

# “The People Do Not Understand”: R. Hayim Hirschensohn and Political Elitism in Modern Judaism (The Vilna Gaon, Rabbi N.Ts.Y. Berlin, I.B. Levinsohn, and Herzl)\*

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## ■ Abstract

Rabbi Hayim (Chaim) Hirschensohn (1857–1935) was one of only a handful of Jewish thinkers to work out a Jewish political theology, and on account of his progressive stances he became a favorite of liberal circles within contemporary Judaism. Therefore, a passage in his book *Malki Bakodesh*, in which he expresses clear opposition to universal suffrage, “invited” mitigating interpretations. Yet, a survey of Hirschensohn’s various writings reveals that they contain a trend of political elitism. Is this surprising? Hirschensohn’s progressiveness notwithstanding, the article argues that his elitist sentiments are rooted in three major intellectual trends within modern Judaism: Mitnagdism, Haskalah, and Zionism. In the writings of seminal thinkers in each of these movements, we find political elitism and reservations about government “by the people.” Hirschensohn’s personal history positioned him at the confluence of these trends, and so his elitist opinions should be viewed as the outgrowth of these intellectual traditions.

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## ■ Keywords

Hayim (Chaim) Hirschensohn, Jewish political theology, political elitism, Misnagdism, Haskalah, Zionism, Halakhic democracy

## ■ Introduction

Rabbi Hayim (Chaim) Hirschensohn (1857–1935) was the author of a well-developed political theology which has been aptly called “halakhic democracy.”<sup>1</sup> He was one of only a handful of Jewish thinkers to work out a political theology in the narrow sense, by which I mean a religious theory that spells out the nature of and justification for the best political order.<sup>2</sup> Hirschensohn is known for his genuinely democratic worldview, as well as his progressive approach to a few halakhic issues. Sharply distinguishing between the national covenant (*berit ‘am*) and the divine covenant (*berit elohah*), he contends that the sovereignty of the state is based on the former, thereby embracing a theological parallel of the social contract doctrine. According to his vision, the Jewish state will maintain equal rights for men and women and for Jews and Gentiles alike, will follow international law, and will exercise free elections. In this article, however, I would like to shed light on a different facet of this remarkable thinker and halakhist: his political elitism. A thorough examination of his writings reveals that the Hoboken rabbi believed in distancing the “multitudes” from positions of political influence. His statements to this effect are obviously at odds with his liberal democratic commitments, and they help us explain a non-democratic passage in his book *Malki Bakodesh* that has been the subject of scholarly debate. After demonstrating this trend in his writings, I will analyze three of its possible intellectual sources—the misnagdic thought represented here by the Vilna Gaon and Rabbi N.T.Y. Berlin, the maskilic thought represented by Isaac Baer Levinsohn, and a particular trend in Zionist thought, represented by Theodor Herzl—and will show that Hirschensohn is a link in a larger chain of modern Jewish elitist thinkers.

<sup>1</sup> Hirschensohn was born in Safed in 1857, and later moved with his family to Jerusalem. There, he was at the center of efforts to modernize education and revive the Hebrew language, attracting the wrath of Orthodox extremists. Due to an excommunication pronounced on him in Jerusalem, in 1897 Hirschensohn emigrated to Turkey. In 1903, he resettled in the United States to serve as the rabbi of the Jewish community in Hoboken, New Jersey, where he passed away in 1935. A few comprehensive studies have been written about him: Eliezer Schweid, *Democracy and Halakhah* (Lanham: University Press of America, 1994); David Zohar, *Mehuyavut Yehudit Be’olam Moderni: Harav Hayim Hirschensohn Veyahaso el Hamodernah* (Jerusalem: Shalom Hartman Institute, 2003); Shaiya Rothberg, “Hademokratizatsiah shel Hamasoret Hamedinit Hayehudit: Mishnato Hamedinit shel R. Hayim Hirschensohn Umekorotehah Hatoraniyim” (PhD diss., the Hebrew University, 2008). Studies of smaller scale will be cited below. See also book reviews on Zohar’s book by Marc Shapiro, *Edah Journal* 5.1 (2005) 1–6, and by Yossi Turner, *Cathedra* 116 (2005) 160–64.

<sup>2</sup> For the different definitions of political theology, see Benjamin Brown, “Jewish Political Theology: The Doctrine of *Da’at Torah* as a Case Study,” *HTR* 107.3 (2014) 266–72.

## ■ Hirschensohn's "Problematic Passage" Revisited

Upon his emigration to America in 1903, Hirschensohn was exposed for the first time to a truly democratic state, in this case a thriving superpower. As a keen supporter of Zionism, he sought to construct a model of modern democracy for the Jewish people in the Land of Israel that was grounded in talmudic and halakhic sources. In his *Elleh Divrei Haberit* (the original given title in translation is "Biblical Covenants") published in the late 1920s,<sup>3</sup> he used the notion of the covenant as the theoretical basis for rule by the demos.<sup>4</sup> In his multivolume magnum opus *Malki Bakodesh*,<sup>5</sup> he went into great detail about the organs of government and their manner of operation, all the while anchoring his ideas in halakhic sources and historical precedents. Hirschensohn derived the authority of the legislative branch from the rabbinic institution of the Sanhedrin (also known as "the Grand Court"), which, according to Jewish tradition, possessed a legislative power beyond its judicial function. To this end he even reasoned that *semikhah*, the authentic but defunct rabbinic ordination of old, could be renewed.<sup>6</sup> Although he based everything on rabbinic sources, it is widely understood that many of his ideas were influenced by the American Constitution. His democracy diverges from the American variety in a number of respects, but his ideal government is still much closer to it than to any other polity in recent or ancient Jewish history that could have served as a precedent.

Hirschensohn was forgotten for a time, but over the past forty years he has become the subject of increasing interest. After Eliezer Schweid "discovered" and wrote an important monograph about him,<sup>7</sup> he became the subject of another book, multiple theses, and quite a few academic articles. This rising tide of interest swelled outside of the academy as well. Due to his openness, liberal Orthodox circles of the late twentieth century lionized him. They viewed him as a sort of "progressive

<sup>3</sup> R. Ḥayim Hirschensohn, *Elleh Divrei Haberit* (3 vols.; Jerusalem: Defus Ha'ivri, 1926–1928).

<sup>4</sup> His concept of the covenant as source of popular legitimacy was analyzed by several scholars, among them: Schweid, *Democracy and Halakhah*, 61–73; Zohar, *Meḥuyavut*, 163–78; idem, "Covenant in the teachings of Rabbi Hirschensohn and David Hartman," in *Meḥuyavut Datit Mithadeshet* (ed. Avi Sagi and Zvi Zohar; Tel Aviv: Hartman Institute and Hakibbutz Hameuhad, 2002) 169–208; Yossi Turner, "The Power of the Community in Rabbi Ḥayim Hirschensohn's Religious Zionism," in *Yahadut – Penim Vehuts* (ed. Avi Sagi et al.; Jerusalem: Magnes, 1999) 31–56 (Hebrew); idem, "Authority of the People and Authority of the Torah in Rabbi Ḥayim Hirschensohn's Religious Zionist Thought," in *Dat Umedinah Bahagut Hayehudit Bameah Ha'esrim* (ed. Aviezer Ravitzky; Jerusalem: Israel Democracy, 2005) 193–218 (Hebrew); Moshe Hellinger, "Degem Hademokratia Hayehudit mul Degem Hayahadut Hademokratit Bahagut Haorthodoksit Hamodernit Hatsionit Bameah Ha'esrim," (PhD diss., Bar Ilan University, 2002) 230–33; Nadav Berman-Shifman, "Pragmatizm Vehagut Yehudit Beartsot Haberit Bameah Ha'esrim: 'Iyun Bemishnot Ḥayim Hirschensohn, Mordekhai M. Kaplan VeEliezer Berkovits'" (PhD diss., Hebrew University, 2008) 188–95.

<sup>5</sup> R. Ḥayim Hirschensohn, *Malki Bakodesh* (6 vols. in 4 pts.; St. Louis: Moinester Printing; Seini: Jakob Wieder Press, 1919–1928).

<sup>6</sup> This issue had been the subject of longstanding controversy, which peaked in intensity in the 16th cent. See Jacob Katz, "The Dispute between Jacob Berab and Levi ben Ḥabib over Renewing Ordination," *Binah* 1 (1989) 119–41.

