

ONE-DIMENSIONAL JEW, ZERO-DIMENSIONAL JUDAISM¹

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That is why I am opposed to the ideal of a philosopher-king, which seems to me as passé as the ideal of a king who would impose his religion on all of his subjects, because there is no philosophy without freedom of thought, opposed to all forms of constraint.

Chaim Perelman²

The principal thesis of this paper³ is that whereas pagan society is vertically organized along hierarchical structures, Judaism alone, by virtue of the *berit* (covenant) contracted by the Jewish people and God at the foot of Mt. Sinai, is horizontally structured.⁴ Hierarchical societies are, necessarily, one-dimensional.⁵ Conversely, multi-dimensional systems require horizontal organization. Intimately connected with these two types of organizations is the question might/right. A subsidiary thesis is that the anti-Maimonidean movement (1180-1240), which continues to unfold through modern times, is the effect of assimilation to Christian patterns of thought and feeling and constitutes an attempt to reduce Judaism to a one-dimensional system. Both "religious" and "secular" one-dimensionality that dominate

¹ To Shifra: Paradigm of holiness and fortitude until her last breath of life. It was so beautiful to have known you! It was so brief....

² Chaim Perelman, "Rhetoric and Politics," in *Philosophy and Rhetoric* 17 (1984), p. 134.

³ A shorter version of the present article was published in French.

⁴ On this fundamental concept, see José Faur, "Texte et Société," in Sh. Trigano, ed., *La Société Juive à Travers l'Histoire*, vol. 1 (Paris, 1992), pp. 49-52; and idem, "Understanding the Covenant," in *Tradition* 9 (1968), pp. 33-55.

⁵ Here "dimension" is used in the Talmudic sense of *midda*, a "measure" or autonomous value-system independent of other structures or value-systems. This is as at B. B.M. 33a, which describes Scripture as a *midda she'ena midda*, "a dimension that is not a dimension," i.e., not autonomous, in contradistinction to "Talmud"—representing the entire apparatus of the Oral Law—that *en lekha midda gedola mi-zo*, "you have no dimension higher than it." The reason is that in Rabbinic literature, "Talmud" stands for the interpreter system whereas "Scripture" is the interpreted system. On this fundamental point, see José Faur, *Golden Doves with Silver Dots: Semiotics and Textuality in Rabbinic Tradition* (Bloomington, 1986), pp. 111-112. In its connotation it parallels, somehow, Herbert Marcuse, *One-Dimensional Man* (Boston, 1964).

Jewish praxis and discourse are grounded on hierarchical considerations; they are mutually exclusive and, depending on their specific position within hierarchical Israel, oscillate on the basic question might/right.

Polytheistic systems postulate an essential conflict between independent forces. The prevailing order in the world is the result of one or more forces overpowering other forces. Cosmogony celebrates the birth and battles of the forces dominating the world. "Victory" announces the formal installation and monopoly of violence by the triumphant party. Implicit in this model is the ideal of one-dimensionality and the need to monopolize power. A *sine qua non* common to all hierarchical systems is the belief that might constitutes right: without violence and the monopoly of violence, hierarchical structures collapse. This affected our concepts of law and justice. "A trial is in its substance a struggle, a battle in a closed arena...a shock of contending forces." A trial in Imperial Rome is described "just a duel fought out between them [the parties] in the full light of day under certain rules, which the umpire is present to enforce."⁶ At the political level, "legitimacy" is established by an initial act of violence, simultaneously determining the rules of normalcy and excluding others from the use of violence.⁷ Other areas of power may be tolerated only when occupying a subordinate position, "inferior" to the dominant power. In the mental apparatus of hierarchical cultures, the status of an area of power is determined by the ability to dominate other areas to a subordinate position. No true division of power does in fact exist: sovereignty is unlimited and indivisible. The pagan Rex is an absolute monarch. As such, "he creates law for others and so imposes legal duties or 'limitations' upon them whereas he is said himself to be legally unlimited and illimitable."⁸ The different areas constituting power and authority are structured as a pyramid, converging onto a single focal point of absolute sovereignty.⁹ A corollary of pyramidal

⁶ Both quotations come from M. Car Ferguson, "A Day in Court in Justinian's Rome: Some Problems of Evidence, Proof, and Justice in Roman Law," in *Iowa Law Review* 46 (1960-1961), p. 740.

⁷ On the pagan sense of violence, see Jacques Derrida, "Force of Law: The 'Mystical Foundation of Authority,'" in *Cardozo Law Review* 11 (1990), p. 991.

⁸ H.L.A. Hart, *The Concept of Law* (Oxford, 1994), p. 51.

⁹ The difference between more or less advanced societies is not structural—they all are constituted along pyramidal lines—but in the institutions designed to regulate the hierarchical position of the conflicting areas of interest. In advance modern societies, such as the U.S.A., it had become the role of the judiciary to arbitrate between the conflicting areas of interest, e.g., the religious and scientific communities.

organization is the hierarchical division "superior/inferior," and "obedience" that a "subordinate" owes to the "superior" by the fiat of rank. That is why, in pagan legal theory, "law" and the power to legislate are inextricably connected to a Rex who must necessarily be *above* the law. "The theory does not merely state that there are *some* societies where a sovereign subject to no legal limits is to be found, but that everywhere the existence of law implies the existence of such a sovereign."¹⁰

According to this theory, were there any legal limitations on the Rex, he would cease to be a sovereign:

There are, and can be, no legal limits on his law-creating power. It is important to understand that the legally unlimited power of the sovereign is his by definition: the theory simply asserts that there could only be legal limits on legislative power if the legislator were under the orders of another legislator whom he habitually obeyed; and in that case he would no longer be sovereign. If he is sovereign he does not obey any other legislator and hence there can be no legal limits on his legislative powers.¹¹

Whatever limitations there are to the legislative power of the sovereign, fear of revolt, morality, etc., these are not legal and cannot be legally enforced in a court of justice.

