EXCURSUS:
CONCERNING THE RULINGS OF R. OVADIAH YOSEF PERTAINING TO THE THANKSGIVING PRAYER, THE SETTLEMENT OF THE LAND OF ISRAEL, AND MIDDLE EAST PEACE

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Arye Edrei’s paper *Law Interpretation and Ideology*,¹ deals with three different approaches to dealing with the lacuna in Jewish law regarding the perception and functioning of a Jewish sovereign state. Edrei’s paper focuses on the laws of war to exemplify how Yeshayahu Leibowitz, Rabbi Shaul Yisraeli and Rabbi Shlomo Goren each provide a different way of dealing with the challenge in light of their disparate ideologies and understandings of the significance and import of the Zionist enterprise in Jewish law. This paper offers a fourth angle: that of R. Ovadia Yosef, and focuses on another facet of the same problem: that of returning territory, once conquered by Israel, to neighboring Arab states or to the Palestinians in the context of peace negotiations. Coming from a different ideology and a Sepharadic background, R. Ovadia Yosef rejects the creation of a legal construct used to understand the religious implications of the existence of the State of Israel on a national-collective plane. As Edrei demonstrates, such an understanding would require special treatment and elaboration of laws to deal with the phenomenon collectively, such as those R. Shlomo Goren endeavored to develop. Instead, R. Yosef approaches Israel’s existence from an individualist perspective as has been the traditional emphasis of Jewish law in the Diaspora. It is the separate institutions and events in the development of the State of Israel that warrant scrutiny, not a collective body meriting a whole new category of analytical tools such as those dealt with in Edrei’s paper. This interpretive methodology in turn, avoids the confrontation of the establishment of the State of Israel in nationalistic terms and avoids the “utopianism” associated with the examples Edrei cites. It also carries

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with it the force of precedent: traditional Jewish legal applications (i.e., the individualized focus) and the resort to sources that have layers upon layers of interpretation (in contrast to a newly derived set of rules to dealing with the State of Israel as a collective phenomenon or adoption of secular laws both of which were at issue in Edrei’s paper).

R. Ovadiah Yosef, is one of most important adjudicators of Jewish law and Jewish legal scholars alive today. He has served on the Supreme Rabbinical Court of Israel and as Chief Rabbi of Tel-Aviv-Yafo and Chief Rabbi of the State of Israel.\(^2\) In addition, he is a public figure of considerable importance. He has single-handedly revived the importance of Sephardic legal scholars working within a Sephardic tradition and Sephardic torah study (Sephardi Jews are those descendant from communities originating in the Iberian Peninsula that later spread to Italy, Holland, the Balkans and Arab countries). Since 1983 he has served in the collective leadership of the \textit{Shas} party which he helped to found, and since 1992 he has been the undisputed leader of the party.

R. Ovadiah Yosef’s rulings concerning the recitation of the traditional thanksgiving prayer during major Jewish holidays, the status of the Land of Israel and the possibility of a peaceful settlement of the conflict of Israel and her Arab neighbors provide a further and interesting perspective on the very different ways Jewish legal dicta came to be conceptualized within the framework of Jewish national existence. More specifically, his disagreements with R. Shlomo Goren on such matters as the recitation of the thanksgiving prayer on Israel Independence Day, and the status of the commandment to settle the Land of Israel and hence the possibility of returning land for peace, are all critical illustrations of the very different ways issues of contemporary \textit{realpolitik} are brought into relation with the world of Jewish legal reasoning and obligation.

To understand the general context of R. Ovadiah Yosef’s rulings it would be useful to compare them to that of religious (Orthodox) Ashkenazim (Ashkenazi Jews are mostly Eastern European Jews descending from Jewish communities that originally settled in the Rhineland). The Ashkenazim always relate to the underlying modern logic of nationalism. The national religious affirm it religiously, while that is precisely what the anti-Zionist Ashkenazi ultra-Orthodox community deny.\(^3\) Thus, in point of fact, Ashkenazim of all stripes, secular Zionist, religious Zionist or ultra-Orthodox view the State of

\(^2\) B\textsc{enjamin} L\textsc{au}, \textsc{from} “\textsc{Maran}” \textsc{to} “\textsc{Maran}”: \textsc{the} \textsc{halachic} \textsc{philosophy} \textsc{of} \textsc{rav} O\textsc{vadiah} Y\textsc{osef} 5-10 (2005) (NB this source, as well as most others cited in this Article, are in Hebrew).