<sup>7</sup> Schweid, *Democracy and Halakhah*.

rabbi,” whose writings could bring the democratic spirit to Orthodoxy and serve as a source of legitimacy for their liberal tendencies.<sup>8</sup> Yet, in one lengthy passage, Hirschensohn deviates from his consistently democratic thought by condemning universal suffrage and supporting the restriction of the right to vote to only those who “understand” political matters. When he speaks of the need for the rabbinical court to renew *semikhah* in the Land of Israel, he asserts:

Although the vote must be taken by the Jewish people, not everyone knows how to vote in such matters, so the vote is entrusted to those who know how to vote.<sup>9</sup> . . . The practice in democratic countries of granting everyone the right to vote, even if they do not know the first thing about the office on the ballot, is a travesty of justice. This is akin to a team of physicians who are unsure about the best course of treatment for a gravely ill patient, so they tally the majority of opinions of those gathered in the [patient’s] house, even if they know nothing about medicine. They consider this practice democratic, but it in fact enables the aristocrats, despots, and other<sup>10</sup> [types of] politicians to take advantage of the people’s ignorance for their own interests in elections. The Sages’ view, however, which is also that of Maimonides, is that even when something requires the people’s approval or the people’s vote, it should come from those among the people who understand what the people need. Therefore, even though we have explained that *semikhah* is an appointment by the Jewish people in the Land of Israel, the right to vote on it belongs solely to the sages of Israel, [chosen] from all of Israel, in the Land of Israel, because the people do not understand who is capable of being a judge and who is not.<sup>11</sup>

On the face of it, Hirschensohn espouses a blatantly elitist view. A diverse set of eighteenth- and nineteenth-century thinkers, including those considered the fathers of western democracy (such as Montesquieu and Hamilton), shared such a view, although in the twentieth century it became considered antidemocratic. It unmistakably contradicts the egalitarianism of developed, liberal democracies.<sup>12</sup>

This passage deviates from the democracy of *Malki Bakodesh*, and so has taxed Hirschensohn’s scholars. All admit that the position Hirschensohn formulated here leaves much to be desired in the way of clarity—a running problem throughout his unsystematic writing—but each scholar offers a different solution.

<sup>8</sup> On this ideological-intellectual trend: Adam S. Ferziger, “Contemporary Religious Zionism and the Search for a Usable Past: Rabbi Hayim Hirschenson as a Case Study,” in *Yosef Da’at: Studies in Modern Jewish History Presented to Professor Yosef Salmon* (ed. Yossi Goldstein; Beer Sheva: Ben-Gurion University Press, 2011) 261–75 (Hebrew).

<sup>9</sup> Or: what to choose.

<sup>10</sup> Hirschensohn uses the word *shonim*, and might be alluding to Prov 24:21.

<sup>11</sup> Hirschensohn, *Malki Bakodesh*, 2:37.

<sup>12</sup> However, such opinions, often emanated from Plato’s *Republic*, kept thriving in theocratic ideologies ranging from the State of Vatican to the haredi Da’at Torah Doctrine and Ayatollah Khomeini’s *Velayat Fakih*. For cross-religious comparison, see Brown, “Jewish Political Theology,” esp. 266–67.

Eliezer Schweid locates the dissonance in the tension that exists between secular democracy and halakhic democracy: “Even though Rabbi Hirschensohn found no problem in presenting the regime required by the Torah as democratic, it is clear that the democracy framed in the Torah cannot be identical to democracy in the secular sense of the word.”<sup>13</sup> He shows how Hirschensohn similarly rejected the principle of “one person, one vote” on another issue, when he preferred a qualitative majority to a quantitative one.<sup>14</sup> Schweid concludes that Hirschensohn’s position is as follows: members of the legislative and judicial branches are to be elected by an elite cadre of Torah scholars, who take popular opinion into account but are not elected by the public, while members of the executive branch are voted in through direct and general elections, “according to secular democratic norms.”<sup>15</sup>

David Zohar basically agrees with Schweid’s analysis. He raises the elitism of Plato, who was concerned by the prospect of decisions left to the vulgus, and the fact that until the ratification of the Seventeenth Amendment to the United States Constitution in 1913, American senators were elected by state legislatures rather than through direct, popular elections. He therefore posits that Hirschensohn’s wariness of direct elections by all was absorbed “from western culture, too.”<sup>16</sup> Like Schweid, he comes to the conclusion that “R. Hirschensohn apparently distinguishes between elections for the legislature and those for the executive branch.”<sup>17</sup> But the interpretation of these two scholars is difficult to maintain, because Hirschensohn himself did not distinguish clearly between the different branches of government; he speaks of “the Grand Court” as the highest institution in the state, one that seems to unify the functions of all the three branches, and does not say whether and how these functions will be separated within it.

Joseph (Yossi) Turner suggests that the public, by free and universal vote, will elect a single Torah scholar as a “distinctive court-member” (*mufla shebeveit din*), and he will appoint the other representatives.<sup>18</sup> The nominees, however, may not be lay people, but only well proven Torah scholars, i.e., select members of the rabbinic elite.

Shaiya Rothberg offers yet another interpretation. In a chapter titled “Did R. Hirschensohn believe in ‘democracy for Rabbis?’” he admits that “R. Hirschensohn’s opinion on this issue is insufficiently clear . . . the role of the rabbis in constituting

<sup>13</sup> Schweid, *Democracy and Halakhah*, 70–71.

<sup>14</sup> *Ibid.*, 71–72.

<sup>15</sup> *Ibid.*, 73. Jewish thought, law, and practice contain elitist doctrines, but also some more egalitarian voices. For some examples see *The Jewish Political Tradition* (ed. Michael Walzer et al.; 4 vols.; New Haven, Yale University Press, 2000) 1:314, 415–18; *ibid.* (2003) 2:9–149; Zev Eleff, *Who Rules the Synagogue? Religious Authority and the Formation of American Judaism* (New York: Oxford University Press, 2016).

<sup>16</sup> Zohar, *Mehuyavut*, 190. The debate over elitism was not limited to western political discourse, and raged in the broader cultural scene, including that of literature: John Carey, *The Intellectuals and the Masses: Pride and Prejudice among the Literary Intelligentsia, 1880–1939* (London: Faber, 1992).

<sup>17</sup> Zohar, *Mehuyavut*, 190.

<sup>18</sup> Turner, “The Power of the Community,” 41.

particular governmental institutions is hazy.”<sup>19</sup> He provides a different solution. He cites a passage from *Malki Bakodesh* that is exceptionally clear: “Democratic governance of this kind, that is to say a republican state<sup>20</sup> with fair elections and equal rights for all, as it is in the most advanced civilization, will be the first government in Jerusalem.”<sup>21</sup> After extensive discussion, Rothberg reaches the conclusion that Hirschensohn was not restricting the right to vote in government elections at all; he was referring to the one-time, historic renewal of *semikhah* to be carried out by the greatest Torah scholars. The people would choose the members of this rabbinic committee by popular vote, and the committee then would elect those Torah scholars for ordination and renewal of the chain of ordination.<sup>22</sup>

In my opinion, even if Hirschensohn wrote what he did in the context of renewing ordination, we cannot ignore the fact that he was making a basic point with broad implications: “the people do not understand”! Moreover, he clearly shows his disdain for “[t]he practice in democratic countries of granting everyone the right to vote, even if they do not know the first thing about the office on the ballot.” No matter how we look at it, this sentiment collides head-on with his high praise of western democracy as the crowning glory of advanced civilization. And even if Hirschensohn’s writings in a few places openly conflict with the passage cited above, I disagree with Rothberg’s approach methodologically—we should take self-contradiction for what it is rather than mangle the author’s words or intent in an attempt to resolve it. Moreover, even if we accept Rothberg’s limiting interpretation, the question still arises: why should we renew ordination at all? From what Hirschensohn writes here, and based on simple halakhic logic, the Grand Court justices are to be chosen from the newly ordained sages. There will be no democratic elections in the western-secular sense, because even if the vote is put to the entire people, as Rothberg claims, the judges are still elected from the elite cadre of ordained sages. Once again, we face a contradiction within Hirschensohn’s thought—if not with the voters here then at least with the nominees—and ignoring Hirschensohn’s words wrings out nothing useful.

If we go the other route and interpret Hirschensohn as saying that the elected sages will only retroactively give their imprimatur to the people’s choice, this committee is effectively a large rubber stamp, so what are we to make of his attribution of importance to the sages’ decision? Following Rothberg’s charitable

<sup>19</sup> Rothberg, “Hademokratizatsiah,” 115. In other places as well, Rothberg is aware of the obscurity and self-contradiction in Hirschensohn’s writings.

<sup>20</sup> In the Hebrew original, Hirschensohn uses the term *melukhah republikanit*, which can be translated as “republican monarchy.” This is, of course, an oxymoron. I assume he used the word *melukhah* in its Yiddish sense, namely, “state.”

