “Rescue” not “Redmption”, was its organizing principle:

As to those who fear that the Zionist doctrine contains an element appertaining to the Redemption and the coming of the Messiah and is apt to destroy a principle of our Faith, they are totally mistaken. Zionism has no connection with Redemption. Its purpose is solely to ameliorate the lot of our unfortunate brethren.³⁰

While Mohilever and Reines focused on “Rescue” and its practical implications, Rabbi Kook developed the theology of Redemption as the foundation for the traditional community’s participation in the rising Jewish state. He, more than any other thinker before him, crystallized a religious approach to Zionism which incorporated the various disparate and often conflicting aspects of Jewish Nationalism and Orthodoxy together in a unified whole.

Kook, a native of Latvia, immigrated to Palestine in 1904 to be the chief rabbi of Jaffa and the surrounding Jewish settlements. Before arriving in Jaffa, Kook had distinguished himself as a gifted scholar and communal leader, serving for six years as the rabbi of Zimel, a small village in Latvia, and 9 years as the rabbi of Boisk, Lithuania. As the rabbi of Jaffa, Kook worked tirelessly defending Orthodoxy, while at the same time advocating tolerance in relations with the secular community. Except for the five years between 1914 and 1919 when he was

³⁰ Unna, pp. 28-31.

stranded in Europe due to the war, Kook served as the rabbi in Jaffa until his appointment as Chief rabbi of the British mandate in 1920, a position which he held until his death in 1935.

The width and breadth of Kook's thinking makes any attempt at summation especially difficult. We will focus on four related aspects of his thought which seem especially relevant to our study: The centrality of *Eretz Yisrael*; the meaning of Galut; spiritual unity, i.e. the inseparability of *Eretz Yisrael*, *Am Yisrael* and, Torah; and his belief that the dawn of Redemption was at hand.

While the land had always had a central place in Jewish tradition, and the commandment to settle land was recognized by the Orthodox world as a whole, the longing for Zion and the obligation to live there had been mitigated, as we have already seen, by other factors like, the injunction not to force the End, as well as the fact that the modern return was - from a traditional perspective - tainted by its current proponents, the secular "free thinkers" who showed no sympathy for traditional Judaism, *halakhah*, etc. Rabbi Kook, by arguing for the centrality of *Eretz Yisrael* for the Jews of his day directly attacked the objections of the Orthodox community to settlement in the Holy Land. Rabbi Kook wrote that the Land of Israel "is not something a part from the soul of the Jewish people; it is no mere national possession, serving as a means ...of survival. *Eretz Yisrael* is part of the very essence of our nationhood..."³¹ Since the land of Israel is so central to

³¹ Shlomo Avineri, The Making Of Modern Zionism (New York: Basic Books, Inc., 1981), p. 190.

Judaism, according to Kook, only by living in the land can Jews meet their full spiritual potential; life outside of the land - life in *galut* - is a distortion of Judaism, a drain on its spiritual creativity, a tainting of the pure the Jewish essence:

Jewish original creativity, whether in the realm of ideas or in the arena of daily life and action, is impossible except in Eretz Israel...A Jew Cannot be as devoted and true to his own ideas, sentiments, and imagination in the Diaspora as he can in Eretz Israel. Revelations of the Holy, of whatever degree, are relatively pure in Eretz Israel; outside it, they are mixed with dross and much impurity...In the gentile lands the imagination is dim, clouded with darkness and shadowed with unholiness, and it cannot serve as the vessel for the outpouring of the Divine Light.³²

This is a radical departure from the traditional understanding of Exile we have already seen, i.e. that exile was a part of the Divine will, a result of our sin, an existential reality which we had to endure with patience and perseverance. Shlomo Avineri in his book, The Making Of Modern Zionism, suggests that "such a radical religious attack on Jewish religious quietism could emerge only after Zionism, with its secular and this-worldly approach, opened new avenues for Jewish identity."³³ Whether as a result of Kook's exposure to the secularist or whether as a result of his mystical experience living in the Holy Land, there is no doubt that Kook offers a new and radically different understanding of Exile and homecoming and the centrality of living in the land of Israel, unlike any of his Orthodox counterparts.

The organic/mystical connection of the Jewish people to the land of Israel reflects a theme in Kook's writing which pervades his whole theology: unity. "The spirit of

³² *ibid.*, p. 190.

³³ *ibid.*, p. 191.

the Lord and the Israel are one," Kook wrote. The notion of Political Zionism championed by Herzl and others that Jewish national identity could be separated from its religious identity was as foreign to Kook as it was to his anti-Zionist counterparts; religion was inseparable from Jewish national identity. But, while the anti-Zionist would separate themselves from the secularists of all types, Kook extends his notion of unity to them as well:

There is untold material and spiritual damage in the fragmentation of our people...this is a pagan way of thinking... the sense of virtue of the righteous in every generation is shared also by the sinners, inasmuch as they too are committed to the good of our people; they are included in the motto 'and all thy people are righteous.' Their fervor acts as a catalyst...Divisiveness undermines the foundations of holiness..."³⁴

The people of Israel, the Torah of Israel, and the land of Israel are One. The unity of these three pillars of Judaism is essential, a fundamental operating principle for Jewish life. In that sense, separation as the anti-Zionist, ultra-Orthodox called for was unacceptable. "The rebirth of the nation through Torah on its land," was in essence the unified message of Rabbi Kook, one which became the guiding light of *Mizrachi*, the religious Zionist movement.³⁵

While this author feels that one can contest the notion already mentioned that Kook's theology sprung, in part, from his exposure to the secular world, it is clear that without his sense that the messianic Redemption was near, few of his other theological assumptions make sense. Thus, Hertzberg writes that Kook "was a

³⁴ Unna, p. 25.

³⁵ Arnold, M. Eisen, Galut: Modern Jewish Reflections on Homelessness and Homecoming (Bloomington: The Indiana University Press, 1986), p. 113.

religious Zionist engaged... in living out an approaching 'end of days'... He was certain that the present generation was the one foretold in prophecy as the age of the coming of the Messiah."³⁶ By combining Kook's belief that the Redemption was around the corner with his related concept of "Unity", Kook was able to pull together the many disparate currents in the Jewish National movement, seeing them all as "instruments of redemption." For example, the secularist call for a return to the land and the labor of the flesh, Kook embraced through his assertion that the flesh was no less holy than the spirit. The assertion of Ahad Ha'am and the Jewish culturalists that one could be culturally a Jew, Kook saw as yet another means for Jews to be preserved as part of the coming Redemption. And, "most important of all, Kook agreed that the secular enterprise of return constituted an authentic (if sinful) expression of Jewish commitments, an activity of the sparks of redemption..."³⁷ Kook's daring theology, his eloquence and his stature as the spiritual leader of the Yeshuv left a lasting impression on his and latter generations of religious Zionists. Indeed, it is rare, to this day, to find any religious Zionist thinker who was not affected by his writings and who does not refer to him in his/her works. As we shall see, Rabbi Ben-Tzion Uziel is a case in point. Though much more practical in his orientation, Uziel's writings show a clear connection to Kook, who he worked along side for much of his career. But, before moving on to the life and thought of Uziel, there is one other aspect of the religious response to

³⁶ Hertzberg, p. 417.

³⁷ Eisen, p. 111.

forge a middle ground between the anti-Zionist Orthodox on the one hand, and the secular Zionist on the other.³⁸

From the outset however, there was little agreement as to how this middle ground should be attained. All agreed that "Jewish statehood was essentially inseparable from Torah, that the state must therefore be established and operate according to *halakhah* and that rabbinic law could ... serve as the basis for regulating all aspects of Jewish national life."³⁹ But while there was unanimity in regards to the idea that Torah should be the basis of the State's operation, the means by which this transformation was to occur was far from clear, and ultimately the source of much conflict within the movement. At the heart of the problem is the fact that the existing *halakhah* does not have the sophistication in either the private or public arena to meet the legal needs of a modern society.⁴⁰ As Yeshayahu Leibowitz points out in his article "The Crisis of Religion in the State of Israel" which he published in 1952, "The religious question arising in the contemporary state of Israel is how to conduct affairs of state according to the Torah and the needs of the hour. The *halakhah* as we know it, never envisaged this "hour." Jewish law, Leibowitz argued, never envisioned the reality posed by the rise of the modern state. Yes, issues surrounding a sovereign Jewish state, like the laws governing the waging of

³⁸ Yosef Tirosch, ed., *Religious Zionism*, (Jerusalem: The Publishing Department of the Jewish Agency, 1975), p. 22.

³⁹ Mark Washofsky, "Halakhah and Political Theory: A Study in Jewish Legal Response to Modernity", *Modern Judaism*, (October, 1989), pp. 306-310.

⁴⁰ *ibid.*, p. 289.

war, for example, were addressed in the *halakhah*. However, even when such issues were addressed they were viewed through a historical lens not applicable to our time. Thus he writes,

The philosophy of history on which it (the *halakhah*) was based dealt with three possibilities only: Jewish independence and sovereignty in an ideal past; exile and subservience in the real present; independence and sovereignty in an ideal future. But God shapes history independently of our theories, and He has seen fit to bring about a fourth possibility - Jewish independence and sovereignty in an unredeemed world...⁴¹

According to Leibowitz then, Jewish law as it exists deals only with the mythic past, a present of subservience, or a messianic future. However, the modern Jewish state falls into none of these categories and thus calls for a new, innovative halakhic approach. While most religious Zionists recognized that the *halakhah* had to be updated to address the issues of modern statehood, no agreement was reached as to how that updating process should operate. Some, like Leibowitz, argued for halakhic creativity and ingenuity on a scale unheard of before. Others called for a more moderate approach, believing that existing "rabbinic law both in content and process, possessed sufficient flexibility to allow such development to occur." The debate continues to this day, with no resolution in sight.

The lack of a clear plan from the outset severely handicapped the religious Zionists in their efforts to transform the Jewish state into a state run by Jewish law.

⁴¹ Yeshayahu Leibowitz, *Judaism, Human Values, and The Jewish State* ed. by Eliezer Goldman. Trans. by Eliezer Goldman and Yoram Navon and by Zvi Jacobson, Gershon Levi, and Raphael Levy (London: Harvard University Press, 1992), p..

Many were the reasons for the failure of the religious Zionist to respond to "the needs of the hour." Unna in his book Separate Ways comments that "The fathers of religious Zionist leaders made no sustained systematic endeavor to anchor their policy on strictly halachik lines..." The reason he posits was that to do so was to invite discord. Thus, for example, even in regards to the issue of "Rescue" versus "Redemption" the official policy of *Mizrachi*, at least in its inception was "Rescue", an idea much less controversial in Orthodox circles than a new formulation of the doctrine of Redemption.⁴² If the basic issue of participation in secular Zionist was potentially so contentious, one can only imagine the road blocks implicit in hammering out the myriad of issue the actual function of the Jewish State would bring to the surface. Another reason Unna offers for the failure of the Orthodox Zionist to prepare the way halakhically is psychological. He writes,

...we were not prepared to digest the psychological significance of the radical changes the establishment of the State and our independence would have on us. We ...hardly begun to consider the halakhic aspect, the spiritual content of the State -to-be...Our response seems (was) ...let us cross the bridge when we reach it...⁴³

In other words, Unna suggests that the situation simply proved overwhelming for the traditional community. This is understandable given the task that was before them. The operation of a modern state touches on a myriad of issues which the *halakhah* would have to be applied to. And though many of the rubrics already exist, the application, as we have already suggested, would be far from the modern

⁴² Unna, p. 33.

⁴³ Unna, p. 74.

reality. Legislation, administration, civil and criminal law, internal and external security, these are some of the issues the *halakhah* would have to address in order to become the law of the State.

Whether due to a lack of unity or the overwhelming demands which the new reality of statehood placed on the religious community, ultimately, the task proved too great for the *Mizrachi* rabbis. However, though the majority of the Orthodox rabbinate failed to meet the halakhic challenge posed by the modern state, a few rabbis actually did attempt to develop an halakhic approach that could result in the law of the Torah being the law of the State. One of those few rabbis that was bold enough to meet the challenge was Rabbi Ben-Tzion Uziel. It is to his life and work that we now turn.

¹Yakov Zuckert, "Rabbi Ben-Tzion Uziel: A Jewish Vision", *Nir-Hachinukhot*, vol. 11-12 (1987), p. 243.

CHAPTER TWO:

Rabbi Ben-Zion Uziel's Zionist Theology

In this chapter we will explore the theology and halakhic philosophy of Rabbi Ben-zion Uziel especially as it relates to religious Zionism and his work as a leader of the religious Zionist camp. We will begin with a brief survey of his life and move from there to an analysis of his thought as a Zionist rabbi and *posek* (religious judge).