\(^3\) \textit{See id.} at 163 (outlining the diametrically opposed views of the Ashkenazi ultra-Orthodox community on one hand and the religious Zionist groups led by Rabbi Zvi Yehuda Kook on the other).
Israel as the realization of Jewish national existence. The various religious Zionist groups and thinkers do not only affirm the concrete acts of setting up a state and maintaining it, but the underlying nationalist rationale for doing so. They reinterpret Judaism so as to give this rationale religious legitimation. The Ashkenazi ultra-Orthodox on the other hand, have always denied the legitimacy of the concrete act, such as setting up the state or winning military victories against enemies because they see them as being intrinsically related to the nationalist rationales, as being examples of Jewish national fulfillment. What the ultra-Orthodox primarily oppose is the nationalist construction of Jewish collective identity, of which the state is merely a realization. They oppose this construction because they view it as a challenge and an alternative to the traditional Jewish legal construction of Jewish collective identity.

R. Ovadiah Yosef, in contrast to these, does not relate to the underlying nationalist rationale but to the concrete act, event, or institution, which he judges by Jewish legal criteria. Thus he accepts with appreciation the military victory of 1948 and the creation of the State of Israel. However, he does not attribute to these events any ideological or theological significance beyond their immediate, concrete meaning in Jewish law. Thus the military victory of 1948 is treated solely in terms of the physical salvation of a Jewish community, concerning which there are clear guidelines and rules in Jewish law. Even the concept of the “beginning of redemption” is treated as a category in Jewish law, and R. Ovadiah Yosef discusses the necessary stages in the redemptive process before it acquires practical implications in Jewish law.

R. Ovadiah Yosef’s approach means that on the one hand he can affirm the local value of the Jewish state and specific events relating to it, yet on the other hand continue to assert the superordinate position of the traditional Jewish law. In other words, R. Ovadiah Yosef retains

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4 See YITZHAK YOSEF, KITZUR SHULCHAN ARUCH: YALKUT YOSEF, The Laws of War During the Sabbath 329:17-29 (2d ed. 1999) (a compilation of R. Ovadiah Yosef’s rulings edited by his son Yitzhak Yosef. R. Ovadiah Yosef deals with the conflict of conducting war and operating a police force on the Sabbath. Both activities assume the existence of a legitimate government and deal with its actions on an individual basis); see also LAU, supra note 2, at 171 (citing 6 Ovadiah Yosef, Yabiya Omer, Even Ha ‘Ezer 3 (R. Ovadiah Yosef dealt with the problem of women whose husbands died in the Yom Kippur War in 1973 and left no recognizable bodies to identify them making it necessary to rely on identification tags left behind. R. Ovadia Yosef went to great lengths in his legal responsa to attempt to declare the women as widows thereby enabling them to remarry.)).

5 See LAU, supra note 2, at 166-67 (R. Ovadiah Yosef unquestionably sees the establishment of the State of Israel as the beginning of redemption, however he makes it clear that there is still a lot to be achieved on a governmental and military level as well as on a moral and spiritual one).

6 Id. at 156-58 (citing Ovadiah Yosef, Maor Israel: Drushim, Darush 3: Shabbat Zakhor 179 (1949) (unpublished manuscript, on file with author) (in an address in Cairo about a year after the establishment of the State of Israel, R. Ovadia Yosef shows exhilaration and gratitude for that
Jewish law as the organizing principle of Jewish collective identity as it was traditionally. The State of Israel fits within the overarching definition of Jewish collective identity based upon Jewish law. It does not offer an alternative principle upon which to base Jewish collective identity. R. Ovadiah Yosef accomplishes this by viewing the “State” not as the national fulfillment of the Jewish people but as a collection of events and institutions, each one of which has to be judged separately in terms of its immediate concrete significance and consequences by the yardstick of Jewish law.

This approach means that R. Ovadiah Yosef’s legitimation of the Jewish state is in a sense provisional; to the extent that in Jewish legal terms the state or any one of its institutions ought to be condemned, it carries no further theological significance that would stay or prevent its condemnation.7

All this is in contrast with both Ashkenazic Religious Zionist and ultra-Orthodox positions. As we have indicated above, they both understand the state as presenting a re-ordering of Jewish collective identity.8 The ultra-Orthodox negate this re-ordering and its external concrete manifestations such as the state and the Israeli Defense Force (IDF). The religious Zionists affirm it—giving it and its external manifestations religious meaning. R. Ovadiah Yosef does neither.9 He breaks the Gordian knot between national fulfillment and the establishment and maintenance of the state and its institutions. In R. Ovadiah Yosef’s Jewish legal work, the state and each of its aspects is examined in its own right in the light of Jewish law, apart from any narrative of Jewish national existence and realization.

