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CHAPTER I

The challenge of modern secularity

How do we sing the Lord's song on strange soil?
 (Psalms 137:4)

THE HISTORICAL LOCATION OF THE QUESTION

Any normative question asked by contemporary Jews must be seen in the context of Jewish modernity. Jewish modernity has been largely determined by three momentous experiences: (1) the acquisition of citizenship by Jews as individuals in modern, secular nation-states; (2) the destruction of one third of Jewry in the Holocaust; (3) the establishment of the State of Israel. If natural law be initially defined as those norms of human conduct that are universally valid and discernible by all rational persons, then the question of "natural law," by whatever name it happens to be called, is inherently involved in all three of these momentous experiences. That is because all three of them are essentially political, and the question of natural law is essential to political thought.

The acquisition of citizenship by Jews as individuals in modern, secular nation-states has been a seismic change from the political situation of Jews in the Middle Ages. During the Middle Ages, Jews were members of a semi-independent polity within a larger polity. The political status of the Jewish communities was determined by some sort of contract with the larger, host societies by which they were allowed to live, as it were, as *imperium in imperio*.¹ Since these larger, host societies, being either Christian or Muslim, were religiously constituted just as

¹ See Jacob Katz, *Tradition and Crisis* (New York, 1971), 11ff.

the Jewish community was, the relationship of the Jewish communities with them was largely determined by religious criteria. Since Judaism, Christianity and Islam are religions of revelation, religious criteria for each of them are necessarily grounded in each of their respective revelations.

For the Christian or Muslim hosts, their task was to find some sort of religiously tolerated status for a community of nonbelievers living in their midst. For the Jewish guests in these societies, the task was to find some sort of religiously tolerated status for a society of non-Jews under whose general rule Jews had to live. The task was made somewhat easier for both sides by the fact that Jews are not an ordinary group of nonbelievers in the eyes of Christianity and Islam, and Christians and Muslims are not ordinary gentiles in the eyes of Judaism.²

Ordinary nonbelievers in the eyes of Christianity and Islam are pagans, as are ordinary gentiles in the eyes of Judaism. But Christians could not regard Jews as ordinary nonbelievers because they affirm that they and the Jews worship the same God and are bound by the same revelation of that God in the same book – the Bible – however much they differ in their forms of worship of that God and their ways of reading that same book.³ Muslims too could not regard Jews as ordinary nonbelievers because they affirm that they and the Jews worship the same God. And even though Muslims do not see themselves bound by the Bible as do Christians in common with Jews, they regard the Bible as a valid revelation, although suffering from a flawed transmission. In fact, it was the Muslims who named the Jews “people of the Book,” meaning a community having a valid revelation, one which Muslims must respect.⁴ Therefore, the interrelationship, despite its many tensions and even its periodic breakdowns, was possible, none-

² See D. Novak, “The Treatment of Islam and Muslims in the Legal Writings of Maimonides” in *Studies in Islamic and Judaic Traditions*, ed. W. M. Brinner and S. D. Ricks (Atlanta, 1986), 233ff.; *Jewish-Christian Dialogue* (New York, 1989), esp. chs. 1–2.

³ See “Declaration on the Relationship of the Church to Non-Christian Religions” in *The Documents of Vatican II*, ed. W. M. Abbott, trans. J. Gallagher *et al.* (London and Dublin, 1966), 663ff.

⁴ See *Quran* 2:88, 106.

theless, because there was at least some commonality between the respective revelations of all three faith communities. At this level, the terms of the relationship between the Christian or Muslim hosts and the Jewish guests were largely theological and historical.

They were theological inasmuch as the presence of Jews in larger, foreign societies had to be justified by the criteria of revelation, which enabled Christians or Muslims to regard Jews as a community somewhere in-between the believers totally inside sacred space and the nonbelievers totally outside sacred space. Jews had to justify their presence in these societies to themselves by quite similar criteria. And all of this too was constituted by both sides against an eschatological horizon. This meant that the present political relationship was only tentative, and that it would be ultimately subsumed in a world totally redeemed. That redemption would be in a time unending, when sacred space would encompass all, when all of the outsiders would finally and permanently find themselves either in that space or nowhere at all.