Uziel was born in Jerusalem in 1880. The son of one of the leading rabbis of the Sephardic community, Uziel, from his birth was immersed in a life guided by Torah and Torah study. Along with attending yeshiva, through his father's auspices Uziel also received private instruction from the best teachers in the community. His acumen as a Torah scholar along with the death of his father when he was thirteen resulted in Uziel quickly moving from the relatively carefree position of a student to one of responsibility both as a provider for his family, as well as a young but rising teacher and Torah sage. By the age of 20 Uziel was a teacher at two of the schools where he had not long before been a student, and in 1904 he was appointed principle of one of the schools, *Tiferet Yerushalim*. Uziel continued to hold positions in Torah education until 1911 when he was appointed *Hacham Bashi* (Chief Rabbi) of the Sephardic community of Jaffa and the surrounding Jewish settlements.¹

As the Chief Sephardic Rabbi of Jaffa, Uziel bucked the isolationist tendencies of the Orthodox community, becoming an active participant in the political life of

¹ Yaacov Hadani, "Harav Ben-Tzion Uziel K'manhig M'dini", "Niv Hamidrasha", vol., 21-22, 1987, p. 241.

the growing *Yeshuv* (Jewish settlements). Uziel's uniqueness as a practical leader was the result of two main factors. First, a willingness to work along side the non-observant community was a characteristic of the *Mizrachi* approach to Zionism. Uziel was the *Mizrachi* rabbi *par excellence*, who embraced the commitment to work along side the secular Zionists like no other rabbi before him. Indeed, as we shall see, Uziel's involvement in the practical and mostly secular life of the *Yeshuv* goes to the root of his own understanding of the Jewish people, the land of Israel, and the theological import of the nascent state. A result of Uziel's practical focus was his heavy involvement in the political life of the *Yeshuv*. We see an example of this in his term as *Hacham Bashi* of Jaffa. Rabbi Yaacov Hadani writes, in commenting on the political nature of Uziel's term as *Hacham Bashi* that, "From the beginning, his (Uziel's) office had the characteristics of a political position, in the sense that he was like a minister of foreign affairs for the community, and its representative before the Ottoman Empire."² The extent of Uziel's political activities on the behalf of the Jewish settlements in Palestine is illustrated by the fact that during World War I, the Turkish authorities temporarily exiled him to Damascus.³

The other factor in the practical focus of Uziel's rabbinate was his relationship with Rabbi Abraham Isaac Kook (Rav Kook). During the first years of Uziel's term as *Hacham Bashi*, Uziel worked alongside Rav Kook who was then the chief

² Hadani, p. 239.

³ Yitzhak Goldslag, "Ouziel, Ben-Zion Meir Hai," *Encyclopaedia Judaica*, vol. 12, p. 1527.

Ashkenazi rabbi of Jaffa. Though Kook was officially only the head of the Ashkenazi religious community, almost from his arrival in Palestine, he was generally seen as the spiritual leader of the whole *Yeshuv*. Uziel himself saw Kook in this light, commenting in his inaugural address (when he was appointed *Hacham Bashi*) that he was "glad to join the great light and treasure of wisdom and knowledge, the great Harav Kook, who is the honored head of instruction and adjudicator regarding the fundamental questions of Israel..."⁴ Although tensions between the two communities existed then as they do today, Kook and Uziel worked well together, with Uziel focusing on the practical issues of the growing Jewish community, while Kook offered the spiritual guidance necessary to direct the Orthodox community in their relationship with the predominately secular nation builders. Thus, there evolved a natural division of labor between Uziel and Kook which suited both men's natural talents. In addition to developing a symbiotic working relationship, they also shared similar religious perspective regarding Zionism and the growing state. Where they differed was the extent to which they would allow the current reality of the developing Jewish state to influence their religious perspective, especially in regards to issues of the *Halakhah*.

In 1914, Kook was stranded in Europe due to the War and much of the religious responsibility of the *Yeshuv* fell on Uziel. Kook returned after the War, eventually

⁴ Hadani, p. 240.

becoming the chief Ashkenazi rabbi of the *Yeshuv*. In 1921 Uziel was appointed chief rabbi of Salonika. He returned to Israel in 1923 as chief rabbi of Tel Aviv, and in 1939 he was appointed *rishon le-Zion*, chief Sephardi rabbi of the Jews of *Eretz* (the land of) Israel, a position he held until his death in 1953.⁵

Though Kook was seen as the spiritual leader of the *Yeshuv* during his life time, Uziel offered spiritual guidance as well, writing extensively on the religious questions surrounding the developing state, authoring a number of books on a variety of religious topics, including a three volume collection of his responsa, *Mishpetei Uziel*. In many ways, Uziel's thought is derivative of Kook and the other religious Zionist thinkers mentioned in the first chapter. However, as we shall see, Uziel, at times showed a daring and innovative approach to the religious challenges of his day. This is especially true regarding his halakhic philosophy, which offers a progressive approach rare among Orthodox authorities. We shall turn to his halakhic philosophy at the end of this chapter, but first, we will outline the theological framework from which Uziel's halakhic approach naturally flows.

At the heart of Uziel's theology were his beliefs concerning Redemption. Like Alkalai and Kalischer before him and like his contemporary, Kook, Uziel believed that the Redemption, rather than being one final cathartic act heralded by the messiah, would come in stages. These "footsteps of the Messiah", though

⁵ Goldslag, p. 1527.

ultimately engineered by God, would be fostered by the work of man. Thus Uziel writes in his work *Hegionei Uziel* that:

The anointed of Israel towards whom we raise our eyes in anticipation will appear to us in stages - one step following the other - each step miraculous in itself; each step sanctifying the people Israel toward their final goal of total redemption.⁶

While Uziel's belief in a gradual Redemption was derivative of other religious Zionist thinkers, Uziel breaks dramatic new ground by freely applying his gradualist redemptive theology to the social and political situation of his day. In other words, while Kook and others were willing to talk in vague terms about the unfolding of redemption, Uziel saw the "footsteps of redemption" in the actions of the *Yeshuv* and later, the burgeoning State; the settling of the land, the victories of the Haganah and I.D.F., the resolutions of the U.N., etc.

According to Uziel, "the first step of the *Geulah* (Redemption) was the ending of foreign subjugation. As support for his position Uziel turned to the messianic writings of Isaiah and Jeremiah. The call in Isaiah, chapter 42 for Israel to "Awake" and "loose yourself from the bands of your (Israel's) neck..." was seen by him as the foretelling of the Israeli War of Independence as was Jeremiah's promise that "...it shall come to pass..., that I will break the yoke from off thy neck, and will burst thy bonds, and strangers shall no more serve themselves of him." (Jeremiah 30:8) For Uziel then, nascent Israel was the fulfillment of

⁶ Ben-tzion Uziel, "Halichot Hamadina B'mishpat Hatorah," *Sefer Hatzionut Hadatit*, ed. by S. Z. Shragai, (Jerusalem, 1977), p.73.

prophecy. The steps of Redemption were the very actions the Jews in Palestine were taking as they fought to reclaim the land and free themselves from foreign subjugation. Thus he wrote regarding the victorious War of Independence:

The foretelling of our redemption (by the prophets) is being realized before our eyes ... in our generation... "The Lord has made bare His Holy Arm in the eyes of all the nations...." (Isaiah 52:10) fulfill(ing) the promise that God gave to our ancestors: "behold all they that were incensed against thee shall be ashamed and confounded and they that strive with thee shall perish..." (Isaiah 41:11)⁷

Here we see clearly the boldness of Uziel's theology in his willingness to equate the history of the emerging state with the prophecies of Isaiah. By placing the struggle of the *Yeshuv* in sacred time, Uziel justifies a religious Zionist approach. Indeed, from his perspective, to not act would be to ignore the word of God as declared by His prophets.

On the heels of the end of foreign subjugation, according to Uziel, comes the second stage of the *Geulah*, *Kibbutz Galyuot*, (the Ingathering of the exiles). Uziel grounds this claim through reference to a variety of proof texts including the prophecy of Moses in Deuteronomy 30:3. There it is written, "That then the Lord your God will turn your captivity, and have compassion upon you, and will return and gather you from all the nations, where the Lord your God has scattered you." According to Uziel's exegesis, the first part of the verse - the 'turn of your captivity' - refers to the War of Independence, while the second half

⁷ Uziel, p. 73.

of the verse - 'and gather you from all nations' - is a reference to *Kibbutz Galuyot*.⁸ As with the end of foreign rule, *Kibbutz Galuyot* was, according to Uziel's messianic view of history, happening in his day.

As bold as this assertion may seem, even an objective eye could not help but see something of the miraculous in the outcome of the War of Independence and the immigration that followed. After all, it was with fear and trembling, not confidence that Ben Gurion declared to the world Israel's independence, May 14, 1948. Then, the possibility of the small, lightly armed *Yeshuv* being driven into the sea by the massing Arab armies seemed all too real. However, Israel managed to win the war, and within eighteen months of the Declaration of Independence, 340,000 Jews would arrive in Israel.⁹ Uziel lived through those tumultuous days, and given the messianic flavor of his religious Zionist theology, it makes perfect sense that he would see the fulfillment of prophecy in Israel's unfolding history.

The third stage of Uziel's blue print for redemption, after the end of foreign rule and the Ingathering, was *Shivat Shoftenu* (The return of the religious judiciary). To support this aspect of his theology Uziel goes to the order of the *Shemoneh Esreh* (Eighteen Benedictions) and its explanation in Tractate Megilah 17a of the Talmud. There the Rabbis argue that the order of the *Shemoneh Esreh* is a typology for the order in which the *Geulah* will unfold. Uziel applies this

⁸ Uziel, p. 74.

⁹ Howard M. Sachar, *A History Of Israel* (New York: Alfred A. Knoff, 1982) , p. 395.

Rabbinic interpretation to the Zionist struggle in Israel. Accordingly, *Birkat Hashanim* becomes the agricultural work of the *Halutzim* (agricultural pioneers), and *Kibbutz Galuyot* refers to both the end of foreign rule (which prevented the *Ingathering*) and the *Ingathering* itself. *Din* or *Shivat Shoftenu*, the next petition in the prayer refers to the subsequent phase in the redemptive process, while *Boneh Yerushalayim* and *Malkhut Beit David*, the re-building of Jerusalem and the return of the messianic kingship, herald the final Redemption.¹⁰

The return of the religious judiciary then was to follow the *Ingathering*, and since Uziel had witnessed the mass immigration that had followed the War of Independence, he had every reason to believe - or at least to argue - for the next phase of the *Geulah: Shivat Shoftenu*. The question for him was not whether the judiciary would be re-established but rather, how would it be reconstituted, and what powers would it have. Only one answer for Uziel was congruent with the depth of his messianic faith. To renew the judiciary in the context of "the footsteps of the Messiah" could only mean the re-establishment of the Sanhedrin as it was in Talmudic times and as it is prophesied to be in the messianic future. Uziel's call for the renewal of the Sanhedrin is perhaps the most controversial of his theological suppositions.

¹⁰ Uziel, p.76. "Sanhedrin", *The Encyclopedia Judaica*, vol. 14, p. 1103.

Some background on the Sanhedrin and its place in post Talmudic Judaism is warranted at this point, in order to fully understand the challenging nature of this proposition for Orthodox Jewry, Zionist or otherwise.

The actual function and purpose of the Sanhedrin is the source of much scholarly debate with no clear resolution to this day. However, from the perspective of Rabbinic Judaism, what is clear is that the Sanhedrin symbolizes the ultimate source of halakhic authority. The sages of "The Great Assembly" had the power to enact new laws and annul standing legislation, to try civil and criminal cases and - when given the jurisdiction - to put people to death. The authority that allowed the Sanhedrin to wield such power was based on the concept of *Smichah* (Ordination). Maimonides in *The Mishnah Torah*¹¹ traces the authority of *Smichah* back to Moses who transferred his authority onto Joshua, by a laying on of the hands: "And he laid (*vayismoch*) his hands upon him, and gave him a charge, as the Lord commanded by the hand of Moses." (Numbers 27:22) According to Maimonides, "Moses also ordained the 70 elders who assisted him in governing...The elders ordained by Moses ordained their successors, who in turn ordained others, so that there was an unbroken chain of tradition from Moses down to the time of the second Temple."¹²

The concept behind *Smichah* was that only the Divine Spirit which rested on Moses and which he passed (a portion of) on to subsequent generations could give

¹¹ *Mishneh Torah*, 4:2.