In terms of the legitimation of the state, R. Ovadiah Yosef in fact proposes an innovative approach. For religious and secular Zionists and for the ultra-Orthodox anti-Zionists, the legitimacy of the state stands or falls with the legitimacy of the idea of Jewish national existence as the ordering principle of Jewish collective identity. If Jewish national realization is legitimate, then the State of Israel is legitimate. If Jewish national realization is not legitimate then the State of Israel is not legitimate. R. Ovadiah Yosef breaks this connection. The state and the events and institutions that are tied to it are legitimate if they can be construed as conforming to Jewish law and its guidelines, without

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7 "Id." at 161 (citing Ovadiah Yosef, 2 Maor Haagada: Drushim: Shabbat Nahamu (1950) (unpublished manuscript, on file with author) (in an address upon his leaving Cairo, R. Ovadiah Yosef condemned the secular nature of the public education system in Israel)).
8 "Id." at 166 (Lau outlines different groups’ definitions of Jewish identity by their characterization of the State of Israel in relation to its redemptive function, or lack thereof).
9 "Id." at 168.
reference to Jewish national realization. Thus, in the eyes of R. Ovadiah Yosef, the State of Israel, the celebration of Independence Day, and the IDF have a certain legitimacy to them. But this is not rooted in any Zionist or Jewish nationalist rationale.

The full complexity of this position is in evidence in his *Responsa* concerning the appropriate religious ceremonies and rituals for Israel’s Independence Day. As Benjamin Lau has noted: a rabbi’s position on this issue is a litmus test for his theological and ideological position vis-à-vis the state.10 The gamut of positions runs from reciting the full thanksgiving prayer, together with a ceremonial blessing which indicates that it is a religious obligation to do so, at one end, to observing the regular weekday service without any change or recognition of special character of the day on the other. R. Ovadiah Yosef prohibits full ceremonial thanksgiving prayer with its corresponding blessing (Rabbi Goren’s suggestion11); but he does permit saying the psalms of the thanksgiving prayer, in its regular ceremonial place after the morning service, and following the part of the service made up of eighteen blessings that is recited while standing upright in all three daily prayers, albeit, without a blessing.12 R. Ovadiah Yosef’s wording here is very subtle. He says that those congregations who wish to say the thanksgiving prayer should be allowed to do so in the proper place in the service, that is, after the prayer recited while standing, where thanksgiving is traditionally rendered.13 While some commentators have interpreted this as a mere concession to the (unworthy) desires of his constituency, I do not believe this to be the case. R. Ovadiah Yosef compared the case of Independence Day with the rite which marks the New Moon. According to the Sephardic tradition, which R. Ovadiah Yosef cites, the congregations themselves initiated reciting the thanksgiving prayer on the day of the New Moon. Thus the Sephardic congregations do not recite the blessing, however the custom did become sanctified.14 According to R. Ovadiah Yosef, Independence Day has the same status. It is a day of religious and Jewish legal significance. However, like the day of the New Moon, its ritual is not fixed by fiat from above, but by the hallowing of custom from below.

In the context of his discussion he accepts the description of the

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10 *Id.* at 168.
11 *Id.* at 164-65 (citing to Shlomo Goren article in the 1956 Independence Day Issue of Iton Hatzofeh).
12 6 O VADIAH YOSEF, YABIYAH OMER, *Orach Chaim* 41:5 (1986) (R. Ovadiah Yosef sets forth his reasoning for prohibiting accompanying the thanksgiving prayer with the blessing, and describes what the state of the world should resemble for the blessing to be permitted); YITZHAK YOSEF, YALKUT YOSEF 3:218 (1985); LAU, *supra* note 2, at 163-66.
14 YITZHAK YOSEF, *supra* note 12, at 422.
State of Israel as the “commencement of redemption.” His authority for doing so is the leading rabbis of the religious Zionist stream, including Rabbi Kook. However he emphasizes that the State of Israel is merely the beginning and that one cannot give full thanksgiving until the process is completed. His reasons for this emphasis are both material and spiritual. The first is the fact that Israel remains in a difficult security situation. The second is spiritual—the predominantly secular character of the Israeli state and society. He stresses that for both reasons the full redemption is still very far away and that we cannot thus, truly celebrate.

A similar ambivalence characterizes his stance towards other dimensions of Israeli state. He classifies all the wars of the State of Israel as “obligatory wars,” thus religiously valorizing them, yet at the same time he is adamant about the exemption of students at institutions for Torah study from military service. (However, it has been reported that he endorsed the idea that students who do not in fact devote themselves to study should enlist in a special unit the IDF established to accommodate the various needs of ultra-Orthodox soldiers.) As opposed to the ultra-Orthodox authorities, he has unequivocally affirmed the principle in Jewish law that the governing law of the land is binding on its citizens and stated that it applies to the State of Israel, hence one is enjoined to obey all laws. Yet in that very same Responsa he wrote, citing the talmudic tractate Bava Batra, 22a, that the state has no right to tax learned Torah scholars, thus opening the door for tax evasion on their part.