<sup>21</sup> Hirschensohn, *Malki Bakodesh*, 1:40.

<sup>22</sup> Rothberg, “Hademokratizatsiah,” 117. See, too, the lengthy treatment in *ibid.*, 154–55. Rothberg tries to support this interpretation from another lengthy passage in *Malki Bakodesh* (Hirschensohn, *Malki Bakodesh*, 2:28–30; Rothberg, “Hademokratizatsiah,” 119) but that passage in fact shows that the ordained sages are to be elected directly through a popular vote, which is then *subsequently* affirmed, presumably formally, by the sages.

reading of Hirschensohn leads us again to the impasse of contradiction, so would it not be better to leave the texts as they are, rather than contort their words and wind up at the same dead end? Let Hirschensohn's elitist sentiment stand as is, sweeping and straightforward. By doing this, I actually interpret Hirschensohn as less democratic than he is depicted even by Schweid and Zohar. According to my reading, Hirschensohn did not adequately distinguish between the various branches of government, lumping them all under the general rubric of "the court," and therefore his words in support of an unequal vote seem to apply to the legislative and executive branches, too. At the same time, his egalitarian statements also seem to apply to all the branches: the contradiction is absolute. Perhaps we can make sense of this in light of the fact that Hirschensohn wrote his work not as a systematic treatise but as a book of responsa, in which each piece is an independent attempt to tackle a concrete question posed to the author.

While passages in Hirschensohn's writings demonstrate his support for egalitarianism, and other passages (albeit fewer) indicate his advocacy for universal suffrage, the passage cited above does not stand alone. Hirschensohn's writings are replete with expressions of elitism that conceptually scaffold the citation above. I refer here to two kinds of elitism, "cultural elitism" and "political elitism," which for the purposes of this article I am defining as follows. "Cultural elitism" is the notion that a well-defined but small group of individuals within society—the cultural elite—embody the ideal or ideals of that society. "Political elitism" is the notion that the cultural elite (or some of its members) ought to constitute the highest political authority within that society. According to these definitions, cultural elitism underlies political elitism, but does not necessarily entail it, while political elitism, even if not a logical derivative of cultural elitism, oftentimes corroborates it. The passage above from *Malki Bakodesh* is an example of political elitism, and there are other such remarks (to be quoted below), some even quite blunt. But these are vastly outnumbered by the countless expressions of cultural elitism we find alongside them. While Hirschensohn's political-elitist remarks affirm directly that Hirschensohn meant exactly what he said in the quote above and considered elitism crucial for governance, his cultural-elitist sentiments constitute supporting evidence of this by showing this to be Hirschensohn's consistent worldview and not an isolated outburst.

If this is correct, then we must ask: Given that Hirschensohn's progressive family and American experience formatively shaped his democratic thinking, who and what were the sources of his elitism? Hirschensohn was a "Litvish" rabbi,<sup>23</sup> who, like many of his colleagues, referenced mainly classical (biblical, talmudic and medieval) works and usually did not share his post-medieval sources with

<sup>23</sup> To avoid confusion, I use the word "Lithuanian" to denote an ethnic, cultural, or geographic affiliation and the word "Litvish" (which in Yiddish literally means "Lithuanian") to denote the religious-ideological stream that developed from the 18th cent. *misnagdim*. Of course, in some cases (like here) there is a large overlap between the two.

readers. As such, there are no discernible trails to follow back to his sources, and any analysis must heavily rely on circumstantial evidence. As shown above, David Zohar thinks the elitist element in his thought derived from western sources, and there is some evidence that such sources did influence him. That said, his elitism could have come from any number of sources to which he was exposed in his lifetime: Jewish medieval philosophy (in particular Maimonides), Spinozism,<sup>24</sup> some trends in modern political philosophy, some trends in American thought and politics, certain aspects of Hasidism, Misnagdism, Haskalah, some voices in the Zionist movement, and certain voices in Religious Zionism. Admittedly, in most of these movements one can also find egalitarian elements as well, which might also have been the sources of Hirschensohn's egalitarian ideas. These, however, would have been widely studied and are therefore not the concern of the present article. As noted above, here I would like to focus on three potential modern-Jewish sources of Hirschensohn's elitism: the misnagdic, the maskilic and the Herzlian-Zionist. I wish to emphasize that this choice is not meant to exclude other sources; the scope of this article does not allow for an all-encompassing survey of Hirschensohn's sources. I leave it to other scholars to explore those possible avenues of influence.

Hirschensohn grew up in a Litvish, misnagdic family.<sup>25</sup> The misnagdic stream was shaped to a great extent by the image of R. Eliyahu ben Shlomo Zalman, known as the Gaon of Vilna or HaGra (1720–1797). Another influential thinker of this stream who, like Hirschensohn himself, was a proponent of the proto-Zionist *Hovevei Tsion* movement, was Rabbi Naftali Tsevi Yehudah Berlin, known as the Netsiv (1816–1893). Both of Hirschensohn's parents grew up in the house of the Jewish financier Saul Levin, who had taken under his wing the Galician maskil Isaac Baer Levinsohn (1788–1860).<sup>26</sup> In all three cases, we cannot tell for sure whether Hirschensohn was or was not exposed to their writings. What we can say with certainty is that all three were eminent exponents of the ideological movements to which he was exposed. Finally, Hirschensohn ardently supported Zionism and admired its founder Theodor Herzl (1860–1904), whom he met in person at the Sixth Zionist Congress in 1903. Here the circumstantial evidence leads to an even stronger claim: It is almost impossible to believe that he did not read Herzl's programmatic and extremely influential pamphlet *Der Judenstaat*, published in Leipzig and Vienna in 1896 and translated into Hebrew the very same year. As noted above, the three movements represented here by these four thinkers included not only expressions of cultural elitism, but also of political elitism partially or fully conceived, which perhaps makes its appearance in *Malki Bakodesh* less

<sup>24</sup> Yossi Turner, "The Political Philosophy of R. Hayim Hirschensohn and its Affinities to Maimonides and Baruch Spinoza," *Iggud* 1 (2008) 381–96.

<sup>25</sup> Arie Morgenstern, "The Hirschensohn Family: Pioneers of Enlightenment and Modernity in Nineteenth-Century Jerusalem," *Cathedra* 108 (2003) 105–30 (Hebrew). It is worth noting that Hirschensohn's father, R. Ya'akov Mordekhai Hirschensohn, adopted a method of study that bears the hallmarks of HaGra's method.

<sup>26</sup> *Ibid.*, 110–11.



surprising. More than that, it teaches us that Hirschensohn continued conceptual trends that the scholarly literature has chosen to ignore. In the coming sections, I will examine these sources, starting with those of Hirschensohn himself and then turning to his predecessors, in order to sketch the contours of this silenced school of thought for the first time.

### ■ Political Elitism in Hirschensohn's Thought

Cultural elitism pervades Hirschensohn's writings. Even when Hirschensohn does not express it outright, his disdain for the *hoi polloi* is palpable. In his *Musagei Shav Vebaemet (False Concepts and Truth)*, for example, he repeatedly attacks "popular philosophizing," "popular notions," and "popular views,"<sup>27</sup> and similar formulations recur throughout the book. Elsewhere, he exhibits a lack of respect for the simple Jew's halakhic observance, which he considers motivated by the wrong reasons.<sup>28</sup> Public opinion also factors into halakhic issues, where again Hirschensohn shows no sympathy for the common man. In his halakhic analysis of the Land of Israel's sanctity, Hirschensohn prides himself on the fact that he is deciding the law "according to the true halakhah, not according to the people's understanding, who read cursorily and decide the halakhah based on their superficial study."<sup>29</sup> His writings are shot through with dismissals of "the multitude's thought," "the multitude's opinion," and "the multitude's error."

Hirschensohn's cultural elitism, though, concerns us less than his political elitism. As noted above, in a number of writings he expresses opposition to the broader public having a say in policymaking. Along the lines of the anti-democratic passage quoted above, which is the crux of scholarly debate, he vilifies the "common sense" of the masses. In one source, he distinguishes between four kinds of intelligence, namely: "(1) simple intelligence (common sense), which is the basis for public opinion, meaning, the masses consider their opinions and decisions self-evident based on common sense, as they have no faith in rational analysis because they cannot grasp it; (2) empirical intelligence; (3) mathematical intelligence; (4) philosophical intelligence."<sup>30</sup> He then launches into an all-out attack on "common sense" and on the common person's unwarranted and unwavering faith in it:

As for common sense, on which the current generation, especially in America, prides itself so greatly over the learned: if only the multitudes would acquire some wisdom they would understand this matter from the outset, that in earlier generations every barbarity was considered commonsensical, every abomination permissible or even obligatory in the minds of the multitudes, and not only in the uncivilized age of cannibalism and filial immolation to

<sup>27</sup> Hayim Hirschensohn, introduction to *Musagei Shav Vebaemet* (Jerusalem: Defus Ha'ivri, 1932) unpaginated.

