

*Also available in the Robert and Arlene Kogod Library of Judaic Studies*

*Ben: Sonship and Jewish Mysticism*

By Moshe Idel

*The Boundaries of Judaism*

Donniel Hartman

*The Open Canon*

By Avi Sagi

*Transforming Identity*

By Avi Sagi and Zvi Zohar

# Judaism and the Challenges of Modern Life

EDITED BY

Moshe Halbertal and Donniel  
Hartman



continuum

*Menachem Lorberbaum*

The problem of religion and state has plagued the politics of the State of Israel since its creation. It has been a constant source of destabilization of Israeli coalition politics, given especially the tie-breaker role assumed by Orthodox parties such as the National Religious Party, the Ultra-Orthodox Agudah and more recently, the Sephardi Orthodox Shas party. The disproportionate power amassed by Orthodox parties, and their manner of wielding it in terms of budgetary allocations and legislation, have long been perceived by secular Israelis as political blackmail. But the coalitional politics of religion in Israel are indicative of a much deeper cultural rift. Indeed, the cultural divide in Israel is rooted in the very foundational moments of the Zionist movement and its pre-state congresses. Zionism was a movement of Jewish national rejuvenation initiated by mostly secular, yet nationally committed Jews. The very legitimacy of secular Zionism, and by extension the very legitimacy of its progeny – the State of Israel conceived of in worldly, not religious terms – has been an anathema to many religious Jews (regardless of denomination) for decades. It is the crux of Jewish identity politics.

A status quo of religious observance in Israel was articulated in a letter sent by David Ben Gurion in 1947 to the representatives of the Agudah party. The letter ensured that Agudah would join in signing the Declaration of Independence of the new state. Among other points, the letter promised that marriage in Israel would be in accordance with Torah law, that Shabbat would be the day of rest, and that kosher food would be served in the military. Its ongoing obligatory status has been ensconced in coalition agreements of successive governments.

For decades, the status quo established in 1947 served as the general guideline for questions of religion and state. The religious parties satisfied in this achievement did not view a constitution as necessary or even helpful for ensuring Orthodox freedom of religious practice. On the contrary, if anything, a constitution would threaten to call into question the religious and ritualistic commitments the state had undertaken at the expense of the freedom from religion of those of its citizens that wished for it. So even though a constitutional process had begun in the early 1950s, the Orthodox parties were one of the principal groups (though not the only ones) that had little interest in its coming to fruition.

A status quo, however, is nothing but the armistice line of warring

parties. It is not a moral document. It could therefore not ensure the long-term commitment that a value-laden constitutional agreement aspires to. Indeed, in the course of the 1990s the weight of the status quo waned as the renewed development of constitutional legislation in Israel gained momentum. New basic laws were added to the slowly advancing (but incomplete) constitutional process, most notably the basic law of 'Human Dignity and Liberty'. To be sure, these laws tried to take into account the complexity of Israeli identity politics. After declaring that 'Basic human rights are founded upon recognition of the values of human beings, of the sanctity of their lives and of their being free,' the basic law 'Human Dignity and Liberty' then turns to expound its purpose: 'The purpose of this basic law is to protect human dignity and liberty so as to anchor in a basic law the values of the State of Israel as a Jewish and democratic state.' The very legislation of 'basic' laws seemed to signify what Chief Justice Aharon Barak declared to be a 'constitutional revolution', equipping the Supreme Court with the legitimacy it needed for judicial review.

Though the religious parties supported the legislation of the basic laws, they feared the implications heralded by the activist liberal chief justice in the final decade of the twentieth century. The relations between religion and state in Israel thus entered a new phase, governed by an incomplete constitution and a no longer existing status quo. This void was one of the factors leading to the most vigorous theocratic attacks against the sovereignty of the State of Israel in the name of the Jewish religion it had ever experienced in the fifty years of its existence. The *haredi* (Ultra-Orthodox) community attacked the authority of the Supreme Court to sit in judgment, while the religious Zionist community attacked the legitimacy of the state to exercise sovereignty over matters of territory. Religious Zionism combined with Ultra-Orthodoxy to undermine classic expressions of sovereignty with regard to policy and justice. These attacks not only aimed at the democratic character of the state but critiqued the very formation of human political agendas that are not religiously sanctioned. It was as much an attack on politics as worldly and prudential as upon democracy. Politics, on their account, must be guided and constrained by a divine agenda they are privy to.