A similar logic can be found in his rulings pertaining to the settlement of the Land of Israel and the possibility of returning land for peace. The possibility of a peaceful settlement of the Middle East conflict has generated, over the past thirty-five years, a good deal of discussion in Jewish legal circles. One of the major reasons why this has generated such discussion is that the major blueprints for such a peace agreement generally involve Israeli withdrawal from territory—in general, the territory conquered by Israel in the 1967 war. In the

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15 Ovadia Yosef, supra note 12, at 41:5; Lau, supra note 2, at 166.
16 Lau, supra note 2, at 166.
17 Ovadia Yosef, supra note 12, at 41:5.
18 2 Ovadia Yosef, Yechaveh Daat 14 (1983); Lau, supra note 2, at 174.
19 See Lau, supra note 2, at 175 (Lau brings a discussion as to what exactly an “obligatory war” requires and two cases where R. Ovadia Yosef discusses the matter).
20 Id. at 176.
21 Id. at 177 (citing 5 Ovadia Yosef, supra note 18, at 64).
23 Id. at 239:2.
24 Zvi Aloush & Yossi Elituv, Rabbi Ovadia Yoseph 94 (Kinneret, Zmora-Bitan, Dvir Publ’g House Ltd. 2004).
framework of peace agreement, Israel is to withdraw from territory that is to revert either to an Arab state (e.g., Syria), or upon which an Arab political entity is to be established (e.g., Palestine). Such a plan presents a challenge in Jewish law because the territory that Israel occupies, especially the West Bank (the Biblical regions of Judea and Samaria), is considered from the point of view of Jewish law (as well as from a historic and geographic point of view), part of the Land of Israel. Living in the Land of Israel, occupying it and/or exercising ownership over it are considered to be positive Jewish religious injunctions (the precise nature of which is subject to dispute which has immediate and total bearing on the issue at hand).25 Thus the issue in Jewish law is generally framed in terms of whether it is permitted for Israel to withdraw from the West Bank (and other parts of the Land of Israel) for the sake of a peace agreement. Are there any other religious values which might prevail over the injunctions to occupy and exercise ownership over the Land of Israel? The candidate that is most generally invoked for this role is the value of saving lives and avoiding bloodshed.26 The talmudic rule states that saving a life overrides all the commandments of the Torah, save the three cardinal sins of idol worship, murder, and adulterous and incestuous sexual relations.27 The question thus is generally posed: does the precedence of saving lives override the injunction to occupy and exercise ownership over the Land of Israel? A peace agreement, by definition, entails the cessation of bloodshed and the saving of lives. If the concern of saving lives then overrides the injunction to occupy and exercise ownership over the Land of Israel, then Israel may withdraw from territory for the sake of establishing a peace agreement with the Palestinians and neighboring Arab states.

Rabbinic authorities started to address this question in the late seventies and mid-eighties in the context of the peace negotiations with Egypt.28 Both Chief Rabbis of the time, R. Ovadiah Yosef, and the Ashkenazic Chief Rabbi, R. Shlomo Goren (a renowned talmudic scholar), addressed themselves to this issue with diametrically opposed conclusions.29 In order to understand their Responsa, it is necessary to go back and review a few of the basic parameters of Jewish collective identity and action orientations of pre-modern, pre-Zionist, and pre-state Judaism. The major issue that is of relevance here is that of collective

25 See OVADIAH YOSEF, CHAZON OVADIAH, Yom Tov 140-49 (Maor Israel, 2003) (R. Ovadiah Yosef discusses the scope of the obligation to settle the Land of Israel, especially when it comes into conflict with a person’s ability to earn a living, as well as parental consent).
27 Id.
28 See ALOUSH & ELITUV, supra note 24, at 94 (expressing the unease felt by rabbis on the subject of peace negotiations with Egypt).
29 LAU, supra note 2, at 164.
as opposed to individual orientations.

The Bible speaks of the People of Israel (the collectivity that Jews identify as their own) as a national society organized for pragmatic action—war and settlement and which possesses, in an institutionalized way, political, military, religious and even judicial institutions (e.g., Judges, the Monarchy, the Temple, and its priests, and organized military command). The Bible and post-Biblical texts describe the disruption and the destruction of this national political and religious order, first in the destruction of the Israelite kingdom by Sancherib in 734 B.C.E., then by the destruction of the Kingdom of Judea and the Temple in 586 B.C.E., and finally by the destruction of the Second Temple and the commonwealth of Judea in 70 C.E. by Titus. During the first millennium C.E. the Jews crystallized an alternative concept of collective identity—a collectivity dedicated to the observance of the Jewish religious law and tradition.