¹² Henri Schilli, "Semikhah", *The Encyclopedia Judaica*, vol. 14, p. 1139.

one the right to wield such legal authority. To preserve the sanctity (and one might argue the power) of such authority, the actual rite of ordination was strictly regulated. This study does not warrant a discussion of the various rules and regulations the Talmud discusses regarding ordination. Suffice to say that some time after the Talmudic period, ordination ceased, along with the ultimate legislative power of the Sanhedrin.¹³

However, while *Smichah* ended in its original meaning, rabbinic legislation and authority continued, but without the absolute power that the Sanhedrin symbolized. There was also some controversy regarding whether *Smichah* in the fullest sense could be re-established. Maimonides - to whom Uziel refers - was one who argued that *Smichah* could be reinstituted. According to Maimonides, the authority of *Smichah* is not dependent on an unbroken chain of transmission from Moses, rather, it rests on the consensus of the community which picks from its ranks the most knowledgeable person to act as its head. He then has the authority to ordain others. The only stipulation for Maimonides was that *Smichah* could only be given in the Holy land as is declared in Tractate Sanhedrin of the Talmud.¹⁴ According to Maimonides, "if all the Palestinian sages would unanimously agree to appoint and ordain judges, then these new ordinants would possess the full authority of the original ordained judges," i.e. the Sanhedrin.¹⁵

¹³ Henri Schilli, p. 1139.

¹⁴ Henri Schilli, p. 1142. See also *Mishneh Torah*, 4:2.

¹⁵ Henri Schilli, p. 1144.

However, in spite of the opinion of Maimonides and a few others, *Smichah* was never reinstituted successfully.¹⁶ Indeed, the thrust was in the other direction, towards limiting the power of religious courts to everyday situations where they could act as arbiters rather than legislatures. Thus, the Shulchan Aruch notes that:

In our day (i.e. when there is not *Smichah*) the judges may try monetary cases (like) a woman's *Ketubah*, inheritance, gifts and monetary damages, that these (kinds of issues) are of an ordinary nature...However, cases that are out of the ordinary ...the judges have no jurisdiction over them.¹⁷

This legal conservatism resulted over time in a halakhic world view which relegated ultimate halakhic authority like that of the Sanhedrin to the mythic past or the messianic future. However, it would be overstating the case to suggest that Jewish law stopped evolving in the post Talmudic era. Rather, without a Sanhedrin, there was no institution which could enact or legislate far reaching changes in the law that would be binding on all of Israel.

It is in the context of the Orthodox community's ultra-conservative attitude regarding the *Halakhah* and authority that one can appreciate the daring of Uziel's call for a renewal of the judiciary and re-establishment of the Sanhedrin. To see the events of history as part of the Jewish messianic frame work was bold but not out of keeping with the religious Zionist camp. However, to apply such thinking to the very foundation from which the Orthodox community was based - the

¹⁶ Rabbi Jacob Berab of Safed in 1538 attempted to reinstitute *Smichah* based on Maimonides ruling. It was never accepted by the greater Palestinian community and with his death in 1541, it ceased to exist. See the E.J. article cited above, p. 1144.

¹⁷ Shulchan Aruch, Hoshen Mishpat, ch. 1.

Halakhah - was radical even for most religious Zionists. Such an expansion of the religious courts would entail broad changes in the traditional judicial structure, including the creation of new courts and the widening of their jurisdiction to civil and criminal matters with which they had not dealt for centuries. Furthermore, it would create a framework for the bold halakhic innovation that such a new and expanded role would require. Thus, it is not surprising that with the exception of Rabbi J. L. Fishman (Maimon), Uziel's *Mizrachi* colleague, his call for judicial renewal was ignored and no real steps to re-establish the judiciary were made. Regardless of Uziel's failure to spur through his writings a renewal of the religious court system, nowhere is the depth of his messianic theology more evident; for Uziel, the dawn of redemption had arrived and even the *Halakhah* must be ready to meet the needs which the coming Redemption and the nascent state required.

Closely related to Uziel's call for *Shivat Shoftenu* was his halakhic philosophy. Indeed, the two go hand in hand, one being the vehicle for the other. However, before turning to his view of the *Halakhah*, there are three other areas of his theology, bearing directly on his religious understanding of the modern Jewish state, worth addressing: *Ahavat Eretz Yisrael* (love of the land of Israel); *Ahavat Am Yisrael* (love of the Jewish people); and his concept of "unity".

Reading Uziel's writings, one can not help but notice his love for the land.

Hadani notes in his article, "*Harav Ben-tzion Uziel K'manhig Medini*" (Rabbi

Ben-zion Uziel as a Political Peader), that "Harav Ben-tzion Uziel spoke much about the glory of Eretz Israel, the commandment to settle there, our right to it, its holiness, its beauty and characteristics..."¹⁸ Love of the land of Israel itself is not a prerequisite for a Zionist philosophy. Hertzlian Zionism, especially in its first years, saw the land of Israel as one of a number of possibilities for settlement; the failed Uganda plan is a case in point. However, from a religious perspective, Zionism did not make sense without the land of Israel as the ultimate destination. Indeed, a yearning for, and a love of the Holy Land is a theme that runs through almost all the literary canons of Judaism from the Bible to the prayer book. In that sense, Uziel's *Ahavat Yisrael* was not unique, but rather a reflection of his religion. Love of the Holy Land was also a prevalent theme in the philosophy of the proto-religious Zionists, Alkalai and Kalischer, as well in the thought of Uziel's contemporary, Rav Kook. However, what makes Uziel's love of the land unique is the depth of his commitment to the concept and his willingness to apply that conviction to the religious issues of his day. Hadani writes that, "It is Harav Ben-tzion Uziel's opinion that settling in the land is equivalent to the whole Torah, and it isn't just an abstract idea but one he uses in decisions of *halakhah*."¹⁹ In the following chapter we will explore the extent to which Uziel's Zionist philosophy influenced his halakhic reasoning. For now, the example of Uziel's ruling

¹⁸ Hadani, p. 245.

¹⁹ Hadani, p. 245.

regarding *Etrogim* grown in Palestine will suffice to show to what degree Uziel's love of the land infused even his legal reasoning.

The question before Uziel was whether there was a religious reason for the Jews of the *Yeshuv* to show a preference for *Etrogim* grown in the Holy Land over those grown outside of the land. Uziel ruled in favor of preferring *Etrogim* from the land of Israel though the *Halakhah* shows no preference, "because the commandment to love the land, and the commandment to settle in the land of Israel (implies also) the commandment to buy the *Etrogim* of the of the land of Israel..."²⁰ Uziel's willingness to rule in favor of Palestinian *Etrogim* when the law does not require it was a bold move. By ruling in favor of Palestinian *Etrogim*, Uziel reinterpreted existing halakhic concepts in a new way; *hidur mitzvah*, (the complete fulfillment of a commandment) implies for him the seeking out (*Iehader*) of Palestinian produce over produce from other lands. The innovative nature of his *hidush*, (new ruling) is illustrated by the fact that his colleague, Rav Kook, who was at that time the Chief Rabbi of the Mandate, showed no preference for Palestinian *Etrogim*.²¹

Related to Uziel's love of the land of Israel was his love for *Am Yisrael* (the people Israel). Rabbi Hayyim David Halevy in his article, "The Love Of Israel As A Factor In Halakhic Decision Making In The Works Of Rabbi Ben-tzion Uziel," writes that "...anyone who knew...Rabbi Uziel...knows that his personality was

²⁰ Hadani, p. 245.

²¹ see footnote to Hadani's article, p. 245.

stamped with a love and kindness for all people and especially Jews...^{22/} It was Halevi's conviction that Uziel's love of Jews was so great that it affected his halachik process, where he showed exceptional sensitivity to the needs of the people. It is not clear to this author that *Ahavat Yisrael* was a central factor in Uziel's halchik approach. However, regardless of its influence on him as a *posek*, there is no doubt that it was a central part of his over all philosophy. Here, perhaps more than anywhere else, Uziel's philosophy echoes his religious Zionist colleagues who often based their justification for working with the secular Zionists on the concept of love of the Jewish people. Indeed, Yosef Tiros in his article "The Essence Of Zionism writes that:

The (religious) Zionist movement has given expression to such noble ideas and fundamentals of Judaism as the unity and love of the Jewish people. As our sages have affirmed, "*Kol Yisrael haverim* -all Jews are comrades - and *af al pi shehata Yisrael hu* - a Jew, even though he has sinned, is always a Jew."²³

Halevi relates a story that illustrates well how Uziel's love of Jews affected his daily life. The state had just been formed and Uziel along with many of his colleagues gathered to protest the desecration of the Sabbath by the secular community. Uziel gave the key note address in which he emotionally called on the secular community to stop their profanation of the holy day. After the protest gathering Uziel summons a taxi which, by the number advertised (there was

²² Hayyim David Halevi, trans. by Marc D. Angel, *Tradition*, 24 (3), Spring 1989, p. 1.

²³ Yosef Tiros, ed., Religious Zionism: an anthology (Jerusalem, W.Z.O. Dep. of Torah ed., 1975.), p. 29.

gasoline rationing then and taxis alternated work days which were advertised on their cabs), he knew worked on the Sabbath. In spite of this, he got in the taxi, explaining to bystanders that he "would never personally be angry at any Jew, even if he isn't *Shomer Shabbat* (one who observe the laws regarding the Sabbath).²⁴

Connected to Uziel's love of the Jewish people, but more clearly reflected in his work as a rabbi and religious Zionist leader was his commitment to the unity of the Jewish people. Unity for Uziel was of primary importance equal to any other religious principles.²⁵ We see the ramifications of Uziel's stress on unity in his approach to both the religious and the secular communities. As a descendent of a famous dynasty of Sephardic rabbis, one would expect Uziel to champion the cause of the Sephardim against Ashkenazim domination, and in doing so contribute to the rift between the two communities. In fact the opposite was the case. Indeed, commenting on the two communities and the Sephardi and Ashkenazi in him, Uziel once said that:

I don't understand the differences. It wasn't the nation of Sepharad or that of Ashkenaz who produced great rabbis...From the start I longed to learn from our Rabbis all that I could...I love the unity of the nation, and I am striving to see unnatural splits...come together...I hate the separation, and condemn all separation which is done under the pretense of religion.²⁶

²⁴ Rabbi Hayyi David Halevy, "*Pesikat Halakhah V'ahavah Yisrael B'mishnat Hagaon Rav Ben-zion Uziel*," *Niv Hamidrasha*, vol 20-21, (Jerusalem, 1987), pp. 55-69.

²⁵ Hadani, p. 244.

²⁶ Hadani, p. 244.

In regard to his relationship with the secular community, Uziel's commitment to unity lead him to minimize the laws and impulses in the Orthodox community to separate themselves from the non-observant. Thus he argued that except in regards to "Holy things", i.e. issues of religious observance, "we are commanded to get closer to them (the non-observant) in order to keep unity in the nation, and so that they will get closer to us," as opposed to moving father away.²⁷

Uziel's thinking regarding "unity" represents the main thrust of the *Mizrachi* movement which held that "The Torah does not recognize a division of the Jewish people into religious and secular camps. All are children of the one and the same God..."²⁸ What makes Uziel unique is the way this principle along with the other aspects of his Zionist philosophy already mentioned, were integrated into his legal decision making, the subject of the following chapter. But before moving on to Uziel's work as a religious judge, we will conclude this study with an outline of the halakhic philosophy which directed his approach as a *posek*.

We have already discussed the prevailing ultra-conservative approach of Orthodoxy to *Halakhah* exemplified by the *Hatam Sofer* and his slogan that *hadash asure min hatora* (New is forbidden from the Torah). In Uziel's introduction to his book of responsa, *Mishpateh Uziel* he makes clear his opposition to such a conservative approach writing that "Conditions of life,

²⁷ Hadani, p. 244.

²⁸ Yosef Tirosh, ed., *Religious Zionism: an anthology* (Jerusalem, W.Z.O. Dep. of Torah ed., 1975.), p.201.

changes in values, science and technology give birth with each generation to new questions and problems which need solving. We cannot ignore them and say 'hadash asur min hatorah.'²⁹ Change to Uziel was a given, an expected part of life to which the *Halakhah* must respond. That is Uziel's first assumption, that new situations regardless of whether the existent *halakhah* addresses them, must be adjudicated. The question then is not, whether the *Halakhah* can address new questions, but how? What shall the guiding hermeneutics be when applying the *Halakhah* to new problems? The answer for Uziel is simple: "learn from the known the unknown", or in other words, go to the sources and apply the existing law to new situations, an activity not at all foreign to Judaism but, for the most part, not part of the modern rabbinic approach.³⁰

Another place where Uziel gives a hint of his halakhic approach is in a responsum he wrote regarding the establishment of a court of appeals in the new state. There, in addition to answering the question before him, he outlined his understanding of the nature of a Jewish, religious judge. According to Uziel, a Jewish (religious) judge is commanded to make just decisions in the absolute sense, which implies a commandment to go beyond the letter of the law when necessary to ensure that the decision the judge makes is truly a righteous decision, i.e. one not just judged in relation to the law it was derived from, but also in

²⁹ Rabbi Ben-tzion Uziel, *Mispatei Uziel* I (Tel Aviv, 1935) , pp.viii-x.

