THE HISTORIC AND CONTEMPORARY RELATIONSHIPS BETWEEN *HALAKHAH* AND *MISHPAT HAMELUKHAH*

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This article introduces the Jewish Political Studies Review *issue examining traditional sources for building a civil state in a* halakhically-*acceptable manner, drawing upon the* ha-lakhic *category of* mishpat hamelukhah. *Jewish tradition knows two sources of legitimate legislative-judicial-gover-nance activity. Principal among them is the* halakhah *which is traditionally understood as a direct development from God's covenant with Israel at Sinai. The Bible developed the semi-separated category of* mishpat hamelukhah *(the law of the kingdom), explicated in Deuteronomy 17:11-20 and I Samuel 8-15, a parallel and semi-separate legal-judicial-governance system within the power of the kings and other civil rulers in Israel.*

While not as richly developed over the centuries as hala-khah, *the development of* mishpat hamelukhah *has continued, reaching earlier peaks during the Second Commonwealth and in Talmudic and post-Talmudic Babylonia. With the rise of Zionism, it was revived by a group of religious Zionists to* halakhically *ground the civil laws of the State of Israel. This article focuses on the relationship between* halakhah *and the* halakhic *framework of* mishpat hamelukhah, *and its extra-*halakhic *characteristics, applying them to the State of Israel, particularly since 1948.*

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A *Halakhic* Means of Building a Civil State

Since the re-establishment of the State of Israel in 1948, a fun-
damental constitutional issue on the table has been the issue of
medinat hok (a state based on civil law) vs. *medinat halakhah*. It
is no matter that, as phrased, this may be a false issue and a false
dichotomy. It is the way the matter is phrased in public debate in
Israel for reasons that are anterior to the phrases themselves. A
better way to phrase the dichotomy is the basic division in Israeli
society between those who seek a secular state, albeit not totally
secular, as a few extremists would have it, and those who see a
Jewish state grounded in the fundamentals of the Torah, albeit not
totally within the four ells of the *halakhah,* as extremists of the
other side would have it.

That is the context within which we turn to discuss *halakhah*
and *mishpat hamelukhah* in the 1990s, over thirty years, or a gen-
eration, since it last appeared on the Israeli intellectual or consti-
tutional agenda. We must begin that discussion by recognizing two
points: first, that for those to whom Torah matters, the effort to
build Israel as a *halakhically* kosher state is an important one.
Second, the Jewish people has always been influenced by political,
sociological, economic, geographic, and cultural realities and, like
any other group of human beings, will continue to be in this world,
but from the early days of their history as an organized people, at
the core of their collective existence has been the Torah as their
constitution in both theory and practice.[1]

The Torah became the core of Jewish collective existence at or
near the beginnings of Jewish history. Layers of interpretation to
the original Torah were added, derived both from what we must
understand as constitutional decision-making and the Jews' behav-
ioral responses to the realities which confronted the Jewish people.[2]
The combination of the two allowed great changes in the interpre-
tation of the Torah without its abandonment as the constitutional
core of the Jewish people.

The model presented here of a core and its subsequent adhesions
differs from the framework model used in modern times to describe
constitutions and their translation into practice. For the framework
model, the constitutional documents constitute the frame and the
interpretations and behavioral modifications the content that fills
the space within the frame. This is a model more suitable to the
European and other well-watered parts of the world where it is
possible to establish boundaries and then to fill them in. The core
plus adhesions model is more like an oasis in Israel and the other
arid or semi-arid parts of the world where the core is located

around the continuing water source to which are added peripheries that spread out as far as the water supply enables them to, to establish a watered area that fluctuates as the supply changes.

Thus, each set of experiences in Jewish history produced another layer of theoretical discussion and practical action that rested on the Torah as its core and the *halakhic* decisions of the time. Those decisions took into consideration (or attempted to) the world in which the people are living, as its most immediate expression. What is critical here is that there has been a dynamic interaction — a dialectic encounter — between the Torah and the world, in all of Judaism at least until modern times, a dynamic captured in the continuing growth of *halakhah*.