These theocratically inclined renunciations of state legitimacy were the immediate background for the assassination of Prime Minister Yitzhak Rabin. But while it is true that this primal act of violence, and later the outburst of the second Intifada, caused these communities to recoil at the consequences of their respective agendas, their withdrawal may yet prove merely temporary. For the accumulating efforts of the de-legitimization of state sovereignty revealed the fact that the State of Israel has not succeeded in adequately addressing the place of religion in its political society. Despite

the unique achievements of the creation of a thriving society, in economic and cultural terms, and of a state-sponsored thriving of religious learning and of religious communities, both secular and religious Israelis have come to the point that they do not understand what a 'Jewish and democratic state' might even mean. Rather than signal the common denominator of Jewish Israelis, this definition in fact highlights the depths of their sense of disillusionment.

Furthermore, in order to thrive, political ideologies are in need of contributing circumstances. In the case of Israel, it is the state itself that has provided circumstances beneficial to the growth of anti-political and anti-democratic theocratic religiosity and done little to curb these tendencies. Israel is the only Western democracy that generously funds educational systems that teach students to disregard the authority of state law and that rewards the graduates of this educational system by exempting them from civil service. Given the consequences, we might argue that the Israeli political system's continuous reluctance to address the adequate place of religion in the polity is nothing short of criminal.

There is no doubt that the specific character of the Israeli parliamentary coalition system encourages sectarian politics and enhances the power of minority interests as opposed to the common weal. Even small improvements, such as raising the electoral threshold, can contribute greatly to the elimination of splinter groups from the parliamentary debate. Awareness of such technical avenues also serves to caution us against focusing too much on ideological differences, a vice to which the highly rhetorical Israeli political discourse is all too prone. Bloated ideological rhetoric is the best camouflage for political neglect. At the same time, we must identify the debates that seriously affect the very legitimacy of political society.

Our approach to questions of religion and state must therefore address both fundamental Jewish and political values on the one hand, and the constitutional structures of the state that provide the circumstances conditioning the political realization of values, on the other. I will not argue here against any specific ideology. Rather my purpose is to outline those values and institutional formulas that would enhance the stability, cohesiveness and justice of the State of Israel as a state of Jews but of non-Jews too, and one with a deeply rich and variegated ethnic, religious and cultural population.

### *'Separation of Church and State'*

A classic modern solution for dealing with the tensions between religion and state is to call for a separation of the two. The creation of the modern republic has been inseparable from a renewed conception of the domains of

politics and religion. Mediaeval empires and later, absolute monarchies, sought political legitimacy in the church and theories of divine right. Modern republics, by contrast, are worldly in their conceptions of politics and in their sources of legitimacy. Therefore, constitutionally speaking, they have for the most part espoused a separation of church and state. Such a separation is understood to be beneficial for politics but no less for religion. It certainly helps ensure freedom of worship as a basic right in the liberal republics.

Yet even so, a cursory look at the constitutions of modern polities reveals that there is no one formula for the adequate arrangement of the relations of church and state. Consider the following examples:

France is a secular republic. The church and indeed all forms of religion are barred from the public domain. A young Muslim woman's wish to attend a public school wearing a scarf gives rise to a constitutional debate. The public domain here is not neutral with regard to religion but rather secularly committed. Religious symbols and affiliations must be kept out of the civil domain.

In contradistinction, the United States is not a secular polity. The Fourth Amendment declares that Congress shall not establish a church. Yet this institutional separation of church and state is meant to allow for an enriching interplay between religion and politics: 'In God we trust.' Today, it is impossible to conceive of a candidate for the American presidency who is not religiously committed. Furthermore, the profound Protestant character of the American polity is obvious when we consider that in its entire history the United States has had only one Catholic president.

