

The Paradox of Israeli Civil Disobedience and Political Revolt in Light of the Jewish Tradition

Sam Lehman-Wilzig

The State of Israel today finds itself in an uncomfortable and anomalous position. After two thousand years of Diaspora life, bereft of political sovereignty and without control over their homeland, the Jewish people succeeded in establishing a state after (and with ongoing) significant sacrifice of life and limb. However, the very struggle to found the Jewish State brought with it another struggle for the soul of the country, in which the prime question (for the time being) has become the extent of concession of the Land of Israel to the Arab world. Given that the core of internal opposition comes from the *religious* Right (which is not to deny the existence of a secular opposition as well), it is not at all surprising that such internal opposition bases itself on religious Jewish law, that is, the Halacha. Indeed, such opposition is somewhat of a mirror image of the religiously inspired terror on the Palestinian side, in the form of the Hamas (and Hizbollah), although this nexus is beyond the scope of our article here.

What is the cause of the anomaly, and why is the State of Israel uncomfortable about this opposition? It goes much farther than the usual disquiet felt by secular, democratic regimes in the face of principled, "divinely" inspired civil disobedience. There are three basic reasons for this.

First, Israel was founded as a *Jewish* State. While this does not mean that it has no place (or that it doesn't offer close to all civil rights) for non-Jewish minorities, it does mean that on the declarative and legislative planes, nothing can be done or said that would undercut this axiomatic principle. Indeed, according to the Basic Law: The Knesset, there are three things that even the Knesset cannot legislate (and political parties cannot carry in their platforms): racist incitement, negation of Israel's democratic character, and *negation of the State of Israel as the country of the Jewish people*. As we shall soon see, this latter clause is interpreted by some in quite a broad fashion, legitimizing in their eyes disobedience and even

revolt in the event that the elected government is willing to cede part of the land of the Jewish nation. For now, however, suffice it to say that once the State is defined as being *Jewish*, it is difficult for everyone involved to ignore the Jewish heritage (law, history, emotional attachment, etc.) when coming to grips with issues of paramount importance, and no less difficult to ignore the very deeply felt Jewish basis (even if wrongly interpreted or distorted) of the disobedients' proclamations and justifications for their actions.

Second, no one in Israel argues that the issue at stake—the peace process and cession of territory—is not of the utmost importance, both in the near term (security) and the long term (the Jewish nature of the country, demographically and territorially). Thus, while the authorities as well as a large part of the citizenry may be willing to make the sacrifice necessary for peace (notwithstanding the extent of such sacrifice), they are also acutely aware that this is not some passing issue but rather the most important decision the country might ever have to make. Indeed, the issue at stake can be perceived as central, that is, resting on a fundamental civil right not open to abrogation, even by a democratic majority. The cession of national land by a country is almost universally considered to be unthinkable. Therefore, even if a majority might come to the conclusion that it is inexorable or necessary, why should those opposed to this consider the act to be any less an abrogation of their sovereign and inalienable right to their homeland? This, of course, makes the position of the "cessionists" philosophically difficult (although not impossible), as their position is *instrumental* in nature, compared to the disobedients' *inherent* and *principled* stand (which is not to say that attaining "peace" cannot be viewed as a principled position of the highest value). At the least, then, the stance of the Israeli civil disobedients is on a political-philosophical par with the "mainstream," if not higher than that. All this is not a justification for their actions, but rather an explanation as to the sociopsychological difficulty the country has in dismissing (and incarcerating) them out of hand.

Third, given the stakes and the risks of the peace process and of ceding territory, many (most?) Israelis on the Left and in the Center are not completely sure themselves that their position is absolutely correct and so find it hard to argue that the extreme Right's arguments are without *strategic* (as opposed to philosophical) foundation. After all, the Arab world did start a war and/or offer *casus belli* against Israel on at least three occasions; several Arab countries still call for jihad; terror attacks continue; the Palestine Liberation Organization (PLO) is a problematic partner for peace; and so on. Thus, while not accepting the extreme Right's position or tactics, even on the level of realpolitik outright denial of their legitimacy

by the broad middle of the road is harder to come by given the stakes involved and the only qualified confidence the majority has in its position.

All this might lead one to believe that the Israeli law proscribing civil disobedience and sedition would be fairly "liberal" and tolerant. However, the opposite is the case: "something that can lead to derision or disloyalty to the state or the governmental authorities, or arouse melancholy or gloom among the country's residents is an act of sedition."¹ What is the source of such an encompassing and illiberal definition of sedition? The answer is unsurprising but still paradoxical: this law of sedition (Hebrew: *Hamradah*, from the root MRD, meaning "revolt") is at least philosophically based on the Jewish—not Western—concept of political disobedience/revolt! Moreover, the entire picture becomes muddied as a result of the role reversal of many of (not all) the protagonists on both sides of the civil disobedience debate. Simply put, many on the extreme Right seem to be arguing from a Western, secular position, while the secular authorities rely on the country's sedition law, which at its base is Jewish in perspective! We shall return to this point at the end of this essay.

The Jewish approach to political "oppositionism" can be divided into four categories: argumentativeness, protest, disobedience, and revolt.² One can broadly say that the Jewish heritage—which includes history, Halacha (Jewish religious law), political philosophy,³ and other sources—has a clear line of demarcation between the first two and last two categories.