Mishpat hamelukhah first emerged as part of the original Torah presented in codified form in Deuteronomy 17:11-20 and as part of an account of the rise of the monarchy in I Samuel (I Samuel 8-15), in the course of what may have been one of the earliest of these dialectic encounters. Indeed, the Torah discussion of the emergence of *mishpat hamelukhah* as part of the institution of the monarchy in ancient Israel is in itself a teaching of how to respond to the dialectic encounter between the Torah as we have it and the world as it is changing.[3]

In essence, *mishpat hamelukhah* as it developed offered the ruling authorities responsible for the civil rule of the Israelites an opportunity to enforce the law so that in times of emergency they would not be quite as bound by the procedural rigidities that the Torah required, while at the same time giving them scope for providing comprehensive civil rule.

While the precise use of *mishpat hamelukhah* in this biblical form came to an end with the destruction of the First Temple and the Babylonian Exile and was often honored in the breach even during that era, it became part of the set of basic regime rules and relationships which the Torah provides for use in different regimes to make them legitimate by Torah standards. As I have described elsewhere, those rules involve Israel's:

1. Recognition of God's sovereignty in the universe and His special covenant with the Jewish people.
2. Recognition of the Torah as the constitution of the Jewish people for political and more than political purposes.
3. Recognition that the Jewish people in its political expression is an *edah*, the equivalent of the Greek *polis* or the Roman *res publica,* and that the *edah* consists of the entire people, organized within twelve tribes or

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their equivalent, and the many *batei av* (households) or townships into which the tribes are divided.

4. Recognition that within the *edah* as well as between the *edah* and God, all relationships are covenantal, that is to say, based upon a fundamental equality (at least for the tasks toward which the covenant is directed) and broad consensus among all members or parties to the covenant.

5. Recognition that fundamental constitutional decisions have to be made through the assembly of the *edah* or in the name of the entire *edah* assembled.

6. Recognition that authority and power within the *edah* is divided into three domains, each specifically empowered directly by God through its own Divine covenant. These domains are known in Hebrew as the *keter malkhut* (domain of kingship or civil rule), *keter torah* (the domain of God's instructions and commandments), and *keter kehunah* (the domain through which the people reach out to God).

7. Recognition that all three domains share in some proportionate way in the governance of the *edah*.

On this basis, *mishpat hamelukhah* as promulgated by the *keter malkhut* was enunciated in the Bible as parallel to the laws of the Torah as promulgated by God through His prophets. Later it was expanded to become a full legal system parallel to but connected with the *halakhic* system as developed and applied in Babylonia to define the authority and powers of the *resh galuta*. It was developed to apply even in the *galut* and continued to do so throughout the premodern period.[4]

From the perspective of those who see Israel as a Jewish yet modern state, the existence of *mishpat hamelukhah* makes it possible for the State of Israel to be both *medinat hok* and *medinat halakhah* by changing the question from one of stark dichotomy to one of cooperative interaction. Granted, those who are strictly wedded to either — a fully *halakhic* state or a fully secular one — that reflect the dichotomy, will not be satisfied with cooperative interaction, but there is much evidence that a majority of Israelis and a majority of world Jewry would prefer cooperative interaction to any of the options of the extremists.

The First Generation's Solution: "Status Quo"

During the first generation of statehood, moderates from both camps dominated governmental and public decision-making on this issue. Those moderates who proclaimed their commitment to *medinat hok* nevertheless saw civil law as protecting Jewish religious requirements as cultural expressions for all Jews and, indeed, making certain basic ones such as the Jewish calendar, Shabbat as the public day of rest, *kashrut* in state institutions, and the official expression of certain Jewish rites normative in the public square, albeit with clear protections for freedom of private behavior except as limited by civil law for the maintenance of public order. Moderates on the side of *medinat halakhah*, on the other hand, confined their demands to state institutions and the public square, holding that matters of *halakhic* behavior as such were private for each individual or family and that the state need not legislate, perhaps even should not, any enforcement outside of a few spheres of public behavior.

This compromise, originally developed during the British Mandate by moderates on both sides, was known as the "status quo."[5] While there were periodic issues involving whether or not the status quo as agreed to by both parties was being maintained, basically both could live with the "status quo." The exceptions were the most militant secularists and the most militant ultra-Orthodox.