Together with the end of independent political existence and the destruction of the national cult, religious, social, and rabbinic elites in Late Antiquity formulated religious orientations that were more egalitarian and individualistic. Thus the notion of equal access to the realm of the holy (for male Jews) became institutionalized and the Pharisees as well as the Rabbis started to become concerned with individual salvation. The institutional pattern of the traditional Jewish law crystallized out of these events and currents. In this pattern, the national, collective aspects of Jewish collective identity in the overwhelming majority of cases, became “bracketed;” relegated to the distant Biblical and ancient past, or to the utopian messianic future. During the period of the Exile (that is, without political sovereignty or national cult), observance of Jewish law became incumbent upon the individual Jew, or in regard to a number of cases, on the local Jewish community, which was conceived as being constituted by individual Jews. Such obligations that are incumbent upon the collective public (such as Temple sacrifices) were relegated to the utopian messianic future. However, one thing should be made clear: the Jewish individualistic orientations in the pre-modern period were very different than the notion of the individual in Christianity. This, of course, is a vast topic, and in this framework, I just want to relate to one salient point. The obligations upon the individual Jew derive from his membership in the primordial community. The fact of one’s membership is largely primordial; in the Exilic-Jewish legal pattern, the

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30 The collection of the books of the Prophets describe these institutions, and the social ordering resulting therefrom extensively.
31 As outlined in the account in Acts of the Apostles 23.
32 The institution of prayer instead of sacrifices (and the designation of sacrifices as an activity that will be resumed in the messianic era) is an example of such a progression.
legal-behavioral implications of this membership are worked out in regard to the individual. This is, of course, very different than the anti-primordial, universalist individualism of Christianity.

One of the ways of describing the reconstruction of Jewish collective identity that Zionism wanted to bring about is to say that it wished to reactivate, in the present, the national-collective aspects of Jewish collective identity.33 In other words, the fundamental Zionist claim is that in the historical present, not the indeterminate messianic future, the Jews can and ought to reestablish the national-collective aspects of their being such as territorial sovereignty and national-collective institutions such as a state and governmental and military institutions. These, according to Zionists of all stripes, ought to be the organizing principles of collective Jewish identity. Thus Zionism entails a shift from an individualist to a national-collective orientation.

I think that we will see the salient points of R. Ovadiah Yosef’s approach more clearly if viewed in relief upon the background of R. Shlomo Goren’s writings on the subject. R. Shlomo Goren has been one of the leading Religious Zionist rabbis and his major project as Chief Rabbi of the IDF, of Tel Aviv-Yafo and of the State of Israel has been to construct concepts, categories, and tools that are appropriate to national existence and a sovereign Jewish state.34 The core of R. Goren’s approach to the issue of the Land of Israel versus the value of saving lives is the construction (or revival) of national-collective Jewish legal categories.35 R. Goren reasons that if there is a national–collective obligation to wage war in Jewish law, then it overrides the obligation to save the lives of individuals.36 The reason for this is that war by its very nature involves the death of individual soldiers and thus if the Torah and Jewish law obligates the Jewish nation to wage war, then within the context of that duty, the obligation to save individual lives is suspended.37

R. Goren locates the source of an obligation to wage war in Nachmanides’38 gloss on Maimonides’ Book of the Commandments.39

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33 See SHLOMO GOREN, TORAT HAMEDINAH: A LEGAL-HISTORICAL STUDY OF CARDINAL ISSUES OF THE STATE OF ISRAEL SINCE ITS FOUNDING 18-28 (Ha-Idra Rabah, Chemed 1995) (explaining the legal significance of an independent Jewish state). Rabbi Goren starts by finding a legitimate source in Jewish law for the creation of a Jewish government in pre-messianic times. He finds an initial authority in the Palestinian Talmud—a version of the Talmud that was edited by the academies in the Land of Israel, also known as the Jerusalem Talmud—where a possibility of a Jewish government without the renewal of prophecy, without the re-establishment of the monarchy and the reinstitution of the high-priest is hinted at. Id.

34 Id. at 18.

35 Id. at 28.

36 Id. at 30 (Rabbi Goren discusses whether the nature of the war makes a difference in the matter, i.e., an “obligatory war” or a “permissive war.”) He cites sources that indicate that even a “permissive war” overrides the individual value of saving lives. Id.

37 Id.

38 Moshe Ben Nachman, a thirteenth century scholar residing in Barcelona, wrote one of the
Nachmanides criticizes Maimonides for not listing the commandment to conquer the Land of Israel, drive out its previous inhabitants and settle it as is explicit in the Book of Numbers and in Deuteronomy. This Nachmanides, writes, can only be accomplished by war and it is a commandment given to all generations. R. Goren writes that if there is such a commandment, then this is precisely the situation in which the State of Israel finds itself. It is commanded to occupy and dominate the Land of Israel, even at the cost of war and bloodshed, for that is the very nature of the commandment.