He is under no legal duty to abstain from such legislation, and law courts, in considering whether they have before them a law of the sovereign, would not listen to the argument that its divergence from the requirements of popular opinion or morality prevented it from ranking as law.¹²

Thus, a situation of "political unfreedom" (whether resulting from a democratic or non-democratic process) is essential for the proper functioning of all hierarchical systems. Since every one, regardless of the particular position he occupies, is in a position of "submission," people in such an organization may be characterized as "slaves," i.e., "people in a state of political unfreedom." Accordingly, Exod. 20:1 characterizes Egypt not as "a house of bondage" (*'abdut*) in the abstract but as "a house of slaves" (*'abadim*): a system binding the different elements of society into a vertical structure of "superior/inferior."¹³ Ultimately, they all are the subjects of the Rex. Addressing himself to the "utopian freedom" promised to the masses by European revolutions, David Nassy (1747-1806) wrote:

¹⁰ *The Concept of Law*, p. 66.

¹¹ *Ibid.*

¹² *Ibid.*, p. 67.

¹³ Cf., R. Moses Hefes, *Melekheth Mahashebet* (Venice, 5470/1710), 46a. See below, n. 36.

All the people of France and Holland before and after the Revolution were, are, and shall eternally be subordinated to their magistrates; they will be forced to pay taxes; to defend their homes and to make the sacrifices demanded by their legislators; they are and shall be slaves of the views of those whom they have entrusted the government and perhaps more so then [after the Revolution] than they were in former times.¹⁴

The "liberty" enjoyed by the population is a function of being too dense to sense its state of perennial unfreedom. Hence, the State's interest in the education and flow of ideas of its subjects. In this perspective, anti-semitism is not the clash between two spiritual systems, one Jewish and another Christian but, as argued by David Nassy, of certain political views intrinsic to European societies.¹⁵

Limited Sovereignty

The "Torah"—comprising the total value-system of Israel—is the result of a *berit* (covenant), freely contracted by God and Israel at the foot of Mt Sinai.¹⁶ Formally, the Torah is the Constitution of Israel.¹⁷

¹⁴ David Nassy, *Lettre politico-theologico-morale sur les Juifs* (Paramaribo, ca. 1789), p. XX. See the following note.

¹⁵ For a full treatment of his views, see José Faur, "David Nassy: On Prejudice and Related Matters," in Lea Dasberg and Jonathan N. Cohen, eds., *Neveh Ta'akov: Jubilee Volume Presented to Dr. Jaap Meijer* (Assen, 1982), pp. 87-116.

¹⁶ See the source indicated in n. 2.

¹⁷ Specifically, the Pentateuch or Written Law is the Constitution, while the Oral Law, is the *perush* representing the interpretation of the Jewish Constitution by the Supreme Court of Israel, see "Texte et Société," pp. 52-55. The Mishnah contains the halakhot—"regulations"—pertaining to the Jewish Constitution, as formulated by Judah ha-Nasi and the Supreme Court of Israel, ca. 189, see "Texte et Société," pp. 78-80. To apply these regulations, however, we need a "Court Ruling" (see B. B.B. 130b; B. Hor. 2a; *Mishneh Torah*, *Shegagot* 12:2; 13:1; and "Texte et Société," pp. 80-82). The Talmud contains the Court Rulings of the last National Court of the Jewish people, see José Faur, *Studies in the Mishneh Torah* (Heb), (Jerusalem, 1978), pp. 43-45; cf., idem, "Monolingualism and Judaism," in *Cardozo Law Review* 14 (1993), pp. 1720-1721. Since after the Talmudic period there were no National Courts, there is a need for the expert opinion of *posqim*, that is, "rabbinic jurists." Although technically lacking the authority of a National Court, their codes and responsa are a kind of "General Counsel Memoranda," reflecting, but not representing, what the opinion of the National Court is (or would have been if the issue would have come before them). A good model for the Rabbinic system is the Internal Revenue Code of the U.S.A. The code itself is drafted by the Congress, the legislative branch of government. In this sense, it parallels the Written Law. All income tax rules must ultimately find a source in the code and do apply by its authority. In applying the code we need to consult the "Treasury Regulations," paralleling the Mishnah. It is worth noting that the regulations are not drafted by the Congress but by the Department of Treasury (nobody knows for sure, but it is probably a part of the Executive). As with the Mishnah, the "Regulations" constitute the official *perush* of the Code. To

Philo regarded the Pentateuch as "the ideal Constitution."¹⁸ To convey this fundamental doctrine, the Jew translated "Torah" with the Greek *nomos*, Latin *lex*, Arabic *shari'a*, Spanish *ley*, French *loi*, etc.

There is an abysmal difference between Jewish and pagan law. In pagan ideology, the sovereign is the basis of the law, not its effect. Essential to Hebrew political thought is the belief that sovereignty, and all forms of authority, are the result, not the grounds, of the Law. When the biblical prophet—an individual without an office—challenged the king, the priest, and the judiciary in the name of the Law, he was in fact postulating the principle that sovereignty is not absolute, that the Law is not the effect but the source of authority.¹⁹ The prophet, noted the late Professor Abraham Joshua Heschel (1907-1972):

was not a *primus inter pares*, first among his peers. By his very claim, his was the voice of supreme authority. He not only rivaled the decisions of the king and the counsel of the priest, he defied and even condemned their words and deeds.²⁰

The Law is independent of the sovereign, of a sovereign person and of governmental bureaucracies. Those in charge of administering and interpreting the Law may err, implying, thereby, that there is an objective law independent of governmental bureaucracies and institutions. Thus, the king, the high priest, and the Supreme Court of Israel are subject to judicial error and must bring an expiatory sacrifice. An entire Talmudic Tractate Horayot deals with the niceties of this principle. In this defining principle, Jewish law differs from other

apply the Code you must consult the "Regulations," just like you must consult the "Regulations" of the Mishna before applying the law of the Pentateuch. In addition, there are "Court Rulings," issued by the Judiciary (not the Executive). They are similar to the Rabbinic court of the Talmud reviewing the regulations of the Mishnah. Generally, a court will not disagree with a "Regulation," and would reserve itself to resolving specific issues brought before it. For instance, "Treasury Regulations" require the taxation of "income." The court could decide if a particular item constitutes "income" for tax purposes, but it would not rule on what is not income. For our purpose, there are also "Revenue Rulings" by the IRS (treasury) that, like the Talmudic court, will adjudicate on specific questions submitted before it, e.g., whether an entity is a corporation or a partnership. Finally, there are the "General Counsel Memoranda" issued by the attorneys of the Internal Revenue Service. Although technically lacking authority, these memoranda, like the decisions issued by the *posqim* are practically binding, in the sense that they are an accurate description of what the Internal Revenue Service ruling will be.