This was possible because even the ideologically secularist leaders of the new state had grown up in traditional homes. Not only did they know what tradition demanded and saw certain traditions as the natural cultural basis for a Jewish state, but they may even have had a certain nostalgia for tradition which permitted them to live with the compromise, understanding it as publicly marking the state's Jewish character, which was desirable, without imposing unwanted private burdens. This, combined with the relative poverty of the country, meant that there were few opportunities on the part of the population as a whole to pursue non-traditional courses of action even had they wished to. The few extreme secularists who stood outside of this pattern, or at least their leaders, were mostly of German or Central European Jewish background who had come from families that had already assimilated and who did not have that nostalgia.

On the other side, the extremists were to be found principally or almost exclusively among the then very small number of haredim (ultra-Orthodox) in the country, ironically, many also from Central European backgrounds, principally Hungarian, whose reaction to assimilation had been to adopt more stringent rules for being truly

Jewish. They were allowed to live their lives in their neighborhoods as they preferred, gaining exemption from those laws of the state that were particularly intrusive such as the exemption of yeshiva students from army service and the state education law which allowed haredim to establish and maintain independent schools rather than become part of the state system.

Justifying the Civil State through *Mishpat HaMelukhah*

At least some of the religious moderates tried to establish a *halakhic* justification for the status quo through explorations of the long-standing *halakhic* concept of *mishpat hamelukhah*. They properly saw *mishpat hamelukhah* as establishing a sphere of jurisdiction for the state that was *halakhically* legitimate but which freed the civil authorities (*keter malkhut* in traditional terms) to act beyond the frame of *halakhic* rulings across a range of civil concerns.[6]

The intellectual movement that led to the development of those earlier studies of *halakhah* and *mishpat hamelukhah* was essentially confined to supporters of the National Religious Party. It reached its peak at the end of the 1950s and more or less exhausted itself by the mid-1960s, having failed to have any significant positive influence on those who did not recognize the binding character of *halakhah* in the first place and evoking the displeasure of the extremists on both sides. The moderates, as pragmatists, settled down to protect the status quo as a successful political device and not to worry about its ideational grounding. That, indeed, was the role the NRP carved out for itself during the years of the Mapai and Labor Alignment coalitions from prestate days until the Begin victory in 1977.

The Six-Day War presented Israel's religious community with a new opportunity to reach out to their Israeli compatriots and perhaps even to develop an appropriate ideational grounding for Israel as a Jewish state. The vast majority of Israeli Jews saw their victory as miraculous in some way and even previously secular Israelis opened themselves to a renewal of concern for Jewish tradition. However, the Israeli rabbinate, having moved in the interim toward the extremist camp or, if not, looking over their shoulders toward the extremists, did not or could not come up with a program for reaching out to the Jewish public of Israel when the opportunity presented itself and the opportunity itself slowly wasted away over the next few years. In the meantime, the highly visible, rigid, and

parochial behavior of the Jewish religious authorities in Israel ac-
tually promoted a backlash.

The result was a curïous new synthesis. Among that part of the
population that saw themselves as non-*halakhic,* the old secularism
gave way to a generalized belief in God coupled with a rejection of
any *halakhic* limitations on their actions that might interfere with
their comfort or convenience. As a result, even as the number of
true secularists diminished, the status quo was being questioned by
an increasing number of Israelis who saw it as an inconvenience.
This was clearly reflected in the Gutmann Institute study of 1993
where 62 percent of Israelis surveyed indicated that they believed
in God and only 13 percent did not. More than that, 54 percent in-
dicated that they believed that the Torah was given to the Jews by
God at Sinai, as against 14 percent who did not. On the other hand,
only 27 percent believed that non-observance was punished by
God.[7]

In the religious camp, the ultra-Orthodox right began to pre-
dominate. The NRP essentially helped them by neglecting to sup-
port the kind of synthetic academic high school education that had
been a hallmark of the Mizrachi, in favor of having their best and
brightest study in high school yeshivot with teachers who were
primarily from the haredi camp. The latter insisted upon rigid,
rabbinically-defined, *halakhic* standards that left no room for
mishpat hamelukhah, even in the public sphere.