However, R. Goren is not only interested in the particular commandment to conquer the land of Israel. Jewish law, he writes, recognizes the right of Jewish governments to wage war in the national interest—this is the concept of “permissive wars.” Citing a talmudic dictum that governments may conduct martial policies that bring about the death of a sixth of their population, he argues that even wars of permission suspend the absolute obligation to save lives. Jewish governments, by their very nature, are allowed to pursue policies in the national interest at whatever cost to the individual. R. Goren’s interest is in jurisprudentially establishing two planes to Jewish law. The first plane is the plane of individual conduct. Upon this plane, the rule holds that the interest in saving human lives overrides almost all the commandments. The paradigmatic case of this rule is the case of the sick person on the fast day of Yom Kippur, that only doctors may determine if he be allowed to fast, and thus observe this most holy of observances. The second plane is that of national existence and institutions. On this plane governments must implement the obligations that are incumbent upon them (such as conquering the Land of Israel), and otherwise are free (according to Jewish law) to conduct war and peace in the national interest without regard for the lives of the individual citizens.

R. Ovadiah Yosef’s entire approach in this issue is directed towards denying the construction, on the Jewish law level, of a national-collective plane in which different rules apply. In other words R. Ovadiah Yosef’s main concern is to retain the traditional construction of Jewish law as a set of obligations applying to individuals and to relegate all possible national-collective obligations to the messianic future.

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39 GOREN, supra note 33, at 30.
40 Id. at 31 (citing Deutronomy 1:21, Numbers 33:53-4).
41 Id. (citing MOSHE BEN NACHMAN, ON THE BOOK OF COMMANDMENTS, Positive Commandments 4).
42 Id. at 32-35 (R. Goren cites additional sources that in effect obliterate the principle of saving lives during war time since it is an expected effect of war that lives may be lost).
43 Id. at 32.
Accordingly, R. Ovadiah Yosef constructs the commandment to live in the Land of Israel not as a national-collective one involving national conquest and occupation, but as an obligation incumbent upon individuals. In line with that, he argues that the rule prioritizing the saving of lives over all the commandments of the Torah (except for the three cardinal sins mentioned above) applies. Hence, even though it is certainly a commandment to live in the occupied territories of Judea and Samaria, if relinquishing them to the Arabs would bring about a peace agreement, then certainly from the point of view of Jewish law, one is required to return these territories as part of such a peace agreement.  

The major challenge that R. Ovadiah Yosef faced in constructing this position was the opinion, cited above, of Nachmanides, that states that there is a national-collective obligation to conquer the Land of Israel and occupy it. Nachmanides is quite explicit in stating that this obligation does not only apply to the original conquest of the land under Joshua but is obligatory for “all the generations.”

Despite this, R. Ovadiah Yosef’s strategy in regard to Nachmanides’ ruling is to turn it into a utopian position. He quotes a tradition cited by Nachmanides’ descendent, R. Shlomo ben Shimon Duran, to the effect that Nachmanides did not intend that this commandment is to be in force “during the time of the Exile.” In support of this, R. Shlomo ben Shimon cited the talmudic tradition concerning the oaths through which God bound the Jewish people after the Destruction of the Temple. One of these oaths is that Jewish people should not try to conquer the Land of Israel by force against the will of the Gentiles. R. Ovadiah Yosef understands the rationale behind the oaths to be the question of danger—that during the time of the Exile, when power is given over to the Gentiles, for the Jewish people to try to conquer the Land of Israel by force will involve too much danger and sacrifice for them. Hence the commandment is not applicable in the

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44 See Yosef, supra note 25, at 140-45 (this approach is supported by his holding regarding the situations in which an individual may be exempted from settling the Land of Israel such as where one’s livelihood is contingent upon living abroad).

45 ALOUSH & ELITUV, supra note 24, at 95; see 5 OVADIAH YOSEF, YECHAVEH DAAT 55 (1977). Congruent with the above is R. Ovadiah Yosef’s holding that it is permissible for women to dress as for men to dress as women where there is threat from an enemy, and that threat can be lessened by such actions that would otherwise be impermissible. Id. It is also permissible for women to be trained as soldiers and carry arms because of the precedence of the principle of saving human lives. Id. Thus even in the context of waging war, R. Ovadiah Yosef establishes the importance of the principle of saving lives. Id.

46 Ovadia Yosef, Love Truth and Peace: Return of Territories as Against the Preservation of Life, ORAL TORAH 14 (1985); ALOUSH & ELITUV, supra note 24, at 95.

47 GOREN, supra note 33, at 30.


50 6 OVADIAH YOSEF, supra note 12, at 41:5 (to illustrate this point R. Ovadiah Yosef goes
era of the Exile. In other words, the obligation to conquer the Land of Israel is only in force during the messianic-utopian era when the Jews will have dominion and the Gentile will not constitute any threat against them!