¹⁸ See Harry A. Wolfson, *Philo* (Cambridge, 1948), vol. 2, pp. 374-395.

¹⁹ On this fundamental principle see the remarkable essay by Rabbi J.H. Hertz, "Monarchy and Freedom in Israel," in his *The Pentateuch and Haftorahs* (London, 5724-1964), pp. 926-930. For some further remarks, see my "Law and Hermeneutics in Rabbinic Jurisprudence," in *Cardozo Law Review* 14 (1993), pp. 1664-1665.

legal systems. The Constitution of the U.S.A., for example, is what the Supreme Court declares. Therefore, it can never commit a judicial mistake.²¹ "We are under a Constitution," declared Charles Evans Hughes (1862-1948), one of the most perceptive Chief Justices of the U.S.A., "but the Constitution is what the judges say it is."²² The Torah, however, is "the inheritance of the commonwealth of Jacob" (Deut. 33:4). The people—not governmental agencies—are the true depository of the Law.²³ Were the people to knowingly disregard an explicit Scriptural commandment on behalf of a contrary decision issued by the *Bet Din ha-Gadol* (The Supreme Court of Israel), they could not bring an expiatory sacrifice, "because they are deliberate offenders (*mezidim*), since they knew that they [the Supreme Court] had erred, and that it was not allowed to have acted thus."²⁴

The basic institutions governing the people are formally and irrevocably autonomous from each other. The rabbis described the national institutions of Israel, as "the crown (*keter*) of Torah," representing the judiciary; "the crown (*keter*) of the priesthood," representing the Sanctuary; "and the crown (*keter*) of the kingdom," representing political authority.²⁵ The "crown" symbolizing "authority," represents not only charge and command but also well marked boundaries. The Hebrew terms for "crown" (*keter*, *ʿatara*, *zer*) refer to "an encircling ornament."²⁶ None of these symbols represent absolute authority.²⁷ When King Uzziah intended to burn incense in the Temple, he was rebuffed by the High Priest: "it is not for you,

²⁰ Abraham Joshua Heschel, *The Prophets* (New York, 1962), p. 480.

²¹ See "Law and Hermeneutics in Rabbinic Jurisprudence," pp. 1670-1672.

²² Cited in Joseph W. Bishop, Jr., *Justice Under Fire: A Study of Military Law* (New York, 1974), p. 175.

²³ See "Texte et Société," pp. 70-74. In this precise sense, the state of Ancient Israel may be described as "democratic," see E.A. Speiser "The Biblical Idea of History in Its Common Near Eastern Setting," in Judah Goldin, ed., *The Jewish Expression* (New Haven, 1976), p. 9.

²⁴ *Mishneh Torah, Shegagot* 13:6.

²⁵ M. Ab. 4:13. See *Mishneh Torah, Talmud Torah* 3:1.

²⁶ In Scripture, the root *keter* (crown) can refer to an architectural ornament (1 Kgs. 7:16, 20). It appears in the sense of a royal emblem in the story of Purim, and designates a headgear ornamenting the king's wives (Esther 1:11; 2:17) and his horse (Esther 6:8). A synonym, *ʿatara* (crown), is used in the same story to designate the emblem of authority that King Ahasuerus placed on the head of his minister Mordecai (Esther 8:15). The rabbis used this term to describe the ornament on the head of the sacrificial bull leading the parade for the "First-Fruits Offerings" (M. Bik. 3:3). Rabbi Yohanan (ca. 180-ca. 279) used the Hebrew *zer* to describe these crowns, see B. Yom. 72b and R. Hananel, ad loc.

²⁷ The model for the Christian "God-Messiah-King" as well as the concept of "law" comes from the pagan world, not from the Hebrews.

Uzziah, to burn incense to the Lord, but for the priests, the sons of Aaron!" (2 Chron. 26:16). Similarly, the rabbis rebuffed a Maccabean king, saying: "It should be enough for you the crown of kingdom. Let the crown of priesthood be for the children of Aaron!"²⁸

Pagan organizations are vertical and vice versa. Beth-El, under the rule of the idolatrous king Jeroboam, is portrayed as a city surrounded by "a vertical (*anakh*) wall." In Hebrew, *anakh* means also "plumb line." In retribution, God would take a "plumb line" and measure the inequities performed against "my people Israel." Hierarchical societies thrive on the oppression of the weak and are doomed to collapse (Amos 7:7-9). Belief in the God of Israel constitutes a repudiation of the notion that the people are the possession of the sovereign. Israel is "my"—not the ruler's—"people" declared God!²⁹ In vertical organizations sovereignty is absolute. Any form of criticism is to be construed as an act of conspiracy. Amaziah, the high priest of the local sanctuary, asked the king to intervene, saying: "Amos has conspired against you." Since absolute sovereignty does not tolerate division of power the sanctuaries were under the control of the monarch. Therefore, Amaziah sought to muzzle Amos on the basis that (unlike the Temple at Jerusalem) this was "the king's sanctuary, and a royal residence" (Amos 10-13).³⁰

The boundaries of each "crown" are established in the Law by virtue of the covenant contracted at Sinai. Even within its own boundaries the authority of a crown is not absolute. The rabbis taught that "the crown (*keter*) of good name (*shem tob*) raises above (*'al gabbehem*)" the other three crowns (M. Ab. 4:14). It is not another crown. As Isaac Abarbanel (1437-1508) shrewdly observed, otherwise there would be four crowns! Rather, it is the condition *sine qua non* for these crowns to be operative.³¹ Accordingly, "the crown of good name rises above them (*'al gabbehem*)" means that it "presides over them," as with the same expression stating that Moses "presided" (*'al*

²⁸ B. Qid. 66a. The standard explanation is that the rabbis objected because there were rumors that his mother had been defiled. Jewish law, however, does not invalidate matters concerning the personal status of a priest on mere rumors that his mother might have been defiled, see the discussion *ibid.*, 66a-b. There were other grounds for opposition to the Maccabean priesthood, see B. Yom. 72b, and my comment in *In the Shadow of History: Jews and Conversos at the Dawn of Modernity* (Albany, 1992), p. 201.

²⁹ Cf., B. B.M. 10b.