Judaism not only permits arguing over points of law, and with the authorities over the interpretation of that law, but even revels in such argumentation. Indeed, the Talmud, which is the major corpus of Jewish law—the basis for all Jewish religious jurisprudence—constitutes not an orderly codex of law but rather a protocol of 400 years' worth of arguing between the Rabbis as to the Law (in which only a minority of cases are settled in any "final" decision). Despite its *theological* basis, then, Judaism seems to go farther than most of the Western tradition (but similar to John Stuart Mill)—accepting not only the legitimacy of expressing different opinions but far more than that: all opinions are intrinsically part of the Truth! To be more precise and "extreme": Judaism does not merely "suggest" that on a specific issue there may be more than one way of looking at things but rather that across the board *elu v'elu divrei elohim khayim*, as the Talmud states—both opinions are the word of God.⁴

The situation regarding public protest is similar, although there must be some moral justification involved and not merely personal interest. As a rule, though, the vast majority of cases in the Bible (several dozen) of protest are viewed/depicted in positive or neutral fashion. Moreover, the Jewish tradition even went so far as to ultimately *institutionalize* public

protest! At a time when virtually all ancient civilizations were ruled despotically, and the word of the monarch was undisputed, the Jewish Prophet stood out as a singular sociopolitical counterforce to the king and/or to corrupt society, continually lambasting in forceful (albeit poetic) terms the reigning dogma and authority—without suffering the ultimate (and, in other societies, automatic) penalty of death. As a study of biblical protest concluded: "The common denominator of the two types of opposition in the Bible is precisely the 'technical' one, that the prophetic and the secular oppositionist arguments were inscribed in the sacred writings of the Jewish people and constituted an educational example and source for the belief that the institution of opposition was a legitimate part of the accepted political system, and of the political culture of ancient Israel."⁵

However, when we turn to actual disobedience to authority and/or overt revolt, the approach shifts markedly, at the least for a "tactical," albeit an important, reason. Judaism's understanding of (political) human nature is decidedly Hobbesian: "Pray for the peace and security of the monarch, for were it not for fear of him, Man would swallow up his neighbor."⁶ Thus, merely for the sake of self-interest it behooves the citizen to obey the ruler because disobedience of any sort leads society as a whole on the slippery slope down into the anarchic abyss.

To buttress this approach, the Torah adds a decisive, positive commandment: "You shall anoint yourself a king."⁷ The Jewish monarchy is at one and the same time limited and also virtually unlimited in its authority. The limitation can be seen immediately, for right after the verse quoted above, the Torah goes on to command the newly anointed king to write in his own hand the entire Torah! The message is clear: the Law is above the king, and not vice versa.⁸ Another form of limitation is "horizontal," not vertical: throughout Jewish history one can see the concept of separation of powers in action—in the form of the "Three Crowns": king, priest, and prophet (later legislative elders, and ultimately "Rabbis"), roughly comparable to the executive, legislative, and judicial branches found in modern polities.

On the other hand, the Jewish political tradition had serious difficulty in permitting any form of rebellion against the reigning authorities, no matter how legitimate the case. This can be clearly seen in the Bible, already during the reign of Israel's first monarch, King Saul. The background to the story is important: Saul sinned gravely against God, and as a result the prophet Samuel anointed David as the future king (to come into effect after Saul's death; Samuel obviously refuses to topple Saul even though he anointed him); moreover, Saul understood who his chosen successor was to be (not his own son Jonathan) and chased David all over the country in an attempt to murder him. During one of the chases. David had

the opportunity to kill Saul but refused to do so, scolding his aide-de-camp Avishai (who had urged him to finish Saul off): "For who can put forth his hand against the Lord's anointed, and be guiltless? . . . As the Lord lives, He [God] will smite him."⁹ Numerous postbiblical commentators can be brought whose general approach is similar. We shall limit ourselves to one more here—inarguably the person with the most political experience of any of the Rabbis: Don Isaac Abravanel (the famous Mishnaic commentator), who served as Spain's finance minister during the reign of Ferdinand and Isabella. Abravanel raises the question of whether there exists any sort of duty to rebel and topple an evil Jewish king, answering that "we have not found within the writings of our wise Rabbis any justification for this."¹⁰

All this is true of revolt. But what about "simple" civil disobedience against a specific law? On the one hand, there are several cases where disobedience to governmental authority is obviously viewed as being legitimate: the Egyptian midwives who refused to kill male Hebrews; King Saul's servants who refused to slay the priests aiding David; Daniel publicly praying to God in the face of Darius's prohibition; etc. But already here we begin to see a pattern: disobedience is viewed positively only when the transgression is a *cardinal* one involving one of the three central sins: murder, idol worship, incest. Political disobedience on a "lesser" issue was less well received, as was disobedience to a "lesser" political authority. For example, Mordecai publicly disobeyed Haman but would not directly disobey King Ahasuerus (perhaps for reasons of political expediency and not principle, but this need not concern us here).

How can we understand the Jewish tradition's approach to what we call today "civil disobedience" against a specific law? In Judaism, both the positive law and natural law emanate from the same source: God's word. Part of the world's order established by God calls for obedience to the temporal ruler, whether Jewish or non-Jewish. This is called in Hebrew *dinah de'malkhutah dinah*—"the law of the land is law." It is only when the law of the land contradicts a supreme religious law (the cardinal three) that the government's edict can be overridden.

