

This People Israel

Toward a Vision of a Democratic Jewish State

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Introduction

Six years after he published his historic manifesto, *The State of the Jews*, Theodore Herzl wrote a futuristic novel, *Old-New Land*, describing the Jewish community of Palestine twenty years in the future. In this work, Herzl tried to go a step beyond his revolutionary manifesto and actually envision a new reality; not just Jewish national self-determination as a slogan, but a sketch for a blueprint for the end goal. Interestingly, he did not envision it as a state.¹ Since 1948, it feels irrelevant to contemplate a utopia that doesn't address the issues raised by statehood. This article is an attempt to present—and justify—a vision of a Jewish state that is a liberal democracy. I offer it in the hope that it will help shift the discourse from complaining about the status quo to considering the costs and benefits of alternative positive visions.

In addressing the challenge of articulating a coherent vision I encountered four central questions. I have devoted a section of this paper to each of these questions:

- A. We need to examine the concepts of “nation,” “state,” and “self-determination” and the relationships among them. I will suggest that the Jews are a nation, entitled to a state like any other nation—but must play by the same rules, which require that the state respect the dignity and freedom of

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individuals—and of other nations—who are likewise entitled to self-determination.

- B. What do we mean when we say “Jewish?” I will argue that while Judaism is a nationality, it is also a religion, that the two components are inseparable, and that both must find expression in a Jewish state.
- C. The language of messianism, or redemption, permeates Jewish and Zionist discourse. What do we really mean when we use this language with reference to our current historical reality? I conclude that we cannot know where we stand in the flow of history, so we cannot assign messianic meaning to the historical events we experience, which implies that the Jewish state is a normal state, with no special privileges or expectations arising from its role in the drama of redemption.
- D. In attempting to clarify what we mean by “democratic and Jewish,” questions arise regarding the relations between religious and political authority in a democracy. I will argue that while on the one hand the Jewish religion must not partake of the coercive power of the state, it very definitely should have a voice in the democratic discourse that shapes the policies and institutions of the state.

What will emerge from my exploration of these four questions is a sketch for a vision of a state, presented as Section E below.

A. National Self-Determination

A. 1.

The past two hundred years have seen a lot of discussion—and a lot of bloodshed—around the question of defining a nation and fixing the meaning and the limits of the right to national self-determination. The terms “nation,” “people,” “culture,” and “ethnic group” are a bit fuzzy, and are often used interchangeably. I suggest that, in this discussion, the term “nation” be understood as referring to a group characterized by:

- A shared culture that encompasses many important aspects of life.
- A sense of historical continuity and a commitment to transmitting the culture to succeeding generations.

- A consciousness of identity—members know they are members, and they recognize other members.
- Unconditional belonging.
- Sufficient size that identity is determined by the above characteristics and not just by personal ties.²

Moreover, we assume that belonging to such a group is significant for members—that belonging fulfills important needs for meaning and support, empowerment and identity, rootedness, and even immortality. Of course, membership is not compulsory; a person who wishes to leave the group is free to do so. Such a nation is just a social grouping—there is no requirement that all the members inhabit a particular location, or that they feel any attachment to place. They may be widely dispersed, maintaining their culture by means of various media of communication.

Liberal nationalism contends that the right of such a group to exist stems from the individual right of each member to choose to belong, to choose to participate in the creation and/or maintenance of such a framework, so that his/her needs may be fulfilled.³ Whether a group can show a historical pedigree dating to ancient times or just decides to become a nation “out of the blue,” there is no moral reason for denying the claim of a group to nationhood, as long as in implementing its claim it does not cause harm to its members or to anyone else.⁴

The modern period has seen many groups that define themselves as nations seek to realize their right to self-determination, which generally is taken to mean: to organize themselves into some kind of autonomous political structure, which will enable the nation to muster resources and control its environment so as to preserve, strengthen, and transmit its culture and identity (mainly through language, education, media, calendar, and symbols). Often this right is understood to imply a sovereign state in a defined territory, but, in fact, self-determination is possible in other settings that allow political autonomy without sovereignty.

It is here, at the point of defining and realizing the right of self-determination, that the bloodshed begins, as nations engage in struggles of secession, in persecution of minorities or even ethnic cleansing, or in conflicts over the dissonance between geographical and cultural borders.

And where does the bloodshed end? It seems that while the ideal of the right to self-determination is morally reasonable—a nation

ought to be able to have political control over significant aspects of its life, so as to sustain and transmit its culture—this right is not absolute and must be limited in several ways:

- It must not significantly infringe on the individual freedoms of citizens of the polity
- It must not significantly infringe on the rights of other nations to self-determination.
- It does not imply an absolute right to a particular geographical area, to a specific set of boundaries.⁵

What does this mean in practice? For example, consider the common situation of two groups who reasonably define themselves as nations, living interspersed in a particular geographical area. Each nation seeks to realize its right of self-determination. Two models (at least) can be suggested:

- a. The entire area becomes a single sovereign state, with a constitution that defines and guarantees a degree of autonomy and specific institutional expressions of self-definition for each nation; and that regulates the sharing of the burdens and privileges of sovereignty between the two nations; i.e., a state comprising a federation of two (or more) autonomous entities.
- b. The area is divided into two states, one for each nation. In each state one nation and its culture is dominant; however, the treaty between the two states specifies in detail the special relationship of each state to its national “kin” living across the border (immigration rights, cultural ties, economic privileges) and guarantees specific cultural rights for the minority within its own borders.