³⁰ This incident had been the subject of a superb study by Professor Shalom Shpiegel, "Amos vs. Amaziah," in *The Jewish Expression*, pp. 38-65.

³¹ R. Isaac Abarbanel, *Nahalat Abot* on *Pirke Abot* 4:14 (New York, 1953), p. 252.

gabbam) over the Jewish court (M. San. 1:6).³² Unlike pagan oligarchies, where the superior pontificates to the “unenlightened” below, in Judaism the crowns cannot function without the people’s approval.

The horizontality of the Hebrew law is evident in the following doctrine. On the basis that the Torah commands everyone “that I command you” (Deut. 11:13), the rabbis conclude that “if one had heard something from the lowliest of Israel, should regard it as if he is hearing it...from the mouth of God.”³³ Without the absolute right for even the “lowliest of Israel” to be heard, and the subsequent obligation of the public to listen, freedom of speech is meaningless. This doctrine rests on the principle that one cannot be under the mandate of the Law without having the right to be heard in the name of the same Law. (This is similar to the much honored principle that there should not be taxation without representation.)

Hebrew Autonomy, Personal and Political

Those unsympathetic to Hebrew thought and the Hebrew people refer to the Jewish form of government as a “theocracy.”³⁴ For polemical purposes, this term was charged with obscuranist connotations, associated with Church history. “Theocracy,” however, was first coined by Josephus precisely because the Greek political lexicon lacked an adequate terminology to describe the system of Israel. Thus, extraneous sources cannot help elucidate this term in Josephus. Here is what he wrote:

There is endless variety in the details of the customs and laws which prevail in the world at large. To give but a summary enumeration: some peoples have entrusted the supreme political power to monarchies, others to oligarchies, yet others to the masses. Our lawgiver, however, was attracted by none of these forms of polity, but gave to his constitution the form of what—if a forced expression be permitted—may be termed a “theocracy,” placing all sovereignty and authority in the hands of God.³⁵

³² Cf., M. Hor. 3:3; B. Hor. 12a, end.

³³ Sifre #41, ed. Louis Finkelstein (New York, 1969), p. 86.

³⁴ The worst book that I have read on the subject is by Gershon Weiler, *Jewish Theocracy* (Leiden, 1988). For some aspects of Jewish pathological deprecation of Judaism, see José Faur, “De-authorization of the Law: Paul and the Oedipal Model,” in Joseph H. Smith and Susan A. Handelman, eds., *Psychoanalysis and Religion* (Baltimore and London, 1990), pp. 222-243. On contemporary Jewish bigotry against Israel and Zionism, see Edward Alexander, *The Jewish Wars: Reflections by One of the Belligerents* (Carbondale, 1996).

³⁵ Josephus, *Against Apion*, II, 165-166, trans. H. St. J. Thackeray, (Loeb Classical Library), vol. 1, p. 359.

Josephus is saying that since the Law was given by God and represents his will, God is in fact governing Israel. It would have seemed more appropriate to designate the Jewish form of government a nomocracy or "government by the Law." However, since in Greek this term refers to a man-made law, Josephus preferred to coin a term that emphasizes that Jewish law comes from God, not from the political sovereign. On this basis he ascertained that Judaism is a "theocracy," i.e., a nation governed by (a law given by) God. Further, he explained:

For us, with our conviction that the original institution of the Law was in accordance with the will of God, it would be rank impiety not to observe it. What could one alter in it? What more beautiful one could be discovered? What improvement imported from elsewhere? Would you change the entire character of the constitution? Could there be a finer or more equitable polity than one which sets God at the head of the universe, which assigns the administration of its highest affairs to the whole body of priests, and entrusts to the supreme high-priest the direction of the other priests? But this charge further embraced a strict superintendence of the Law and of the pursuits of everyday life; for the appointed duties of the priests included general supervision, the trial of litigation, and punishment of condemned persons.³⁶

Autonomy (*herut*) is awarded to every Jew by virtue of the covenant contracted at Sinai.³⁷ To forestall abuse of power, the Torah made special provisions concerning the national territory of Israel. These provisions affect the economic and political status of the Jew. In the pagan economy of ideas, where might is the ultimate ground for legitimacy, the conqueror, by virtue of his sword, becomes the possessor and hence the ruler of the territory. Let us consider, for the sake of illustration, the case of William of Normandy (the Conqueror). In 1066, he crossed the English channel, and, after defeating King Harold, he claimed England as his own. Consequently, he imposed a feudal system (from which the law of English real estate developed), parceling the land to his lieutenants, who, in turn, parcelled it to others. On top of the system stood the sovereign wielding absolute power. In this fashion, "Each person, save the king, was deliberately

³⁶ Ibid., II, 184-186, p. 367. Since "theocracy" has now become associated with government by ecclesiastical authorities, I refer to the Jewish form of government (Torah) as a "nomocracy." For such a use in Judaism, cf., the title of R. Imanuel Aboab, *Nomologia o Discursos Legales* (n. p. 5389/1629).

³⁷ Not "freedom" (*hofesh*)—a negative concept with negative connotations (e.g., freedom from hunger or oppression). See "Texte et Société," pp. 70-82; "Law and Hermeneutics in Rabbinic Jurisprudence," pp. 1663-1664.

made subservient to another, his landlord. And all were subservient to the crown, from whom all land titles derived."³⁸

The recognition of the conqueror as the ruler of the land explains the logic for appointing George Washington the first president of the U.S.A. But Scripture rejects this logic. When the monarchy was offered to Gideon and his descent in recognition of his triumph over Midian, he responded: "I shall not rule over you, nor my son shall rule over you. The Lord shall rule over you" (Judg. 8:23). Gideon's logic is premised on the belief that the conquest of the land of Israel is the effect of God's promise to the patriarchs, which is executed by God through God's might (see Deut. 8:7-18; 9:1-3). The enemy was defeated by God, not by the military leader (see Exod. 34:10-16). The land of Israel has the status of "inheritance:" the Jewish people take possession of what is strictly theirs (see Josh. 1:11). A major consequence of this doctrine is that the Jewish king is not the legitimate owner of the land, as the case of Ahab and Nabot shows (1 Kgs. 21:1-24).³⁹ The Sabbatical and Jubilee's legislation give emphasis to this overwhelming doctrine (Lev. 25:1-55). Since without economic autonomy, personal and political autonomy are not factual, the Torah calls attention that these laws were given "at Mount Sinai" (Lev. 25:1): together with the Decalogue they guarantee the basic autonomy of each Jew. Hence the Rabbinic doctrine: "No one can be autonomous (*ben horin*), unless busy in the Torah" (M. Abot 6:2). In this context, it is well to remember that the Torah is both "divine" and "eternal." These are legal concepts. As "divine," the Torah requires no promulgation by any authority, earthly or heavenly; it binds the contracting parties at all times and in all societies. Consequently, it is also "eternal," in the exact sense that it cannot be abrogated either by an earthly or a divine authority. Without these attributes, the Jewish people, too, would fall prey to what Herbert Marcuse (1894-1979) refers to as "the realities of the prevailing societies."