When the constitutional debate which had taken place briefly
during the four years after the establishment of the state reemerged
in the 1970s, it was no longer a debate about what to include in the
status quo but a debate as to whether Jewish tradition deserved any
sanction on the part of the state. Thus, even the effort to remove
Israeli law from its dependence upon Ottoman and British sources
and to ground it in the civil dimensions of the Jewish legal tradition
as advocated by partisans of the *mishpat ivri* movement ran into
serious obstacles in the Knesset.[8] What emerged was a vague
statement which could be interpreted by the courts in various ways,
depending on the inclination of the judges, rather than firmly es-
tablishing any grounding in Jewish law, although that interpreta-
tion remained equally possible.[9] The reality was that the courts
would not have many judges who would look for a "Jewish" inter-
pretation, but were likely to have many who would look for some-
thing else.

Meanwhile, the status quo began to crumble at the edges be-
cause of the majority's desire to protect or extend their comfort or
convenience. In this they were supported by the courts. Local en-
forcement of Sabbath laws restricting the opening of places of en-

tertainment and the selling of goods and services needed for that purpose became well-nigh impossible.[10] The coming to power of a generation, many of whom were already unfamiliar with Jewish tradition, meant that enforcement of Jewish norms in other spheres became more difficult and more frequently the exception rather than the rule. Leadership passed to the extremists on both sides, leaving the moderates in a difficult position. The status quo survived to the extent that it did out of political necessity rather than constitutional consensus.

At the present time, the country has no constitutional agreement on these matters. Indeed, there is a greater ideological polarization than ever before, even though studies continue to show that Jewish behavior among the Jews of Israel continues to be relatively strong and represents a continuum from ultra-Orthodox to ultra-secular with the great majority in the middle in some way "traditional."[11] Nevertheless, the constitutional debate is increasingly conducted on the rather artificial basis of bipolarity. All of this is being exacerbated by Israel's opening itself to the world and the influences of world culture which by definition is not Jewish and, in its presentation by the media that spread it throughout the world, is distinctly secular or, even worse, idolatrous.

The Modern Challenge

The critical challenge to this system came with the disruptions of modernity which brought with them demands for change that became a subject of controversy within the *edah* itself. There were those Jews who sought to abandon the political dimensions of Jewish life, so as to enable Jews as individuals to become citizens of the polities in which they lived, while preserving their religious differences, and those who sought more limited change through the adaptation of *halakhic* Judaism to modern conditions by dropping its civil dimensions.[12] While the disruptions and the responses of Emancipation they invoked were all products of the diaspora, particularly in Western Europe and the new worlds colonized by Western Europe, ultimately they became part and parcel of Jewish life everywhere including Eretz Israel.

Meanwhile in Eretz Israel, in the old Yishuv, the old framework of governance through the three *ketarim*, especially the *keter torah* and *keter malkhut* with attention paid to distinctions between *halakhah* and *mishpat hamelukhah*, at least implicitly, continued as long as the Ottomans ruled the land, that is, until the British conquest in World War I. Adaptations to modernity did take place at

various points during the nineteenth century, introduced by the Ottoman suzerains. The Sephardic-led *edah*, once unified, was undermined by the secession of the Ashkenazic *kollelim* established in the mid-nineteenth century by immigrants from Eastern Europe who also had abandoned the traditional pattern of governance.[13]

The Zionist movement from the first represented a kind of covenant between representatives of both modernist and traditional camps, those advocating radical change and those advocating adaptation.[14] The former saw the Zionist project as an effort to enable Jews to survive by removing them from the lands of persecution and returning them to their own land where they, in effect, would assimilate as a nation among the nations. They looked upon the Jewish past as irrelevant to modern living, perhaps even less relevant than the medieval and ancient pasts of the various European nations they sought to emulate which were also reduced to the status of "heritage" rather than adapted to become vehicles for modern life.