Although the theological constitution of that relationship in general was seen by both sides from the revealed perspective of God, its specifics were negotiated very much within the historical situation at hand. Usually, those historical specifics that determined the terms of the relationship between Jewish guests and their gentile hosts were the most ephemeral of all; they were largely economic. Jewish presence in these societies was usually justified at this level of *Realpolitik* by their economic usefulness to their hosts.⁵

To be sure, the question of natural law did enter into these negotiations but, for the most part, they were conducted either at the level of God's revealed law or human-made law. (Natural law, as we shall see in due course, is the idea of a reality that is less exalted than direct divine revelation and more exalted than merely local human arrangements.) This is largely the case because the parties to these relationships could confine their self-definition to the more historically immediate categories of

⁵ See Katz, *Tradition and Crisis*, 51ff.

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Jew, Christian, or Muslim, and had to rely much less on the more abstract category of “human person,” with which natural law is concerned.

However, all of this changed with the breakdown of the *ancien régime*. For with the new self-constitution of European society into nation-states, the issue of natural law directly entered the picture in the form of natural rights. The view of society that came in the wake of the social contract theorists of the sixteenth and seventeenth centuries was one that posited in one way or another the notion that human beings qua human beings have constructed society *de novo* with certain rights already in hand. Unlike what pertained in the older pre-modern societies, the individual human did not come *from* society; rather he (and later she) came *to* it. The task of society, then, was to constitute itself in order to facilitate the exercise of the rights of these human beings which they brought from nature.⁶ In this view, all human beings began from zero, so to speak, and everyone entered society (in theory anyway) at the same point in time and space.

This new notion of human personhood and human society had antecedents to be sure, but they functioned far more as partial contributors to its emergence than as its actual causes. Furthermore, and for our purposes here most important, this provided the necessary theoretical conditions for the political emancipation of the Jews into European society and culture.⁷ But here the concessions from both sides required for this new relationship were far more radical than the theological interpretations and economic adjustments required by the medieval relationship. Here both sides had, in effect, to assume a primary and public identity as rational, ahistorical human beings, and reserve their secondary and private identity as Jews or Christians for more domestic spheres. (At this point in history, the Jewish–Muslim relationship becomes quite different than the Jewish–Christian one.) The attitude of Jews who

⁶ See Leo Strauss, *Natural Right and History* (Chicago, 1953), 165ff.

⁷ This became the basis of Moses Mendelssohn’s arguments for Jewish emancipation in his 1783 book *Jerusalem*. See Alexander Altmann’s introduction to Allan Arkush’s English translation of this work (Hanover, N.H., and London, 1983).

accepted this new situation was most famously expressed by the nineteenth-century Jewish Enlightenment poet Judah Leib Gordon, who coined the slogan (in Hebrew): “Be a Jew in your tent and a human being (*ben adam*) when you go out of it.”⁸ What is most important to bear in mind is that the new relationship between Jews and the larger world was negotiated by philosophical, not theological, means.

At least in theory, Jews were now offered their admission ticket to European society and culture; and, seemingly, it did not require that they abandon their Judaism by any detour through Christianity, as had been the case in the past. It is little wonder, then, that the vast majority of European Jews (and, later, Jews in the New World) regarded this as a very good offer whenever it was made to them, or promised to them, or even hinted at. And, although this process of admission took various forms and had various levels of success, at the theoretical level at least, it required Jews to justify their political presence by the criteria of natural law, especially in its modern version as “natural rights,” which became better known as “human rights” (*droits de l’homme*). Indeed, much of Jewish thought, from Baruch Spinoza in the seventeenth century to Moses Mendelssohn in the eighteenth century to Hermann Cohen in the late nineteenth and early twentieth centuries, was a Jewish justification of human rights and liberal society based on them. This still explains the persistent loyalty of large numbers of Jews in Europe and North America to quite stringent notions of secular social space as an absolute desideratum. And in justifying their own admission to a larger society, these Jewish thinkers had to constitute an opening for Judaism on the horizon of a new universal order. That was the case whether Judaism was to be deconstructed as Spinoza suggested, or to be tolerated as Mendelssohn asserted, or to be the historical source of true universalism as Cohen speculated.⁹

⁸ This is from Gordon’s 1863 Hebrew poem “Awake My People.” See M. Stanislawski, *For Whom Do I Toil? Judah Leib Gordon and the Crisis of Russian Jewry* (New York and Oxford, 1988), 50ff.

⁹ For Spinoza and Cohen on this issue, see D. Novak, *The Election of Israel* (Cambridge, 1995), chs. 1–2. For Mendelssohn on this issue, see Alexander Altmann, *Moses Mendelssohn* (University, Ala., 1973), ch. 6.