The only authentic alternative and negation of dictatorship (with respect to this question) would be a society in which the "people" have become autonomous individuals, freed from repressive requirements of a struggle for existence in the interest of domination, and as such human beings choosing their government and determining their life. Such a society does not yet exist anywhere. In the meantime, the question must be treated in

³⁸ Jesse Dukeminier and James E. Krier, *Property* (Boston, 1988), p. 146. There is a fine summary of the English real state theory in Jesse Dukeminier, *Property* (Gilbert Law Summaries), pp. 57-65.

³⁹ For an analysis of this episode, see "Law and Hermeneutics in Rabbinic Jurisprudence," p. 1666.

abstractio—not from the historical possibilities, but from the realities of the prevailing societies.⁴⁰

The tension between the ideal, legislated in the Torah and the real has eschatological dimensions: it would unfold into an era of *Shalom*, a term meaning not only “peace” but also “harmony” and “agreement.” It is a rejection of *pax Romana*, grounded on the monopoly of violence and world domination. The Torah is the guide to achieve *Shalom* (see Is. 32:17; Jer. 8:15; Zech. 8:16; Ps. 85:11, etc.). *Shalom* represents a higher form of human organization. The Jewish messiah will be the first leader to raise humanity to this level. Therefore, he is designated the “Prince of Peace” (*šar shalom*; Is. 9:5). Some believe that before that era will come to pass, the Jews will have to establish *shalom* within their own commonwealth. To implement this, the rabbis teach that a messianic herald will come “to establish peace” within the Jewish “world” (M. Ed. 7:8). Meanwhile, at the pre-eschatological level, advanced Talmudic scholars (*talmide ḥakhamim*), by virtue of their teaching Torah, are those who “promote *shalom* in the world” (B. Ber. 64a).

In the political thought of the ancient Israelites, the monarch is the “slave” (*‘ebed*) of the people: their loyalty to him is predicated on his submission to them (see 1 Kgs. 12:7). The same is true of all other government officers. In this spirit, when appointing two rabbis to some communal positions, Rabban Gamaliel II (first and second centuries) said to them: “Are you imagining that I am investing you with a mandate? I am investing you with enslavement (*‘abdut*)!” (B. Hor. 10a-b). To celebrate the autonomy the Torah awards and the *shalom* it bestows, each Jew thanks the Lord daily for having made her or him neither a gentile nor a slave and having given him or her the Torah.⁴¹

The Anti-Maimonideans

The anti-Maimonidean controversy (1180-1240) revolved around issues that antedate the birth of Maimonides (1135-1204) and are directly connected neither to the historical Maimonides nor to his ideas. Maimonides lived and developed his works and ideas in light of the values and traditions first instituted by R. Moses ben Hanokh (d. ca.

⁴⁰ Herbert Marcuse, “Repressive Tolerance,” in *A Critique of Pure Tolerance* (Boston, 1969), p. 105.

⁴¹ See “Texte et Société,” chap. 7.

965) and his pupils, in Cordoba, Maimonides birth place, and then in neighboring Lucena. R. Moses' school had strong links with the academies of the Geonim, their intellectual and spiritual traditions, and general outlook. Two features in particular distinguished that school: it was urban, and it counted on the support of the social and intellectual elite.⁴² Maimonides' devoted his life to developing, articulating, and transmitting the wisdom of that school. The anti-Maimonideans flourished in Western Europe, primarily among communities that were yet thickly enveloped in the values of the Dark Ages. Their source of inspiration was not the traditional Talmudic academies in Babylonia but the gentile environment. It has been shown that the sudden appearance of "heretics" and "deviants" beginning in the eleventh century in European society was the result, rather than the cause, of the persecuting society.⁴³ Emulating the Christian environment, the anti-Maimonideans responded by locating Jewish "heretics" to persecute. Their spiritual inspiration came from men like Bernard of Clairvaux (1090-1153)—the "great detective of heresy"—rather than the sages of Israel.⁴⁴ As a result, violence was adopted as a legitimate means of expression. In their zeal, they did not shrink from informing and collaborating with the Church (a capital offense in Judaism) and implored the clergy to burn the books of Jewish heretics just like they burn the books of Christian ones. The anti-Maimonideans never condemned this kind of behavior. On the contrary, those directly involved in having the Christian clergy burn Maimonides' works were awarded positions of power.⁴⁵ Their views, too, were expressed in a language of violence: the purpose was faultfinding rather than understanding, like the writings produced by Christian writers on Judaism.⁴⁶ Those wanting to defend the Maimonidean tradition were expelled and persecuted. R. David Qamhi (ca. 1160-ca. 1235), the most learned Jew in Western Europe at the time, was not permitted to speak and was expelled from Toledo.⁴⁷ By ex-

⁴² See *ibid.* pp. 82-95.

⁴³ See *In the Shadow of History*, p. 2.

⁴⁴ See *ibid.*, pp. 11-12.

⁴⁵ See José Faur, "A Crisis of Categories: Kabbalah and the Rise of Apostasy in Spain," in ed. Moshe Lazar, *The Jews of Spain and the Expulsion of 1492* (Lancaster, California, 1997), pp. 42-45.

⁴⁶ Their criticism was known as *hasagot*, (strictures) and *haggahot* (emendations). The first term means "to overtake" as when a persecutor seizes the victim, the second means "to correct" something which is ritually void, see José Faur, "Monolingualism and Judaism," p. 1714, n. 7.