<sup>28</sup> R. Hayim Hirschensohn, *Hiddushei HaRahah Lemasekhta Horayot Bavli ViYerushalmi* (3 vols.; Jerusalem: Defus Ha'ivri, 1914–1924) 1:10b.

<sup>29</sup> Hirschensohn, *Malki Bakodesh*, 1:81; *ibid.*, 4:127.

<sup>30</sup> Hirschensohn, *Musagei Shav Vebaemet*, 3.

placate the gods, when the multitude's understanding considered this virtuous, but even now, when the light of civilization has dawned on the world.<sup>31</sup>

Hirschensohn goes on to enumerate the horrors and injustices subscribed to by the public in the name of "common sense": the American slave trade and lynching, eastern European anti-Semitism, and the widespread opposition in the West to equal rights for women. He explains in a vein reminiscent of the great ethicists of the Lithuanian Musar tradition: "truthfully, the common sense of the public is molded by desire, and the multitudes use it simply to gratify their desires."<sup>32</sup> But Hirschensohn saves his politically elitist, and even anti-democratic, view for his discussion of monarchy. King Saul, he claims, knew he ought to fulfill God's command to destroy the Amalekites and their property (1 Sam 15), but, fearing pitchforks and torches, he yielded to the people's desire to spare the best flocks for themselves, and this was his sin:

This [the idea of keeping the property] was also common sense at the time, and the king ought not consider the opinion of the people at all, they being of lower standing than him, because by fearing their opinion he would abase himself in their eyes. This was the reason God removed him from being king of Israel. This is the opposite of the current common sense, according to which the king exists solely to help the people gratify their desire. This common sense is imperfect, because the truth is that while the king does exist solely to help the people, this aid does not consist of helping them gratify their desire but of elevating their spirit through just laws and edicts that correct and perfect their common sense. In the same way that he must help the people with their external enemies, so must he come to their aid against their internal enemies, which is the perverted and unjust common sense that at times can do more harm to the people than their external enemies, for it corrupts their hearts from within.<sup>33</sup>

In this passage, Hirschensohn points to the downside of democracy, whose only purpose is to satisfy the people rather than improve them. If someone were to argue that this is cultural and not political elitism, Hirschensohn's polemical correspondence with R. Gershon Miller demonstrates the opposite. In his letter to Miller, Hirschensohn repeats the above, verbatim, in connection with the government of the future Jewish state.<sup>34</sup>

In *Malki Bakodesh*, Hirschensohn also complains about the prevalent democratic notion held by the American public, that the wisdom of the public should be trusted in making decisions of consequence. He brings the institution of the jury as an example of a law built upon this wrongheaded notion:

<sup>31</sup> Ibid., 4.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid. Hirschensohn goes on to criticize the idea of progress, hypothesizing that someday people might consider the consumption of animals, which we take for granted today as "common sense," no less barbaric than the cannibalism of antiquity (ibid., 4–5).

<sup>34</sup> Hirschensohn, *Malki Bakodesh*, 4:252–54.

In America, the people constantly take issues with the wise and the educated—even their own—saying that common sense of the multitudes trumps all learning. There is also the famous American and European practice of trial by jury, in which the jury decides whether to convict or acquit and the judge rules on the punishment alone.<sup>35</sup>

Hirschensohn's talmudic novellae bear this out as well. In his commentary on tractate *Horayot*, he argues with R. Baruch Epstein (1860–1942), author of the *Torah Temimah*, about the meaning of the phrase 'am haarets, which literally means “people of the land,” but often appears in the Talmud to denote boors. In the Bible, the term appears in a sacrificial context in Leviticus: “And if any one of the people of the land ('am haarets) sins through ignorance. . .” (Lev 4:27). The Sages interpreted the phrase as follows: “'am haarets—excluding the anointed priest, excluding the prince [=king].”<sup>36</sup> Epstein sought to broaden the exclusion and read the two cases as representative rather than exhaustive: “'am haarets means the multitudes and not the princes and dignitaries, such as the anointed priest and the king.”<sup>37</sup> Hirschensohn disagreed with this expansion because he was not prepared to exclude public dignitaries from being the 'am haarets: “in truth, all of these [=princes and dignitaries] are included within 'am haarets.”<sup>38</sup> He buttressed his position with the words of Judge Mayer Sulzberger (1843–1923), a judge of the Court of Common Pleas in Philadelphia and an industrious leader of the city's Jewish community:

Perhaps the honorable Mr. Sulzberger of Philadelphia, may God keep him, was right [in saying] that in the Prophets those elected from the people to parliament are called 'ammei haarets. These elected men first appeared after the split between the Kingdoms of Judah and Israel and during the ensuing anarchy in the Land, when they [=the people] turned to a democratic regime and endowed those elected from the people certain powers.<sup>39</sup>

I would like to draw attention to the fact that here Hirschensohn segues from cultural elitism to political elitism. In the quotes above, Hirschensohn never says unequivocally that only leading Torah scholars or political experts can make political decisions, but the drift of his words is plainly in that direction. Admittedly, even these novellae contain statements that move in the opposite direction,<sup>40</sup> but this merely reinforces what I wrote above: Hirschensohn was not a systematic thinker, and the two opposing trends—the democratic and elitist—coexisted in the same

<sup>35</sup> *Ibid.*, 2:55–56. R. Yose's dictum, which Hirschensohn cites accurately a few lines above the beginning of the quote, does not talk about one who says “I have no Torah,” but one who says “I have nothing *but* Torah” (b. Yebam. 109b).

<sup>36</sup> b. Hor. 11b.

<sup>37</sup> R. Baruch Epstein, *Torah Temimah* (ed. princ.; 5 vols., Vilna: Rom, 1902) Lev 4:27 with note 109 (emphasis added).

<sup>38</sup> Hirschensohn, *Hiddushei HaRaḥah* (3 vols.; Jerusalem: Defus Ha'ivri, 1914) 1:74c.

<sup>39</sup> *Ibid.*, 1:74c–d.

<sup>40</sup> Hirschensohn, *Hiddushei HaRaḥah*, 2:9 (introduction), 34b–c.

man at the same time. Since the sources of his democratic thought have been well studied, we will now analyze four possible sources of his elitist tendency.

## ■ Political Elitism in Litvish-Misnagdic Thought: HaGra and the Netsiv

From its very inception, the misnagdim fostered an elitism of talmudic scholarship. The consummate Torah scholar was their central ideal,<sup>41</sup> and the figure of HaGra, towering above the people and cloistered in study, became their role model.<sup>42</sup> The Litvish ethos not only placed the act of Torah study on a pedestal, but also those studying it, who embodied the ideal Jew and perhaps even the ideal human being. Within a very short period of time, this ideal took on political dimensions: the leading Torah scholars of the generation became the spiritual leaders of the public,<sup>43</sup> and the doctrine of *Da'as Torah* conceptually undergirded this with a political theology.<sup>44</sup> This doctrine developed mostly in the circles of *Agudas Yisroel* and its affiliates and fully matured at the beginning of the twentieth century, but the seeds of this line of thinking had begun to sprout in Litvish thought of the preceding two centuries. This budding idea first appears in HaGra's writings, and an additional, but seemingly independent, strain can be found in those of the Netsiv.