R. Ovadiah Yosef’s reinforces this utopian construction of Nachmanides’ position by arguing that if the obligation to conquer the Land of Israel is in fact an “obligatory war,” that is, a war that the Jews are commanded to wage, then the sacred protocols and observances that are attendant upon an obligatory war must be observed. Most notably, the Jews must consult a sort of oracle, which according to most commentators was part of the breastplate worn by the high priest and conveyed divine messages. This “oracle” was indeed part of the Jewish sacred apparatus at the time of the Exodus out of Egypt and it is expected that it will return to use during the messianic restoration. However, it is not present in the contemporary era of ordinary history that was inaugurated by the destruction of the Temple and the end of Biblical Revelation. In other words, by interpreting Nachmanides’ idea that conquering the Land of Israel involves a war that is a commandment in the strict sense, that is, as accompanied by all the sacred and miraculous protocols that accompany obligatory wars in the Bible, R. Ovadiah Yosef again constructs the commandment to conquer the Land of Israel as utopian and as not applicable to the ordinary (or profane) contemporary period.

R. Ovadiah Yosef’s final argument is that the type of dominion over the Land of Israel that the State of Israel would be defending by not returning the occupied territories in the framework of a peace agreement is clearly not the kind of dominion that Nachmanides was referring to. Here again, the thrust of R. Ovadiah Yosef’s argument is to construct Nachmanides’ position in utopian terms. Basing himself upon earlier interpretations, he claims that the type of dominion that Nachmanides’ discussed was absolute. That is, as absolute owners, the Jews could do with the Land of Israel whatever they wished, including such things as destruction of places of idol worship and transfer of population. However, today, Israel is bound by international agreements, law, and custom in its treatment of the territories of Judea, through the numerous historical military conflicts the State of Israel has faced and suffered losses from.

51 Ovadiah Yosef, supra note 46, at 14; 1 Ovadiah Yosef, Yabiyah Omer, Orach Chaim 3:1-18 (2d ed. 1986) (explaining the importance of the breastplate and especially in the context of matters related to the land since in the original assignation of land in Israel to the different tribes, the breastplate was used as some sort of an allocation device. Furthermore, it is written that the Divine presence during the time of the Second Temple—which stood between 515 B.C.E. and 70 C.E.—was lesser partly because this breastplate was lacking).


53 Ovadiah Yosef, supra note 46, at 14
Samaria and Gaza. It cannot, for example, close churches, even though (in accordance with the Sephardic legal tradition) they are considered to be places of idol worship and even though it is universally acknowledged by all authorities in Jewish law that it is forbidden to permit idol worship of any sort in the Holy Land. Furthermore, the Palestinian uprising (referring to the first Intifada of 1987-1989) proves that Israel is not in total control of the territories; it is dangerous to travel the roads and pass through Palestinian towns. In sum, Nachmanides’ ruling is not at all relevant to the contemporary situation and properly belongs to messianic times. In contemporary times, the commandment to live in the Land of Israel is only an individual one and has no national-collective dimension to it.\footnote{Lau, supra note 2, at 167.}

R. Ovadiah Yosef stresses that he was only providing a Jewish legal framework for discussing the return of parts of the Land of Israel in the framework of a peace agreement.\footnote{ALOUSH & ELITUV, supra note 24, at 94.} He was not providing a concrete ruling. He emphasized that the return of territories is permitted if and only if the relevant and duly constituted military and government authorities come to the conclusion that it would indeed facilitate a genuine peace agreement. If, on the contrary, they feel that it would worsen Israel’s strategic position and not result in a genuine peace agreement, then it would be absolutely prohibited to return any part of the Land of Israel, because then such a move would endanger lives and not save them.\footnote{Id. at 95.}

R. Ovadiah Yosef’s rulings on the issue of land and peace are another illustration of how R. Ovadiah Yosef insists upon the retention of traditional religious and legal categories, yet does not use them to negate the legitimacy of the very existence of the State of Israel. Rather he uses them so as to evaluate the various institutions and situations of the Israeli state under Jewish law. Thus he does not claim that Israel must return the territories because it has no right to exist or defend itself (as some extreme anti-Zionist ultra-Orthodox would have it).\footnote{Lau, supra note 2, at 168.} On the contrary, it has every right to defend itself, but that right itself must be understood within the framework of the traditional value of avoiding bloodshed and saving the lives of individual Jews.\footnote{ALOUSH & ELITUV, supra note 24, at 95.}