In such a situation, however, the more interesting point is that any transgression of a ruler's law that does not demand the breaking of a cardinal religious commandment is tantamount to breaking God's Law. In effect, then, the Jewish tradition places the Jew in a very ticklish situation: either the civil disobedience is *required* of the Jew (in a very few circumstances) or it is categorically *forbidden*.

It is here that we can discern the source of the Israeli sedition law's problem, for in contrast to the accepted (modern) Western stance that differentiates—philosophically as well as legally—between disobedience and

revolt, other than the exceptional cases of the three cardinal commandments, the Jewish political "philosophical" approach does not make such a differentiation, for the "slippery slope" reasons noted above. On the most basic semantic level, this can be seen in the fact that the Jewish legal tradition does not have a term for civil disobedience. No matter the situation, it is called *mo'raid be'malkhut* (rebellious against the kingdom).

Maimonides expressed this explicitly: "Whoever rebels against a king of Israel, the king has the right to kill him even if the king ordered one of the people to go to a certain place and he did not do so."¹¹ "Not going to a certain place" despite the king's orders can hardly be understood as a sign of revolt, and yet even such a minor transgression can carry with it the (justified) penalty of death, because any transgression of the monarch's word is tantamount to undermining His very authority. This approach is the accepted one to this day, as can be seen by the recent article of Rabbi Epstein, entitled *Mo'raid Be'malkhut*, in which he concludes that there is no difference between revolting a little or a lot; every act against the king is called Revolt (*me'ridah*).¹²

As we shall see shortly, this still leaves open some important questions that are crucial to our understanding of contemporary "sedition" in Israel and the justification/legitimation brought forth by its proponents (i.e., those opposing the peace process, etc.). However, we can sum up the overall thrust of the Jewish tradition as clearly being on the side of verbal protest (regardless of its vociferousness; see some of the Prophets' berating perorations), while being against actual civil disobedience and of course violent overthrow of the powers that be.

How, then, can the extreme Right justify civil disobedience and even sedition (verbal and perhaps physical)? At the outset, one has to differentiate between two streams within those completely opposed to the peace process: secular and religious. While they form a tactical and strategic alliance on the key issue of ceding territory, their ultimate goal is somewhat different as well as the underlying justification for their actions. We shall first present the secular argument in brief and then turn at length to the religious extreme Right (returning eventually to a more in-depth analysis of the mainstream Orthodox viewpoint).

The reason for this disproportionality in our treatment is the "ultimate goal" alluded to above. The secular "seditionists" can be called a "one-issue" camp: if the peace process were to be irreversibly completed tomorrow one way or the other, they would melt back into Israeli society—perhaps triumphant, perhaps deeply frustrated—but with little long-term effect on their public behavior. The religious "seditionists," on the other hand, view the problem (from their perspective) in a much more profound and all-encompassing fashion: the illegitimacy of the Israeli politi-

cal regime as constituted from the very start. The reason that their “sedition” did not emerge much earlier is that until 1993 (the Oslo accords) Israel’s “illegitimate” governments (Labor and Likud) had not threatened to take the drastic step of ceding any “biblical” territory.¹³ In any case, their “revolt” is not temporary but rather permanent and ongoing.

The individual who best expresses the secular “seditionist” camp is Elyakim Ha’etzni, a lawyer and long-standing oppositionist to the peace process. Given his clear and coherent “call to arms,” we shall let his pen do most of the talking:

Do we deny democracy? No and no again! Our conclusion is that there are issues so basic and sacred that even democracy doesn’t rule over them, even though all of us—Right and Left—accept democracy as the best type of regime invented yet by man. Democracy is but a framework, and there are topics that cannot be included in this framework. It is a Jewish disease, deeply rooted, to sanctify everything in a religious holiness. Thus did Jews sanctify Marxism and Leninism. . . . The intellectual progeny of those Leftist Jews have now discovered a new “religion”: the religion of democracy and the “church of peace.”

Democracy, then, is a mere tool determining how and with whom to constitute the government. Therefore, a democratic majority and a democratic vote cannot undermine a fundamental right. . . . According to law [the Basic Law: The Knesset], the Knesset itself removed from its own purview three things [enumerated at the start of this article; S.L.-W]. . . . The Knesset ensured that the entrance of a Jew into areas of the Land of Israel that are not included in the borders of the State of Israel will still be considered valid for the purpose of receiving citizenship through the Law of Return [which grants automatic citizenship to any Jew wishing to live in Israel].¹⁴

Ha’etzni’s conclusion is that the Knesset itself placed the issue of territorial borders beyond the purview of “democratic (majoritarian) politics,” and that the ones who are willing to concede on this issue are the ones in effect undermining Israeli democracy. With this argument, Ha’etzni tries to have his cake and eat it too by arguing at one and the same time that there are fundamental issues that demand “undemocratic” behavior (something that Thoreau and Martin Luther King would certainly agree to), but that in our case here it is the other side that is really acting undemocratically! This is not the place to point out the inherent contradiction in his conclusion (his first argument actually justifies his opponents’ “undemocratic” actions). What is clear is that Ha’etzni’s terms of reference are decidedly secular (even throwing in a dig at the Jewish

temperament), they are within democratic theory as normally argued, and they are instrumental in nature: “this issue is off limits, but Israeli democracy as a whole is just fine . . .”

When we turn to the religious camp within the extreme Right, the arguments take on a completely different coloration—in the language used, in the underlying frame of reference, and in the ultimate conclusion reached. The vocabulary is theological, the frame of reference ancient (instead of modern), and the bottom line far more radical in its scope.