HaGra did not discuss issues of political theology. In this regard, his characterization of the messianic era<sup>45</sup> looks promising for extracting his positions, but a survey of the relevant material reveals a focus on the metaphysical and spiritual aspects of the period and very little, if any, discussion of its political dimensions. Surprisingly, however, his commentary on Proverbs (written down by his disciple

<sup>41</sup> Norman Lamm, *Torah Lishmah: Torah for Torah's Sake in the Works of Rabbi Hayyim of Volozhin and His Contemporaries* (New York: Yeshiva University Press, 1989); Hannah Kehat, *Mishefukah Hatorah Letalmud Torah: Temurot Baideah shel Talmud Torah Ba'idan Hamoderni* (Jerusalem: Carmel, 2016) 31–269; Immanuel Etkes, *The Gaon of Vilna: The Man and His Image* (trans. Jeffrey M. Green; Berkeley: University of California Press, 2002) 209–31; Elijah Judah Schochet, “The Nature of Lithuanian Jewry: The Legacy of the Gaon of Vilna,” in *The Gaon of Vilnius and the Annals of Jewish Culture* (ed. Izraelis Lempertas; Vilnius: Vilnius University Publishing House, 1998) 206–22; Mordechai Zalkin, “Between the Prodigy and the Carter: The Cultural Heritage of Lithuanian Jewry,” *Gesher* 136 (1998) 73–82 (Hebrew); Uriel Gellman, “The Scholarly Elite in Lithuanian Jewry: Character and Image,” in *Toldot Yehudei Russia* (ed. Ilya Luria and Israel Bartal; 3 vols.; Jerusalem: Zalman Shazar Center, 2010) 2:113–23; Lawrence Kaplan, “The Hazon Ish: Haredi Critic of Traditional Orthodoxy,” in *The Uses of Tradition: Jewish Continuity in the Modern Era* (ed. Jack Wertheimer; New York: Jewish Theological Seminary of America, 1992) 145–73; Benjamin Brown, *Haḥazon Ish: Haposeq, Hama'amin Umanhig Hamahapekhaḥ Haḥaredit* (Jerusalem: Magnes, 2011) 152–70.

<sup>42</sup> HaGra was not as secluded as popular myth would have it, but that is for a different discussion.

<sup>43</sup> Shaul Stampfer, “The Emergence of the Gdoilim Phenomenon,” in *Hagdoilim: Ishim Sheitsvu et Penei Hayahadut Haḥaredit BeYisrael* (ed. Benjamin Brown and Nissim Leon; Jerusalem: Magnes, 2017) 11–20 (Hebrew).

<sup>44</sup> Brown, “Jewish Political Theology,” with lit. cited in n. 1.

<sup>45</sup> By this I mean his depiction of the messiah's kingdom itself, not his ideas about the redemptive process (which recently have been the subject of lively scholarly debate).

R. Menachem Mendel of Shklov), which deals mostly with ethics, does contain a fascinating and very unusual comment that is pertinent here. Proverbs 8:15–16 reads: “By me kings reign, and princes legislate just laws. By me rulers rule, and so do the dignitaries and all those who make justice prevail.”<sup>46</sup> In his comment on these verses, HaGra presents a political model that startlingly resembles Montesquieu’s three branches of government,<sup>47</sup> although HaGra adds a fourth branch that we may term the “enforcing branch.” Montesquieu published *The Spirit of the Laws* in 1748, and Locke had already laid out the *trias politica* in his *Second Treatise on Government* of 1689,<sup>48</sup> but we can confidently presume that HaGra had neither read nor heard of their writings.<sup>49</sup> What follows is an original, parallel system theorized by HaGra:

“By me kings reign, and princes legislate just laws.” The princes legislate laws and norms of proper conduct, as the verse says: “a lawgiver (*mehoqeq*) from between his feet” (Gen 49:10); on which they [=the Sages] said: “These are the heads of the Sanhedrin (*nesiim*) in the Land of Israel who learn Torah.”<sup>50</sup> And they are those who decide the laws.<sup>51</sup> The kings are the ones who see to it that the laws are obeyed. The rulers are posted in every city and adjudicate according to the legislation made by the princes. This is what the verse means by: “Behold, a king reigns for justice, and rulers rule for judgment” (Isa 32:1). In other words, the king is to ensure that law is done with

<sup>46</sup> In the original Hebrew: בִּי מְלָכִים יִמְלֹכוּ וְרוֹזְנִים יִחְקֶקוּ צֶדֶק, בִּי שָׂרִים יִשְׁרוּ וְנִדְיָבִים כֹּל שִׁפְטֵי צֶדֶק. The translations of the Bible and the talmudic texts below are mine, in order to comply with both the original text and HaGra’s interpretation.

<sup>47</sup> Charles-Louis de Secondat, Baron de Montesquieu, *The Spirit of the Laws* (Cambridge: Cambridge University Press, 1994) 156–66.

<sup>48</sup> John Locke, *Second Treatise of Government* (Indianapolis: Hackett, 1980) 75–77. For Locke, however, the three powers are the executive, legislative, and federative, the latter dealing with, among other things, foreign affairs.

<sup>49</sup> HaGra did harbor great curiosity about the hard sciences, but he deeply scorned philosophy, even Jewish religious philosophy. Even his knowledge of the sciences appears to have been limited to what he could learn from Hebrew books alone (Etkes, *Gaon of Vilna*, 3–4, 13, 22–23, 38–72). Eliyahu Stern finds some texts in HaGra’s writings that he sees as responses to 17th- and 18th-cent. philosophy (*The Genius: Elijah of Vilna and the Making of Modern Judaism* [New Haven: Yale University Press, 2014] 38–49), but even if we accept his analysis, it refers only to metaphysics, a field in which HaGra demonstrated interest, and not political philosophy, a field that he ignored almost entirely.

<sup>50</sup> The interpretation appears in b. San. with different wording. A version closer to HaGra’s can be found in the commentary of R. Yehonatan of Lunel on R. Yitzhak Alfasi’s *Halakhot Gedolot* (1b in pagination of the RIF).

<sup>51</sup> Heb. *posekim hadinim*. Although this sounds like judicial ruling, indicating legal application rather than legislation, HaGra intends lawmaking. The reason is that from a traditional perspective there is no room for new legislation, and nearly every new norm is considered interpretation of the eternal law given at Sinai (barring a few exceptions, such as the seven rabbinic commandments and various decrees made over the centuries). Clearly, HaGra means that the princes are crafting a general norm, along the lines of legislation. Throughout the passage HaGra uses similar verbs and nouns that denote both making laws and deciding legal cases, and his intent should therefore be understood according to context.

justice and no injustice prevails, and the rulers are to judge. The dignitaries are subordinate to the rulers and are to oversee that court decisions are carried out, and these correspond to the “rulers of thousands etc.,” as it says in the weekly Torah reading of *Devarim*.<sup>52</sup> They are called dignitaries [because] the officers must be men of dignity (*nedivim*) and not cruel or covetous, for it is regarding them that the verse says “haters of covetousness,”<sup>53</sup> in order that the ruling decided by the rulers be followed. This is [the meaning of] “By me kings reign, and princes legislate justice,” for all legislation and counsel—all are in the Torah.<sup>54</sup>

If we translate HaGra’s terminology into Montesquieu’s terms (adding the fourth branch mentioned above), we can put it as follows: the *princes* are a quasi-legislative branch (which here does not legislate as it sees fit but through the interpretation of Torah law),<sup>55</sup> the *kings* are the executive branch, the *rulers* are the judicial branch,<sup>56</sup> and the *dignitaries* are the enforcing branch, which like the lower courts (“rulers of thousands, etc.”) appear to be under the supervision of the highest courts of the judicial branch. Political philosophy after Montesquieu distinguished between the theory of absolute separation of powers and the theory of checks and balances, in which branches supervise one another. HaGra is clearly close to a form of the latter theory: the legislative branch is superior to the executive, and the judicial branch oversees the enforcing branch. This institutional structure is completely original to HaGra and does not align with earlier rabbinic sources. In the talmudic tradition, the Sanhedrin constituted both the legislature and the judiciary, and after its disbandment the *Amoraim* of the Land of Israel perceived themselves as its direct continuation, while the Babylonian *Amoraim* viewed themselves as continuing its mission in a reduced capacity (“we act through their agency”).<sup>57</sup> We also do not find any opinion asserting that the king answered to the Sanhedrin or to the Sages.<sup>58</sup>

For us, the crucial point is that in this rare political reflection by HaGra the branches are all clearly populated by Torah scholars. The legislative branch comprises “heads of the Sanhedrin (*nesiim*) in the Land of Israel who learn Torah”; the judicial branch as well must nominate “masters of Torah,”<sup>59</sup> presumably those

<sup>52</sup> HaGra intends judges of lesser stature, based on Deut 1:15 (as well as Exod 18:21, 25).

<sup>53</sup> R. Eliyahu ben Shlomo of Vilna, *Beur Lesefer Mishlei* [Commentary to Proverbs] (ed. R. Menahem Mendel of Shklov; Shklov, 1798) 8:15.

<sup>54</sup> HaGra on Proverbs, *ibid*.

<sup>55</sup> Above, note 52.

<sup>56</sup> He explicitly refers the reader to Exod 18, where this is the meaning of the word *sarim* (KJV translates: rulers), and Deut 1:15 (where KJV translates: captains).

<sup>57</sup> b. Giṭ. 88b.

