

Preface

This year's English section of *Diné Israel* presents four articles which we have grouped under the heading "Legal and Political Theology." Each addresses the way Jewish legal and political thought is shaped by and, in turn, shapes, theological reflection. The term "political theology" originated in a Christian context and most studies to date have remained in that context. The editors of *Diné Israel* hope that the articles in this volume will stimulate fresh questions and fresh consideration of the ways theology is embedded, often tacitly, in Jewish texts addressing legal and political ordering.

The Symposium begins with David Flatto's analysis of the meaning of the term "theocracy" in the writings of Josephus. In "Theocracy and the Rule of Law: A Novel Josephan Doctrine and Its Modern Misconceptions," Flatto argues that the term 'theocracy' refers to the constitutional framework in which the divine law is embedded. For Josephus, it is "precisely the supremacy of the formal rule of law over the personal and unpredictable governance of men that establishes the Jewish polity as superior to the Roman one." Both *Antiquities of the Jews* and *Against Apion* contain a sustained political-theological argument that the Torah's laws are the foundation of the Jewish polity. God governs through his comprehensive laws as legislated by Moses and administered by the priests. This law-centered conception of divine governance is far from obvious: the Hebrew Bible does not emphasize God's direct rule through laws. Indeed, for others – most notably Martin Buber in the modern era – spiritual anarchy is the form of governance ideally promoted by the Hebrew Bible. Earlier, too, sixteenth- and seventeenth-century Christian writers misunderstood the Josephan doctrine, interpreting it as advocating civil sovereignty, emptied of religious law, whereas the original notion in Jewish late antiquity refers to legal supremacy built upon a sacral structure.

In "Before and After Babel: Linguistic Exceptionalism and Pluralism in Early Rabbinic Literature and Jewish Antiquity," Steven Fraade explores the connection between law, political theology, and language. Within the multilingual and multicultural setting of the rabbis, the legal discussion of which 'Jewish' language is appropriate for different tasks has profound political

implications. The rabbinic sources examined, all of Palestinian provenance, reveal several distinct themes. The first is ethnocentrism: Hebrew is the language of the *paterfamilias* and a marker of ethnic identity. Hebrew also assumes an ontological status as the language through which God created the world. Thus it is linguistically exceptional. Yet, at the same time, the rabbis were committed to linguistic pluralism. Traditions about the multilingual nature of revelation reflect two disparate concerns. While one set of traditions emphasizes the intellectual necessity of the totality of human languages to reveal all the Torah's interpretive aspects, the other set is concerned with politics: to make the Torah accessible to the nations of the world so as ultimately to exclude them from salvation. *Realpolitik*, rather than political theology, frames other traditions exalting multilingualism: those who rule or sit on the court function better if they possess multilingual skills. With respect to ritual obligations, Hebrew retained preferential status but practical considerations, such as linguistic incompetency within the Jewish community, led to permission to use other languages.

"*Goy: Toward a Genealogy*," by Ishay Rosen-Zvi and Adi Ophir, traces the original "naming, partition, and structure" of the Jew and the Gentile together with God, in tannaitic thought. In an earlier paper, Ophir had argued that the conceptual opposition between a generic *Goy* – lacking a history and destiny or even personality – and the particularized, 'chosen' Jew has been remarkably stable because it fulfills a key theological-political function. First, while the "*goy*" is a threat to the Jewish community, the category also is the "external condition" guaranteeing its internal cohesion. Moreover, God is a full member of this triad. Indeed, the "*goy*" is God's other side, filling the vacancy left by God's departure from the historical stage. In short, God's appearance – politically and theologically – is now through the "*goy*." In this paper, Rosen-Zvi and Ophir concentrate on the first appearance of the term "*goy*" in the generic sense, tracing the transformation of "*goy*" from a nation/people to all nations/peoples other than Israel and, finally, to any individual who is not a Jew. The Hebrew Bible and Second Temple Judaism attest to a variety of discriminating categories: people of different, identified ethnicities, distinct nations, the resident stranger, etc. While a few intermediate categories – the Noahide, for example – persisted, the marked trend of rabbinic thought was to erase them. In their place, arose the unified category of "*goy*," a category that marked an entirely new theological-political discourse in which Jew and Gentile are binary opposites. This discourse makes its appearance against the background of a prevalent understanding of living in a post-revelatory world in which God has disappeared as a political power. Instead,

the “*goy*” now has the task of confirming Jewish election. While this transformation is part and parcel of the exegetical and aggadic discourse, halakhic discourse simply assumes it as a background condition. Thus, Rosen-Zvi’s and Ophir’s thesis also bears on a host of scholarly debates about relations among Jews and Gentiles in the early rabbinic period. For example, rabbinic leniency toward Gentile impurity, intermarriage, and conversion is not a consequence of the rejection of ontological distinctions, they contend, but rather its very opposite: once the new category of “*goy*” became stable, it no longer needed to be constructed through laws.

The final essay in this series, “Two Concepts of *Gezerat ha-Katuv*: A Chapter in Maimonides’s Legal and Halakhic Thought, Part I,” by Yair Lorberbaum, analyzes Maimonides’s treatment of scriptural decrees. Lorberbaum elucidates that scriptural decrees could be understood in both a theological and jurisprudential sense. The theological sense is a law or commandment expressing God’s pure will for which there is no rationale or else expressing human limitation and therefore the rationale is unknown. The jurisprudential sense, however, has no connection to the issue of reasons; rather, it refers to the categorically imperatival nature of the scriptural obligation or prohibition. As is well known, Maimonides rejected out of hand the idea that the commandments are expressions of pure divine will with no rationale. Instead, in the *Mishneh Torah*, Maimonides often uses the term “scriptural decree” in the jurisprudential sense. This sense carries a variety of possible secondary meanings including a demand for mechanical-literal (formalist) reading of scriptural language as opposed to interpreting the commandment in light of its rationale, thus subordinating the discretion of the interpreter to the language of the rule. Maimonides’s jurisprudential approach is thus consistent with his conception of the divine.

We are pleased to conclude with a response by Haym Soloveitchik to an article by Yair Lorberbaum and Haim Shapira, “Maimonides’s *Epistle on Martyrdom* in Light of Legal Philosophy,” which appeared in Volume 25 of *Diné Israel*. That article cited an early piece by Soloveitchik analyzing the *Epistle on Martyrdom* as a work of rhetoric, not law. In their article, Lorberbaum and Shapira contended that a positivist approach to law underlay this analysis. Soloveitchik clarifies that his argument about the rhetorical nature of the Maimonidean text is not dependent on a particular jurisprudential approach. The gist of his argument, instead, was that Maimonides breached in the *Epistle* the basic boundaries of what constitutes a legal argument.