Both of these models may be observed in operation, imperfectly of course, in various countries in the world today. Examples of the single-state model include Canada, Belgium, Spain, and Switzerland; examples of the multiple-state option include the remains of Yugoslavia and Czechoslovakia.

A. 2.

It seems reasonable and straightforward to define the Jews as a nation according to the criteria listed above. Even if, historically,

the Jews in their geographical dispersal became divided into sub-groups that adopted different languages and other cultural attributes, still, they maintained a strong shared historical memory, a unifying shared language of study and prayer (at least), and an explicit self-identification as members of one nation. Indeed, they even shared a dream of restored national sovereignty in the Land of Israel.

As a nation, then, the Jews have the right of national self-determination like any other nation. The Zionist movement arose in the historical context of the awakening of national consciousness among the nations living in multinational empires in Europe. It emphasized the national component of Jewish history and claimed the right of self-determination. Zionism was based on the understanding that the Jews had in ancient times been an independent nation living in a sovereign national state; that the state was conquered and the Jewish population dispersed; that they retained their identity and significant parts of their culture, their memory of their land and their state, and the expectation that these would someday be restored. Interestingly, however, the aspect of a sovereign state was not central in the Zionist national vision. The emphasis was on a return to the land, the establishment of some kind of polity that would allow the Jews to unite and renew and live by their culture—but the type of polity was left vague.⁶ Indeed, though Theodore Herzl's Zionist manifesto was titled *The State of the Jews, Old-New Land*, published later, explicitly states that the renewed Jewish polity would not be a state, but a cooperative society.⁷ And proposals for a shared state with the Palestinians were part of Zionist discourse all the way until 1948. But over time, especially from the 1930s onward, statehood as such became the primary focus of Zionist aspirations.

While state sovereignty is not a *sine qua non* of national self-determination, in view of the trauma experienced by the Jews (and others) in the twentieth century, a reluctance by the Jewish nation to place itself in a situation of powerlessness can be understood. In the particular case of the Jewish nation (and other nations that suffered the condition of powerlessness in the past century) the argument from "necessity"⁸ strongly supports insisting on self-determination in the form of a state.

Given the historical experience mentioned above, and the centrality of the dream of sovereignty to both the Jewish and

Palestinian nations, let us focus on the model of a sovereign state for each nation. Here are the implications of this model:

- Since both nations have a right of national self-determination in the form of a sovereign state, they will have to agree to divide the territory of Palestine into two states (see below for a discussion of geographical claims and borders).
- Each state will contain a minority population of the other nation (Jews in Palestine, Palestinians in Israel). Both states must guarantee full citizenship, equal protection, equal rights, and equal opportunities for all their citizens regardless of national identification. There is no such thing as a democratic state that is not a “state of all its citizens.”
- Since the purpose of national self-determination is to create for the nation a space in which its culture is dominant (language, calendar, education, symbols), each state will indeed be entitled to establish its cultural institutions, symbols, and norms.
- However, in keeping with the principle of “doing no harm” to other nations’ self-determination, the two states will be bound by mutually agreed constitutional provisions to respect and support the cultural needs of their respective national minorities; e.g., the right to Hebrew schooling for Jews in Palestine, and Arabic schooling for Palestinians in Israel.
- Mechanisms for fair and democratic representation of each national minority in its host state, in the making of state decisions that affect the minority as a group.
- Open borders.
- Mechanisms for peaceful resolution of conflicts, especially over natural resources.
- Protection of and access to holy places.
- Immigration policies favoring “kin” minorities into each majority state (e.g., “law of return”).

It is assumed that both states will be democracies. Just what the structures of governance should be—e.g., Must the two states have the same democratic format? What should be the degree of cooperation and entanglement between the two states?—must be left for a future discussion; but they are matters not of principle but of negotiation.

For the past century, this model of states in which national majorities have special relationships to their kin minorities in neighboring

states has been tried in Europe; sometimes successfully, sometimes disastrously. It is not a magic solution. But if we accept, as I suggest, that we are not living in messianic times, then we are going to have to make do with imperfect solutions and try to make them work.

A. 3.

Agreeing that the Jewish nation has a right to self-determination in a sovereign state does not address the question of location. The right of national self-determination is a universal moral right and does not recognize divine intervention in the distribution of real estate. Unlike most other nations that have attained self-determination through statehood over the years, the Jews did not begin the process from the position of a nation living in its historic homeland. The Jewish nation at the turn of the twentieth century was scattered among dozens of states; only a small number of them lived in the Land of Israel, which they saw as their historic homeland. Indeed, a significant component of their understanding of “self-determination” was the reestablishment of a national polity through immigration to this land.

There is almost no text on the Jewish classical bookshelf, no event in the liturgical calendar, in which some image of the Land of Israel does not appear, either as a setting for historical description or as a messianic ideal. This emotional, cultural connection between Jewish nationality—and religion—and the Land of Israel long antedated the modern nationalistic movement of Zionism. Therefore, to offer the Jewish nation a venue for self-determination that is not in the area known as the Land of Israel seems absurd if not perverse, a denial of a central element of Jewish cultural identity. On the other hand, there is another nation living in this same area, which claims the right to self-determination—and which has a historical connection to the land. Assuming a two-state model, the setting of the boundary between the two states would have to be part of the process of negotiating the treaty governing their relationship.

B. Jewish Nationality and Jewish Religion

B. 1.

The formation story of the Jewish people—the exodus followed by the covenant at Sinai—integrates religious and national elements.