The other camp valued Judaism and the Jewish heritage, sought to adapt it to modern life, and saw the re-establishment of a Jewish national home in Eretz Israel as the best or only way to do so under conditions of modernity. These two camps were not simply divided between religious and secular since there were secular Jews — Ahad Ha-am and Bialik, for example — who were in the latter camp, although one would be hard put to find religious Jews other than Yeshayahu Leibowitz in the former. Indeed, those religious Jews who understood Zionism to be entirely within the former camp rejected it and Israel, its product, as violations of the will of God. Still, it was the religious Zionists who formed the backbone of the adaptation camp and from the first sought to find ways to rebuild the Jewish national home and ultimately the state along lines that would find a place for *halakhah* and at the same time a place for modern civil rule. It was from them that the movement to revive *mishpat hamelukhah* as an integral part of the Zionist enterprise originally emerged.

During the period of British Mandatory rule, despite the strength and ideological fervor of those in the first camp, the second camp prevailed because it was in the interest of the British Mandatory authorities to support them. Thus the Jewish Yishuv in Eretz Israel became the world's last autonomous Jewish community following the older premodern model, albeit with some significant modifications. Indeed, it more clearly approached a regime governed by representatives of the three *ketarim*, in theory as well as practice, than many of its diaspora predecessors.

During the 1920s the British, after consulting and negotiating with the representatives of the Yishuv, established the Mandatory ordinances dealing with Knesset Israel, the civil structure (*keter malkhut*) of the Yishuv, in the form of a multi-party parliamentary system with universal suffrage, both male and female (a matter that involved some dispute in the Orthodox community). In another ordinance they established the present Chief Rabbinate, empowering them essentially as the *keter torah*, while the *keter kehunah* continued to be a minor and local function as it had become in the diaspora, exercised in the Yishuv through local religious councils in or around municipalities.

When the state was established in 1948, this system was continued under the new regime. Whatever contradictions were built into it were bridgeable either through compromises or by not confronting the theoretical issues directly. For example, because the original Jewish polity in biblical times had made God the sovereign, issues of authority and power within the Jewish polity were never issues of sovereignty but rather of jurisdiction. Consequently, they could be shared and the balance between them could be changed from time to time, as it has been throughout Jewish history.

Sovereignty and Jurisdiction

Although with the proclamation of the State of Israel, the state became politically sovereign in international law, its sovereignty was democratic and thus different institutions of governance could be established or continued also on the basis of jurisdiction rather than entering into disputes over the locus of sovereignty. Since *mishpat hamelukhah* always had rested on issues of jurisdiction and not of sovereignty, this posed no particular problems for that school of thought. Indeed, while political scientists following European models talk about the sovereignty of the Israeli state lodged in the Knesset, Israeli law has been very careful to formally avoid using the term "sovereignty" in reference to either, leaving the sovereignty question open and dealing only with empowering different jurisdictions.

Nevertheless, despite the possibilities of using *mishpat hamelukhah* to accommodate a modern state, as had been demonstrated by the earlier religious Zionist *halakhists* dealing with this question, the existence of the other camp with its strong and, in principle, unyielding secularism made it impossible to gain consensus around the theory of Israel's civil government as falling within the framework of *mishpat hamelukhah* and thereby going hand in hand

with *halakhah*, albeit with separate jurisdictions. Moreover, because of the rightward pull of the haredim, the religious Zionist theory of *halakhah* and *mishpat hamelukhah* was in the end rejected by both camps, at least insofar as it was to be applied to the modern State of Israel.[15]

But that cannot be the end of the story. There are those who want to simply abandon the issue, either because they want an entirely secular state, perhaps even militantly secular, or because they see no way for a modern state to be linked to the *halakhic* system. They demand that Judaism should become a private matter exclusively (the position of figures like secular Uri Avnery and the late Yeshayahu Leibowitz who was devoutly religious). For them, the effort is neither necessary or desirable. But for those who would like the Jewish state to have a significant Jewish component while being a democracy, the issue is not so easily disposed of.

Indeed, it has become a pressing one. The peace process seems to have effectively ended the covenant between the two camps that united the two original approaches to Zionism. The question of whether Israel will be a state like all other states only with a Jewish majority (at least as long as one survives) or whether it will be a Jewish state that has a grounding in Jewish tradition resulting in certain commitments to Jewish civilization and the religion of that civilization, is now a real one and is getting more intense. The concerns thereby raised have led to radical behavior on both sides even in ways that still are rejected by both.