Given the halachic analysis presented above, these “seditionists” first have to grapple with—and overcome—the “problem” of *dinah de-malkhutah dinah*, for, as we noted above, during the course of over 2,000 years of Diaspora life¹⁵ the Jewish tradition developed the axiomatic political principle that whatever the nature of the Gentile government, its word had to be obeyed.

How was this to be overcome? First, by arguing that *dinah de-malkhutah dinah* referred only to a non-Jewish government. Second, with regard to a Jewish government (in Israel), by asking whether democracy could even be considered legitimate, or whether only a biblical-style monarchy fit the halachic bill. Third and most crucially, whether a Jewish government—monarchical or otherwise—must be obeyed if it requires transgressing a *mitzvah*, a positive religious commandment, and not merely the three cardinal rules. As mentioned, the following discussion will first elucidate the halachic arguments of the contemporary seditionists and then turn to a discussion of the religious counterarguments of those who differ with their approach. We shall make no attempt here to adjudicate between the opposing positions. But once again, it is important to understand the halachic “mentality” of *elu v’elu divrei elohim khayim*, which enables even repugnant opinions (to the modern sensibility) to be given respect in the ongoing halachic debate, as long as such opinions are voiced from a Torah perspective.

The first argument is at first glance a paradoxical one: Jews living under Gentile rulers must obey the authorities (in almost all circumstances), whereas Jews do *not* have to obey a *Jewish* government that is not monarchical or based on the Torah. The reasons for this, however, are “obvious”: the very idea of “the law of the land is the law” came into being only *after* the Jewish people had lost sovereignty over their land. In other words, it is a principle that evolved in the Diaspora for the unique conditions that existed there: Jewish life in non-Jewish lands. Moreover, this principle is not based on a primary Torah commandment (“you shall place upon yourself a King”) but rather on secondary rabbinic edicts and interpretation of biblical stories (as we shall see a bit later).

This leads to the second question: can *any* Jewish government other

than a Torah-based regime be legitimate? The extreme religious Right argues that it cannot. Here the position seems to be on solid ground as it finds support in Maimonides—the great post-Talmudic codifier—who suggested that no post-Temple Jewish regime could be considered legitimate if it predates the rebuilding of the (Third) Temple.¹⁶ Maimonides called this type of regime an “intermediate government,” without any halachic imprimatur. As Rabbi Goren (former Chief Ashkenazic Rabbi of Israel) explains: “It is obvious, according to the Rambam’s (Maimonides’) system, that an intermediate government at this time has no status and no authority, for it lacks all the things that the Rambam set as a condition for a government in Israel, such as waging war and conquest of territory.”¹⁷ Moreover, even rebuilding the Temple isn’t enough, Goren immediately continues, for Maimonides insists on all the other institutions of government being reestablished too: the prophecy, the Great Parliament, and the High Priest.

As we shall shortly see, while technically this Maimonidean position is virtually untouchable, the approach of the majority of rabbinical decisors is to bypass Maimonides from a different biblical direction.¹⁸ It is for this reason that the seditionists move on to their third argument: even if one does not accept the Maimonidean position of the inherent illegitimacy of the contemporary Israeli regime, one can hardly deny that the Israeli governments (all of them) have issued edicts and passed legislation that patently fly in the face of Torah law. When faced with *any* government demanding that its citizenry transgress biblical commandments, the Halacha clearly demands that the ruler not be obeyed. This is even true of a biblical-monarchical regime; all the more so regarding any other type of Jewish regime—as (il)legitimate as it may be.

The argument ceased to be an academic one in 1995 when a group of leading rabbis (one of them, Rabbi Abraham Schapiro, was Israel’s former Chief Ashkenazi Rabbi) issued a call to the army not to force religious soldiers to remove settlers from their homes as a result of any peace treaty calling for territorial concessions. On the one hand, this rabbinic decision was not seditious in any active sense, for it did not in any way demand of anyone to stop the authorities from carrying out their policy, nor did it even demand military disobedience on the soldiers’ part; rather, it strongly urged the army command (and the government) not to place their religious soldiers in a religiously untenable position. However, notwithstanding the circumspect way in which this Torah edict was phrased, it soon became clear that the basis of the decision contained the kernel of true sedition, for the Rabbis had decided (and proclaimed) that territorial concession was a transgression of Torah law.

Yehudah Etzion, a convicted (later pardoned) member of the “Jewish

Underground” in the 1980s (attacks against Arab leaders and schoolchildren) and one of the leading Orthodox right-wing seditionists, made clear the import of this decision in an article written immediately thereafter—and almost immediately preceding Prime Minister Rabin’s assassination.¹⁹ He first rightly points out Maimonides’ extreme reluctance to legitimize “revolt against the king,” noting that the king has the authority to execute anyone for any sort of insubordinate behavior.²⁰ However, Etzion continues, in the very next paragraph Maimonides brings up a specific situation that places the whole issue in a different light: “the law regarding an individual standing against the king’s edict that contradicts a Torah commandment . . . if the king decreed the abolition of a commandment—then ‘one does not heed the king.’ The general explanation of the priority of God’s word over the King’s word is: (in a conflict between) ‘the owner’s word and the slave’s word—the owner’s word takes priority.’”²¹

But Etzion does not stop there. Once we are faced with a regime that systematically and ideologically ignores Torah prescriptions and actively demands their transgression, the problem becomes not local (regarding a specific policy) but endemic. And for him, there can be no doubt as to the all-encompassing seriousness of the situation: “In an hour when they [the Israeli government] are setting up with their own hands the enemy state in the heart of our country, handing over her finest parts and establishing a competing sovereignty against us, then they have lost the last shred of legitimacy that comes from their being Israel’s salvation.”²² His solution: “We must make more comprehensive our view, and widen the circle of testing and judging from the king person (prime minister) to the entire type of government: the revolt is necessary against the entire regime, and not just against this or that government. The revolt must come even were matters of state to be governed in tranquillity.”²³ In short, this is not a short-term issue but one that strikes at the very heart of the nature of the State and its underlying legitimacy.