This covenant between God and the nation became the central theme of Jewish life, thought, and law ever after. It established that Jewish nationhood and Jewish religion are inseparable. The text emphasizes that both of these formative experiences happened to the entire group. No one can claim that s/he was not included in the redemption—and in the revelation. All Israelites, and all of their descendants for all time, would be expected to keep the memory of the redemption—and the attendant commitment to the commandments—alive. A nation, with a shared historical memory, a shared language, and (soon) a shared land. A religion, committed to a life according to a code of divinely ordained laws, enriched and given meaning by a set of symbols and beliefs.

The inseparability of nation from religion reached a new level and took on a new dimension with the establishment of the Davidic empire, and the construction of the Temple by Solomon. Now the link between national and religious identity became institutionalized in a centralized state with an official cult. Nationality, religion, and statehood were now one all-enveloping environment.

B. 2.

With the loss of national sovereignty in 586 B.C.E., the apparatus of a state and a central cult were lost, moved to the realm of the hope of restoration, and the Jews were scattered among many lands and cultures, to which they adapted. Hence, it could be argued that the national component of Jewish identity declined, and the religious component dominated; but this seems an oversimplification, as the hope for national restoration, with its images of the land of Israel, the monarchy, and the Temple, remained a central tenet of the religion.

In the eighteenth to nineteenth centuries in western Europe, the possibility seemed to present itself of separating the two tangled strands of Jewish identity. With the rise of a humanistic, secular worldview, and the revolutions against the hierarchies of royalty, nobility, and church, a new vision arose, of a neutral society, populated by individuals of diverse religious beliefs and affiliations, citizens of states that offered religious freedom in return for civic loyalty.⁹ One could be a Jewish Frenchman, or a Protestant one, or a Catholic one—the state didn't care, as long as the citizen was loyal to the state and obeyed its laws, served in its army, etc. This vision created a difficult dilemma for the Jews. Could they be full Frenchmen while still

adhering to the explicit hope of restoration to their ancestral homeland? For a Frenchman, France was the ancestral homeland. Were the Jews prepared to give up the promise of emancipation for the sake of their Jewish national identity? Or to give up their Jewish national identity for the sake of emancipation? There were various responses. Some Jews insisted that indeed, Judaism was purely a religion, and that one could be, without conflict or compromise, a Frenchman of “the Mosaic persuasion.” A way to avoid the dissonance that this position engendered was to see the current movement toward enlightenment and emancipation as a manifestation of redemption.¹⁰ In other words, these Jews (primarily in the context of the Reform Movement) reinterpreted the messianic hope as symbolic, referring to a universal human redemption from the forces of oppression. And indeed, they saw their arrival at the “promised land” in the new age dawning in Europe (and America) of individual freedom, humanism, and democracy; it was not an actual physical location in the Middle East.¹¹ Others, who came to be called Orthodox, rejected the invitation of emancipation unless it came with no strings. They refused to modify Jewish belief or practice in any way for the sake of emancipation, even if the result were a continuation of the premodern reality of segregation and limitation.

This conflict over the proper response to modernization raged in Jewish communities across Western Europe throughout the nineteenth century, and towards the end of the century reached Eastern Europe as well. Meanwhile, it became clear that the debate might be moot, as Europe drew back from the vision of a neutral, humanistic society. The possibility of Jews as individuals integrating into European nations ran aground on a new obstacle: the idea that states should represent national groups—with distinct ethno-cultural identities. A neutral society in a neutral state, to which all citizens might belong equally regardless of their religious beliefs, ceased to be the operative vision for Europe, as the model of ethnically homogeneous states became dominant. The Jews, despite their attempts to assimilate into European cultural identities, were still seen as outsiders. Since they continued to have some degree of separate ethno-cultural identity, they were suspect in the eyes of the new nationalists; they were seen as unassimilable.¹²

Zionism can be seen as a form of adaptation to this new reality: if the rest of the world is to be organized into national states, then the Jews can participate as equals—after all, they had a long history of

self-definition as a nation, despite what they had told themselves as they had tried to integrate into enlightenment Europe. As such, Zionism was a modern movement, a product of phenomena that were occurring in Europe at the turn of the twentieth century. It was a movement of national self-determination that arose out of the failure of the dream of European integration and that imagined its goal according to the model of the new ethnic nation states that would emerge from the disintegration of the old Europe after the First World War. Zionism did not envision the restoration of a Davidic monarchy or of the Temple cult. The utopia it sought to establish was simply that of a modern ethno-cultural polity, where the Jews would speak their own language in their own land, live by their calendar and culture, and develop freely into the new century like any other national group. Thus, conversely to the Reform Jews who had tried to see Judaism purely as a religion without a national component, Zionists tried to see Judaism as purely a nationality, without a religious component.

Looking back over the history of the dialectic between the national and the religious components of Jewish identity, I suggest that disentanglement is impossible. Neither can claim to be a free-standing definition of Judaism, without the other. Thus the adjective “Jewish” describing a state implies both that the state will be a polity representing the Jewish nation, and that it will reflect in some way the covenant upon which the Jewish religion is based. Of course “reflect in some way” is a very broad statement and requires explication, which I will present in the following sections.

C. Our Inability to Know Our Place in the Drama of History

C. 1.

The covenantal understanding of the history of the nation of Israel is stated clearly in the Torah:

But if, despite this, you disobey Me and remain hostile to Me . . . I will scatter you among the nations, and I will unsheathe the sword against you. Your land shall become a desolation and your cities a ruin . . .