⁴⁷ See, "A Crisis of Categories: Kabbalah and the Rise of Apostasy in Spain," p. 44.

cluding the possibility of dialogue and insisting that their values cannot be put into question, the anti-Maimonideans were in fact postulating the principle that spiritual unity is the effect of the strong group's dominating the weak, that there are no traditions, institutions, and values common to all that could serve as the bases of discourse between conflicting parties in Israel.

Some of their most radical theological ideas, wrapped under the cover of "Kabbalah," i.e., "a doctrine that you must accept as an act of faith, without questioning" (see below), came from pagan lore still lingering among their peasant neighbors. The Kabbalah, noted Mircea Eliade (1907-1986), is akin to the "cosmic religion that disappeared after the triumph of Christianity, surviving only among the European peasants." It presupposes a system of "cosmic sacrality" that the rabbis had tried to suppress: "Thanks mainly to the tradition embodied in the Kabbalah, a 'cosmic sacrality,' which seemed to have been irretrievably lost after the rabbinical reform has been successfully recovered."⁴⁸ Studying their writings today from the vantage of contemporary scholarship, one wonders whether any of the anti-Maimonideans possessed the intellectual tools to pass a critical judgment on Maimonides' legal code (*Mishneh Torah*)—a work based on meticulous legal analysis of the Talmud and juridical traditions of the geonim. Typically, historians fail to realize that the anti-Maimonideans did not measure up to the standards of the Rabbinic schools of Andalusia and the East. They were unfamiliar with the rudiments of Semitic philology and major legal and literary principles developed in the geonic academies. Mostly, their objections rested on faulty readings of the Talmud and/or on a lack of familiarity with the geonic interpretation of the text. The same applies, all the more, to Maimonides' *Guide*. It was written in Arabic, a language foreign to them, about topics demanding a high level of intellectual training and sophistication. The Hebrew translation of the *Guide* could not help this type of reader any more than a Hebrew translation could help a Yeshivah student today make heads or tails of Wittgenstein's *Tractatus*, or Whitehead's and Russell's *Principia Mathematica*.

Underneath the noise produced by the anti-Maimonideans rested a single issue: is Judaism a one-dimensional or a multi-dimensional system. If Judaism is one-dimensional, then any differing view ought to be repressed at all cost. The anti-Maimonideans embraced Chris-

⁴⁸ Mircea Eliade, *The Quest* (Chicago, 1969), Preface (no pagination). I have further developed this subject in, "A Crisis of Categories: Kabbalah and the Rise of Apostasy in Spain," pp. 41-63 and in José Faur, *Homo Mysticus: A Guide to Maimonides's Guide for the Perplexed* (Syracuse University Press, 1999), pp. 3, 10.

tian ideology. They also adopted the ways of the Church. First and foremost, Judaism was to be conceived as a "religion"—a term for which classical Hebrew has no terminology—in the precise one-dimensional sense designated by the Catholic Church.⁴⁹ Their triumph led to the erosion of the multi-dimensional values of Israel, converting Judaism into a religious system mirroring Christianity. Systematically, the building blocks of Judaism were vacated from their original semantic connotations and imbued with a sense originating in Christendom. A good example is Kabbalah, originally standing for "the authoritative tradition" stemming from the Talmudic Court of Justice, the geonic academies, and the Rabbinic masters of Old Sepharad. The anti-Maimonideans transformed this term to indicate the mystical and the folklore, "even in the hands of the old men and women of our people"—to the *exclusion* of the legal traditions of the Talmudic Court of Justice, the geonim, and the Rabbinic masters of Old Sepharad.⁵⁰ Another such term is *semikha*. As noted by Abarbanel, it came to denote Christian "ordination" with no connection to the institution bearing this name in Rabbinic tradition.⁵¹ Similarly, "Talmud learning"—the rallying cry of the anti-Maimonideans—was nothing more than a blunt adaptation of the scholastic methodology of *auctoritas* (authority). In compliance with scholastic intellectual tradition, certain *auctores* (authors) were invested with authority; in turn, these *auctores* were divided into *maiores* (= *rishonim*) and *minores* (= *aharonim*). Consequently, the Talmud was not to be approached directly but through a prism of interpretations and opinions expressed by a hierarchy of *auctores*. "Proof" consisted in citing one or more of these *auctores*, without having to have recourse to the subject matter itself.⁵² The purpose of the de-authorization of the *Mishneh Torah* was to convert halakhah into "canon law," in the precise Christian sense, whereby jurisprudence could be conditioned (from a legal perspective: "manipulated") to "theological" considerations.⁵³ The ultimate roots for the model of the "ideal" Jewish ghetto are to be found Augustin's *Civita Dei*, not in the Talmud. Political leadership and the cultivation of mundane sciences were to be regarded as per-

⁴⁹ The present Hebrew *dat* denoting "religion" is a neologism. In the Scripture and Rabbinic literature, *dat* means "law."

⁵⁰ See, "A Crisis of Categories: Kabbalah and the Rise of Apostasy in Spain," pp. 46-48.

⁵¹ See "Texte et Société," n. 130, pp. 698-699.

⁵² See José Faur, "Sánchez's Critique of *Auctoritas*," in Peter Ochs, ed., *The Return to Scripture in Judaism and Christianity* (Mahwah, 1993), pp. 259-260; "Texte et Société," pp. 98-99.

⁵³ Cf., "Monolingualism and Judaism," pp. 1719-1724.

icious and obtrusive to spiritual life and faith.⁵⁴ Faith meant, simply and plainly, obedience to the "superior." The most fundamental duty of the Jew became faith in the infallibility of the clergy (*emunas hakhomim*), especially in their transmission of lore professed to have been received through esoteric means. As in Christendom, it is the act of subordination that renders the individual a *fidelis* (faithful), "because the subject has faith in the superior's institutions."⁵⁵ The source of this doctrine, continuing to shape the very soul of Judaism, was first formulated by Pope Gregory the Great in the sixth century, who declared that, "the verdict of the superior—no matter whether just or unjust—had to be obeyed by the inferior subject."⁵⁶ Accordingly, "rationalism," i.e., the application of critical knowledge by the *fidelis*, is an act of insubordination. Church policy developed along these lines. As noted by a prominent historian, "What was demanded was not criticism but credulity."⁵⁷ Contrary to biblical and Rabbinic law postulating that even the Supreme Court of Israel at the Holy Temple in Jerusalem is subject to error,⁵⁸ the anti-Maimonideans regarded their own rabbis as inerrant, like the head of the Catholic Church. In recent times, they were endowed with the power to penetrate the "mind of the Torah" (*daas torah*) and issue decisions based not on the classical texts of halakhah but on a special insight to which only they have right of entry. This doctrine was first formulated by Paul as the "Spirit of the Law," with the express purpose of abrogating the Law.⁵⁹ Recently, it was argued that a prominent Rabbinic leader should not have to respond to a subpoena of the court. This view is contrary to Jewish law stating that the even the king and the chief priest at the Temple in Jerusalem could be tried. The only concession afforded to them is that, if condemned, they could be flagellated in a court of three judges, as simple commoners, to spare them public humiliation, rather than in a court of twenty-three (Y. San. 2:1, 19d). Significantly, their view coincides with the bull issued in 1302 by Pope Boniface, declaring that "if the supreme power err it