³⁰ Rabbi Ben-tzion Uziel, *Mispatei Uziel* I (Tel Aviv, 1935) , pp.viii-x.

relation to the justice of the outcome of the decision.³¹ In Uziel's introduction to *Mispateh Uziel* already cited, he outlined his general approach to new questions before the *Halakhah*. Here, in discussing the role of the religious judge in making decisions, Uziel shed light on the creative nature of the halakhic process he envisions. A judge does not merely apply the law to a given case. Ultimately, according to Uziel, justice must be in the forefront of the judge's mind. It is important to note that Uziel does not suggest that the law should be ignored or overridden. Rather, what Uziel seems to be suggesting is that the judge, in making the decision, has the right and even the obligation to be creative and flexible in his ruling, in order to guarantee that his decision will be not only in accordance with the law, but also just. Combining Uziel's statement in his introduction to *Mishpatei Uziel* with his words here, we see how progressive his halachik approach was, especially compared to his Orthodox contemporaries. Not only did he reject the notion that "*hadash asur min hatorah*," but he also felt that creativity and flexibility were necessary qualities for applying the *Halakhah* to new situations.

There are many examples of Uziel's progressive response to contemporary halachik issues. In the following chapter we will examine a number of his responsa in detail, highlighting his progressive approach as well as the possible motivation behind it. However, before turning to his responsa themselves, it is worth while to

³¹ Rabbi Ben-tzion Uziel, *Mispateh Uziel* I (Tel Aviv, 1935), pp.viii-x.

ask the more general question: what is the source of his progressivism in regards to the *Halakhah*? There are a number of possible answers to this question, a few of which we have already touched on, like his belief in the coming redemption or his love of the land of Israel. These two possible influences, as is the case with most of the forces evident in Uziel's religious life can be placed under the general rubric of religious Zionism, Uziel's *raison d'être*. However, one influence not subsumed by Uziel's Zionism is his Sephardic background to which we now turn.

Uziel came from a famous line of Sephardi rabbis, and he served the Sephardic community his whole life. Thus, it is safe to say that Uziel was a product of, and a participant in Sephardic culture. This is not to say that he was not influenced by the Ashkenazi milieu all around him, rather that of the two cultures, he reflected more the Sephardic than the Ashkenazic in his background and his approach to religious issues.

In regards to halakhic issues, a common distinction is made between Sephardic and Ashkenazic philosophies that being that the former are more lenient than the latter. However, this is often seen as a pejorative distinction, especially given the stress that much of the Orthodox community places on strictness (*chumra*). Rabbi Hayyim Yosef David Azulai, an 18th century Sephardic sage put the distinction between the two approaches differently. "He wrote that in matters of the *Halakhah*, Sephardic sages clung to the quality of *hesed*, kindness, and (thus) tended to be lenient. Ashkenazim (on the other hand)

Mark D. Raskin, *The Chavrutot of Jewish Law* (New York: Seder Harmon Press Inc, 1994), p. 76.

manifested the quality of *geburah*, heroism, and therefore tended to be strict.³²

To Azulai then, it was *hesed* not leniency that was the guiding light behind the Sephardic approach, though leniency was, at times the result.

Another element of the Sephardic halakhic approach which Uziel himself noted was that they tended to operate with the belief, fostered by centuries of relative autonomy, that they had the power and authority "to annul customs which were not based on the *Halakhah*"; customs that often increased, with out reason, the strictness of the law. This was in contrast to Ashkenazic practice where rabbis tended to strengthen customs even when the custom had no basis in the *Halakhah*.³³

One other aspect of the Sephardic approach to *halakhah* significantly different from the Ashkenazim was in regards to their understanding of the purpose of the *Halakhah*. For the Sephardim, the *Halakhah* was a practical guide to behavior, not "a metaphysical system set aside for the elite." Thus, it is not surprising that "the classic codes of Jewish law were produced in the Sephardic communities." This difference is significant because the practical orientation of the Sephardim towards the *Halakhah* tended to ground them more to the needs of the people. The Ashkenazim on the other hand, who saw the *Halakhah* as an "intellectual system divorced from actual life," were more prone to make legal decisions in the

³² Marc D. Angel, *The Rhythms of Jewish Living* (New York, Sefer Hermon Press Inc, 1986.) , p. 76.

³³ Angel, p. 77.

abstract, without always showing a concern for the practical implications of their rulings.³⁴

Applying these various elements of the Sephardic halakhic approach to what we know about Uziel and his progressive halachik orientation, we see that he, in many ways, embodied the Sephardic halachik philosophy. Concerned with everyday life and the practical world around him, Uziel could not ignore the contemporary issues that came before him. Furthermore, his practical orientation kept him in touch with the people which in turn made him more sensitive to their needs and their weaknesses. And, unlike many of his Ashkenazi contemporaries, when a problem arose that needed to be solved he could turn to a rabbinic tradition that gave him the authority to make such decisions.

But, as much as his Sephardic background influenced his halakhic philosophy, his overriding concern with religious Zionism and the emerging modern state of Israel was, by far, the greatest influence on his halachik approach. This is especially evident in his work as a *posek* to which we now turn.

³⁴ Angel, p. 78.

CHAPTER THREE: *Rabbi Ben-Zion Uziel's halakhic response to the challenges of statehood.*

The previous chapter addressed Rabbi Ben-zion Uziel's theological response to Zionism, as well as his halakhic philosophy, especially regarding issues arising from the emergence of the modern Jewish state. The goal of this chapter is to show how his Zionist theology and related halachic philosophy influenced his work as a *posek* (religious decisor) of *eretz yisrael* (the land of Israel) before and after the State was established. We will begin with a few brief remarks regarding the nature of responsa, followed by an analysis of Uziel's responsa in three areas particularly relevant to our study: Jewish law and the judiciary of the modern state; Labor relations; and woman's suffrage. These three areas were chosen because they reflect well the kinds of question which arose as a result of renascent Israel, as well as Uziel's response to them.

It has been suggested that responsa - "the written rulings issued by halachik decisors as answers to questions addressed to them" - is "the most rabbinic of all genres of post- talmudic rabbinic literature."¹ There are a number of reasons for this. First there is quantity. Responsa literature comprises the majority of rabbinic writings from the early Middle Ages to this day. The second reason related to the first is the fact that it is mainly through responsa literature "that the rabbis impart authoritative instruction on issues of Jewish law and observance." In other words,

¹ Mark Washofsky, "Responsa And Rhetoric: On Law, Literature, And The Rabbinic Decision," *Pursuing the Text*, ed., by John C. Reves & John Kampen (Sheffield: Sheffield Academic Press Ltd, 1994) p. 360. See also, P.J Haas, "The Modern Study Of Responsa", in D. Blumenthal (ed.), *Approach's To Judaism In Medieval Times* (Chico, Ca: Scholar Press, 1985). II, pp. 35-71.

she'elot uteshuvot ("question and answer," another term for responsa) was and still is the main literary medium - "the literary tool-in-trade" - of the Orthodox rabbinate.² These two facts go along way in explaining the importance of responsa literature as a Jewish literary genre. However, more important than sheer numbers or even the dominance of the medium for authoritative rabbinic expression is the religious depth which the responsa literature reflects, for it is through *she'elot uteshuvot* that the eternity of the oral law is made real, or as Peter Haas suggests in his article "Toward a Semiotic Study of Jewish Moral Discourse", "The writing of a responsum ...is a ritual act which demonstrates that the existing law contains answers to all questions... It thus validates the entire received legal tradition and the foundational values of rabbinic culture."³

Given the central nature of responsa literature in Orthodox rabbinic discourse, it is not surprising that a prominent and active rabbi like Uziel would have written volumes of responsa over the course of his life.⁴ What is unusual about Uziel however, is the range of issues he covers in his responsa, as well as the often new and innovative approach he takes when applying the *halakhah* to contemporary problems. Indeed, as the reader may remember from the previous chapter, Uziel saw responding halakhically to "the needs of the hour" as a religious duty, one he

² Washofsky, p. 360.

³ Washofsky, p. 362. See also P. Haas, "Toward a Semiotic Study of Jewish Moral Discourse", *Semeia* 34 (1985), p. 72.

⁴ The majority of Uziel's responsa can be found in his 3 vol. work, *Mishpatei Uziel*. Excerpts of his responsa can also be found in *Sefer Hamizrachi*, edited by Joel Fishman & Raphael Shragai (Jerusalem, 1977), p. 72-95.

was obligated to do as a rabbi and *posek*, and also as a witness and participant in the "footsteps of Redemption." This general approach to issues of the *halakhah* was bolstered by his strong belief, shared with many other *Mizrachi* thinkers, that the only law appropriate for the Jewish state was the Torah. However, as much as Uziel and others were committed to the idea of the "Torah of Israel, for the people of Israel, in the land of Israel," little work had been done for most of Israel's post exilic history to make such an ideal a reality. Certainly, there had been times in Jewish history prior to the emergence of the modern state when Jewish communities had functioned some what autonomously, operating their own court systems, and in general, regulating their communities through an interpretive process based on Jewish law. However, such examples from the past, though numerous were limited in scope and in no way comparable to the problems posed by a modern Israel. Indeed, with the rebirth of Israel, "the needs of the hour" were many, and Uziel worked unflinchingly to try and address those needs through the medium of "*shelot uteshuvot*."

Judicial Procedures

Of all the issues that Uziel addressed, perhaps the most crucial, in as much as it would lay the foundation for the whole religious judicial structure which Uziel envisioned, were his responsa regarding the establishment of a religious judiciary to function as the court system for the modern state in all areas of the law. What would such a court system look like? Would it be comprised of *batei din*

(traditional religious courts comprised of a minimum of three rabbi's) or would it reflect more the western court systems with a judge, jury and appeals process? How would it function? Would the laws of Jewish jurisprudence be applied to all contemporary issues, or would the hodgepodge of Turkish and British law already in existence hold sway in some cases? These are just a few of a myriad of issues which the modern state posed for Uziel and his *Mizrachi* colleagues who sought to make the Torah the basis for the State's judiciary. An exhaustive examination of all the issues surrounding this important and complex subject is beyond the scope of this work. Our study will focus on a few specific questions Uziel addressed which offer us particular insight into his methodology and halakhic philosophy. We will begin with two related procedural questions: 1) Is there a need for Jewish witnesses to swear to tell the truth before they testify? 2) Would it be worthwhile to establish a formal oath, for those who come to testify, that they will tell the truth?⁵

In response to the first question, Uziel writes:

A Jew is commanded to give clear and timely testimony, taking care to speak the truth, refraining from any falsehood or distortion in his words. Furthermore, the litigant nor the court has the right to force the plaintiff to swear to tell the truth nor does the plaintiff have the right to do so on his own behalf, whether in a secular or religious court, since every Jew was present at Mount Sinai and there swore to tell the truth as it is written, "Do not bear false witness against your neighbor." (Exodus 20:13) and, "Keep far from false words!" (Exodus 23:7).⁶

⁵ *Sefer Hamizrachi*, (Jerusalem, 1977), p. 72-95.

⁶ Uziel, *Sefer Hamizrachi*, p. 81.

On the surface, this *teshuvah* seems rather straight forward. Uziel, when confronted with a judicial procedure at variance with the *halakhah*, rules against adopting such a procedure on the grounds that it is not necessary given the existing provisions expressed at the covenant at Sinai and fleshed out in rabbinic law.⁷ It is not until the second question that we get a glimpse of the subtle rhetoric Uziel employs in arguing his point, a rhetoric that speaks more to the secular masses than to the religious community.

In response to the question, of whether a standard oath should be adopted for witnesses in order to ensure that they will tell the truth, Uziel argues that such an oath would go against the entire intent and spirit of Toraitic jurisprudence.