When I, in turn, have been hostile to them and have removed them into the land of their enemies, then at last shall their obdurate heart humble itself, and they shall atone for their iniquity.

Then will I remember My covenant with Jacob; I will remember also My covenant with Isaac, and also My covenant with Abraham; and I will remember the land. (Lev. 26:27, 33, 41–42)

Thus, when the kingdom and the Temple were in fact destroyed, the events were not simply an incomprehensible disaster, but understandable, part of a process, and, most importantly, reversible. Return to the terms of the covenant would restore God's favor to His people, and this would in turn lead to the reestablishment of the kingdom and the rebuilding of the Temple.¹³ Jeremiah even speaks of this in terms of seventy years (Jer. 25:11-12).

However, the restoration did not come after seventy years and not after four hundred years, and life was lived in the dissonance between the evidence that the present reality had become permanent and the belief that it was only temporary.

As the redemption receded from the immediate horizon, one phenomenon that developed out of this experience of dissonance was the inflation of the messianic vision far beyond the original expectation of restoration of cult, dynasty, and sovereignty. Based on poetic images used by the prophets to describe the glory of restoration, traditions developed that suggested that the restoration would be not just to the good old days of Solomon's empire with its cult, but to the good old days before the expulsion from Eden: A new heaven and a new earth, lions lying down with lambs, the end of disease and of death—indeed, the resurrection of all the dead.

Moving the hope of redemption from the mundane and political to the cosmic and the universal was a way of removing its sting, of moving it farther away, of stabilizing it as a permanent element in the people's belief system, in a sense divorced from the real events of history. If restoration were seen as a real return to the land of Israel, one was perpetually uncertain as to whether this was the right moment to buy a ticket. If restoration were seen as a return to Eden, there was no such dilemma. By the Middle Ages, these two schools, the "here and now" approach and the eschatological one, were tangled up in popular belief and in the liturgy—but were still distinct approaches over which scholars argued.¹⁴

The Rambam, for example, insisted that the restoration will be just that and nothing more, without miracles and without any cosmic overtones: the Jewish people will be restored to sovereignty in

their land, the cult will be reestablished, and life will be conducted according to the Torah.¹⁵

And the Rambam's rationalism extended not only to the content of the redemption, but to the process as well. He discouraged calculations and speculations and fantasies, and called for patience and faith:

No one is in a position to know the details of this and similar things until they have come to pass. They are not explicitly stated by the prophets. Nor have the rabbis any tradition with regard to these matters . . . Nor should one calculate the end. Said the rabbis: "Blasted be those who reckon out the end" (BT *Sanh.* 97b). One should wait (for his coming) and accept in principle this article of faith as we have stated before.¹⁶

The Ramban, on the other hand, countered with the view that with the coming of the Messiah the world will return to a state of paradise, a utopia in which lions will indeed lie down with lambs, and all of humankind and all of nature will dwell in peace and tranquility.¹⁷

A corollary dimension to this debate is the question of how the actual redemption will arrive: Will it descend on the world as a sudden, unpredictable event,¹⁸ or will it be a cumulative, step-by-step process?¹⁹

The "suddenly" approach supports the view that we cannot know when the Messiah is approaching, so we must wait patiently, without interpretations of the meaning of events, without looking for signs; it reduces "messianic tension." The "little by little" approach opens the door to interpretation of events as signifiers of the approaching redemption, thus increasing this tension.²⁰

C. 2.

The "suddenly" approach, combined with the dominant cosmic, universalistic image of redemption, effectively placed the redemption outside of human knowledge and experience, institutionalizing it in liturgy and ritual, calming and controlling the power of messianism. This allowed life to proceed in an orderly way through the vicissitudes of history, while keeping alive the hope for national restoration in the context of a perfect world as a constantly remembered goal of prayer and ritual observance.

However, in view of the sometimes unbearable reality of Diaspora life, it happened that the people refused to tolerate this deep uncertainty, the inability to know where the present moment was located on the curve of history. Throughout the centuries and all over the Jewish world, there were eruptions of messianic activism, in the form of individuals who claimed to be the Messiah or were acclaimed as such, or in the form of movements that fostered behaviors intended to hasten the coming of redemption.²¹ Since these eruptions always ended in disappointment, and often in disaster, the traditional literature is replete with statements by the rabbis, over the centuries, seeking to discourage messianic speculation and activism.²²

In sum, it seems that the very concept of messianic redemption carries within it tremendous sustaining power, sublimating the people's mourning for their lost utopia into a commitment to maintain the covenant and await, optimistically, restoration. At the same time, this power, if uncontrolled, has the potential to undermine the covenant and pervert optimism. This dialectic has been part of Jewish life and thought since the original destruction.

If one steps back and looks at this process over history, it seems obvious that every attempt to know or to force the end has had negative results and that the admonitions to refrain from such thinking and action were always correct—but just no match for the temptation. The common-sense conclusion from this accumulated experience is that all such calculations, interpretations, and actions should indeed be avoided. As Maimonides said, the only sure proof that the redemption will have arrived will be its actual arrival.