⁵⁴ See *In the Shadow of History*, pp. 204-207.

⁵⁵ Quoted *ibid.*, p. 33.

⁵⁶ Quoted *ibid.*, p. 36. For a survey of the subject, see *ibid.*, pp. 28-29, 32-34.

⁵⁷ Daniel J. Boorstin, *The Discoverers* (New York), p. 572.

⁵⁸ See "Law and Hermeneutics," 1666-1669.

⁵⁹ See "Monolingualism and Judaism," pp. 1719, 1721-1724, 1732-1736. For an in depth analysis of the psychological background, see "De-authorization of the Law: Paul and the Oedipal Model," pp. 222-243. The power to penetrate the mind of God was first claimed by Balaam the pagan prophet bent on cursing Israel, see Num. 24:16.

can be judged only by God, and not by man.”⁶⁰ Because of the Christian ideology introduced by the anti-Maimonideans, the term “Messiah” underwent a semantic transformation: it is closer to Jesus than to Bar Kokhba.⁶¹ Accordingly, Shabbetai Zevi (1626-1676) could pass as a “Jewish” Messiah. Emulating Paul’s interpretation of Jesus, he was regarded by some as the true *corpus Christi* of Israel.⁶² In their view, “all the souls in Israel” became “united in one body, which is the messiah,” that is the persona of Shabbetai Zevi, exactly as in “Paul’s doctrine of the unity of the faithful in the mystical body of Christ.”⁶³ The values and culture of one-dimensional systems are grounded on mythological thought. A fundamental aspect of mythological syntax is denial of responsibility. Myth imputes guilt (in the same way that it assigns grace), but it does not—it cannot—recognize responsibility.⁶⁴ Since the system is infallible, those who suffer are “victims” of some cosmic plan that lay beyond the boundaries of the normative. The only recourse is to complain.⁶⁵ In Scripture “complaints” (*telunot*) are associated with slave-mentality: people unable to assume personal responsibility, thus blaming “others” for their misfortunes. Complaints were peculiar to the Jews leaving Egypt. Instead of acting, when facing a crisis they “complained,” finger-pointing and faulting Moses, Aaron, and even God (see Exod. 15:24, 16:2; Num. 14:2, 29, 36; 17:6, etc.). Eventually, the people of Israel overcame this habit. The last complaint registered by Jews was at the time of Joshua, during the conquest of the land of Israel (Josh. 9:18). By reducing Judaism to a one-dimensional religion, grounded on mythological considerations transcending the normative, the anti-Maimonideans succeeded in transforming the Jew into “a complaining persona” *par excellence*. It is now found in the most disparate individuals, from Woody Allen on one side of the spectrum to the most

⁶⁰ Quoted in Jeffrey Burton Russell, *A History of Medieval Christianity* (New York, 1968), p. 168.

⁶¹ For some valuable insights on this matter, see Gerson D. Cohen, “Messianic Postures of Ashkenazim and Sephardim,” in ed. Max Kreutzberger, *Studies of the Leo Baeck Institute* (New York, 1967), pp. 117-156.

⁶² On this basic Christian doctrine, see *In the Shadow of History*, pp. 28-29, 32-34.

⁶³ Gershom Scholem, *Sabbatai Sevi* (Princeton, 1973), p. 814. The latest version of this ever evolving saga professes that the Jewish Messiah had actually died (although not really dead!) and will resurrect (more accurately: reappear) any minute now to take possession of planet earth. Does it sound familiar?

⁶⁴ I have developed this subject in *Homo Mysticus: A Guide to Maimonides’s Guide for the Perplexed*, pp. 9, 79-80.

⁶⁵ The same strategy is found in present American culture, see Charles J. Sykes, *A Nation of Victims: The Decay of the American Character* (New York, 1992).

traditionalist Rebe on the other extreme. Those who do not complain have a Jewish deficiency problem.

Vivisectioning Judaism

The Pentateuchal code includes religious as well as civil laws. In this it finds no parallels in either the ancient codification of the Near East or in modern codes. We can now gain a better understanding of the anti-Maimonidean opposition. A fundamental doctrine taught by the geonim and major Andalusian thinkers is that the Torah constitutes a two-dimensional system, one that, for lack of a better term, we may call "theological," embracing the institutions, doctrines, and commandments intended to develop the human mind and spirit. The other is the "political," embracing the institutions, doctrines, and commandments intended for the welfare of public and social life.⁶⁶ Awareness of this two-dimensionality helped the Jews appreciate the uniqueness of their system *vis à vis* Christianity and Islam. Elie Benamozegh (1823-1900)—a rabbi that modern Jewry is in dire need of discovering—observed that the failure of Christianity and Islam rested on their inability to grasp the two-dimensionality of the Torah—that one half alone is a mutilated, dysfunctional system. Each in its own way proceeded to dismember Judaism. Christianity took one half, the spiritual, defaulting the political dimension of the Torah:

... that between the two objects, the two interests that Judaism embraces, that are the subjects of its dogmas, of its cult, of its hopes, —in between the present life and the life of the future, the heavens and the earth, the natural and the supernatural....

Christianity attached itself exclusively to the first.⁶⁷ All other aspects of the Torah, the political in particular, are not only dead but also deadly. Islam took the other half:

It is the other half of Judaism, the side that Jesus left, that Mohammed erected as a supreme principle, as a foundation stone of its system.⁶⁸

Although Islam had borrowed many elements from Jewish faith and religion, it "had adopted from Judaism above all its mundane and political side."⁶⁹ A one-half "Judaism" is a mutilated Judaism. It will

⁶⁶ See Maimonides' *Guide* II, 40 and III, 27. Hence the title of Spinoza's *Tractate*.