Furthermore, to impose such an oath would give the mistaken impression that:

false testimony is prohibited only on account of the oath and not in and of itself... For those that recognize the truth, such an oath, rather than being a worthy addendum, becomes a corruption (of the intent of the Torah). What would be most desirable is that (instead of focusing on oaths) we strive to impress upon the people the importance of giving valid testimony from a religious, social and individual perspective. A perspective of self respect where anyone who breaks his word, damages his honor..and those who have self respect, honor their word...⁸

⁷ In another responsum regarding the validity of recorded or written testimony, Uziel outlines the traditional safeguards against false testimony. Simply stated, the *halakhah* begins with the basic assumption that the commandment to tell the truth is *deen Torah* (a Toraitic law). However, the judge has a special role in assuring the veracity of a witness in as much as he, through his manner, inspires (intimidates) the witness to telling the truth. He also should possess skills of cross examination which should further ensure that the witness tells the truth. The Toraitic source for the *halakhah* on this issue is Deut. 19:15, specifically the word "*mipi 'hem*" (from their mouths). There are a number of other rabbinic sources relating to this issue including, *Yevamot* 31b, *Gittin* 71a and *Shevvet* 30b which Uziel references along with the commentary of the *Hatam Sofer*. See, *Mishpateh Uziel, Hoshen Mishpat, ch. 14, p. 70*, for the complete responsum.

⁸ Uziel, *Sefer Hamizrachi*, p. 81.

If one were to read just the first part of this second *teshuvah*, it would seem to be merely a repetition and elaboration of the first response. An oath formula Uziel argues, violates the intent of the Torah and sends the wrong message to the people: i.e. that it is only under oath that it is forbidden to tell a lie. This is basically an argument from the tradition, and if that was all Uziel offered, there would be nothing about it which was out of the ordinary. However, Uziel does not stop with the tradition. Rather, he goes on to offer an additional argument, based on more universal precepts like "self respect" or a "social perspective", which are suggestive more of humanism than of Jewish orthodoxy. This is a subtle but significant aspect of Uziel's rhetoric here and in other of his responsa we will study. What Uziel appears to be doing is reaching out for a language which modern secular Israelis can understand. He realizes that for them, fear of transgressing the Torah is not an impressive (or even valid) deterrent against false testimony. However, he sees no reason, in this case, to abandon the traditional practice. Rather, what is required is a bridge between the secular world and the world of "Torah-true" Judaism, a bridge Uziel tries to build by couching a traditional rule in language he hopes will be persuasive to a skeptical, secular community.

Another force which is perhaps below the surface of Uziel's appeal to the secular community is the perceived national character of Jewish law. While implicit in the Orthodox world view which Uziel represents, it was only in the

context of Jewish Nationalism that the secular Zionists began to see Jewish law as an integral part of Jewish national identity, rather than merely another relic of the Diaspora to be discarded. Menachem Elon notes the move towards an appreciation of Jewish law in the history of Zionist thought when he writes in his seminal four volume work, Jewish Law: History, Sources, Principles that:

The National Awakening and the Zionist movement, which proclaimed the need for a return to the Jewish homeland and the independent national life there for the Jewish people, were naturally accompanied by a radical change in the attitude of the Jewish people toward Jewish law. It was recognized that the Jewish law embodied not only religious but also essential national values.⁹

This awakening which Elon describes spawned, among other things, a society for the cultivation of Jewish law (*Mishpat Ivri*) in order that it might serve as the law of the modern state. Though *Mishpat Ivri's* success as an organization was limited, it did represent a significant change in the attitude of the political Zionists to Jewish law; Zionist groups, hitherto uninterested in or even opposed to the idea of the renewal of Jewish law, began to think of Jewish legal renewal as part of the greater national struggle of Zionism. It would be erroneous to suggest that Uziel's motivation for the renewal of Jewish law was a direct result of the *Mishpat Ivri* movement. Indeed, as a renowned Orthodox rabbi and religious leader, it is likely that Uziel's belief in and commitment to Jewish law was a basic and fundamental principle which he acquired in the earliest stages of his education. What we can

⁹ Menachem Elon, Jewish Law: History, Sources & Principles. 4. vols. (Philadelphia: The Jewish Publication Society, 1994), p. 1588

suggest however, is that Uziel, given his heavy involvement in the wider Zionist cause, must have been aware of the *Mishpat Ivri* movement, and his awareness of this trend in secular Zionist circles, at times influenced the rhetoric of his responsa. Thus, in the two previous responsa, Uziel's rejection of the need for oaths in assuring the veracity of witnesses, while clearly consistent with Jewish law can also be seen as an appeal to Jewish law in light of a national resurgence which saw the *halakhah* as part of an authentic national identity.

In the case just cited, Uziel finds no compelling reason to argue for a change in the *halakhah*. However, in another case regarding the acceptability of the testimony of gentiles in civil and criminal cases, the *halakhah* directly conflicts with an almost universally accepted idea of justice and fairness, i.e. that all people, regardless of religion or race, are equal before the law. (The *halachah*, as it is generally understood, prohibits gentile testimony). Though it is published as a *teshuvah*, Uziel did not receive this question as responsa, rather he postulated it himself in order to explore the issues it raises and to make clear the *halakhah*. He notes that the emerging government has many questions before it, one of which is the issue of non-Jewish testimony. He asks, "is it possible to accept their testimony or, at the very least, to issue a rabbinic decree in order to make such testimony valid?" This question (given the demographics of the emerging state and, the accepted judicial practices of modernity of which it hoped to be a part) is of great

importance to the formation of a just state guided by Jewish law.¹⁰ Thus Uziel writes:

One of the great aspirations of the Jewish people is to redeem the Israeli legal system, returning the Law of the Torah to its rightful place. Certainly, one of the objectives of the Redemption is the return of the judiciary: "I shall return your judges as in the beginning." (Isaiah 1:26). Therefore, as we establish our own judiciary we must look to the Torah as the foundation for our legal system in every area of the law, for Jewish law covers every interaction between one man and another. Thus we must answer the question, can we accept the (pral) testimony of non-Jews (according to the Torah)? It is not possible to ethically say no to this question, thus making the testimony of those who live amongst us and who deal honestly with us, unacceptable. One has only to recall our own history in exile when we were denied the right to testify (to know that this is in fact an unjust law). Furthermore, if all the other enlightened nations of the world make no such distinction regardless of race or religion, how can we make such a decision?¹¹

There are many striking features to the argument Uziel offers here. In contrast to the last *teshuvah*, the Zionist foundation of his argument is immediately evident to the reader. Here Uziel appeals directly to the national character of Jewish law, asserting that its renewal is an organic part of the emerging modern state.

Furthermore, recalling Uziel's Zionist theology of Redemption outlined in the last chapter, i.e. that Redemption is to come in stages, one of which is the renewal of the Jewish judiciary, it is clear that Uziel's reasoning here reflects those views as well. Recalling that such a messianic view of contemporary Jewish history was rejected by the non-Zionist Orthodox movements like *Agudat Yisrael*, and that

¹⁰ Uziel, *Mishpateh Uziel, Hoshen Mishpat*, ch. 14, p. 80.

¹¹ Uziel, *Mishpateh Uziel, Hoshen Mishpat*, ch. 14, p. 80.

even *Mizrachi* rabbis were hesitant to so boldly apply their messianic view of Israeli history to halakhic problems, one realizes the daring of Uziel's argument.

Another unusual feature to Uziel's reasoning, less bold than his application of his messianic theology but also significant, is his reference to the history of the Jewish people as justification for a new look at the *halakhah*. While this kind of argument may sound familiar to a liberal Jewish reader, it has little place in traditional rabbinic discourse which generally shows little cognizance of history in the modern critical sense of the word. History as seen through the lens of traditional Judaism is experienced primarily on the religious plane, through the festival cycle, the days of mourning, etc. The religious Zionists however, swept up into history through the revival of Jewish nationalism, experienced a "renewal of historical consciousness" where the historical dimensions of the Jewish people, beyond the religious calendar, became very important in their understanding of the world and events which were taking place around them.¹²

From the perspective of these first three responsa, we see that Uziel's rhetoric is contingent, to some degree, on his motivations as a Zionist rabbi, as well as the audience he hopes to reach. In the first responsum, his audience was the *hillunim* (the secular community). After all, it is the *hilloni'im*, not the Orthodox whom he must convince of the superiority of the Jewish legal system over other competing systems. In the third responsum, it is not the secular community whom he has to

¹² Moshe Unna, *Separate Ways* (Israel: Dep. for Torah Ed., WZO, 1987), pp. 27-28.

convince, but rather the Orthodox. However, given the tenor of his arguments - his stress on the coming Redemption and his appeal to Jewish history - one would guess that, although he is concerned about the entire traditional community, the responsum is directed more to the religious Zionists, who are more likely to accept his perspective and thus his decision.

Labor Law

Before moving on to Uziel's responsa in the area of labor law, it will be helpful to touch briefly on the role the various labor movements played in both political and religious Zionism. Indeed, while the Jewish national movement from its inception harbored the gamut of ideologies from right wing ultra nationalists to left wing communists, as it matured, labor Zionism had emerged as the dominant ideological wing of the movement. There were a number of reasons for this. First, the zeitgeist of in Europe and in Palestine was heavily influenced by Socialist intellectual trends. This became especially true in Palestine after the "Third Aliya" (1919-1923) when approximately 37,000 newcomers arrived, many fleeing directly from the Bolshevik Revolution in Russia. Among these new immigrants were a large number of people trained through the *Hechalutz* (the pioneer) movement which was markedly Socialist in character, tipping the ideological balance of the *yeshuv* towards the Labor Zionists.¹³ Second, the nature of the settlement activity in Palestine - i.e. the heavy emphasis on agriculture and other

¹³ Howard M. Sachar, A History Of Israel (New York: Alfred A. Knoff, 1982) , pp. 144-146.

labor intensive activities lent itself to the work of the *halutzim* (pioneers) who were almost all Socialists. Third, of all the movements represented in and outside of Palestine, the majority of the competent leadership was among the Socialist ranks. And finally, the world economic crisis and its political repercussions strengthened the Left (and the extreme Right) all over Europe, which also helped to bolster the Labor movement in Palestine.¹⁴

While Labor won supremacy in the political Zionist struggle, the same trend emerged in the religious Zionist camp as well, resulting eventually in the merger of *Hapoel Hamizrachi* (the labor wing of the religious Zionist camp) and *Mizrachi* in 1956, with *Poel Mizrachi* effectively swallowing up *Mizrachi*, while at the same time setting the stage for the establishment of the National Religious Party.¹⁵ Many were the ramifications of this sea change in the religious Zionist camp, including a shift in emphasis toward the political arena as well as a change in general orientation from the center of the political spectrum to the left. Uziel was no less affected by these trends than the religious masses they represented. Though Uziel remained independent of *Hapoel Hamizrachi*, the responsa to which we now turn arise mainly out of questions submitted to him by members of the religious labor Zionist movement. In that sense, these *she'elot* (questions) to which Uziel

¹⁴ Walter Laqueur, *A History Of Zionism*, (New York: Schocken Books, 1989), p 318.

¹⁵ Moshe Unna, p.58. See Unna's chapter "Between *Mizrachi* and *HaHapoel Hamizrachi*" for a full description of the struggle for supremacy of the two camps (pp.39-60.)

responds are political in nature, which in itself raises a number of questions about the purpose of the responsa, and the objectivity of Uziel's analysis.

The first responsum we shall examine deals with the general question: Does the tradition (the *halakhah*) recognize the right of Labor to organize? In response to this *she'elah* Uziel argues that the tradition does recognize the agreements that guilds or other professional organizations make. He bases his argument on the commentary of the *Rosh* (an acronym for the famous 14th *ashkenazi* Rabbi, Asher ben Yechiel) to the Talmud, *Baba Batra* 9a. There the question is, can two tradesmen - butchers in this particular case - make their own code of business conduct, enforcing it themselves when one or the other breaks the contract. The Talmud suggests that yes, in the absence of an authoritative figure like a rabbi who would normally adjudicate in such cases, trades people do have the authority to make such agreements, because in areas of commerce, tradespeople are considered equivalent to members of the community (a guild is a community), and such behavior falls under the prerogative of the community. The "*Rosh*" furthers this argument - along with *Nimukei Yosef*, a commentary to Alfasi's Halakhot - by suggesting that they can go as far as to levy fines, even if the Torah does not require such punishment, based on the rights a community has to regulate its own life.

At this point, one might argue that while there are a few similarities in the issues the Talmud is addressing here and those which arise around organized labor, in

fact there is little significant connection between the Talmud's discussion and the question which Uziel wants to address. In other words, it would be easy to say, "the Talmud doesn't speak to the contemporary questions of labor relations." Uziel however, is operating under the opposite assumption, mainly, that the *halakhah*, of which the Talmud is a primary source speaks to the "needs of the hour," and it is the obligation of the *posek* to apply the eternally relevant *halakhah* to those needs.