C. 3.

The modern nation state envisioned by Zionists was a far cry from the traditional Jewish vision of restoration. And yet, the correspondences between the images were unmissable, and even the most secular Zionists were hard put to resist quoting biblical and other traditional sources referring to the restoration. Thus, the Jewish messianic tradition was surely one of the forces that drove the formation and formulation of Zionism.²³

The different views regarding the nature of the messianic time and the process of reaching it led different groups to find different religious meanings in the Zionist project:²⁴

- a. Secular Zionists saw the messianic drama as simply a national epic of exile and restoration. The language of the prophets and the liturgy provided images and inspiration for this effort, and could serve as a tool for enlisting the masses in the effort. However, the correspondence to the traditional descriptions of the messianic state were only vague and approximate. For secular Zionists, the state had no religious significance.
- b. For many Orthodox rabbis, the concept of creating a Jewish state in the land of Israel, by human efforts, seemed a violation of the prohibition of “forcing the end” (BT *K’tubot* 111a), so they opposed the Zionist movement vigorously (and many still do). Their opposition was heightened by their awareness that most of the Zionist leadership were not religiously observant and intended a state that would not be governed according to the Torah. Thus, they saw the creation of a modern Jewish state in the land of Israel as a perversion of the messianic hope and of God’s plan for redemption.
- c. However, this was not the only possible Orthodox response. Among the earliest supporters of the Zionist idea were Orthodox rabbis who saw a value in the creation of a devout, productive, free Jewish community in the land of Israel without the establishment of a Davidic monarchy, or rebuilding the Temple. It was amelioration, an opportunity to fulfill mitzvot—but with no direct messianic implications.
- d. Another Orthodox solution to the conflict over messianic activism was to adopt the view that the Zionist effort to create a Jewish state in the land of Israel is indeed one stage in the (“little by little”) messianic redemption. The fact that God has allowed this effort to achieve some success—that Jews are returning from exile, that an independent state has been established—means that we are living in the preliminary stage of the messianic redemption. For this sector of Orthodoxy, the modern state of Israel has deep religious significance. It is evidence of God’s hand in history; its creation was a manifestation of the miraculous, of prophecy fulfilled. Communities that accept this view have modified their liturgy to recognize the significance of the state.

Since the 1967 Israeli conquest of the biblical “heartland” of Judea, Samaria, and of all of Jerusalem, even though Orthodox

Zionists remain a minority within Orthodoxy and within Israel, their rhetoric and their activism have come to dominate public discourse. It is commonplace, across a spectrum of Orthodox and liberal communities, for the messianic understanding of the state of Israel to be taken for granted and to find various cultural expressions, including in the liturgy. And for those who are part of the core community of Orthodox Zionists today, the belief that we are living in the pre-messianic age, and are called upon to act to advance the redemptive process, has found expression in recent decades in rabbinical decisions, in parliamentary activism, in civil disobedience, and even in violent action.

C. 4.

From a liberal religious perspective that sees history as a process of human action in partnership with God—without a predetermined trajectory (redemptive or otherwise) and without God’s direct intervention in events, the Jewish state must be seen, like any other state, as a product of historical forces, with no promises of eternity, no moral discounts, no exceptionalism. We may be inspired by the apparent correlation between events and biblical prophecies, but we have no way of knowing if these events are in fact the fulfillment of prophecy. The state’s creation may represent a stage in the process of redemption, but we cannot possibly know that.

So if the state is to have religious meaning, it cannot be as a messianic eruption into the flow of history. If we believe in a God who is a force for morality in the world, then the long-term sustainability of the state will be conditional on whether its institutions and its collective behavior manifest moral values. Thus, the religious meaning of the state is as an opportunity for implementing the covenant in the context of state power in the real, postmodern, world.²⁵

In other words, it is possible to ascribe to the state religious significance, as providing an opportunity for seeking to renew and implement the covenant—without attempting to interpret the existence of the state as proof of redemptive progress. Abstaining from such an attempt avoids moral exceptionalism, keeps the Zionist project in the realm of rational discourse and practical decision-making, and requires that the Jewish state, with respect to its governance and its borders, act and be treated like a “normal” state in the family of nations.

D. The Voice of Jewish Religion in a Democracy

D. 1.

If we accept the argument that Jewish nationality and religion are inseparable, we are now left with the challenge of articulating just how the covenant can find expression in a democratic state. I have tried to show that understanding the state as a stage in the messianic drama, as a fulfillment of prophecy, is not an acceptable response to this challenge. It follows that attempting to define the borders of the state according to biblical prophecy is also not an option for an expression of the Jewish religion in the state.

Another possibility would be that Jewish religious law be the law of the land; i.e., that the state would be governed by halachah. There are a number of obstacles to the implementation of this suggestion, some practical and some theoretical:

- a. The halachah is based on the belief that God revealed the Torah to Moses, and that the authority to interpret and apply the original revelation to the exigencies of everyday life throughout history resides in a continuous chain of leaders; the rabbis of each generation are ordained by the generation before. As such, the system is hierarchical, based on divine revelation, and not subject to “the will of the people,” which is the basis of the authority of law in a democracy.
- b. The understanding that the Torah by itself is insufficient to rule a state is found already in the tension over the people’s request for a monarchy in the Bible (Deut. 17:14 ff., I Sam. 8). The matter is discussed in the Talmud and medieval commentators; while the question is unresolved, there are important voices (e.g., the Rambam) that find limitations in the halachah that prevent it from operating as the law of the state without a supplementary authority. This authority is necessary both to deal with areas of life in which halachah (never having functioned in a state context) has no experience or precedent; and to correct the distortions that can occur in the attempt to implement the halachah as the law of the land.²⁶
- c. As a system of religious law, the halachah consists of a body of divine commandments incumbent on the individual Jew. Thus, while it is the law of the community, it is at the same time a manifestation of the personal relationship between the

individual and God. The attempt to enforce the halachah as the law of the land—including on citizens who do not believe in its divine origin or the authority of rabbis to interpret it—would represent a violation of the basic assumption on which the halachah is based. How can belief-based law be enforced, by state power, on nonbelievers?