We must again ask whether the model of *halakhah* and *mishpat hamelukhah* can be of service and, if so, what must be clarified to revive and improve it. This involves a clarification of Eliezer Schweid's restatement of the conventional question as to whether Israel will be Jewish or democratic to ask more appropriately: What kind of democracy do we want? What kind of Judaism do we want?[16]

From a *halakhic* perspective, then, *mishpat hamelukhah* offers the possibility of legitimate civil government that, while not necessarily *halakhic* in its character, can be accommodated within the *halakhic* framework. The openness and flexibility of *mishpat hamelukhah* from a *halakhic* perspective originally served Jewish civil leaders ranging from Israelite kings to Babylonian exilarchs. In medieval times it became a tool of the *parnassim* of the diaspora Jewish communities on a more republican basis than heretofore. Now the Jewish people have a chance to use *mishpat hamelukhah* to develop a civil democracy suitable to the contemporary world without divorcing it entirely from its Jewish roots. For those committed to *halakhah* it makes it possible for them to recognize

the civil laws and institutions of a civil state as *halakhically* le-
gitimate, thereby enabling the building of at least one side of the
needed bridge between religious and secular Israelis without forc-
ing the latter into an untenable position from their standpoint.

At the same time, the use of *mishpat hamelukhah* offers *hala-
khic* Jews a chance to build a state that avoids one of the perennial
dilemmas of religious commonwealths, namely, the inability to suc-
cessfully apply absolute religious standards to regimes serving
weak and fallible human beings. We know such utopian efforts as
expressions of Puritanism. History is littered with the wreckage of
such efforts and provides us with a clear lesson. No matter how
highly motivated the founders of the regimes based on utopian
standards might be, in the last analysis, human nature, with its
many weaknesses, will win out unless we have sufficiently sober
expectations. Jewish history began as such a Puritan movement in
Mesopotamian civilization and was a relatively successful one at
that. Although it, too, ultimately succumbed to the need to accom-
modate human weaknesses, it left a legacy of expectations regard-
ing justice and morality which remain major motivating forces in
Jewish history.

In Judaism, one historic task of *mishpat hamelukhah* has been
to soften the rigid demands of *halakhah* when it came to human
governance, whether by being more flexible or by applying the law
in other than absolutist ways. This possibility should be one of the
greatest attractions of *mishpat hamelukhah* for Jews who are seri-
ously religious. It allows them to define their religious standards as
they should be and at the same time to apply them under different
circumstances as they can be.

For those who wish to maintain Israel's well-known and still
much desired commonwealth solidarity and norms, one of the best
possibilities for doing so is by anchoring them within the frame-
work of *halakhah* and *mishpat hamelukhah*, just as the founders of
the United States from John Winthrop through James Wilson at-
tempted to anchor the new American federal republic in the concept
of federal liberty. That, indeed, is what the first generation of Is-
raelis who explored the relationship between the two sought but
failed to achieve because they could not find sufficient support in
either the religious or non-religious sectors of Israeli society.

This issue argues on behalf of a renewed attempt, undertaken
very soberly, understanding that it is most unlikely to lead to an
acceptable understanding for both camps. For those who pursue
that line of exploration for practical purposes, we can hope that the
results will stimulate an effort on the part of those who are uncom-
fortable with this formulation because of its religious character, to

formulate a proper definition of commonwealth for Israel from the perspective of the civil society model. To do so, we need a new or extended exploration of the relationship between *halakhah* and *mishpat hamelukhah* in Jewish tradition from the perspective of the two forms of democracy of modernity — civil society and commonwealth — especially emphasizing the commonwealth model and how the traditional edifice can be developed through it. That is the necessary task of our times and it is a worthy one for us to pursue.

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The collection of articles in this volume traces the idea and practice of *mishpat hamelukhah* from earlier times to the present.