As interesting as is his halakhic reasoning, the rhetoric he employs is even more indicative of his bold and ideological stance on this issue. What is the significance of the right of Labor to organize and the Talmudic discussion which supports such a right? The import of the law is that:

the worker must not be left alone ... to hire himself out for a miserable wage satisfying the needs of his family with "the bread of adversity and the water of distress." (i.e. that workers should be able to protect themselves from exploitation). Therefore, he should protect himself by organizing. Working together with his fellow workers, he can make just and righteous work rules which protect him and his fellow workers, bringing them respect and a fare wage on par with other people of the community.¹⁶

Uziel's rhetoric here reads more like an excerpt from a socialist manifesto than a halachic discourse. While economic justice is not a foreign concept to the Torah, nowhere does the *halakhah* call for workers to organize to prevent themselves from being exploited by their employers! It seems obvious then that Uziel, the eminent halachist, in this case is speaking more to the religious Zionists, especially

¹⁶ Uziel, *Sefer Mizrachi*, p. 84.

the *Poel Mizrachi* wing, and perhaps to a limited degree to the secular majority, than he is to the more traditional Orthodox community, who would surely find his reasoning here foreign and out of place.

Once Uziel established the right of workers to organize, he makes two interesting moves: he explains how religious courts could function in the place of the "important person" which the Talmud refers to in the question already sighted, and he extends the right of workers to organize beyond just their economic well being to the all encompassing network of organization such as the *Histadrut* (The General Federation of Labor) was establishing at that time.

Regarding the use of religious courts to solve labor disputes, Uziel argues that in Talmudic times the economic relationships between communities members were relatively simple. Thus an important person (*adam hashuv*) could feasibly handle all the labor disputes which arose in a community. However today, Uziel writes:

an "*adam hashuv*" alone would not be able to adjudicate all the kinds of legal issues which might arise ... Rather, we need to establish a religious court, made up of authoritative Jewish legal minds also knowledgeable in areas of science, economics and sociology who can develop and establish practical labor law. After this has been accomplished, judges can be appointed who have knowledge of the law and are familiar with the full range of disputes that can arise amongst the trades and in their relationships with the employers...¹⁷

What is striking about Uziel's comments here is their modern tone. He argues for objective criteria - scientific knowledge - to augment the ability of religious courts

¹⁷ Uziel, *Sefer Mizrachi*, p. 84.

to make just decisions. Traditionally, the *halakhah* is objective criteria enough for any question. Uziel's call for scientific knowledge as a buttress for the *Halachah* is thus an unusual move for an Orthodox *posek*, one that reflects more an "enlightened" scientific approach than a traditional one. It is also important to note that while Uziel suggests replacing the idea of an *adam hashuv* with a *beit din* and augmenting it with scientific knowledge, he does not seek to do away with the concept all together. Rather, as is often the case with the *Mizrachi* approach, Uziel seeks a middle ground between the non-Zionist Orthodox to the right who oppose such halakhic innovations which Uziel suggest, and the secularists on the left who prefer to rely on Turkish or British legal precedents.

Regarding Labors prerogative to organize for purposes other than economics, Uziel writes that:

...(Labor) also has the right to establish these institutions: a cultural center to enrich and enlighten, a science foundation, or an art center ..(And) Health centers to renew the strength of the worker who has been injured on the job. Also, the establishment of Savings plans for retirement or in the case of disability. For over time a worker losses his strength and can not continue to work as in his youth. This is the plain meaning of scripture when it says: *And from the age of fifty years they shall cease waiting upon its service, and shall serve no more. (Num. 8:25)* All of this can not be accomplished except through organized labor. Therefor, let us bring honor onto the Torah of Israel by establishing laws for organized labor¹⁸

We see then how Uziel, starting from a relatively simple halakhic question, boldly enters into the midst of the contemporary issues of his day. Not only does the

¹⁸ Uziel, *Sefer Mizrahi*, p. 84.

Torah support the right of workers to organize for the purpose of their economic welfare, but also implicit in this "Toraitic" right to organize is the prerogative to protect and enrich most other aspects of their life as well. This is underscored by Uziel's use of a biblical proof text to support his inclusion in these other types of organizations some type of retirement fund (an unusual move in itself for an Orthodox *posek*, who would more likely restrict his biblical interpretations to those found in the halachic *Midrashim*). But, even more innovative than his inclusion of retirement funds also included in Labor's right to organize is his reference to cultural organizations for the arts and sciences. Early on in the relationship between the *Mizrachi* camp and the political Zionist mainstream, the religious Zionists fought hard to prevent the development of cultural organizations outside of those sanctioned by the tradition. Whether Uziel simply is bowing to what already existed, or whether he sees in these new organizations elements of Torah - as his responsa suggests - is hard to judge. What is clear here however is Uziel's progressive view of the *halakhah* and its ability to address the many needs of the modern state.

The next responsum we shall focus on addresses the relationship between workers and their employees. A number of questions arise out of this discussion including: is there equality in the worker-employer relationship or is it hierarchical? what responsibilities does an employer have to a worker who is injured on the job? must a Jewish employer show preference to Jewish workers?

do employees have the right to strike and can the employer "lock out" its employees?

In regards to the question of the general nature of the relationship between the worker and his or her employee, Uziel writes that:

Worker/Owner relations should be congenial, a relationship of equals where one worker helps the other finish their work. There should not be a sense of inferiority or shame on a part of the workers in relation to the owners because they are both (equally) dependent upon each other to get the work done. Furthermore, the employers are obligated to treat their employees kindly rather than strictly, as is written in scripture: *That you may walk in the way of good men, and keep the paths of the righteous.* (Prov. 2:20) ¹⁹

It is not surprising after what we have already seen that Uziel, in these general remarks, shows much sympathy for the worker in his relationship with his employer. Uziel's remarks here echo the classic discussion of worker-employer relations found in the Talmud, *Baba Matzia* 83a. There the question is, are workers liable for material damages incurred due to an accident on the job? After much discussion, the majority opinion is that workers can be held liable for such an accident if they were negligent. Furthermore, their negligence is assumed unless either they bring a witness who testifies that they were not negligent or, in the case that there were no witnesses present, they take an oath stating that they were not negligent. However, at the end of the *sugia* (the section) there is one additional case offered in the name of the renowned Talmudic sage, Rav. The case

¹⁹ Uziel, *Sefer Mizrachi*, p. 85.

involves an accident which, according to *Rashi* as well as other commentators was due to negligence. Since negligence was involved, *Rabbah bar bar Channan*, the employer, took their cloaks as compensation. *Rav* however, ordered *Rabbah bar bar Channan* to return the cloaks and to pay the workers their wages for that day. When *Rabbah bar bar Channan* asked him if his ruling reflected the law, *Rav* replied, "yes", quoting Proverbs 2:20 (*That you may walk in the way of good men, and keep the paths of the righteous...*), the same verse Uziel quoted above as a proof text for his remarks. Thus, it is clear that Uziel sees his remarks in the context of *Rav*'s. However, while *Rav*'s stature alone makes his ruling significant, since in this case he did not represent the majority opinion, the *halachah* does not follow him, nor is his ruling cited in later halakhic codes like the *Shulchan Aruch*.

Uziel's remarks in light of *Rav*'s, especially considering the fact that *Rav* does not represent the *halachah*, illustrates the extent to which Uziel is oriented towards Labor. It also again shows Uziel's willingness to seek new answers from the existing *halachah* on a given issue. The tension in the *sugia* cited, as well as in the last words of Uziel's remarks - i.e. that "employers are obligated to treat their employees kindly (mercifully) rather than strictly" - is between the concepts of justice and mercy. *Rav*'s point, and by association, Uziel's is that justice is sometimes better served through mercy. In other words, both *Rav* and Uziel stress

equity over law; this for Uziel is a basic principle which he applies to most aspects of employee worker relationships.

Our next responsum deals with the employer's responsibility to his workers in the case of an injury on the job. The question is, does the Torah support the common Labor practice of seeking life or catastrophic illness insurance as part of the work agreement between the worker and the employer? And, in the absence of such an agreement, is the injured worker, according to the *halakhah*, still entitled to seek compensation? According to Uziel, the *halakhah* does not require the employer to provide insurance or other compensation outside of what is stipulated in their agreement. However:

...the Torah does not remove the employer's responsibility for his employees in the case of an accident on the job Furthermore, the employee is entitled to seek ...a guarantee that in the case of injury or death, he or his family will be compensated. The employer is obligated to support such demands.²⁰

Uziel goes on to argue that:

Even though, according to the *halachah*, the employer is not obligated to compensate the employee, it appears to me that the law is not referring to today's situation where, the (on the job) risks, due to the complexity of technology, are much greater...Thus, I am inclined to say that the employer should take heed from the Torah to do all they can to protect their employees from harm, for as scripture says: *When you build a new house, then you shall make a parapet for your roof, that you should not bring any blood upon your house, if any man falls from there.* (Deut.22:8) This general principle includes any negligence that results in an injury like a faulty ladder or a rabid dog, etc....

²⁰ Uziel, *Sefer Mizrachi*, p. 85.

As in the case of gentile testimony, the *halakhah* seems to be in conflict with "the needs of the hour." Uziel recognizes this when he comments that the law does not refer to such a complex situation as we have today. However, as we have already seen, his halakhic philosophy does not allow him to dismiss the issue, claiming that the *halakhah* simply does not speak to this particular problem. It also is reasonable to suggest that given his affinity to Labor and the political nature of this and other similar responses, he can not rule in favor of not protecting workers from on the job risks, as the *halachah*, in its plain sense, might require.²¹ Rather, what Uziel offers is a new halachic interpretation of Deuteronomy 22:8 and the Toraitic *mitzvah* of *maakeh* (the parapet). The verse does not speak explicitly to the situation of labor relations. However, Uziel, in grappling with the conflict between the employers freedom of contract and the his responsibility for the safety of his workers, makes a new connection, a *hidush* (a new interpretation) which brings the *halakhah* to bear on "the needs of the hour" and the existing practice. Uziel is not blind to the boldness of his move, however, and at the end of the responsum he comments that "when it becomes the practice for all employers to insure their workers, then the principle we follow is '*hakol k'minhag hamedinah*' " (the law follows the custom of the community), which would relieve him of the need for offering the *hidush*.

²¹ See the *Mishnah* and *Tosafot* to *Baba Matzia* 83a.

Another example of Uziel's innovative *halachik* approach to labor relations is his response to the question, are Jewish employers obligated to hire Jewish workers even when their labor is more expensive than gentile labor? Uziel responds affirmatively to this question arguing that "the mitzvah of engaging Jewish workers is more than just an act of tzedakah for it touches on the obligation, enforceable by a *beit din*, whether you be a merchant, manufacturer, employer (of any kind), to support your fellow Jew." Further on in the *teshuvah* in regards to the question of Jewish workers wages he makes more explicit what he means by commandment when he writes:

Furthermore, (less you think that the *mitzvah* of hiring Jewish labor is not to be taken seriously), though it appears to be a positive commandment, one which could be broken passively and which would carry a lesser punishment if broken, in actuality, it is more like a negative commandment in that you would have to go out and hire non-Jews to work in Jewish workers places, and in that sense, its violation carries the same consequences as if one was to break a negative commandment.

Not only is hiring Jewish labor a *mitzvah* according to Uziel, to not hire Jewish workers is tantamount to transgressing a negative commandment, a much more serious offense than violating a positive commandment. It is one thing for Uziel to show a preference for Jewish labor - one would expect that - it is quite another for him to argue that hiring Jewish labor is a *mitzvah* (commandment) on par with not working on the Shabbat. This is especially daring since he bases his ruling on his preference to Jewish labor could have only helped ease the tight labor market. One own *hidush* derived from Leviticus 25:14 and the *Sifra* on that verse. The verse reads, "And if you sell a *selling* to your fellow, or acquire from the hand of your

fellow, you shall not wrong, one man, his brother." Uziel quotes the *Sifra* to the verse which, in part, reads:

"Where is it derived that when you sell, you shall sell only from your fellow (i.e. a Jew)? Scripture teaches, "And you shall sell a *selling* to your fellow..." Where is it derived that when you buy, you shall buy only from your fellow? Scripture teaches, "And if you buy from the hand of your fellow..."