- d. And a practical consideration: The evolution of the halachah over the centuries was not “clean” and straightforward, but actually consisted of an ongoing deliberative process incorporating robust and sometimes strident debate. Between this internal diversity of opinion, and the effect of geographical and cultural dispersal of the people and their rabbinical authorities, the reality was that multiple opinions and practices coexisted. Diversity of opinion and practice has only expanded over time, especially in the past two centuries. It is not at all clear how the halachah could provide a unified legal system for a state.

D. 2.

It is generally taken as part of the definition of a democratic state that freedom of religion and freedom from religion are guaranteed to all citizens. That is, one must be free to believe and practice in accordance with one’s conscience without state interference (as long as one’s practice does not infringe on the freedom of others). And the state must similarly not interfere with one’s desire to avoid any or all religious practice.

It is possible to identify three models for state-religion relations that are consistent with a democratic regime:²⁷

- a. Establishment—the state recognizes and supports a particular religion.
- b. Separation—the state is religiously neutral and gives no support to any religion.
- c. Communal recognition—the state is religiously neutral, but provides (equal) support to all religious communities that fulfill minimal requirements for recognition as such.

Each of these can be seen in action in present-day democracies that have strong traditions of individual freedom; for example: establishment in the United Kingdom; separation in the United States; and communal recognition in Germany. The establishment

and to a lesser extent the recognized communities models require some degree of state “entanglement” with religion. Public funds are channeled to religious institutions in both cases; and in the establishment model, symbolic and even institutional preference is granted to a particular religion and its adherents—which is, on some level, an infringement of religious freedom; e.g., a Catholic, Jew, or Muslim cannot aspire to be King of England. Nevertheless, Europe is replete with examples of states with established religions where the resulting infringement of individual liberties is perceived by adherents of the nonestablished religions as acceptable.

One way to implement the requirement stated earlier, that a Jewish state must “reflect in some way the covenant upon which the Jewish religion is based,” would be for Judaism to be the established religion. Thus, Judaism would be privileged to receive taxpayer funding for its institutions, and its symbols would dominate in the public sphere. This status would have to be carefully circumscribed to insure that no individual would be inhibited in any way from freely practicing Judaism, a different religion—or no religion at all. This would require that while rabbis might receive salaries funded by the state (which would also obtain in the recognized communities model), they may have no access to or share in the coercive power of the state. Freedom of and freedom from religion would prohibit the functionaries of the established religion from in any way enforcing particular prohibitions or practices on individuals or the public at large.

D. 3.

While the entanglement of halachah and state power is not acceptable, either to the democratic state or to the halachah, the halachah can still play an important role within the state: For citizens who voluntarily wish to live within a halachic framework, the state can certainly be expected to make possible the establishment of communities of individuals who agree on a particular halachic authority and live their lives accordingly. It will be necessary for the state to set clear guidelines regarding what areas of life may be governed by these voluntary communities and which are reserved for the state authority. For example, the right to live wherever one wishes, the degree of autonomy of educational institutions, various civic obligations and exemptions, jurisdiction in family law, etc., all need to be negotiated and defined.

This framework would of course include non-halachic, and indeed non-Jewish, communities.

D. 4.

It is important to mention, at this point, the body of modern political theory that seeks to articulate a place for religion in the public discourse of democracy. There are some thinkers (most notably Rawls)²⁸ who insist that the voice of religion must not be heard in this discourse, but only voices that are neutral and universal. However, if we want to have a democratic discussion that focuses on values, and if religions are a source of value for their adherents, it seems absurd to seek to silence the religious voice.²⁹ Of course, we are referring to open participation in a free market of ideas, not to privileged treatment, or to the possibility of the religious voice partaking of coercive power. It would seem that to avoid a situation in which a majority might be influenced by a religious voice to legislate in a discriminatory way, entangling religious affiliation with state power, a constitution that defines the limits of majority hegemony—and a strong judiciary to enforce these limits—are necessary for allowing this free and open discourse to take place.³⁰

Let us imagine a Jewish state characterized by a Jewish national culture (with suitable guarantees of cultural freedom and even autonomy for minorities); either Judaism as the established religion, or a structure of recognized religious communities; and a constitution with safeguards of individual freedom of and from religion—and against majority tyranny. In this case, individuals and groups, civil society organizations and political parties, would all be invited and encouraged to participate in the cacophony of the public discourse that seeks to form policy according to competing sets of values. Presumably in a Jewish state, many of these participants would seek to root their arguments in their interpretation of the covenant. Through a political process of persuasion, coalition-building, and compromise, arguments would become policies, laws, and symbols defining the lives and living space of the nation.

D. 5.

Thus, Jews who believe that the policies of the Jewish state should reflect the covenant must take responsibility: they must learn and teach, persuade and organize, vote and demonstrate, to convince

their fellow citizens of the correctness of their particular interpretation of the covenant as it applies to the issue at hand. The state must provide for all citizens opportunities to learn and to hear, and to make their voices heard. In other words, there is no way to connect the Jewish state to the covenant by means of force, or by some definitional structure. The responsibility for interpreting and applying the covenant devolves upon the citizens and the leaders (formal and informal) whom they choose. The policies of the state will represent Jewish values to the extent that the citizens, by means of the mechanisms of democratic decision-making, succeed in crafting such policies.