But as hinted at above, on all these questions, the halachic picture is not clear-cut (in Jewish law, it almost never is). The counterarguments are well founded as well. It must be pointed out that they are put forth by religious authorities who are no less knowledgeable and devout, so that the seditionists’ radical conclusions are not necessarily a function of Jewish religious fundamentalism per se but of their own political and/or temperamental predilections.

Rabbi Goren himself highlights the duality of the Halacha and its approach to the general question of a secular Jewish government’s political legitimacy. In the same work in which he cites Maimonides, Goren brings the Jerusalem Talmud²⁴ as a counterbalance: the Third Temple will be built *before* the House of David returns to its rightful throne, and since

logically (according to Goren) it is inconceivable that the Temple would be rebuilt under anything but a Jewish regime, it is obvious that there must be some sort of "intermediate" government.

However, logical inference is not enough; there must be some sort of biblical basis—if not imprimatur—for the unquestioned authority of a nonmonarchical Jewish government. Many commentators find it in the successor of Moses. First, the biblical commandment to establish a king after the conquest of the Land of Israel was not fulfilled by Joshua—and the biblical source does not so much as hint at any criticism for such inaction in the face of a clear Torah commandment. Quite the reverse, as the famous modern decisor "Chatam Sofer" notes:²⁵ Joshua could even execute miscreants on the basis of the exhortation by two and a half tribes that "any man who heeds not your word which you command, put him to death."²⁶ One might also add that this is a legitimation of "democracy" in the classic sense of the term: the people's (that is, tribes') will.

What is the justification for this? In an analysis akin to political philosophizing as we know it in the West, the most influential early Zionist Rabbinic personality of all—Rabbi Abraham Isaac Kook²⁷ (Israel's first Ashkenazi Chief Rabbi, prior to the State's establishment)—offered the following argument: "At a time when there is no king, due to the fact that the monarch's rulings are also a matter of the nation's general good (and not just religious adjudication), all the rights (i.e., authority) revert back to the nation as a whole. This is particularly obvious regarding every judge (ruler) that arises in Israel: the law of the king is his . . . especially regarding whatever involves governing the general public."²⁸ Here Kook is inverting the Western basis of democratic legitimacy. Instead of the people having an original and primary authority to establish their preferred form of regime (including the right to set up a monarchy), the Jewish approach—in Rabbi Kook's eyes—takes the God-given legitimacy of the king and transfers it to the people when for any reason (except, perhaps, usurpation by the people of the king's power when the monarchy exists) the monarchy/king does not exist or cannot function properly. In Judaism, too, power abhors a vacuum; democracy is certainly preferable to nothing.

If Kook views democratic government as a necessary but decidedly secondary regime, not so a later Religious Zionist halachic authority, Rabbi Shaul Israeli. He seems to place the two types of regime on an even footing!

We have found that the appointments of a king and a judge are equal, from the perspective of the power that sets them up. This can be accomplished in two ways: appointment from on high by the prophet or the Sanhedrin [religious legislature], and through election by the

people when there is no need for the prophet or the Sanhedrin. From this we can deduce that all governmental appointments done in Israel through elections in which the majority decides, have validity and authority. . . . From here we can see that the Government Council elected through proper elections has all the same authority regarding ruling and governing the nation as a King of Israel has.²⁹

While not singular, this is still somewhat of an unusual position among contemporary religious decisors, for it comes close to suggesting that the biblical commandment of establishing a monarch is one in which the Jewish people are free to decide whether to accept it or not. Probably more mainstream in his approach to the question of democracy's legitimacy in the present situation is Rabbi Goren, who distinguishes between a priori and ex post facto (a distinction carrying considerable weight in the whole of the Halacha), in order to finesse the halachic force of the biblical commandment as well as Maimonides' heavyweight interpretation. Goren points out that Maimonides' injunction that everything be done by a Jewish, Torah-based monarchy is a prescription for an *ideal* world, but that after the fact (in the *real* world), assuming that any other type of Jewish government succeeds in reconquering the Land of Israel and establishing a Jewish State, such a government by its very success proves itself legitimate in the eyes of the Lord.³⁰

With the groundwork being laid for the halachic legitimacy of the present type of government (democratic regime), other Orthodox decisors turn their attention to the more specific question of *mo'raid be'malkhut* (revolting against the king). Rabbi Ovadiah Yosef, Israel's former Chief Sephardi Rabbi and the acknowledged supreme decisor among Sephardi Jewry today, was asked whether it is permitted to avoid paying tax (income, municipal, or value-added) to the Israeli authorities. His response, based on a ruling of a famous sage from the medieval period, is worth quoting at some length:

also in a country where the government is not monarchical, but rather is elected by the country's residents, the valid principle is of "the law of the land is the law. . . ." Thus wrote the Rashbah in his questions and answers, that every government of Israel that rules in its place, its laws are law within the principle "the law of the land is the law," and it is just like the law of the king. . . . This is the law regarding the State of Israel, whose citizens elect the Knesset, etc.³¹