In spite of the fact that the verse quoted and the interpretation of it offered by the *Sifra* appear to have nothing to do with labor relations, Uziel uses this verse and the *Sifra* to the verse as the basis for the *mitzvah* of hiring Jewish workers. This is quite an innovation for which he offers no supporting rabbinic sources. Apparently Uziel thought that his interpretation of the verse was adequate proof of the existence of the *mitvah*. However, one would think that such an innovation with such far-reaching consequences would warrant at least some supporting, authoritative opinions. One can only guess at his motivation in offering this opinion. From what we have already seen however, it seems likely that he was writing to a very specific audience - an audience already predisposed to this kind of opinion like *Hapoel Hamizrachi* - and that he wrote it as a religious Zionist looking to the *halakhah* for strength in the struggle to build up the land. Unemployment was a serious problem in the developing *yeshuv* and showing preference to Jewish labor could have only helped ease the tight labor market. One can also read a hint of labor politics in this response in that Jewish labor tended to

be organized and the thrust of his responsa was that "Jewish labor", which in this case was synonymous with "union labor" should be used not because it is a nice thing to do, but because it is a requirement of the *halakhah*.

To this point, Uziel's responsa regarding labor relations have demonstrated a great degree of flexibility and creativity in applying the *halakhah* to contemporary issues. At times, it has seemed as if Uziel is driven more by the current reality than by the force of the law. In the following responsum, which addresses the legitimacy of strikes and "lock outs" according to the *Halachah*, the limits of Uziel's willingness to innovate halakhically are evident. Also evident is the underlying logic behind when Uziel pursues an innovative approach to a contemporary issue versus when he argues from a more traditional interpretation of the existing law.

According to Uziel the *halakhah* does not support the right of workers to strike or of management to lock workers out:

In regards to the (obligation of the employer to the) worker: every day that he doesn't work is a lost day of his life. The Torah ...commands man to work as it is written in scripture: *Six days you shall labor, and do all your work; but the seventh day is the Sabbath of the Lord your God; in it you shall not do any work...* (Deut.5:13-14) And the tradition extends the meaning of this verse to cover not just the commandment to rest on the seventh day, but also the commandment to work during the 6 profane days. As for the (obligation of the worker to the) employer: whether in manufacturing or in service...It is not just the lost time (which mitigates the workers right to strike) but also the ongoing damage caused by the cessation of work.²²

²² Uziel compares the employer's loss of time due to a strike to the losses which an employer might incur due to a cessation of work when perishable goods (or crops) are involved. As perishable goods that spoil

Given what we already know about Uziel's general stance toward Labor and Labor's relationship with its employers, it is not surprising to find him arguing against the right of the employer to "lock out" its workers. However, it is surprising that Uziel does not support the right of Labor to strike. One might argue that such a right simply does not exist within the *halakhah*. However, we have already witnessed Uziel's willingness to break new halakhic ground when "the needs of the hour" and the existing practices of the day demand such an approach. The question is then, why in this case does Uziel not innovate on such a basic issue as the workers right to strike? As we saw in Uziel's responsa regarding the renewal of the judiciary and the taking of oaths, when faced with two competing concepts of law, if possible, Uziel will argue for the "Torah true" approach. In the question before him, the "Torah true" approach is not to strike but to turn to a *beit din hashuv* (Uziel's counterpart to the *adam hashuv*) which can rule in the case of a dispute between the workers and their employer. In other words, in the "Torah world" Uziel envisions, all labor disputes would be submitted to the rabbinic courts for compulsory arbitration, which means that there would be neither a need nor a place for "lock outs" or strikes.²³

Woman's Suffrage

can not be recovered, so Uziel argues is the case with lost time on the job - it can not be recovered. See *Baba Kama* 116b, *Baba Matzia* 76a and *Shulchan Aruch, Hoshen Mishpat* 333:8.

²³ It is interesting to note that the same kind of reasoning applies to a socialist society as well, accept in the socialist model the Government, not the religious courts, is the guarantor of the economic justice of the society.

The last responsum we shall examine is in regards to the question of women's suffrage, a highly contentious issue in the developing *yeshuv* within Orthodoxy, and even among the various *Mizrachi* factions. This problem "made its debut" during "the Second Constituent Assembly of the Jewish community in Palestine, held in the summer of 1918."²⁴ From the outset, the *Haredi* (ultra-orthodox) factions were opposed to women's suffrage. However, among the *Mizrachi*, the international contingent was for women's suffrage, while the organization representing the *yeshuv*, falling back on the long time custom of the Palestinian community, was against it. Ultimately the international faction succeeded in convincing the national *Mizrachi* organization to acquiesce on this issue, and, as Gary Schiff writes in his book, Tradition and Politics: the religious parties of Israel, in "the face of vehement opposition... the national *Mizrachi* reluctantly agreed to participate in the General Assembly of the *Knesset Yisrael*, women and all."²⁵ The *haredim* on the other hand, never wavered in their opposition to women's suffrage, and eventually the decision to allow women to participate fully in elections "spurred the secession of the *haredim* from the political institutions of the *yeshuv*."²⁶

Given Uziel's positive and innovative approach to contemporary issues, it is not surprising that Uziel argued in favor of women's suffrage. Unlike his other

²⁴ Gary S. Schiff, Tradition and Politics: the religious parties of Israel, (Wayne State University Press, Detroit, 1977) pp. 41-42.

²⁵ *ibid.*, p. 42.

²⁶ Wahofsky, p. 386.

teshuvot, however, Uziel did not publish his views on the issue until after the controversy had died down and women's suffrage was a reality in the young state. One can only speculate as to why he did not publish his views at that time. Hadani suggests that Uziel waited to publish his views "until the storm passed in *Eretz Yisrael*" because he did not want to further incite the division which was developing between the various Orthodox factions.²⁷ It is also worth noting that Uziel's opinion was at odds with the overwhelming majority of the *yeshuv*'s rabbis, including his *ashkenazi* colleague Rav Kook, and that in itself may have given him pause in seeking to publish his views during the controversy.

What-ever his reason for delaying the publication of his opinion, eventually it was published in the form of a responsum in Uziel's already cited three volume work, *Mishpatei Uziel* (It is interesting to note that in the forward to the responsa Uziel writes that he wrote the responsa not as a ruling, but rather for the purpose of "clarifying the law.")²⁸ As we saw in Uziel's response to the question of the validity of gentile witnesses, from the outset, Uziel leaves little doubt as to which way he will rule on the issue. Indeed, Uziel comments that, in regards to active suffrage, the first aspect of the question he addresses, "he finds no clear reason to deny women this fundamental personal right." He notes that women, like everyone else, are either directly or indirectly effected by the officials which the public

²⁷ Yaacov Hadani, "Harav Ben-Tzion Uziel K'manhig M'dini", *Niv Hamidrashia*, vol., 21-22, 1987, p.243.

²⁸ Uziel, *Mishpateh Uziel*, 3 (Tel Aviv, 1940), no. 6.

elects to manage the affairs of their communities: they are bound to uphold the laws these officials enact, to pay taxes, etc. Given the fact that whether they are represented or not, they will be held responsible to the rules of the publicly elected leaders, Uziel asks, "how is it possible for (those who argue that they should not be given the right to vote) to 'hold both ends of the rope:'* to impose upon them the obligation to obey the elected representatives of the public, and at the same time to deny them the right to vote?"

As for the idea that women are not mentally competent to vote, Uziel argues that in fact "women in our generation as well as those of past generations have been intellectually competent, involved in various aspects of business and generally managing them well." Furthermore, he argues, given women's proven competence in the often complex matters of business, it is absurd to argue that they are too feeble minded (*daat kalah*) to understand politics.²⁹ And, as for the argument that women's participation in elections will lead to sexual impropriety or immoral behavior (*pirtzut*), Uziel writes:

What could this be referring to? After all, all one is doing is going to the polls and placing a ballot in a box! If voting poses a potential problem of this kind, you deny living space to every person, and should thus forbid walking in the street, or entering a store where there is just one man and one woman ... or doing business at all with a woman for, with this kind of thinking, such contact will lead to immorality: no one has ever suggested such a thing!

* to hold both ends of the rope" is a Hebrew idiom taken from Genesis Rabbah (49:9) which is similar in meaning to the English expression, "to burn both ends of the candle."

²⁹ *ibid.*

Thus Uziel makes quick work of the main arguments against active suffrage for women. Also included in that first section is his argument against the view that allowing women to vote will cause unrest in the home as well as an argument that suggested that women were not, in their own right, citizens of the community, but rather, they only existed through their connection to their husbands. Both of these arguments, as with the first three, he quickly refutes.

Applying what we have already learned about Uziel's halakhic approach to the first part of this responsa we see that at least three elements previously cited are represented here: his insistence on applying the *halakhah* to contemporary issues rather than proclaiming that "new is forbidden from the Torah" (Uziel in his introduction to this responsa even suggests that at the heart of Orthodox rulings against women's suffrage is that very slogan of the *Hatam Sofer*!); his willingness to invoke secular standards of fairness- and their language - to religious questions. Also, as has been the case in all the responsa cited, the very fact that he is writing this responsum is a testimony to the degree he was influenced by Zionism in general and secular Zionist in particular. After all, one can hardly imagine that women's suffrage would have been an issue for Orthodoxy if not for the success of the secular Zionist majority in their nation building efforts.

While Uziel easily demolishes the arguments against women voting in elections, the second part of the question - passive suffrage for women - is a more serious issues relative to the *halakhah*. Uziel himself notes that in regards to this question

there appears to be "an explicit prohibition." The source for the prohibition is Deut. 17:15: *som tasim aleicha melech*, 'you shall surely appoint a king over you', which the *Sifre* reads as "Place you shall place." The question is, why is the verb repeated: *som, tasim*? What is the purpose of using the infinitive absolute, *som* (place), and the imperfect form of the same verb, *tasim* (you shall place)? There are many ways to answer this question. One, for example could argue that the syntax in this case is merely a reflection of the style of the author or an expression of emphasis, (you shall surely place) or both. However, in the mind of the midrashist, such anomalies are seen as portals to the divine truth hidden behind the text. Such a mind sees a syntactic problem like this as an opportunity to *lidrosh*, to expound on the text and to uncover its deeper meaning. Thus, for the *Sifrei*, the answer to why the verse reads '*som tasim*' instead of '*tasim*', is that "If he - i.e. the king - dies, appoint another in his place... A king and not a queen."³⁰ This would suggest that only a man, i.e. a king, could be sovereign over the people. The *Rambam* (Maimonides), citing what appears to be another midrash to the verse, extends this apparent prohibition to include any position of authority over the public.³¹ Also sighted is a supporting argument from a contemporary of Uziel's, Rabbi Shlomo Aaron Wertheimer. But, unlike *Rambam*, Wertheimer cites a *geniza* text (a text recently uncovered in the famous Cairo *Geniza*) which is not authoritative. The *Sifre* and the great halachik authority Maimonides however, are

³⁰ *Sifre Devarim*, 29:16.

³¹ *Rambam, Yad Melachim* 1:1.

weighty sources which Uziel must contend with if he is to prove his point that passive suffrage is not prohibited by the Torah. Thus Uziel writes, "we will inquire whether the words of the *Sifre* and the decision of *Rambam* are authoritative statements of the *halakhah* or if there are possible arguments which can be brought forth to contradict them?".³²

With Uziel's main opponents before him, he proceeds to argue his case. First, he notes that the midrash - i.e. that woman are not allowed to hold positions of leadership over the public - is not mentioned in the Talmud, the Mishnah or Gamorah, and since the specific prohibition against woman being appointed as leaders of the community (as apposed to being appointed in the place of a king) is absent from the words of the *poskim*, other then *Rambam*, it must be considered as less than established law and more like an opinion. Once Uziel has established that the existing prohibition does not have to be taken as authoritative - i.e. that it is not supported by the Talmud - he moves to show that, to the contrary, opinions in opposition to the prohibition exist in the words of the *Tosafot* (Medieval commentators to the Talmud) in their commentary to the rule in *Niddah* 6.4 "which apparently disqualifies women from serving in the role of judge, the paradigmatic position of authority..."³³ The problem for the *Tosafot* is that

³² Uziel, no. 6.

³³ Washofsky, p. 396.

Deborah was a judge. They also cite a midrash on Exod. 21:1 which contradicts the rule.³⁴

Having succeeded in shifting the burden of proof to the otherside - it is now up to the opponents of women's suffrage to prove that the existing prohibition is authoritative - Uziel takes the offensive making his case for the existence of the right of women to run for office or to function in positions of authority over the public. He does this by referring back to Deut. 17:15 and the meaning of the word *minu'i* (appointment). He argues that while the Torah forbids *minu'i* for woman in the sense that an authoritative body like the *Sanhedrin* (The supreme legislative and judicial body of Talmidic times) cannot appoint a woman to a position of authority, it does allow for women to be chosen leaders by the people as would be the case in an election. In support of his opinion Uziel sights a number of authorities who view Deborah's judgeship in the same light, that is to say that they argue that she was not appointed as a judge, rather, she was freely chosen to judge over them.³⁵ Thus Uziel concludes that it is permissible for a woman to hold a position of authority, even according to *Rambam* and the *Sifre* - which, as Uziel's argument goes, only forbid appointment via a body like the *Sanhedrin* - if she is freely chosen by the people to have authority over them. Therefore, Uziel sees no reason to deny women the right to run for and be elected to office.