But what if they don't? Indeed, the possibility exists that the citizens will decide that the covenant has no relevance to current issues and will formulate policies entirely based on values drawn from other sources. There is no way to prevent such an outcome. All we have is what we have always had: the free will of the Jews to choose whether to uphold the covenant. If the Jews take responsibility for the covenantal Jewishness of the state, then the state's policies and behavior will reflect the covenant. And if not, not. And if, in the long run, the state remains disconnected from the covenant, and its ethno-cultural identity fades under the glaring sun of globalization, then, perhaps, there will someday not be a polity that can reasonably be called a Jewish state. This would be consistent with the traditional understanding of the covenant as conditional: the Jews are responsible for the sustainability of their state.³¹

E. Reflecting the Covenant

Based on the answers to my four questions about the theoretical requirements of a Jewish state, it is fairly straightforward to sketch a concrete proposal involving:

- A constitutional democracy in which Jewish national culture is dominant but minority cultures are protected and supported.
- Freedom of and freedom from religion, whether or not Judaism is the established religion of the state.
- Division of historic Palestine into two states whose relationship—and whose borders—are defined by a negotiated treaty.

Once the Jewish state is secure in both its democracy and in its Jewishness as sketched above, then the possibility for vibrant public debate on how to apply the covenant to the ongoing business of national life will be reinforced. Various “Jewish voices” will be able to be heard and considered without the constant concern that their presence in the debate will somehow undermine democracy; and of course, those speaking in such voices will have to speak in the language of, and according to the rules of, democracy.

It is tempting to suggest that “reflecting the covenant” means simply that the Jewish state will embody “Jewish values.” The fallacy in this characterization is that Jewish values don’t exist as a clear body of objective, universally accepted principles. Any given policy question generally involves a tension between values, and so a mechanism is required for prioritizing the competing values. In a halachic community, that mechanism is the rabbi, with his authority to interpret the tradition. In a democracy, the mechanism is the process of education, deliberation, debate, and decision-making involving, directly or indirectly, all members of the polity. Hence, in the democratic Jewish state, the competing claims of different Jewish and universal values must be articulated and advocated for; ultimately, policy will be made by the mechanism of democracy.

Is it possible to resist this temptation to generalize values and still say something about how the state can “reflect the covenant?” Herewith is a fragmentary attempt:

1. Immigration

All states have immigration policies. They have a legitimate right to regulate the influx of new inhabitants, based on their obligation to insure the welfare of their citizens. A Jewish state must take (at least) two additional considerations into account: (a) the special connection of the state to members of the Jewish nation elsewhere in the world; and (b) the responsibility of Jews for the welfare of the weak, the outsider, the poor, not only within the nation, but beyond; this is anchored not only in various traditional texts (e.g., do not oppress the stranger; ways of peace), but in a collective historical experience of exile, expulsion, and exclusion. The tension among these value claims is eternal and difficult (For example, see BT *Bava M'tzia* 62a).

The challenge to the democratic Jewish state is to craft policies that recognize this tension and seek to resolve it thoughtfully; presumably the policy will change over time in accord with the needs of the state, the needs of the Jewish nation, and the needs of a world awash in miserable people seeking safety and a better life in a new place.

2. Social Justice

The Torah predicts that “the poor will never disappear from the land” (Deut. 15:11). The Torah and most later interpretations assume that social and economic inequality are part of the human condition; ownership of property, ambition and competition, skill and luck are all part of the natural order of the world (*Midrash B’reishit Rabbah* 9:7).

The ongoing moral challenge to the individual and the community is how to ameliorate the suffering of the weak and how to insure that economic inequality does not lead to injustice in terms of fair treatment and equal opportunity. The obligation to care for the weak and the outsider is a powerful recurring theme in the Torah and thereafter; and Jewish communities took this challenge seriously and developed elaborate institutions to respond to it throughout the ages. The covenant does not dictate a particular economic regime or specific policies; but it would seem that a Jewish state must explicitly and concretely address this dimension of the human condition through education and legislation.

3. Justice and Mercy

All societies face the dilemma of finding the balance between the aspiration to absolute justice and the human (and divine) quality of mercy. Modern states all struggle with questions of justice, punishment, deterrence, and rehabilitation. This struggle finds expression, for example, in the debate over capital punishment, in questions regarding the purposes, effects, and costs of imprisonment, and in discussions of the fairness of the judicial system, rules of evidence, etc.

Clearly, there is no direct univocal interpretation by means of which the mechanisms of justice in the Jewish state can simply “reflect the covenant.” However, we expect that the various positions

articulated in the tradition will be heard and considered along with the wisdom of historical experience and modern criminology and law, in formulating policies for the state.

4. *Environment*

The Torah and the literature of interpretation are rich in discussions and laws that address the tension between the natural human impulse to control and exploit the world—and the sense of humility, the belief that humanity must “know its place” in the universe and take responsibility to place limits on the exploitation of nature. Indeed, one of the central pillars of Jewish law and culture, the Shabbat, may be seen as one means of achieving balance—along with a variety of other laws, such as the Sabbatical year, laws regarding public and private space, the holiday of Sukkot, the laws of *bal tashchit* (prohibition of unnecessary destruction of resources), etc. From this body of material it is obviously not possible to generate a clear, unequivocal set of policy guidelines. However, we would expect that in a Jewish state, the voices of the tradition would find loud and clear expression in the informal cultural discourse on consumerism, waste, and responsibility—as well as in the formal legislative and regulatory debate.