Britain differs radically from both France and the United States. It is a constitutional monarchy, and the monarch is, by virtue of office, head of the Church of England. Britain knows no constitutional separation of church and state. Yet it is a liberal society in so far as citizenship is not premised on religious affiliation and the state respects the freedom of religious association.

In contrast to an existing fundamental agreement with regard to specific civil rights, the constitutions of modern republics are radically divided as to the best arrangement of the religious and the political. Different countries have different histories, and various religions give rise to different practices and cultures. The institutional arrangements of church and state derive from the particular historical and cultural backgrounds of the people who are the citizens of the republic.

This holds true for the State of Israel, too. Simply calling for a separation of religion and state in Israel is not enough. More has to be said about the Jewish religion, the nature of the Israeli polity, and the specific nature of the hoped-for separation in order to judge what the best arrangement might be and to understand why this indeed is the case.

### 'A Kingdom of Priests and a Holy People'

John Locke's *Letter Concerning Toleration*<sup>1</sup> is the founding document of the separationist position. Locke's predecessors, Thomas Hobbes and Baruch Spinoza, had cautioned vigorously of the dangers of an independent church, and espoused therefore a position of sovereign supremacy over the church. In contradistinction to these predecessors, Locke maintained that if the church agreed to accept the limitations incumbent upon a non-governmental organization, the sovereign could afford, on his side, to relinquish the imposition of supremacy. Locke advocated turning the church from an institution with a stake in ruling to what we would recognize today as a Non-Governmental Organization (NGO).

Locke argued that two religious groups seemed to be principally unable to accept such an arrangement. Catholics, he argued, maintained not only a religious but a political loyalty to the Pope in Rome and were therefore suspect of a split loyalty with regard to the state. Similarly, Jews, because of the specifically political character of their religious commitment, could not countenance a separation of the civil and religious realms:

For the commonwealth of the Jews, different in that from all others, was an absolute theocracy; nor was there, or could there be, any difference between that commonwealth and the church. The laws established there concerning the worship of one invisible Deity were the civil laws of that people, and a part of their political government, in which God himself was the legislator.<sup>2</sup>

Locke identifies the structural peculiarity of the Jewish religion. The Torah is a political project. Ordering the polity and prescribing the requisite ritual are complementary spheres of the one law aimed at creating a 'kingdom of priests and a holy nation' (Exod. 19.6). The constitutional character of the 'commonwealth of the Jews' is in turn derived from a specific political theology according to which 'God Himself was legislator', or in other words, God was sovereign.

Locke thus makes three important arguments about the Jewish religion: (1) The Jewish religion is committed to a specific political theology wherein God is conceived of in political terms. He is sovereign. (And this presumably precludes human sovereignty.) Put differently, Judaism is committed to a theocracy, to a polity wherein God reigns. (2) A Jewish commonwealth cannot therefore countenance a separation of the religious and the political, for they are all part of the one law of God for ordering his polity, in terms of justice and in terms of worship. (3) By implication, Jews would not make for

good citizens in a polity that would strive to separate the religious and the political.

Is Locke's account of Jewish political commitment correct? This question was first confronted in the eighteenth century by Moses Mendelssohn, who advocated the civil emancipation of Jews and the attainment of equal citizenship. Mendelssohn was mostly concerned with Locke's third point, because it implied that Jews were committed precisely to the kind of pre-modern ecclesiastical politics that would bar them from achieving citizenship. In his *Jerusalem*,<sup>3</sup> Mendelssohn argued that the Torah was God's positive law addressed solely to the people of Israel. It is therefore inapplicable to a Gentile polity. Moreover, exile precisely means a suspension of the Torah as a political program. The maxim 'the law of the kingdom is law' guides Jewish exilic existence.

Mendelssohn's strategy of argumentation allayed the fears informing Locke's critique and proved the Jews of Europe eligible for the Lockean doctrine of toleration. Mendelssohn thus was able to formulate the basic adage of Jewish Diasporic existence in early modernity: be a Jew at home and a citizen in public. This formula of Jewish politics was essentially liberal.

Our concern here, however, is with the character of a Jewish state. Is it capable of promoting the toleration Jews so dearly valued when it was extended to them at the advent of modernity? Can it generate a civic space inclusive of all Jewish denominations, and of Jews and non-Jews of secular and religious commitments?