<sup>58</sup> At most we find that “they consult the Sanhedrin” before the king goes to war, but even this light obligation is interpreted by Rashi as a merely symbolic act: “they ask their permission so that they may pray for them” (Rashi to b. Ber. 3b, s.v. *venimlakhin*; cf. Rashi to b. San. 16a, s.v. *venimlakhin*, where he merely says, “they ask their permission”). The only source that could have served as a precedent for HaGra is Maimonides’s ruling that a person should disobey any royal edict that deviates from Torah law (*Mishneh Torah*, “Laws of Kings,” 3.9).

<sup>59</sup> HaGra’s commentary to Prov. 8:16, subsequent to the above text.

who meet the halakhic requirements for serving as a judge; and while the executive and enforcing branches seemingly can consist of ordinary folk, they are subject to review by Torah scholars—the kings by the princes and the dignitaries by the rulers.<sup>60</sup> At the end of his comment, HaGra does not forget to mention that this is the best political order, because both the legislation and its application must be done through the Torah: “for all legislation and counsel—all are in the Torah.”<sup>61</sup> This is an unmistakable expression of political elitism, in fact a theocracy, in which the ruling elite is composed of Torah scholars. Although for HaGra this political order was far from being realized, a vision of the distant past or future when the Jewish people had or would again have political autonomy with a king and Sanhedrin presiding, it still reflected the ideal. As politically ineffectual as it might have been, it certainly served to strengthen the tendency towards cultural elitism.

HaGra’s most influential disciple was R. Hayim of Volozhin (1749–1821). In his *Nefesh Haḥayim*, he, more than any other Litvish thinker, entrenched Torah study as the highest value. He also founded the mother of the Lithuanian yeshivas—the Yeshiva of Volozhin.<sup>62</sup> In *Nefesh Haḥayim* and his other writings, the glorification of the Torah and its scholars project outwards in high relief. While his cultural elitism is implicit, his political elitism is altogether absent. This particular extension of cultural elitism would only be elaborated in the writings of the rabbi who would marry his granddaughter and helm his yeshiva, R. Naftali Tsevi Yehudah Berlin, the Netsiv. It is worth noting that the Netsiv was an illustrious Torah scholar who was heavily involved in communal leadership, and so played an important role in forming those personalities who would become the paradigmatic *gedolei Torah* (leading Torah authorities) of coming generations.

The Netsiv’s Torah commentary *Ha’amek Davar*<sup>63</sup> often dwells on the ideal of Torah study. Alongside this topic we find two other, less pronounced interests in political issues and nationalism, and in leaders and leadership. The intersection of these three interests gave rise to a fascinating idea that is quite close in spirit to the doctrine of *Da’as Torah*.

The Netsiv expresses cultural elitism a number of times when he states his belief that Torah scholars are Judaism’s religious ideal.<sup>64</sup> In some places the Netsiv advances this opinion into the political sphere, commenting that Torah scholars

<sup>60</sup> Perhaps the limitations on the *melekh* result from HaGra’s distinction between a *melekh* and a *moshel*. The former is recognized by the people as their rightful ruler, whereas the latter takes rule by force; see R. Eliyahu ben Shlomo Zalman of Vilna, *Qol Eliyahu* (Pietrykaw: Kronenberg Press, 1904) sec. 37, 15, on Gen 37:8, and idem, *Beur Lesefer Mishlei*, 27:7. In this source, HaGra is evidently not speaking of a social contract, because even when the king is accepted by his people, HaGra notes that his rule comes from his forbears or “from heaven.”

<sup>61</sup> This reflects HaGra’s conception of the Torah’s all-inclusiveness, about which see Brown, “Da’at Torah,” 546–48.

<sup>62</sup> On R. Hayim of Volozhin, see Lamm, *Torah Lishmah*; Etkes, *Gaon of Vilna*, 151–208.

<sup>63</sup> *Ha’amek Davar* (5 vols.; Vilna, 1879–1880).

<sup>64</sup> Interesting instances include *ibid.*, Gen 2:4; Lev 26:19; Num 8:6 (in *Harḥev Davar*, n. 1), 22:3, 23:7, 23:9, 23:22; Deut 10:12, 26:19, 27:9, 31:28, 32:2, 32:9.

should also be the leaders of the Jewish people. But the Netsiv's political elitism was not free of misgivings. In a number of commentaries in his book, we encounter a tension between two competing conceptions of elitist leadership: the aristocracy of the pedigreed and the noocracy of illustrious Torah scholars.<sup>65</sup>

In a lengthy comment on Exodus 13, the Netsiv writes that every nation's power is concentrated in three elements: 1) the monarchy and its symbols, 2) the generals and the army, and 3) military arms. The Jewish nation, both in the Land of Israel and in exile, has its power concentrated in three spiritual analogues: 1) acceptance of the yoke of the kingdom of Heaven, 2) the leaders of the people, and 3) the spiritual arms of the Torah, that is, Torah study. The structural parallelism clearly implies that just as the generals and military use arms to fight, so Jewish leaders wield the spiritual armament of Torah study to wage war. This motif appears already in the Talmud and Midrash, in which the Sages interpret quite a few scriptural verses about physical battle as referring to the "battle of Torah," the stormy debates between Torah scholars. But the Netsiv goes one step further when he speaks about the second source of strength, the Jewish leaders. He writes that when God guided the Israelites through the wilderness, there was no great need for the scholar-leaders, but once they arrived in the Land of Israel, and certainly when they were exiled, they had to appoint leaders who were qualified to figure out God's intention and fight his wars, and "wanted to throw themselves into this difficult work at all times."<sup>66</sup> In such circumstances Torah scholars must leave their four ells of study and assume the mantle of leadership, and "if those qualified for this—the [spiritual] leaders of Israel—do not set their mind to serving God and leading Israel, they destroy the collective . . . when the great Torah scholars do not attend to the needs of the collective, the Holy One judges the elders of His people severely."<sup>67</sup>

If, thus far, the Netsiv has conceived of the leading elite as Torah scholars, further on in his commentary on Exodus 13 his position becomes more complex. Apparently, the Netsiv was troubled by the gap between the scriptural leadership ideal, which is fundamentally hereditary (priests, Levites, and kings), and the talmudic one, which is essentially focused on personal intellectual achievement (the *talmid hakham*). Here, again, the Netsiv devises a lengthy military allegory, drawing on his familiarity with the Imperial Russian Army. At one point, he writes that promotion to the top brass is an expression of honor for the promotee and does not necessarily reflect his abilities. But in the trenches only skill matters, nobility does not win the day. Using a military parable, the Netsiv explains that

<sup>65</sup> The Netsiv's own family did not have a particularly noteworthy pedigree. It was his scholarship that brought him R. Hayim of Volozhin's granddaughter's hand in marriage and the key to the yeshiva of Volozhin, thereby cementing his place in the Lithuanian-Jewish aristocracy.

<sup>66</sup> *Ha'amek Davar*, Exod 13:2.

<sup>67</sup> *Ibid.* In other places he recognizes that some Torah scholars try to remain at a remove from public issues and focus solely on halakhic instruction in their immediate environment (*ibid.*, Num 24:6), but here he seems to mean ordinary Torah scholars rather than exceptional Torah leaders of the entire Jewish people, who must forgo spiritual bliss and dedicate themselves to communal issues.



when peace reigns and borders are secure, people can enjoy the prestige of their generals' august lineage even when the highborn do not demonstrate exceptional talent, because the stakes are low; when the fate of the nation hangs in the balance, such indulgences become excesses that must be foregone for the national interest, which requires capable people at the helm. In other words, in the Netsiv's era the leaders of the Jewish people should be the greatest Torah scholars.<sup>68</sup> Even though the Netsiv here appears to accept the rule of the nobility during peacetime, that is, before Israel's descent into exile, an earlier comment reveals that he was not completely comfortable with this. In a comment on Exodus 6:14, he writes that during the biblical period leadership flowed from intellectual rather than hereditary virtue: "Moses' greatness did not come from his Levite lineage but from his unique suitability for the Torah, for the power of the Torah alone is grander than and superior to any pedigree." The Netsiv resorts once again to a military parallel, but here it does not concern a state of emergency: "in the same way someone uniquely suited to be commander-in-chief of the armed forces inspires greater respect and admiration than does any kinship to the monarchs of this earth."<sup>69</sup>

How can we square the Netsiv's two positions expressed but a few chapters apart? I have no satisfactory solution, but the common denominator suffices for our purposes: the Netsiv's conception of leadership is elitist. Up for debate is only which elite should lead, the patricians or the scholars. Ultimately, the Netsiv concludes in both places that in his own day the supreme leaders of the Jewish people are the outstanding Torah scholars.