5. *Education*

A central pillar of democracy is the requirement of an informed citizenry. A central pillar of Jewish identity is the requirement of knowledge of the covenant. In both cases, making of decisions that balance different values—and interests—is seen as requiring a familiarity with accumulated experience and tradition, as well as an understanding of current reality and its dilemmas. We therefore expect that in the Jewish state, significant material and human resources will be devoted to education at all levels—from preschool to adult; especially: civics and philosophy, Jewish classical sources, and Middle Eastern studies.

In each of these realms—and of course many others—the results of the democratic deliberation will become, as policies of a Jewish state, *ipso facto*, Jewish policies—and so, we will be able to say that the Jewish state reflects the covenant: a dynamic, multifaceted, reflection with the power to light up the world.

Notes

1. Theodore Herzl, *Old New Land*, trans. Lotta Levensohn (Princeton: Wiener, 1997), 79.
2. Avishai Margalit and Joseph Raz, "National Self Determination," in *The Rights of Minority Cultures*, ed. Will Kymlicka (Oxford: Oxford University Press, 1995), 82–87.
3. Chandran Kukathas, "Are There any Cultural Rights?" in Kymlicka, *The Rights of Minority Cultures*, 228–56. See also Alexander Yakobson and Amnon Rubinstein, *Israel and the Family of Nations: The Jewish Nation-State and Human Rights*, trans. Ruth Morris and Ruchie Avital (London: Routledge, 2009), 40–41.
4. Chaim Gans, *A Just Zionism* (New York: Oxford University Press, 2008), 19.
5. *Ibid.*, pp. 27–29.
6. *Ibid.*, 39–40. See also Ben Halpern, *The Idea of the Jewish State*, 2nd ed. (Cambridge: Harvard University Press, 1969), 22.
7. See note 1 above.
8. Gans, *A Just Zionism*, 41–44.
9. Jacob Katz, *Tradition and Crisis* (New York: Schocken, 1971), 245–74.
10. Joseph Dan, *Apocalypse Then and Now* (Tel Aviv: Yediot Acharonot, 2000), 270–74 (Hebrew).
11. Michael Meyer, *Response to Modernity: A History of the Reform Movement in Judaism* (Detroit: Wayne State University Press, 1995), 82–84, 388.
12. Halpern, *The Idea of the Jewish State*, 59.
13. The word "messiah" simply means "anointed one," referring to the restoration of a king from the Davidic dynasty—who were installed in office by means of anointment.
14. Gershom Scholem, *The Messianic Idea in Judaism* (New York: Schocken, 1971), 24–36.
15. See *Mishneh Torah*, Laws of Kings, chaps. 11–12.
16. *Ibid.*
17. See, e.g., his commentary on Leviticus 26:6.
18. See David Kimchi's commentary to Malachi 3:1.
19. See the words of R. Chiyah Rabbah in JT *B'rachot* 1:1.
20. Aviezer Ravitzky, *Messianism, Zionism and Jewish Religious Radicalism* (Chicago: University of Chicago Press, 1996), 21.
21. See, e.g., the "catalog" in Abba Hillel Silver, *A History of Messianic Speculation in Israel* (New York: MacMillan, 1927), *passim*.
22. See, e.g., BT *Sanhedrin* 97–99.

23. Halpern, *The Idea of the Jewish State*, 104; Ravitzky, *Messianism, Zionism*, 4; Ehud Luz, *Parallels Meet* (Philadelphia: Jewish Publication Society, 1988), x.
24. Ravitzky, *Messianism, Zionism*, 35–40.
25. See, e.g., Martin Buber, “A Debate on Zionism and Messianism,” in *The Jew in the Modern World—A Documentary History*, ed. Paul Mendes-Flohr and Jehuda Reinharz (Oxford: Oxford University Press, 1980), 449, 452; Arthur Green, *Radical Judaism: Rethinking God and Tradition* (Cumberland, RI: Yale University Press, 2010), 145.
26. See Aviezer Ravitzky, “Is a Halakhic State Possible? The Paradox of Jewish Theocracy,” *Israel Affairs* 11, no. 1 (2005): 137–64.
27. Brian Smith, “Religion, Politics, and State in a Stepanesque Perspective: Inseparable but Craftable,” *Problems Confronting Contemporary Democracies*, ed. D. Chalmers and S. Mainwaring (Notre Dame, IN: University of Notre Dame Press, 2012), 362–63; and Shimon Shetreet, “Human Rights in Israel: Freedom of Religion,” http://www.jewishvirtuallibrary.org/jsource/Society_&_Culture/freedom.html.
28. Smith, “Religion, Politics, and State,” 348.
29. Alfred Stepan, *Arguing Comparative Politics* (Oxford: Oxford University Press, 2001), 216, 229; Michael J. Perry, *Religion in Politics: Constitutional and Moral Perspectives* (Cary, NC: Oxford University Press, 1999), 45.
30. Stepan, *Arguing Comparative Politics*, 217.
31. This approach has implications, I believe, for the role of the rabbi in a Jewish state. See Marc Rosenstein, “The Role of the Rabbi in a Democratic Jewish State,” *Cross Currents* 65, no.1 (March 2015): 139–50.