Answering these questions demands challenging Locke's understanding of Judaism. Locke, I will argue, was only partially correct. Although he correctly heard the voice of a certain strand in the Bible, it is not the only one, and it is certainly not the only strand existing in the rabbinic tradition. Yet, in order to correctly frame the argument, a qualification must be made. Our interpretations of rabbinic sources ought to respect the fundamental cultural and historical divides: neither the biblical prophets nor the rabbis were proto-liberals. The rise of modern republicanism necessitated new conceptions of politics and religion which were considered heretical in the eyes of the previously hegemonic Catholic Church. Pre-modern conceptions of Judaism are no different in this respect. Such conceptions view the advent of modernity as a crisis of authority and religiosity. My purpose is not to render such conceptions modern but to argue that there are sufficient resources available in the Jewish tradition for thinking differently about politics and religion.

### *Secularizing the Political*

Locke's first point was that Judaism is committed to a theocracy, to a polity wherein God reigns. But what does this actually mean? What does this reign imply? If we turn to the Bible itself, one can argue that the Lockean reading is highly selective. The Torah raises a theocratic conception in the Book of Exodus but also provides a thoroughgoing critique of its political viability. The Book of Numbers is arguably a critique of the ideal-type of theocracy, the reign of Moses. The book painstakingly follows Moses' slow demise, and ultimate failure, as a political leader through numerous rebellions against his authority and his inability to address them adequately (one of the lowest points of which is the zealous taking of the law into private hands by Phinehas [Num. 25.1–15]). This is not to detract from Moses' foundational achievement of creating a people, but rather to say that the task of mediator between God and the people was an impossible one that doomed him to failure.

The inner biblical critique of theocracy continues in the Book of Judges that identifies God's reign with human anarchy: 'In those days there was no king in Israel, each man did what was right in his own eyes.' This verse is repeated (with slight variations) three times at the end of the book (18.1, 19.1, 21.25), stressing that idolatry, spilling of blood and incest – the cardinal sins of Judaism – are attendant on this anarchy. This critique leads finally to a new worldly conception of politics in its monarchic version, ultimately sanctioned by God.

The Bible, then, not only raises the ideal of divine reign but also arguably critiques its implications with regard to the political institutions of human life. Its thorough exposition includes a forthright critique of the attempts to translate divine reign politically in human affairs. The attempt to implement direct divine rule proves to have a destructive effect on human life: it either corrodes leadership (as in the case of Moses) or is corrosive of fundamental values thus leading to anarchy (as in the case of the Judges).

In rabbinic Judaism, the kingdom of heaven (*malkhut shamayim*) is neither a political institution nor (as the Christian Bible would have it) a historical event. It is an ever-present and non-spatial normative domain one enters in the daily recitation of the *shema* and the acceptance of the yoke of commandments.<sup>4</sup> Politically speaking, the Mishnah endorses the worldliness of politics as the assumed rule, declaring, 'the king neither judges [in the Sanhedrin] nor is subject to judgment' (Sanhedrin 2.3).<sup>5</sup> The king is placed outside the domain of divine law. Ultimately, 'there is none above him but the Lord his God' (Mishnah Horayot 3.3) – God himself, but in fact not even his law.

Locke's second point – that Judaism cannot countenance a distinction

between the religious and the civil domains – was long ago contested by leading mediaeval rabbinic authorities. These authorities were acutely aware of the inadequacy of halakhic norms for guiding society. In a famous *responsum* endorsing the extra-halakhic penal codes of mediaeval Jewish communities, the thirteenth-century scholar and communal leader, Rabbi Solomon ibn Adret (Rashba) writes the following:

For if you were to restrict everything to the laws stipulated in the Torah and punish only in accordance with the Torah's penal [code] in cases of assault and the like, the world would be destroyed, because we would require two witnesses and [prior] warning. The Rabbis have already said that 'Jerusalem was destroyed only because they restricted their judgments to Torah law' (BT Bava Metzia 30b).<sup>6</sup>

Halakhic criminal procedure places impossibly tight restrictions on conviction. Criminals must be forewarned by the witnesses of the penalty incurred for such felonious action, and testimony must be given by two competent witnesses who saw the crime together. Such restrictions, argues Adret, are sure to lead to the destruction of society because they make conviction impossible.