While not necessarily accepting the specific halachic road to Yosef's bottom line, it can be said that very few Israeli rabbinic authorities have

come out in favor of any form of disobedience against the Israeli government, many for practical political reasons—after 2,000 years of exile, the fear of the “destruction of the Third Temple,” that is, the State of Israel, as a result of internal dissension and weakness is palpable and voiced on numerous occasions. Not many have attempted to venture into the halachic minefield, for several reasons. First, as noted above, while the corpus of Halacha is over 2,000 years old, most of it evolved in political conditions not conducive to any analysis of Jewish sovereignty, regime legitimacy, and political (dis)obedience. Second, and no less problematic, is the third issue raised by Etzion and others: if such a Jewish government demands that the devout Jew *transgress* the Torah, it is not easy to see how the rabbis can condone this. Rather than deal with the question, most tend to studiously avoid it in the halachic equivalent of “discretion is the better part of valor.”

We now have a situation where both sides (within the Orthodox camp) disagree heartily on the questions of whether *dinah de'malkhutah dinah* refers only to a non-Jewish government, and whether any Jewish government regime other than a Torah-based one can be legitimate; but in which only one side dares voice its opinion on the third question, that is, can *any* government passing laws that fly in the face of the Torah be legitimate?³²

This clearly leaves the field open to the “fighting words” of active revolt on the part of the “secessionists.” At this point, two final questions must then be asked: why don’t Etzion and other, like-minded right-wingers revolt? (The Jewish Underground that was active between 1980 and 1984 used violence only against Palestinian Arabs). And why don’t the authorities arrest anyone espousing such a seditious “call to arms”? Etzion himself offers the (same) answer to both these questions, once again based on Jewish religious law: “Are we required—a halachic demand—to revolt against the present government in the State of Israel? The answer is negative. Revolt is never a commandment or halachically required in an objective and absolute fashion, demanded of the public.”³³

The extreme religious Right, then, plays Maimonides on both sides: one must refuse to obey, but there is no *requirement* to overthrow. In modern parlance: civil disobedience, yes; claiming the right to revolt, also yes; but active overthrow of the government—not a bad idea, but no one can tell you that you have to do it. This enables the secessionists to live in the best of all possible worlds (from their perspective): to remain within the Halacha; to oppose all Israeli government policy with which they disagree; to argue for the illegitimacy of the very regime; to bandy about the need to overthrow the government and the regime; but not to commit themselves in practice to such a revolt (at least at this time)—thereby avoiding suffering the most extreme legal consequences of their verbal onslaught.

In a larger sense, this two-pronged and ambivalent approach is symptomatic of Jewish history writ large. On the one hand, one cannot say that the Jewish tradition had no important examples of extreme political action. Several cases from the Bible and Jewish history can be brought forth—Judah Maccabee against the Greeks, Bar Kochba and Rabbi Akiva against the Romans are but two of the more famous cases. However, on the other hand, the interesting thing in these cases of political rebellion is that even when the Jewish tradition accepts the action, the acceptance is *reluctant* and *ex post facto* (again)—and not as a precedent for legitimating similar future activity.

Indeed, the Rabbis at times went out of their way to remove the “heroic” elements from the revolutionary. This can best be seen in the Hanukkah story: while the revolutionary heroics of Judah Maccabee led to the purification of the Temple and victory over the Hellenizers, ultimately the Rabbis chose as the central aphorism to be read by Jews on the Hanukkah Sabbath the following decidedly nonrevolutionary verse: “*Not by military might and not by force, but only through my spirit says the Lord of Hosts.*”³⁴ From that time onward, a new ethic arose that continued at least into the twentieth century—passive resistance through martyrdom. But this is a far cry from active rebellion.

The result is ironic, from a number of perspectives. The Zionist movement came into being as a reaction to such political passivity and fatalism, infusing its adherents with an activist—even “revolutionary”—ethos. Thus, it finds itself in a somewhat uncomfortable position when having to defend itself against those who criticize it (and worse) for not standing firm on its full historic rights—the whole Land of Israel, etc. On the other hand, the Religious Zionists have an even more problematic past: not only did the medieval and early modern martyrdom approach have deep religious roots, but even when political Herzlian Zionism arose, most of the Orthodox camp around the world refused to jump on the bandwagon, becoming fully Zionist—ideologically and practically—only later on. The Religious Zionist camp continued to harbor feelings of pioneering “inferiority” for decades until after the Six Day War, when the territories were “freed” and it formed the vanguard in settling Judea and Samaria (the West Bank). Relinquishing even part of “their” accomplishment is a tremendously difficult thing to swallow, so that even the extremely unpalatable seditious call to arms by a small fringe among their brethren finds resonance if not agreement in the Religious Zionist (right-wing) mainstream.

Both the secular (mostly dovish) camp and the Religious Zionist (mostly hawkish) camp, therefore, find it emotionally and ideologically difficult to forcefully suppress this specific sort of political sedition.

To complicate matters even more, we also have the strange situation

of Israeli law on the issue, as briefly mentioned at the beginning of this essay. The law of sedition and its reigning interpretation seem to be caught between the hammer of the Western philosophical tradition and the anvil of the *cultural/psychological* ethos of the Jewish political heritage.