Aside from this Introduction, this issue has nine articles. Seven deal with classical Jewish perspectives on the relationship between *halakhah* and *mishpat hamelukhah*. Two deal with contemporary Israeli applications. Aharon Kirschenbaum lays the *halakhic* groundwork for what follows in his article on "Concurrent Jurisdictions in Jewish Law," in which he discusses how the traditional *halakhic* system and the system of *mishpat hamelukhah* have interacted in practice in historic Judaism. He discusses the scope of *din malkhut* in *halakhah*, the jurisdiction of the Sanhedrin and other courts in matters involving temporary emergencies, and practical juridical contingencies in light of *din torah*. Kirschenbaum addresses the question of competition among different authorities and applies the entire matter to contemporary Israel. His emphasis is on the classic rabbinic period and the Middle Ages. In "Regulations (*Takanot*) Concerning the Public and the Individual in the Talmud," Shalom Albeck focuses in more specifically on the ordinances governing public-private relations in the Talmud from the perspectives of the two systems as matters of public law.

Itamar Warhaftig and Eliav Shochetman turn to classical rabbinic theory to understand the relationship between rabbinic law and kings; that is, the senior authority in *mishpat hamelukhah*. Warhaftig examines exceptional powers of the rabbinic courts in relation to the power of the king in "The Authority of the Court versus the Authority of the King." He begins by examining the difficulties in applying *halakhah*, particularly in the fields of criminal and public law, and the development of different juridical paths. He then examines the *halakhic* differences in the jurisdictions of the king and the court and the precedents for them in the Bible, the period of the Second Temple, and in the thought of Maimonides and R. Nissim of Gerona. He closes by raising questions about the possibilities of using a similar approach in our time. Shochetman

examines "The Duty to Obey the King's Command When It Con-
tradicts *Halakhah*." Shmuel Shilo continues Shochetman's theme
by looking at one special parallel to *halakhah — dina demalkhuta
dina*, in "When the Law of the Kingdom is Not Law."

This section concludes with Gerald Blidstein's "Maimonides on
the Renewal of *Semikha*: Some Historical Perspective," and Steven
Friedell's examination of "Jewish Tort Law Remedies not Based on
Torah Law — An Approach Based on the Ran and the Rivash."
Blidstein looks at issues of judicial continuity and authority, while
Fridell expands the earlier discussion of the Ran to include R.
Isaac ben Sheshet Perfet to discuss the role of *mishpat hamelukhah*
in developing Jewish tort law remedies. Taken together, these clas-
sical Jewish perspectives review critical aspects of talmudic and
medieval rabbinic thought and practice dealing with the interrela-
tionship of the two legal systems.

From them we go to two articles on contemporary Israeli appli-
cations. Alan Mittleman writes about "*Mishpat HaMelukhah* and
the Jewish Political Tradition in the Thought of R. Shimon Feder-
bush." Federbush, an American Orthodox rabbi who settled in Is-
rael in the early days of the new state's existence, attempted to
build a political theory combining Jewish law and religious tradi-
tion and the governance of a modern civil state by reviving and
building on the concept of *mishpat hamelukhah*. Mittleman ana-
lyzes his work and its impact.

Martin Edelman approaches the issue from the non-*halakhic*
perspective in "Who is an Israeli?: *Halakhah* and Citizenship in the
Jewish State." He argues in essence that modern citizenship is not
compatible with a state that takes its cues from *halakhah*, much
less one whose legal system is rooted in it in this modified way.

While these articles do not comprise a comprehensive study of
halakhah and *mishpat hamelukhah*, they do give the reader a sub-
stantial introduction and analysis of the topic and raise significant
questions about its applications or possible applications to the
Jewish state. It is our hope that the issue will stimulate further
consideration of the problem from the perspectives presented here.