It is important to stress that these restrictions are not arbitrary but were so construed by the rabbis in order to make capital conviction impossible. The inadequacy of halakhic criminal procedure is ultimately rooted in a critique of capital punishment.<sup>7</sup> Adret, however, is clearly aware of the inadequacy of halakhah as a tool for social order and prescribes civil politics as the means for ensuring social order. Civil politics guided by concern for social order will better achieve its goal than the social law of religious halakhah. The pre-modern medieval Jewish community was a *kahal kadosh*, a holy community, devoted to a religious way of life predicated on divine law. Yet the Lockean notion of the one complete divine law including both civil and religious statutes never became the actual norm of Jewish communal life. In fact, it was the reasoned restriction of the application of divine law that ensured the political stability of the community.

Israeli society, of course, is a unique kind of Jewish society. Even if a messianic Jewish society were to be governed by a Lockean version of a complete Jewish law, the State of Israel is not constituted as such a society but is rather qualitatively different. Rabbi Isaac Halevi Herzog, the first chief rabbi of the State of Israel, correctly argued:

The very founding of the State [of Israel] is a kind of partnership. It is as if Gentiles, let us say even heathens . . . agree to allow us to

create a joint government in which we have a recognized pre-eminence and the state will bear our name.<sup>8</sup>

According to Herzog, the State of Israel is constituted upon a joint covenant of Jews and non-Jews together to create a political society whose public space is predominantly Jewish. Such a political entity is not the agent assumed by the Torah for executing its political commandments and vision. These commandments, argues Herzog:

are not addressed to particular individuals but to the governing body, [that is] to a Jewish government, whatever its formal [regime], that is sufficiently empowered to discharge them. These commandments were originally addressed to the Jewish people conquering the land, who became sovereign over it independently of the [other] nations. These are the Torah's background assumptions with regard to these commandments, as is self-evident. In the absence of this background, and given the realistic circumstances whereby this state is given ... these commandments do not apply.<sup>9</sup>

According to this argument, the State of Israel is not charged with the implementation of the Torah's vision of a political society but it is, however, obliged not to openly legislate against Torah law. Such a stipulation goes well with the fundamental assumptions of freedom of religion in a democratic and liberal republic wherein the polity will not legislate to actively desecrate the actions prohibited by a religion.

### *Synagogue and State*

The above critique of theocratic conceptions of Jewish law and politics and of their applicability to the State of Israel is not meant to deny the power of the theocratic impulse in the Jewish tradition. Theocratic impulses become destructive when they are conceived of as a foundation for a revolutionary politics, erroneously assuming the ability to provide an alternative institutional arrangement for human life. This occurs when the theocratic impulse is joined with the messianic yearning to overcome the constraints of human finitude and the partial character of human life, such as the unarticulated *haredi* ideal of a Torah state or the religious Zionist vision of politics as an instrument of divine history. The challenge of Jewish politics is to openly address this impulse and to tame it so it may serve as a source for constructive social criticism. Jewish politics must be worldly in character while always seeking to negotiate the place of the holy in human life. The

great biblical prophets may serve as a model for us as well; they did not aspire to exercise power, but rather to serve as its conscience.

The task of constitution-making is to create guidelines for justly negotiating power. The best way for the State of Israel to promote the conscientious control of power is by encouraging Jewish religious pluralism and by strenuously affirming the value of freedom of religion. Rather than using value-neutral slogans like 'Separation of Religion and State', civic education should espouse the value-laden discourse of freedom of religion. Furthermore, espousing freedom of religion does not necessarily entail a total separation of state and synagogue. We can best formulate the guidelines of an Israeli model by reconsidering the ones enumerated earlier.