If pinning down his position was not challenging enough, in at least one other place the Netsiv deviates from this whole model of leadership by stating outright that leadership of the nation need not be by the learned. He contrasts Joshua and Gideon, who each led the Jewish people in the Land of Israel. Following the rabbis, the Netsiv depicts Joshua as "very great in Torah [study], the 'father' of the Oral Torah in his time" and Gideon as someone who was "not great in Torah [study], as the Talmud famously considers him undistinguished."<sup>70</sup> However, since Gideon "devoted himself to the people, . . . he was credited with winning the battle."<sup>71</sup> Still, even when a Jewish leader is not a Torah scholar, the Netsiv establishes in a number of comments that he must listen to the leading Torah scholars and accept their guidance.<sup>72</sup>

Taken as a whole, the foregoing treatments of leadership in *Ha'amek Davar* are not free of contradiction or perplexity. The central thread that ties them all together is the Netsiv's claim that the learned elite ought to be the leaders of the Jewish people: whether permanently or temporarily (likely for more than two thousand

<sup>68</sup> Berlin, *Ha'amek Davar*, Exod 13:16, *Harhev Davar*, n. 1.

<sup>69</sup> *Ibid.*, Exod 6:14.

<sup>70</sup> b. Roš. Haš. 25b.

<sup>71</sup> Berlin, *Ha'amek Davar*, Gen 48:19.

<sup>72</sup> *Ibid.*, Num 13:2 and Deut 10:12.

years!), whether formally sitting in government or informally acting as *éminences grises*. The Netsiv, therefore, fully endorses political elitism. If we combine his position with HaGra's, we can justifiably assert that the Litvish tradition's cultural elitism put forth small but important buds of political elitism.

### ■ Quasi-Political Elitism in Haskalah Literature: Isaac Baer Levinsohn

The eastern European Haskalah literature of the nineteenth century is poor in political philosophy and political theology. As a rule, eastern European maskilim professed unwavering loyalty to the Czarist regime and did not engage in thought experiments about the ideal political order. Nevertheless, where political elitism is missing, cultural elitism abounds. Indeed, cultural elitism spanned the entire history of the movement, from its very first proponents to its last.<sup>73</sup> But of all the eastern European maskilim we are specifically interested in Isaac Baer Levinsohn, less because of his unique importance for the history of the Haskalah and more because he bordered on political elitism as well, and because of his direct connection to the Hirschensohns.

Levinsohn was a diehard cultural elitist. For him the masses were “far from the paths of reason.”<sup>74</sup> He could not conceal his antipathy to “our great multitudes, the simple folk, the fainthearted, the fools who do not have the scales on which to distinguish truth from falsehood (as Maimonides describes them in the *Guide*, 1:65), groping around as if struck blind and leaning on the shoulder of one's fellow, without realizing that he too can't see straight.”<sup>75</sup> When scholars and philosophers disclosed profound matters, such as the immortality of the soul and the coming of the Messiah, the rabble bastardized these lofty doctrines, turning them into “repulsive ideas” and “strange notions.”<sup>76</sup> All this because the masses are “far from the paths of reason and have nothing to do with theoretical speculation.”<sup>77</sup>

Levinsohn's polemical *Zerubbabel*, a mostly apologetic work responding to Christian charges, is riddled with similar elitist sentiments. Although he levels a

<sup>73</sup> For example: Moses Leib Lilienblum, “Niqmat Evilim,” in *Kol Kitvei Mosheh Leib Lilienblum* (ed. Yosef Zetlin; 4 vols.; Odessa: Helperin Press, 1912–1914) 4:169; David Frischmann, *Kol Kitvei David Frischmann* (ed. P. Lakhover; 9 vols.; Warsaw and New York: Lilly Frischmann, 1935–1939) 8:106. See also *ibid.* (1938) 6:220. An interesting debate on this question was held between Jacob Samuel Bick (1772–1831) and his younger contemporary R. Solomon Judah Leib Rapoport (SHIR; 1790–1867), when the former turned away from the elitist and anti-hasidic line of mainstream Haskalah and began embracing pro-hasidic and populist views. For an illuminating summary and analysis, see Shmuel Feiner, *Haskalah and History: The Emergence of a Modern Jewish Historical Consciousness* (trans. Chaya Naor and Sondra Silverston; Oxford: Liverpool University Press, 2002) 107–15.

<sup>74</sup> Isaac Baer Levinsohn, *Yalkut Rival* (Warsaw: Ginz Press, 1878) 80.

<sup>75</sup> *Idem*, introduction to *Te'udah BeYisrael* (Vilna and Grodno: Manes and Simel Press, 1828) ii–iii. I am grateful to Emmanuel Etkes for bringing this source to my attention.

<sup>76</sup> Levinsohn, *Yalkut Rival*, 80–81.

<sup>77</sup> *Ibid.*, 80.

good deal of criticism at the “rabbis” in his later writings, here he defends them and even presents them as a spiritual elite of utmost importance to the Jewish people.<sup>78</sup> At length he cites rabbinic dicta about Torah scholars and the boors (*‘ammei aratsot*), which include exultation of the former and their privileges and scathing denigration of the latter—all without any apologetic tone and even with a tinge of pride. At most, Levinsohn blunts their cutting edge by explaining that the boors in question were not only ignorant but also immoral, and Torah scholars were not only erudite but also morally virtuous.<sup>79</sup>

All of these examples—and there are many more—are expressions of cultural elitism. But the most surprising texts in *Zerubbabel* are those in which Levinsohn slides into political, or at least quasi-political, elitism. They are surprising because Levinsohn, like most maskilic writers, did not opine on matters of political philosophy or political theology. He digresses into talking about elitism in his discussion of the ancient transfer of religious leadership from the priests to the rabbis and the scope of rabbinic authority, after which he shifts to the present day:

Instead of that, today we are not led by the priests or Levites, only by those learned in Torah, wisdom, and fear of the Lord, be they priests, Levites, or Israelites. Nowadays, the Torah scholars of the generation are our nobility; they are the ones who today stand in for the priests and generals of old.<sup>80</sup>

Two observations arise from this quote. First, he does not use the word “rabbis,” but speaks of “those learned in Torah, wisdom, and fear of the Lord,” which in my estimation leaves the door open for Torah-observant maskilim to be part of this leadership (perhaps he even hints at such an ideal rabbinic figure, who could not be found, in his opinion, in the contemporary rabbinate). Second, the erudite elite are not only spiritual leaders but a sociopolitical aristocracy that parallels the nobility of European society. He gestures towards this when he sticks in “generals” among the nobility. Biblical aristocracy, which he discusses, never includes the career military, though such men were in fact part of the aristocracy in Imperial Russia.

The restrained language in the first part of the book becomes freer in the fourth, in which he recaps many of the arguments made in the first part. After stating that in exile the observance of ceremonial commandments is a substitute for obedience to political power, he says:

The religious scholars among us arouse the people to strengthen [their] religious observance, and in so doing they strengthen the entire nation. Therefore, these scholars ought to have the status of rulers, generals, judges, and political leaders today, so that people listen to them as well, like the army generals of the past. Just like the commoners and soldiers must render honor and glory to their chiefs and leaders for a country to function, so that there is

<sup>78</sup> See, e.g., Isaac Baer Levinsohn, *Zerubbabel* (4 vols.; Warsaw: Scheinfinkel Press, 1901) 1:124.

<sup>79</sup> *Ibid.*, 2:10–28.

<sup>80</sup> *Ibid.*, 1:85–86. Levinsohn denies, however, that “the Jews replaced the priests with the rabbis in a day” (*ibid.*, 1:139).

no anarchy leading to the gradual disintegration of the nation, so must we act today with our religious scholars.<sup>81</sup>

Levinsohn is aware of the fact that this scholarly elite is not perfect, but in the context of his apologetics he seeks to shore up their authority and paper over their shortcomings: Even when they are sometimes mistaken, he contends, “the people must not disobey them.”<sup>82</sup>

So we see that one of the arch-maskilim of eastern Europe, who had a personal connection to the Hirschensohn family, subscribed to a robust version of cultural elitism that produced an underdeveloped political elitism, which I am terming quasi-political elitism.