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This volume is dedicated to the memory of the late Herbert Berman, whose own beliefs as a religious Zionist and activities as a leader in Jewish and general affairs placed him firmly in the camp of those seeking the kind of framework of which we speak and who played a very active role in trying to make that framework a workable one. Herb Berman served as legal counsel or treasurer for a very wide range of Jewish organizations within the *keter malkhut* in the United States and the Jewish world as a whole, including active service as a member of the Board and Executive Committee of the Jerusalem Center for Public Affairs. Even more important to me personally, he was a close personal friend. We shared many ideas, thoughts, and plans over the years related to those various activities and I learned many lessons from him about how to engage in ethical politics. He and his wife Daisy provided the bulk of the support for the publication of the proceedings of our conference on "*Halakhah* and *Mishpat Hamelukhah*." Alas, he did not live to see the publication appear. Instead, we are dedicating it to his memory. *Yehe zichro baruch.*

Notes

1. See Daniel J. Elazar and Stuart A. Cohen, *The Jewish Polity: Jewish Political Organization from Biblical Times to the Present* (Bloomington: Indiana University Press, 1985).
2. Menachem Elon, *Jewish Law; History, Sources, Principles,* trans. B. Auerbach and M.J. Sykes (Philadlephia: Jewish Publication Society of America, 1994).
3. I Samuel 8-15.
4. Simon Federbush, *Mishpat HaMelukhah* (Jerusalem: Mosad Harav Kook, 5712-1952).
5. S.Z. Abramov, *Perpetual Dilemma* (Rutherford: Fairleigh Dickinson University Press, 1976).
6. Federbush, *Mishpat HaMelukhah*.
7. Shalom Levy, Hanna Levinsohn, and Elihu Katz, *Beliefs, Observances and Social Interaction Among Israeli Jews* (Jerusalem: Louis Guttman Israel Institute of Applied Social Research, 1993).
8. The *mishpat ha-ivri* movement was initially developed at Hebrew University by professors of law and Jewish studies who were themselves Orthodox from the moderate camp. They sought to develop an understanding of Jewish law as part of the general heritage of all Jews regardless of their religious commitments. While based on *halakhah, mishpat ha-ivri* emphasized its civil dimension and how

it was applied over the generations. See the classic work in the field, Menachem Elon, *Jewish Law; History, Sources, Principles*.

9. Zvi H. Preisler, ed., *Legislation in the State of Israel* (Jerusalem: Ketuvim Publishers, ̈1996); *Devrei HaKnesset* 89II (Jerusalem, 1980), pp. 4025-4031; Aharon Kirschenbaum, "*Hok Yesodot Ha-Mishpat—Mitziut VeTzipiyot*," in *Iyunei Mishpat* 11 (Tel Aviv: Hotzaat Ramot, 1985-86), pp. 117-126; G. Prokachya, "*Hok Ye-sodot Hamishpat, TSH"M—1980*," in *Iyunei Mishpat* 10 (Tel Aviv: Hotzaat Ramot, 1984), pp. 145-157.

10. Eliezer Don-Yehiya, *The Politics of Accommodation: Settling Conflicts of State and Religion in Israel* (Jerusalem: Floersheimer Institute for Policy Studies, 1997) (Hebrew); Michal Yudelman, "Kibbutzim 'Declare War' on Religious Coercion," *Jerusalem Post* 26 June 1998, p. 3.

11. Levy, Levinsohn, and Katz, *Beliefs, Observances*.

12. Calvin Goldscheider and Alan Zuckerman, *The Transformation of the Jews* (Chicago: University of Chicago Press, 1984); Ezra Men-delsohn, *On Modern Jewish Politics* (New York: Oxford University Press, 1993).

13. Ruth Kark and Joseph B. Glass, *Sephardi Entrepreneurs in Eretz Israel* (Jerusalem: Magnes Press, 1991); Daniel J. Elazar, *The Other Jews: The Sephardim Today* (New York: Basic Books, 1989).

14. Walter Laqueur, *A History of Zionism* (London: Weidenfeld and Nicolson, 1972); Daniel J. Elazar, *Israel: Building a New Society* (Bloomington: Indiana University Press, 1986).

15. Rav Haim Hirschensohn, *Hidushei Hirschensohn Horayot* (1914-1916), *Malkhi BaKodesh* (1919-1928), *Eileh Divrei HaBrit* (1926-1928), and *Torat Eretz Yisrael* (1935); Eliezer Schweid, *Democ-racy and Halakhah* (Lanham, MD: Jerusalem Center for Public Affairs and University Press of America, 1994).

16. Eliezer Schweid, "The Jewish State and Democracy," *Jerusalem Letter/Viewpoints,* No. 298 (15 July 1994).