The French model of a secularly committed state would not work in Israel – because of the specific Israeli need to negotiate the holy – in that it takes a blatantly anti-religious posture towards civic space. In the case of Israel, state commitment to secularism as an ideology is as detrimental as one-sided religious commitments to the flourishing of its citizens. On the contrary, the state should equally promote the building of synagogues of different denominations and also support the building of mosques. Rather than devalue public space, the democratic debate must allow for citizens to endow their public space with their traditional values. Indeed, as custodian of the Holy Land, the State of Israel has the unique responsibility of fostering variegated religious commitments. This is a uniquely universal responsibility.

The American model is too strict in that it prohibits the state from funding the flourishing of religion in its society or its citizens' ability to democratically determine the character of public space. The democratic value of creating an agreed-upon public space should carry a greater weight than the liberal directives advocating state neutrality. The democratic debate in Israel should allow the differences in society to surface in the parliamentary deliberation as to the Jewish cultural and religious character of public space.

There are, however, important preconditions that ought to determine the validity of endowing the public space religious character. First, such enactments may not undermine the democratic character of the state. The state lacks the legitimacy to determine what is religiously obligatory for a person; it can only determine what will be civically binding; therefore its legislation, too, which owes its very authority to the *demos*, cannot be one that undermines the state's democratic character.

Religious legislation seems necessarily to imply an infringement upon freedom from religion. A further restriction must therefore be added which touches upon the content of legislative acts with regard to religion, namely, a legislative act cannot be justified in purely religious terms. Saying eating

pork is forbidden by the Torah is neither a necessary, nor a sufficient condition for civic legislation. One must argue in civic and cultural terms. The idea behind this restriction is that any religiously inclined enactment must create a broader non-religious coalition to back it and lend it civic authority.

Finally, religious legislation cannot contradict the state's responsibility as custodian of the Holy Land to ensure the flourishing of all forms of religiosity. The British model we saw above is close to Israel's in its recognition of a state clergy. It is important to stress that with regard to religions other than Judaism, the State of Israel has adopted the *millet* system of the Ottoman Empire and the British Mandate to recognize the respective autonomy of non-Jewish religious groups. But in the case of Judaism itself, the adoption of a state clergy violates the need for religious pluralism by lending state recognition to one of several major options of Jewish life, thus ensuring an Orthodox monopoly on marriage and divorce procedures.

The model emerging for Israel is that of a polity ideologically committed in neither secular nor religious terms. It should therefore not have a state clergy, or at any rate no single-state clergy. The state should actively help to fund the whole variety of religious forms of life as a means of encouraging individual freedom of religion and freedom of religious association.

### *Conclusion: Would a Written Constitution make a Difference?*

Since the assassination of Prime Minister Rabin, much effort has been invested in furthering a written constitution for Israel by a diversely motivated group of promoters who hope that a written document with broad civic support will contribute to healing the deep rifts in Israeli society. Yet there are many specific and conflicting agendas in Israeli constitutional politics. Among the Jewish citizens advocating a constitution, Democrats hope that agreed-upon procedures for political life will mitigate conflict, Liberals hope that a constitution will provide the values necessary to constrain political debate and action, and trump the initiatives of politically unreliable parliamentarians. The religious parties hope a written constitution will help enshrine state commitment to Orthodox values, or at least sanction the remnants of the religious-secular status quo of the early years of the state. Arab citizens would be satisfied if the state would live up to the values of freedom and equality it committed itself to in the Declaration of Independence of 1948. The more radical voices would like to strengthen an attenuation of the specifically Jewish commitments of the state. These latter interests highlight the biggest conundrum of Israeli constitution-making: easing the Jewish-Arab tensions necessitates a broadening of the

civil character of political society, while the internal Jewish rifts require a deepening of a Jewish common denominator.

It should be noted that there already exists a weighty body of constitutional ruling by the Israeli Supreme Court, and in that sense the Israeli system is closer to its parent British system, which does not have a written constitution. Still, there is no doubt that an agreed-upon constitution would contribute to an easing of divisions in Israeli society. Yet, if my preceding analysis is correct, the real problems in Israel are not a function of the lack of a written constitution but of a lack of political will to implement what is already possible. Changing the electoral system, ceasing the funding of anti-civic educational systems, and ending the exemption of *haredi* and Arab citizens from civil service are all possible without a written constitution and would not be promoted by its enactment. Even the Law of Rabbinic Jurisdiction (1953), that stipulates that only rabbinic courts will enact marriage and divorce of Jews in Israel, does not need a constitution to be circumvented. It would be sufficient for the state to recognize the civil marriage and civil divorce of citizens who choose such procedures.