In this connection, the use that R. Ovadiah Yosef makes of the talmudic tradition of the three oaths is instructive. The extreme anti-Zionist ultra-Orthodox use this tradition as a proof text against the entire attempt to reconstruct Jewish collective identity along national-
territorial lines. They cite this tradition against the entire attempt to construct Jewish national existence and its realization: the State of Israel. R. Ovadiah Yosef makes more modest use of this tradition. Characteristically, he does not relate to the actual underlying attempt to create Jewish national existence. He does not take a theological stance towards it. What concerns him is the question of in what terms ought one interpret the State of Israel and its political and military needs and institutions. Ought they be interpreted in terms of the revival of the national-collective dimensions of Jewish existence? Or should they continue to be interpreted in terms of the traditional categories of Jewish law, those same categories that constituted Jewish law in the Diaspora during the pre-Zionist era? R. Ovadiah Yosef invokes the tradition of the three oaths not as a proof text against the Zionist enterprise and actual State of Israel in the real world but rather against the interpretation of the Zionist enterprise in national-collective (R. Ovadiah Yosef would say, messianic) Jewish legal terms. Unlike the anti-Zionist ultra-Orthodox, R. Ovadiah Yosef has no a priori theological objections to the Zionist enterprise and the State of Israel and its defense or political needs. He only insists that it be interpreted and evaluated according to the traditional categories of Jewish law and of traditional collective Jewish identity, not according to new national-collective categories such as R. Goren and other religious Zionist rabbis suggest.

CONCLUSION

Much of the inner religious and political history of the West in the past five hundred or so years can be characterized as possessing two traits. The first is that of utopian or Gnostic orientations. Puritanism, Jacobinism, Communism, The Enlightenment, the American and French Revolutions, and National Socialism have all been characterized as having utopian aspirations; of creating perfection in the immanent reality of this world. Secondly, that to a large extent, these movements aim to achieve this perfection by the construction of new collectivities and reconstruction of collective boundaries.

As I have noted briefly above, several of the Israeli religious streams have a relation to these aspirations. The most common form of religious Zionism in Israel today shares in the general Zionist objective of reconstructing Jewish collective identity around the principle of national-territorial existence. It differs from other, secular forms of Zionism by attributing to this reconstruction religious significance.

59 GOREN, supra note 33, at 38.
60 Ovadiah Yosef, supra note 46, at 14.
61 GOREN, supra note 33, at 18-28.
Furthermore it has a strong utopian aspiration of which the sanctification of national existence is a part. It aims to establish a form of religious perfection in the mundane orders of state, territory and settlement, military activity, and even culture and art.

The Ashkenazi ultra-Orthodox, also relate in their own way to this orientation and process. The basis of their communal life is organized in self-conscious opposition to the Zionist reconstruction of Jewish collective identity. Within the bounds of their (counter) community they also maintain a utopian religious orientation. To this community, totalistic Torah study and fulfillment of the commandments in an exhaustive, severe fashion constitutes the perfect fulfillment of the religious ideal. Thus, in their own way, despite their opposition to the modern attempts to reconstruct Jewish collective identity, they too have subtly reinterpreted the Jewish tradition so as to lend it certain modern hues, not only in its ideological self-consciousness and in the self-consciousness of its ideological warfare, but in its utopian aspirations—its attempt to found the Kingdom of God in the here and now.

R. Ovadiah Yosef’s religious vision rejects religious utopianism both of the National Religious and of the ultra-Orthodox variety. As we have seen, it does not award any significance to the possible redemptive character of the State of Israel. Similarly, the methods that R. Ovadiah Yosef endorses regarding Torah study and Jewish legal decision-making are resolutely anti-Utopian in character. In regard to the second parameter, the reconstruction of collective identity, we have seen that he was able to develop the means of interpreting the meaning of the State of Israel, its creation and its dilemmas, without considering it in the light of such reconstruction. Thus, R. Ovadiah Yosef’s thought simply “brackets” or bypasses this issue. He does not endorse a nationalist reconstruction of Jewish collective identity, nor does he negate the State of Israel because of principled opposition to such a reconstruction. Rather his position allows him to relate to the state and its attendant events and institutions within the traditional Jewish legal framework of Jewish collective identity.

However, R. Ovadiah Yosef too, reinterprets modern and traditional orientations so that his vision is far from being a mere iteration of religious traditionalism. R. Ovadiah Yosef’s non- or anti-traditionalism centers around the methods used to determine the religious norms. R. Ovadiah Yosef rejects the mimetic traditionalism of community custom. For him religious norms are to be derived from the intensive study of the texts. A central part of his program is the creation of an institutional and organizational reality which furthers this

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62 LAU, supra note 2, at 155-58.
intensive text study—a class of Sephardic Rabbinic scholars and super-communal Torah academies organized in the Ashkenazi fashion.\textsuperscript{64} We see thus that R. Ovadiah Yosef’s religious vision creates a constellation which has not been seen before: a modernist institutional and organizational orientation in the service of a pre-modernist religious substantive conception.

\textsuperscript{64} \textit{Id.} at 128.