This can best be seen in the famous "Zo Artzeinu" case. Around the time of the Rabin assassination, an Israeli religious Jew by the name of Feiglin led a civil (or not so civil) disobedient movement—Zo Artzeinu (This Is Our Land)—against the peace process. The Attorney General charged him with "sedition" (*hamradah*). Feiglin argued that blocking traffic and other forms of civil disobedience should not be considered as undermining the State or its government, while the Attorney General obviously thought the opposite.³⁵ What is most interesting and illustrative about this case is that both sides were essentially arguing the *reverse* of the position they should have been taking!

As a religious Jew, Feiglin ought to have understood that *Jewish religious* law sees little distinction between disobedience and revolt (except in the case of the three cardinal sins), while the secular Attorney General upholding Israeli *secular positive* law should have been able to make the distinction between *disobedience* and *revolt*, based on generally accepted Western practice and thought that doesn't condone the former but certainly views it in a far more lenient light than the latter. That neither of the two understood the irony of their respective positions is less an indication of political expediency than of the confusion reigning in Israel—philosophically, theologically, ideologically, emotionally, and practically.

Why this confusion? There are several reasons. First of all, as we have already briefly noted above, having lived in Diaspora for close to 2,000 years, the Jews and their Halacha did not (and probably could not) develop a coherent political philosophy while bereft of political sovereignty. Thus, when the Jewish State was established, the Rabbis had to become involved in religious *creatio ex nihilo*—something the Halacha almost never does. Second, in looking for sources for such a religious political philosophy, Israeli Orthodoxy was and is faced with two possibilities: Jewish *history* from Abraham to the end of the Second Temple, a period where one can find several clear examples of civil disobedience and outright rebellion; and the equally long Diaspora period, where such behavior hardly occurs. The attraction of the former is clear and from one perspective makes sense: that was the only other epoch where Jews had sovereignty as they have today. The problem is that Jewish halachic law and philosophy in general is overwhelmingly *postbiblical*, and a tradition that prides itself on the continuity of Tradition finds it very difficult to make an about-face and leap back in time against the intervening development of Rabbinic Law.

The third reason for the present confusion is that modern Zionism was very strongly influenced by Western philosophical notions of nationality and other concepts, so that it is not surprising to find even the religious camp unconsciously relying on Western philosophy (especially when the Halacha has little clear to say about an issue such as the one being discussed here). Thus, in a historical irony it is now modern Orthodox Judaism that is being influenced by Western philosophical notions such as disobedience, instead of the reverse early modern situation, in which emerging liberalism sought philosophical sustenance in the stirring accounts of the struggle for rights found in the Bible. In other words, when the Western or liberal tradition was trying to find its way, it turned to what was perceived then as a coherent source (the biblical tradition); today the shoe is on the other foot, with Orthodox Judaism in Israel trying to develop its own core of *political-philosophical* beliefs and finding relevant ideas in the Western tradition, although it will not overtly admit this.

In the opinion of this author, the long-term prognosis is positive, for in the gradual mutual philosophical give-and-take within Israel, an eventual synthesis of Halacha and Israeli positive law will emerge on such questions as regime legitimacy, the limits of political (dis)obedience, and the red line of sedition. In the short term, however, the religious fundamentalists have the upper (philosophical halachic) hand because of the "certainty" of their beliefs. This does not mean that religious fundamentalism is the source of sedition in Israel, but rather that until the mainstream, more moderate Rabbinic "fundamentalists" develop a full-blown political theology, their muted opinions will be shouted down—if they choose to voice them at all.

NOTES

My sincerest thanks to my assistant, Mr. Gilad Katz, for his invaluable help in finding several of the key sources cited in this essay and for helping me to flesh out a few of the ideas herein.

1. Criminal Law, 1977, para. 136.

2. S. Lehman-Wilzig, "Am K'shey Oref": Oppositionism in the Jewish Political Tradition," 40 *Judaism: A Quarterly Journal*, no. 1 (1991): 16–38.

3. The term political *philosophy* is somewhat misleading by modern, Western lights, due to the fact that the Jewish approach to law and public policy questions is "antiphilosophical" in the sense that little or no attempt is made to first analyze issues from a position of overarching principle. Rather, "philosophical" principles are derived (if at all) through the accumulation of jurisprudence on a host of specific, concrete case studies. The closest analogy in the West to this is the British "common law": the evolutionary development of case law that ultimately can be

agglomerated into some superstructural philosophy. In the event, the Common Law has had its later philosophers (e.g., Blackstone). Other than perhaps Maimonides (the great twelfth-century Jewish commentator, Aristotelian philosopher, physician, and religious law codifier) there is no Jewish equivalent of a political philosopher, and certainly no philosophical "canon" from which one can easily glean Jewish "politico-philosophical principles."

4. To be fair, the Jewish approach is not completely relativistic. The Talmud's dictum is valid for anyone who approaches the question of law from a Godly perspective, that is, accepts the divine inspiration of the Torah and grapples with the question at hand from within the Halacha—the jurisprudential principles developed by Jewish tradition.

5. Avraham Wolfensohn, *Ha'tanakh Ha'politi: Oppositiah Ba'nikra* (The Political Bible: Opposition in the Old Testament) (Haifa: Halevanon, 1974), 86 (Hebrew).