³⁴ *Tosafot* to b. *Nid.* 50a, s.v. *kol*, *Kid.* 35a

³⁵ See R. Nissim Gerundi to Alfasi, *Shevu'ot*, beginning of ch. 4 (fol. 13a); R. Sh'lomo b. Adret, *Hiddushim*, *Shevu'ot* 30a.

In this reponsa as in the others we have demonstrated how Uziel walks the narrow bridge between the *halakhah* and the contemporary situation. Though in this case his opinion was published after the controversy had taken place, the reality of the *yeshuv* and "the needs of the hour" leave him no choice but to find a way within the *halakhah* to rule in favor of women's suffrage. How could he rule otherwise? The right of women to vote and run for office was universally accepted among the secular Zionist majority. Thus, to rule against women's suffrage would be to deny the *Mizrachi* movement the ability to participate in the political process which, practically speaking, would have denied them any power in the struggle over the character of the new state. No, as was the case with the question of the acceptability of gentile testimony and other issues which we have examined, "the needs of the hour" demand an affirmative response from the *halakhah* and Uziel's creative and innovative approach to the *halakhah* enabled him to make such a ruling.

Our examination of Uziel's responsa have revealed a number of things about his view of the *halachah* and his work as a *posek*. Evident in all the responsa we studied was the influence Zionism and his place within the secular Zionist mainstream had on his work. As important as the forces behind Uziel's various decisions is the complex and dynamic process he employs to arrive at those decisions; when, for example, he defends a traditional position and when he seeks a *hidush*; when he uses the language of rabbinic discourse, and when he seeks a

broader audience through the use of the vernacular. Our study has shed some light on this process as well, showing, at least in part, the various factors which are at work in Uziel's attempt to make a bridge between the *halakhah* and the realities of the modern state.

Uziel's commitment to the halachik process and his tireless efforts to apply the *halakhah* to the contemporary issues of the modern state is unique among Orthodox *poskim*. For many, the regressive slogan of the *Hatam Sofer*, "*hadash asur min hatotah*" is a more acceptable position vis a vis the *halachah* and contemporary issues. However, as we have seen, Uziel's Zionist theology and his halachik philosophy, from the start, compelled him to reject such a slogan and to seek solutions to the problems of nascent Israel through the *halakhah*. In the concluding chapter we will attempt to evaluate Uziel's success in answering halachik questions in the spirit of Religious Zionism, as well as an evaluation - through the lens of Uziel's writings - of the ability of the Halakhah to offer a sufficient framework for a modern state.

CONCLUSION

There are many measures of success. In evaluating Rabbi Ben-zion's work as a *posek*, and his tireless efforts to answer halachik questions according to "the needs of the hour" and the spirit of religious Zionism, it is helpful to separate theory from practice. Practically speaking, Uziel and his *Mizrachi* colleagues failed inasmuch as the *halakhah* did not become the basis for the legal apparatus of the modern state, nor were they ever able to fully flesh out how the *halakhah* could meet such a challenge if the opportunity was presented. In using the word "theory" however, we mean to refer more to Uziel's halachik approach and the example he set in the specific responsa we examined. Thus, the theoretical question is, regardless of the acceptance of his rulings and his overall approach to the *halakhah*, was Uziel successful in at least showing how a bridge could be built between the *halakhah* and the needs of the modern state as seen through the eyes of the *Mizrachi* camp and his own Zionist theology? In answering that question we shall also address the more general question of the halachik traditions ability, according Uziel, to offer a sufficient framework for the modern state.

Many of the rulings we have examined demonstrate Uziel's ability to apply the tradition to the contemporary situation. This was especially evident in the case regarding Uziel's view of labor relations. For example, in his rulings regarding labor's right to organize, we saw how a creative use of the sources enabled him to relate archaic laws applicable to economic structures long since abandoned to the

¹ See this work, ch. 2, p. 20.
² See this work, ch. 2, p. 20.
³ See this work, ch. 2, p. 22.

contemporary and complex challenges of labor relations.¹ While in that case the issue was more a gap between the experience to which the *halakhah* spoke and the contemporary situation, Uziel's ability to make the law speak to the issues of his day was not limited to situations where gaps needed to be filled and connections needed to be made. Indeed, in that same group of responsa, there were examples of when the *halakhah* appeared to be in direct conflict with "the needs of the hour," yet Uziel still found a way to work from within the tradition to come to a workable decision. For example, in regards to the question of owner responsibility in the case of a worker's injury while on the job, the right to contract appears, according to Jewish law, to overrule the generally accepted idea that workers deserve some protection from injuries incurred while working. Uziel acknowledges this conflict but at the same time offers a new interpretation to Deuteronomy 22:8 which strongly implies the employer's moral, if not legal responsibility to the worker for injuries he incurs while working.²

Another example of Uziel's bridge building abilities in this same group of responsa is found regarding the question of hiring preferences for Jewish labor. Outside of the laws of *tzedakah* (justice/charity) the *halakhah* does not appear to support such a preference. Uziel however, through a new reading of *Sifre* and its interpretation of Leviticus 25:14, finds a way to support such a ruling.³

¹ See this work, ch. 3, p. 20.

² See this work, ch. 3, p. 20.

³ See this work, ch. 3, p. 22.

While many of the rulings we have examined demonstrate Uziel's success, at least in theory, in working within the tradition to solve contemporary problems in the spirit of religious Zionism, examples of the limits of his approach are also evident in his work. Perhaps the most striking example of Uziel's ability to argue from within the tradition for an innovation, as well as the limits of his efforts, is found in his ruling regarding the validity of non-Jewish testimony, which we addressed in the group of responsa regarding Jewish law and jurisprudence.

As has already been mentioned, the *halakhah*, which prohibits gentile testimony in most cases, directly contradicts common practice and modern notions of justice and fairness. For a religious Zionist like Uziel, who saw the renewal of the religious judiciary as an integral part of the Jewish national rebirth, such a conflict posed a serious problem; how could the Torah become the law of the land if it discriminated against such large segment of its population? Uziel recognized that if he and his *Mizrachi* colleagues were going to succeed in making Jewish law the law of the State, he must find a way to make the *halakhah* speak to the new reality of Israel, a place where non-Jews make up a sizable minority of the population and where existing practice and generally accepted morays run counter to the tradition on this issue. Uziel had to show that the *halakhah* could allow for the testimony of non-Jews in Jewish courts. This was no small task. However, Uziel, the eminent halachist, was able to show a way through the tradition to embrace non-Jewish testimony by a careful and innovative reading of the law.

The thrust of Uziel's argument was historical. Beginning with *Rashi's* commentary to *Gitin 9b*, he argued that the various prohibitions against gentile testimony reflect more the state of gentile Jewish relations than an absolute law. For example, *Rashi*, in his commentary to *Gitin 9b*, writes that the Torah allows for non-Jewish testimony in civil cases, but the Rabbis prohibited such testimony, fearing that the gentiles, lacking knowledge in Jewish jurisprudence, would not be able to give clear and accurate testimony. The *Tosafot*, on the other hand, argued that the prohibition was based on the fact that gentiles were not considered part of the community, and therefore their testimony could not be trusted, and so forth.⁴ Once Uziel demonstrated the situation aspect of the laws discrimination against gentiles, he argues that times have changed and:

Since we now live amongst non-Jews who have an understanding of the judiciary and who are generally versed in such areas as science and commerce and who are conscientious, and who show reverence for the truth - they themselves being commanded to tell the truth by their own laws, adding to the issue of honor other penalties if one does not tell the truth - should this not be enough to verify and to prove that they can be exacting in their testimonies and that they would not bring such evil upon themselves as to wantonly lie?

According to Uziel then, even given the existing prohibitions against gentile testimony, now, in our day, there is no longer a reason to prohibit non-Jews from testifying, as the reasons for the prohibition no longer exist. Here again we see that Uziel was able to work within the tradition, and still find a way to argue for a change in the *halakhah*.

⁴ See Uziel, *Sefer Mizrahi*, p.82.

Yet, as cogent as his arguments seem, even he realized that there was a great distance between a well thought-out halachik innovation by an individual rabbi and the acceptance of that innovation as authoritative for the whole community. Therefore, in this case, Uziel calls for a *takanah* (an authoritative rabbinic ruling) to be established which would make such an innovation in the *halakhah* authoritative for the whole community.

While Uziel shows great prowess here, and in other decisions we have examined in applying the *halakhah* to the issues of his day in a manner consistent with his religious Zionist theology, his call for a *takanah* to make his ruling authoritative reveals the limits of his approach. It also points to one of the main stumbling blocks for *halachik* innovation in general. The issue is authority. Who has authority to make *halachik* innovations? When Uziel accepted the position of *Hacham Bashi* in Jaffa in 1912, he compared his role to that of the sephardic leaders of the middle ages who operated with religious and political authority in their communities.⁵ Furthermore, recalling Uziel's remarks regarding the role of the *posek*, we know that Uziel felt that it was the duty of the religious decisor to apply the law to what ever issues came before him- "to learn the unknown from the known" - and to do so in such a way that justice, not the letter of the law, was served.⁶

⁵ Yaacov Hadani, "Harav Ben-Tzion Uziel K'manhig M'dini", "Niv Hamidrashia", vol., 21-22, 1987, p. 240.

⁶ See chapter 2, p. 18.

However, in the modern Jewish world, *poskim* do not operate in isolation, nor are they buttressed by the kind of communal cohesiveness that existed in the middle ages, to which Uziel referred. Thus, while in theory, Uziel's remarks make sense, in practice even he realized that for a ruling of any controversy to have authority, it must be seen as representative of more than just one religious leader's reasoned opinion. In other words, to halachikly innovate in the way that Uziel envisioned, some apparatus or body would have to be created in which a consensus of opinion on important issues could be reached. Uziel recognized this and argued for the renewal of the Sanhedrin as well as other authoritative rabbinic bodies in order to give weight to the halachik innovations he foresaw as a necessary part of the *Mizrachi* mission to make the Torah the law of the State. Unfortunately for his program, no serious effort was ever made to renew the Sanhedrin or to create any other religious body capable of accomplishing his goal, and the result was that Uziel's rulings were only taken seriously by the *Mizrachi* communities that he represented. Interestingly, the problems Uziel faced nearly 50 years ago are the same as those existing today, both within the religious Zionist camp and outside it. Indeed, the Orthodox community in general is divided into numerous subgroups with their own halachik authorities, each of which claiming its place as the only "Torah true" approach to the Halakhah.

Much has been written about the failure of the religious community to meet the many halachik challenges which the rise of the modern state created, and many are the laments within the religious Orthodox camp as to their failure in turning their agenda into a reality. Few were the rabbis like Uziel who were willing to lay the halachik ground work for the new Israel. Indeed, as Menachem Elon writes:

The national-religious leaders of the *yeshuv* who should...have been particularly interested in preparing Jewish law, as both a religious and national treasure, for practical application in daily life, were not alert to the need to take action to achieve this goal. ...This failure has proved to have been one of the greatest errors in the history of the national-religious movement.⁷

Still, the failure of the religious Zionists and their leadership to pave the way for a legal renewal on par with the national revival which was happening around them does not necessarily reflect the inability of the *halakhah*, at least in theory, to meet the needs of modern Israel. Uziel's work shows that with creativity and a willingness to innovate, the basic rubrics of the *halakhah* can be brought to bear on issues only remotely similar to those addressed by the original decisors.

However, we have also seen through Uziel's work that any comprehensive attempt to make the *halakhah* the legal frame work for the State would often require, the ability to enact new rulings (*takanot*). Furthermore, these ruling would have to be seen as representative of the whole Orthodox community, and thus authoritative.

Such unanimity seems unlikely given the historically fractious nature of the religious community, and the conservative nature of its leadership. Nevertheless,

⁷ Menachem Elon, Jewish Law: History, Sources & Principles. 4. vols. (Philidelphia: The Jewish) p.1604.

Uziel's work shows that the Torah is indeed a eternal text in as much as the teachers of Torah are willing and able to apply its many faces to the challenges and needs of their age: "*hafoch ba v'hafoch bah d'cola bah* (Turn it - the Torah - over and over , for it contains everything.)"⁸

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⁸ *M. Avot* 5:26.

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