The second momentous experience that has determined Jewish modernity is the Holocaust. Here the question of natural law enters the discussion either by its affirmation or by its denial. For the great debate among Jews who ponder the Holocaust is whether it is to be interpreted along general or singular lines.

For those who argue that its significance is singular, the introduction of any universal element into the discussion only serves to dilute the Holocaust as a uniquely Jewish tragedy. For these thinkers, to explain the Holocaust in universal terms, even universal moral terms, is to ultimately explain it away.¹⁰ However, if this view is carried to its logical conclusion, and any universal point of reference is eliminated, the tragedy of the Jews can only be presented to the larger world as the tragedy of a super-human species, a race of angels rather than a human people. Accordingly, the connection with these victims has to be more one of fantastic projection than reasoning about persons with whom any other human shares certain universal commonalities. (Of course, isn't it easier to turn a super-human species, with whom one shares nothing essential in common, into a sub-human species, with whom one is equally remote, than it is to relate to fellow humans with whom one does share something essential in common? Are not romanticization and demonization too similar not to be troublesome?) In other words, the explicit elimination of a natural law perspective makes any reasoned attempt to come to grips with the Holocaust harder in the world.

The slogan that has emerged after the Holocaust – “Never again!” – implies that the Holocaust has a universal moral meaning, which if properly learned, can provide at least a theoretical prophylactic against its repetition in the world – against *anyone*. Ideas do indeed have practical consequences, as modern ideologies have so vividly demonstrated in this century especially.

At this point, I would also argue that to present the Holocaust as a human, moral tragedy no more dilutes its

¹⁰ See Emil Fackenheim's introduction to Yehuda Bauer's *The Jewish Emergence from Powerlessness* (Toronto, 1979).

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unique sorrow for the Jews than does one's demanding that the murderer of his or her own child be tried before a general tribunal. For that in no way lessens the need of the bereaved parents to mourn their unique loss in the most intimate way. The deeper need for mourning and ultimate consolation does not eclipse the more general and immediate need for justice, either the justice of retribution or the justice of prevention. Indeed, the proper resolution of both spheres of concern requires that the respective phenomenality of each sphere be kept separate.

Despite a tendency of contemporary Jewish thought about the Holocaust to take the anti-natural law line in making its claims upon the world, another tendency, equally strong I think, takes a natural law line (whether it is aware of its philosophic underpinnings or not). This line of thought (whether consciously or unconsciously) is surely what is behind contemporary Jewish interest in the whole issue of human rights in the world, and which makes itself manifest in such attempts as the international drive against racism and terrorism, to which many Jews have been so dedicated. In these attempts, Jews have had to present their own victimhood against a universal horizon. In other words, Jewish suffering as epitomized by the Holocaust has had to be presented as the most poignant example of the violation of human personhood and its essential rights.¹¹ When such presentations rise from the level of special pleading to the level of truly rational reflection and argument, the perspective of natural law must make an essential entrance into the discussion.

The third momentous experience that has determined Jewish modernity is the establishment of the State of Israel. Here the question of natural law has entered into the discussion by way of the debates about what sort of a polity the new Jewish state is to be. These debates began with the very inception of modern Zionism at the end of the nineteenth century, and they have continued unabated both before and after the actual reestablishment of Jewish sovereignty in the

¹¹ See Hannah Arendt, *Eichmann in Jerusalem*, rev. edn (New York, 1965), epilogue.

land of Israel in 1948. And as has been the case with contemporary Jewish thought about the Holocaust, natural law has entered the discussion both by affirmation and by denial.

For those who have envisioned the State of Israel to be a democracy, which although primarily a Jewish polity for Jews is one in which non-Jews can become citizens and enjoy equal civil rights with the Jewish majority, the question of natural law is enunciated in the question of human rights.¹² Because Israel has from her inception allied herself with the West, and this for a variety of reasons both theoretical and practical, she has had to justify her existence to the West (primarily the United States) on the grounds of her being a constitutional democracy. Especially on the issues of guarantees of personal liberty and the protection of minorities, there has had to be some sort of affirmation of natural law thinking by those Zionists who have advocated this type of polity out of conviction and not just as a rhetorical ploy to satisfy both the powerful American Jewish community in particular and American public opinion in general.