⁶⁷ Elie Benamozegh, *Morale Juive et Morale Chretienne* (Paris, 1867), pp. 330-331.

⁶⁸ *Ibid.*, pp. 331-332.

⁶⁹ *Ibid.* pp. 333-334.

inevitably lead to either spiritual or political barbarism, or to both:

One, by excluding the spiritual part of Judaism, made its politics degenerate into barbarism; the other, because it loosened itself from the social life of Judaism, had transformed its religion into asceticism. From one side or from the other, always a mutilated Judaism, deformed in one of its essential parts.⁷⁰

Because both these systems were essentially one-dimensional, "religion" was often associated with intolerance and violence.

You find this curious fact, that the more intense has been the religion of any period and the more profound has been the dogmatic belief, the greater has been the cruelty and the worse has been the state of affairs. In the so-called ages of faith, when men really did believe in the Christian religion in all its completeness, there was the Inquisition, with its tortures; there were millions of unfortunate women burned as witches; and there was every kind of cruelty practiced upon all sorts of people in the name of religion.⁷¹

The above, however, gives no sense of the problem. Intolerance and violence are not exclusive to "religion:" they are present in all one-dimensional systems and ideologies, including those professing to be secular and rational. "Religion as madness," observed Wittgenstein (1889-1951), "is a madness springing from irreligiousness."⁷²

These considerations have a definite bearing for the understanding of the menu offered by contemporary Jewry. It is strictly one-dimensional. The options available and their respective subdivisions are based on a strict binary system of either/or: secular/religious and their ensuing subdivision. As with Christianity and Islam, choosing one item means the repudiation of the "other." The "secular" can be as authoritarian and doctrinaire as the "religious." Addressing a similar situation, Miguel de Unamuno (1864-1936) wrote that, "Voltairean barbarism," is as deplorable as "traditional barbarism. Exclusively secular education became as sectarian as education that is exclusively religious."⁷³ Conceptually, the *soblanut* (tolerance) bid made by moderate elements within each camp is also one-dimensional: a tactical concession to an erroneous party made for the sake

⁷⁰ Ibid., p. 334.

⁷¹ Bertrand Russell, *Why I Am Not a Christian* (New York, 1957), p. 20.

⁷² Ludwig Wittgenstein, *Culture and Value*, trans. Peter Winch (Chicago, 1980), p. 13e.

⁷³ Miguel de Unamuno, "La Educación," in *Obras Completas*, vol. 3 (Madrid, 1958), p. 515. For a similar criticism of the enlightenment, see José Faur, "Sephardim in the Nineteenth Century: New Directions and Old Values," in *Proceedings of the American Academy for Jewish Research* 44 (1977), pp. 29-52.

of "unity." It is akin to those saintly folks extending common courtesy to the "Jew" while thinking that he or she will surely fry in Hell.

The Torah is a highly complex system. Formally, it contains 613 commandments (*misvot*). Each is a kind of "general system principle" unfolding into different fields of interest, distinct levels of consciousness. Unlike strata of opportunities, these cannot be fulfilled by a single individual.⁷⁴ Indeed, the Torah was given to *Kelal Israel* (the Totality of Israel)—not to individuals—because the Torah, as a *total system*, can only be fulfilled collectively, as a close-knit crew. We should, in the language of the Scripture, "serve him with a single shoulder" (Zeph. 3:9).

There are several consequences to this view. Since it is not possible for a single individual to fulfill the Torah in its entirety, if one had fulfilled a single commandment (*misvah*), she or he has participated in the *berit* and therefore is "religious"—no matter whether that *misvah* is "honoring one's parents," or "sending the bird away before taking her nestling," etc. The diversity of commandments is so great and the opportunities so many that it would be difficult to find a single Jew who in the course of his or her life had not fulfilled at least one of the *misvot* of the *berit*. This is a fundamental article of Jewish faith. It was formulated by R. Hananya ben 'Aqashya (second century) and is contained in a most popular Mishnah-passage (M. Mak. 3:17), usually recited when concluding *Pirke Abot*, before saying the *Qaddish*. It proclaims that the great variety of "instruction and commandments" contained in the Torah is because God wished "to warrant Israel merit (*le-zakkot et Israel*)."⁷⁵ Maimonides explained:

It is one of the Law's fundaments of faith, that if a person had executed [even] one of the 613 commandments of the Law, in a proper and satisfactory manner, without associating with it some mundane designs at all, but did it for its own sake, as [an act of] love...that person has gained the rights to the life in the World to Come. R. Hananya is teaching that the great variety of commandments assure that during the whole course of one's life a person would have the opportunity to perfectly fulfill [at least] a single [commandment].⁷⁵

It follows that the current division of "religious/secular" (*dati/hiloni*) is contrary to the fundaments of the Torah: another instance of spiritual assimilation to non-Jewish conceptual models. The diversity of views

⁷⁴ See the remarks of R. Moses di Trani, *Qiryat Sefer* (Venice, 1551), *Introduction*, chapter 7.

⁷⁵ Maimonides, *Perush ha-Mishnayot*, ad loc. The translation comes from the original Arabic in R. Joseph Qafih bilingual edition (Jerusalem: Mossad Harav Kook, 1964), vol. 4, p. 247.

and attitudes prevalent among Jews warrants appreciation, rather than *soblanut* (tolerance), because it is only through the dynamic interaction of all the members of the team that *my* acts gain meaning and coherence.⁷⁶

⁷⁶ The same idea, with a somehow limited scope but in the same spirit, was expressed by the saintly R. Israel Meir Ha-Kohen, in *Hafetz Hayim 'al ha-Torah* (Bnei Brak, 5714/1954), pp. 255-256, when comparing the different approaches within the Hasidic and Misnagdic communities to a modern army: "each one contributes to defeating the enemy, one with his Torah (learning), the other with his prayer. Some with their music and songs, others with the blowing of the *shofar*. On condition that they direct their hearts toward their Father in heaven." Conceptually, this model could be expressed in more positive terms and extended to include *Kelal Israel*.