The constitutional debate in Israel overemphasizes the role of a written document at the price of recognizing the lack of political will to implement what is already possible. If this is indeed correct, the alienation of ordinary citizens from the political system in Israel will only grow to the extent that they will realize that a constitution cannot deliver what the citizens hope for. The danger to the democratic character of Israeli society lies not only in the political ineptitude of the Israeli parliament but also in the alienation of citizens from participating actively in civic life. The role of the social critic in Israel today is much like that of the great prophets of old, to educate and call attention to those values most citizens already know and regard as their own in order to help generate the political will for their proper implementation.

### *Notes*

- 1 J. Locke (ed. M. Montuori), *A Letter Concerning Toleration* (The Hague, Martinus Nijhoff, 1963), p. 73.
- 2 *Ibid.*
- 3 M. Mendelssohn, *Jerusalem, or On Religious Power and Judaism* (Hanover NH, 1983).
- 4 See Mishnah Berakhot 2.2.
- 5 M. Walzer, M. Lorberbaum, N. Zohar and Y. Lorberbaum (eds), *The Jewish Political Tradition, Volume One: Authority* (New Haven, Yale University Press, 2000), p. 136.
- 6 Rashba, *Responsa* 3.393, in Walzer et al., *The Jewish Political Tradition: Authority*, pp. 402-3.

- 7 See A. Kirschenbaum, 'The Role of Punishment in Jewish Criminal Law: A Chapter in Rabbinic Penological Thought', *The Jewish Law Annual* 9 (1991), 123–44; and M. Lorberbaum, *Politics and the Limits of Law* (Stanford, University of Stanford Press, 2001).
- 8 M. Walzer, M. Lorberbaum, N. Zohar and Y. Lorberbaum (eds), *The Jewish Political Tradition, Volume Two: Membership* (New Haven, Yale University Press, 2003), p. 530.
- 9 Walzer *et al.*, *The Jewish Political Tradition: Membership*, p. 529–30.

## FOURTEEN War and Peace

Noam Zohar

*Peace and War*

The most important biblical message about war is the radical notion that war is not a permanent feature of human existence – it shall one day disappear from the face of the earth. True, God sends the Israelites to make battle and conquer the Promised Land, and even before that, in the Song on the Sea, he is himself glorified as 'the LORD, the Warrior, LORD is His name!' (Exod. 15.3). Human history and Jewish history have included numerous wars, and the Jewish tradition has certainly mandated warfare. Yet above this painful reality stands Isaiah's compelling prophetic vision:

In the days to come, the Mount of the LORD's House shall stand firm above the mountains and tower above the hills; and all the nations shall gaze on it with joy. And the many peoples shall go and say: 'Come, let us go up to the Mount of the LORD, to the House of the God of Jacob; that he may instruct us in his ways, and that we may walk in his paths.' For instruction shall come forth from Zion, the word of the LORD from Jerusalem. Thus he will judge among the nations and arbitrate for the many peoples, and they shall beat their swords into ploughshares and their spears into pruning hooks: Nation shall not take up sword against nation; they shall never again know war. (Isa. 2.2–4)

The two parts of the last verse are crucially connected. This is not a vision of the 'end of history', in which nations shall no longer have any contrasting interests or deep conflicts that might lead to severe confrontations. Rather, war will be transcended because the nations will have a forum, respected by all, for resolving their differences. Like citizens in a well-ordered society, the various peoples will eschew violence as a mode of dealing with conflicting claims or interests.

Isaiah did not coin the phrase 'international law', but his vision depicts what amounts to almost the same thing: a central institution for conflict resolution. God's role as effective arbitrator rests here not upon his might, but upon the universal reverence for his instruction. Missing are the details: How will complaints be lodged and processed? How will God's instruction actually be known – will particular agents speak for him? And what of mechanisms for enforcement?