However, as in the case of contemporary Jewish thought about the Holocaust, there has also been what might be called a revisionary type of Zionism, one that is based on a denial of natural law, that is, when viewed philosophically. In this view, which has both secularist and religious advocates, the sole purpose of the State of Israel is to enhance the power of the Jewish people.¹³ There is no attempt in this school of Jewish thought to constitute any sort of *modus vivendi* with non-Jews based on the idea of common humanity rooted in common human nature.

Culturally, this type of Zionism has argued for the maximal isolation of the Jewish people from the larger western civilization in which they find themselves and with which they have had to cast their lot, like it or not. And politically, where such

¹² For an important discussion of what might be termed the universal significance of both the Holocaust and the reestablishment of the Jewish state in the land of Israel, see A. B. Yehoshua, *Between Right and Right*, trans. A. Schwartz (Garden City, N.Y., 1981), 6ff.

¹³ See C. S. Liebman and E. Don-Yehiya, *Civil Religion in Israel* (Berkeley, Calif., 1983), 66, 229.

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isolation is less and less of a possibility in our increasingly interconnected world, the *modus operandi* has been one of strict *Realpolitik*. The only points in common with the non-Jewish world are based on questions of common interest of the most specific, and ephemeral, kind. In fact, advocates of this position are not only not interested in pursuing more philosophical discussions of commonality, they are more often than not actually hostile to them. For such discussions would force them to admit that there is some sort of commonality deeper than that of momentary interests, and that is something they really deny. Occasionally, most often at moments of great political stress, less sophisticated Jewish elements, both inside and even outside the State of Israel, will actually deny any common humanity between Jews and non-Jews. Such denials are most often explicit, dramatic, and vehement. Because of their sensationalism, these outbursts will frequently attract wide media attention. In response to the obvious questions they raise, embarrassed cohorts of those who have made them will usually utter some sort of half-hearted denials.¹⁴ However, this embarrassment is more rhetorical than philosophical. It almost always comes from those who have to deal more regularly with the larger world and who realize that the fact of such outbursts – not their actual content and truth value – will make diplomacy in that larger world more difficult.

THE PHILOSOPHICAL LOCATION OF THE QUESTION

In thinking about the three determining experiences of Jewish modernity, the invocation of natural law type concepts has largely presupposed the historical value of the Enlightenment. The political emancipation of the Jews from the confines of the ghetto is seen as philosophical liberation; the Holocaust is seen as a denial of Enlightenment values of liberty and equality;

¹⁴ Thus the response of many Religious Zionists and secularist nationalists to the massacre of twenty-nine Arabs in a Hebron mosque by the Religious Zionist, West bank settler Dr. Baruch Goldstein on Purim 5754 (29 February 1994) was one of either covert sympathy or tepid disapproval. The disapproval impressed many as being quite disingenuous.

and the State of Israel is seen as the great historical opportunity for the Jewish people to be constituted as a western type democracy.

Nevertheless, all of this has been attacked, since the time of the Enlightenment itself, but especially since the Holocaust, as being a betrayal of the true reality of the Jewish people. As we have already seen, as regards the Holocaust and the State of Israel, this attack has been conducted on the grounds of *Realpolitik*. The Holocaust and what is perceived as the continuing political isolation and vulnerability of the State of Israel are supposed to have taught us that the Jews have been asked to give far more than they have received from western civilization. And this has been used to argue, retroactively, that the Enlightenment itself, at least as regards the interests of the Jews, and maybe in and of itself, has been a failure. And since almost all modern Jewish thinkers who have dealt with the question of natural law have assumed that it is identical with the modern idea of human rights, any assault on the value of post-Enlightenment modernity would seem to entail the elimination of the question of natural law from contemporary Jewish thought.

Even if one does not hold such a negative view of the value of the Enlightenment in general and for Jews particularly, the question of natural law as it has been raised for modern Judaism is nonetheless a great problem. For the universality essential to the very idea of natural law seems to imply that Judaism itself must be justified by the criteria of something greater than itself. And even if that greater universe and its nature do not totally deconstruct Judaism beyond all recognizable continuity with its past, Judaism seems to have to play a secondary role in this whole scheme of things. But how can a tradition like Judaism do any such thing in good faith? Whatever role the tradition has allowed universal human reason to play in its own thought processes, it has been unwilling to allow any such guest in its house to undermine that house's foundation in revelation. For commitment to the truth of the Jewish tradition forces one to admit that revelation presents truth that human reason cannot uncover by itself. Natural law has usually