6. Pirkei Avot (Sayings of the Elders) 3:2 (Hebrew).

7. Deuteronomy 17:15.

8. As further proof of this, Jewish kings traditionally did not wear a crown; that was reserved for the Torah (as is still the practice today, with the Torah being "dressed" with a cloth mantle surrounding it and a silver crown on top).

9. 1 Samuel 26:9–10.

10. Abravanel's commentary on Deuteronomy 17:15 (Hebrew).

11. Moses Maimonides, *Mishneh Torah: Sefer Melakhim* (Commentary on the Bible: Book of Kings), 3:8 (Hebrew).

12. Jacob Epstein, "Mo'raid Be'malkhut," 10 *Tekhumim* (1989), 90–108 (Hebrew).

13. Even this term is fraught with ambiguity, as there has never been a final, complete delineation of the borders. Several references can be found in the Bible regarding the outer borders, but these differ from time to time, not to mention the fact that it is not at all clear what the exact border was in certain regions. Overall, though, it can be stated that the Sinai was not considered to be part of biblical Israel, which is why—despite the attempt to stop the withdrawal from Yamit (in the Northern Sinai)—the cession of territory in Judea and Samaria has only recently been viewed in apocalyptic terms by the religious Right.

14. Elyakim Ha'etzni, "And If the 'People's Decision' Will Be to Concede Part of the Land of Israel?" 188 *Nekudah* (September 1995), 60–61 (Hebrew).

15. While most people view the Jewish Diaspora as commencing with the destruction of the Second Temple in 70 C.E., Jewish life outside of the Land of Israel has continued unabated from 586 B.C.E.—the year of the First Temple's destruction and the Jewish people's exile to Babylon. Indeed, at the time of the Roman destruction of the Second Temple, fully two-thirds of all Jews already resided outside the borders of Israel.

16. Moses Maimonides, *Sefer Ha'mitzvot* (The Book of Commandments). Root 14 (Hebrew).

17. Rabbi Shlomo Goren, *Sefer Torat Hamdinah* (The Book of Political Law) (Jerusalem: Ha'Idra Rabbah, 1996), 21 (Hebrew). The irony of this approach

seems to be lost on those holding this halachic position, for if the present government's conquest is based on an illegitimate use of authority, what is to hold anyone back from returning the conquered lands?

18. This is very typical of the traditional halachic approach and should not be viewed as a technical subterfuge. When faced with an unimpeachable halachic pronouncement that causes great practical difficulty, the usual rabbinical approach is not frontal (overruling it) but rather circumventational (finding another, more roundabout source for the majority's "antitraditional" position).

19. This is not to suggest in any way that there was a direct connection between his article (and similar ones by others) and the assassination itself. On the other hand, there can be no doubt that it added extra fuel to the generally overheated religio-political flames fanning Yigal Amir's decision to take matters into his own hands. Yehuda Etzion, "The Rabbis' Hand Should Be Strengthened (Even If Their Decision Was Hesitant and Went Only Part Way)," 188 *Nekudah* (September 1995), 50–54 (Hebrew).

20. Maimonides, *Mishneh Torah: Sefer Melakhim*, 8:3 (Hebrew).

21. Etzion, "Rabbis' Hand," 51.

22. *Ibid.*, 53.

23. *Ibid.*, 52.

24. Two "talmuds" evolved in parallel: the Babylonian and the Jerusalem. The former was and has continued to be considered the more authoritative, given the heavier religious weight of its rabbis. The source in this case is Tractate *Ma'aser Sheni* (Second Tithe), chap. 5, law 2 (Hebrew).

25. *Orakh Khaim* (Way of Life), Response 208 (Hebrew).

26. Joshua 1:18.

27. Kook himself is a good example of *etu v'elu divrei elohim khayim* from two different perspectives. While Kook was known for his moderation and continual attempts at finding a middle road (or at least a way to engender a dialogue between the secular and religious camps), his son, an eminent rabbi in his own right, became the spiritual head of Gush Emunim (Bloc of the Faithful), from whence emerged right-wing extremism and even the rabbinical directives to refuse Israeli Army orders to vacate Jewish settlements, as noted above. A true dialectic—all in the same family within two generations.

28. *Mishpat Cohen* (The Priestly Law), section 144, paras. 13–15 (Hebrew).

29. *Amud Ha'yemini* (The Right-Hand Column), section 7, chap. 8 (Hebrew).

30. Goren, *Sefer Torat Hamdinah*, 26–27.

31. Rabbi Ovadiah Yosef, *Khavat Da'at* (Opinion), part 5, para. 63 (Hebrew).

32. The reader who is very familiar with the Israeli scene might ask why I am studiously avoiding the entire *din rodef* controversy that preceded and followed the assassination of Prime Minister Rabin. This refers to the alleged "ruling" on the part of a few rabbis that the Prime Minister—because of his willingness to relinquish land—has the status of a person to be tracked down and killed. Despite the outcry on the part of many rabbis against such a "ruling" (the existence of which the police have not been able to prove), this is still a far cry from any defense of the government on the "command to transgress" question. *Din rodef* refers to a

specific person and the action to be taken against him as extreme (murder). It is far from the more subtle question of disobedience—not necessarily violent—to a government coercing its citizenry to transgress a commandment.

33. Etzion, "Rabbis' Hand," 53.

34. Zechariah 3:6.

35. Cf. 3996/95 *State of Israel v. Feiglin and Saket* (Jerusalem Magistrate Court) (11 November 1997).