### ■ Political Elitism Among the Zionists: Theodor Herzl

From the very beginning, Zionism was infused with a healthy dose of democracy. Although many attendees of the first Zionist Congresses hailed from countries that had never experienced democratic rule, they aspired to lead the Jewish national movement with a liberal spirit and maximal representation of all classes. A number of Zionist thinkers, especially those who came to Zionism from maskilic circles (such as Lilienblum and Aḥad Ha’am), expressed their cultural elitism in their writings, but one can find perhaps just as many who rejected it and embraced democracy as the optimal political system for the envisioned state. Among the latter are many of the Socialist Zionists and even the aristocratic intellectual Max Nordau, whose essay “Majority and Minority”<sup>83</sup> can be read as “fanfare for the common man.” Although we do not know the extent to which Hirschensohn was exposed to their writings, we can presume, with a high degree of likelihood, that the Jerusalemite rabbi read Theodor Herzl’s *Der Judenstaat*, either because it was a foundational piece of Zionist thought, or because he was gushing with admiration for the father of political Zionism.

Like many of his contemporaries, Herzl feared a despotic regime, but like many earlier and contemporary thinkers he did not believe that democracy and tyranny were mutually exclusive.<sup>84</sup> We can even sense his fear of the “tyranny of the mob,” which was shared by a number of conservative thinkers in the eighteenth and nineteenth centuries. Add to this his education in the classics, and his firsthand experience with Viennese crowds whipped into an anti-Semitic frenzy by Karl Lueger and with the Parisian mobs exclaiming “*Mort aux Juifs!*” during the Dreyfus

<sup>81</sup> *Ibid.*, 4:3–4.

<sup>82</sup> *Ibid.*, 1:34.

<sup>83</sup> Max Nordau, *Paradoxes* (Chicago: L. Schick Press, 1886) 33–70. There are other texts, though, in which Nordau reveals clearly elitist sentiments.

<sup>84</sup> For Herzl’s political theory, see Elitzur Bar-Asher Siegal, “Theodor Herzl’s Theory of Quasi-Contract: Ideological Background to Theodor Herzl’s Theory of the Moral Justification for the Establishment of a State,” *Hayo Hayah* 4 (2004) 7–23 (Hebrew).

Affair, and we can understand why the *mobile vulgus* left a bad taste in his mouth.<sup>85</sup> Consequently, he came to the realization that the leadership of the people must be entrusted to responsible and wise leaders. After all, it was Emperor Franz Josef himself who consistently intervened and blocked Lueger from becoming mayor of Vienna, even when he won elections. In this conflict between the elite and the masses, the elite are often the forces of light and the masses the forces of darkness.

In Herzl's utopian novel *Altneuland*, one of the two main protagonists is Kingscourt, a Prussian aristocrat, but most of the other protagonists are also upper-crust intellectuals, who are highly cultured and immersed in the finest arts and culture Europe has to offer. The novel reveals to the reader that Herzl's main concerns about the future state were economic and cultural. He expected the state to have a flourishing economy and a no less vibrant culture, the culture being high European culture. Problems of security and foreign relations received short shrift, and Herzl even considered the problem of the relationship between religion and state to be fleeting, because he envisioned a Jewish state in which Judaism would transform into a kind of civil religion of the humanist-liberal variety.<sup>86</sup>

In his programmatic work *Der Judenstaat*, Herzl dedicated an entire subchapter, titled "The Phenomenon of Multitudes," to the means by which to attract the masses to the Zionist project. In this section, Herzl enters into the practicalities of Zionist propaganda, because the visionary of the state realized that it would prove difficult to convince the Jewish masses to abandon Europe for the sparsely populated and scarcely watered Land of Israel. He reports the approach of the Jewish philanthropists, who thought a subsidy would encourage immigration, but dismisses its effectiveness in the case of Zionism. In its stead, he presents two major approaches: one can be termed "reversing the dynamic" or "the Tom Sawyer effect," and the other can be termed "the allure of the holy" or "the Spinoza effect." Both of them reflect Herzl's underlying premise: The masses are not rational, but their bad irrationality might be used by the rational elite of the Zionist movement for the good purposes of Zionism.

Let us examine the first approach, "reversing the dynamic." If you pay someone to do something, the payment is viewed as compensation for a loss or covering a cost, so the person considers the activity an unpleasant or undesirable "sacrifice." If you ask someone to pay to do that same thing, the dynamic just described is reversed: the payment is viewed as the cost for the right to engage in the activity, so the person considers it desirable. I call this "the Tom Sawyer effect" because this propagandistic tactic calls to mind a scene in Mark Twain's *Adventures of Tom Sawyer*, in which Tom's Aunt Polly punishes him for getting into mischief by making him paint a fence. Tom has no interest in painting the fence, but when his

<sup>85</sup> Haya Hare, "From the Palais Bourbon to 'Der Judenstaat,'" in *Theodor Herzl, Visionary of the Jewish State* (ed. Gideon Shimoni and Robert S. Wistrich; Jerusalem: Magnes, 1999) 126–44, at 130–31.

<sup>86</sup> For a political theoretic analysis of the novel see Shlomo Avineri, *Herzl: Theodor Herzl and the Foundation of the Jewish State* (trans. Haim Watzman; New York: BlueBridge, 2013) 165–200.

friend Ben Rogers comes by he pretends that he is deeply enjoying it and won't let him paint it until he gives him an apple.<sup>87</sup> Herzl may not say this explicitly, but he intimates that a similar approach should be adopted in trying to sell the Land of Israel to the Jewish masses.

The second approach of "the allure of the holy" says that religion persuades people to do things that come with great sacrifice, not only by promising them reward in the world to come, but by rewarding them with the feeling of religious elevation in this world. Herzl gives the example of pilgrimage to Mecca, Lourdes, and Trier, which are very demanding on pilgrims, yet "men return comforted by their faith."<sup>88</sup> In this connection, it is difficult not to think of Spinoza, who voiced deep contempt of popular beliefs but at the same time argued that the state should and must utilize them to its own rational, and fundamentally secular, ends.<sup>89</sup>

In Herzl's opinion, these combined effects would work on the masses: "all these centres of attraction combined would be fully qualified permanently to hold and satisfy them."<sup>90</sup> Ultimately, the soul of the nation burns to return to the land, but the masses are not discerning enough to recognize this truth directly, so they must be manipulated into doing what the heart already knows is right. This manipulation that tugs at the people's heartstrings should be effective because Herzl believes the masses are naturally susceptible to manipulation. This may not be explicitly elitist, but he certainly does not have much faith in the "wisdom of crowds."

Blatant elitism appears further on in *Der Judenstaat*, where Herzl formulates a detailed and politically elitist doctrine. The "Society of Jews," the body to promote Zionism in political, judicial, and diplomatic fora, would need to appoint a council of jurists to formulate the constitution of the new state. What kind of constitution? Herzl answered: either a democratic monarchy (i.e., constitutional monarchy) or an aristocratic republic. Between the two, Herzl seems to have preferred the second alternative. Herzl supports monarchical institutions since "these allow of a consistent policy, and represent the interests of a historically famous family born and educated to rule, whose desires are bound up with the preservation of the State."<sup>91</sup> However, this form of government is not pertinent for the Jews, whose monarchic dynasties ceased to exist so long ago. Democracy, on the other hand, is a bad choice:

A democracy without a sovereign's useful counterpoise is extreme in appreciation and condemnation, tends to idle discussion in Parliaments, and produces that objectionable class of men, professional politicians. Nations are also re-

<sup>87</sup> Mark Twain, *The Adventures of Tom Sawyer* (Hartford: American Publishing Co., 1881) 28–32.

<sup>88</sup> Theodor Herzl, *A Jewish State: An Attempt at a Modern Solution of the Jewish Question* (trans. Sylvie d'Avigdor; ed. Jacob De Haas; New York: Federation of American Zionists, 1917) 31.

<sup>89</sup> Benedict de Spinoza, *Theological-Political Treatise* (ed. and trans. Jonathan Israel and Michael Silverthorne; Cambridge Texts in History of Philosophy; Cambridge: Cambridge University Press, 2007) 211–13; Michael Rosenthal, "Two Collective Action Problems in Spinoza's Social Contract Theory," *History of Philosophy Quarterly* 15.4 (1998) 389–409.

<sup>90</sup> Herzl, *Jewish State*, 31.

<sup>91</sup> *Ibid.*, 37.

ally not fit for unlimited democracy at present, and will become less and less fitted for it in the future. For a pure democracy presupposed a predominance of simple customs, and our customs become daily more complex with the growth of commerce and increase of culture. “*Le ressort d’une démocratie est la vertu*,” said wise Montesquieu.<sup>92</sup> And where is this virtue, that is to say, this political virtue, to be met with? I do not believe in our political virtue; firstly, because we are no better than the rest of modern humanity; and, secondly, because freedom will make us show our fighting qualities at first. I also hold a settling of questions by the public voice to be a foolish proceeding, because there are no simple political questions which can be settled by Ayes and Noes. The masses are also more prone even than Parliaments to be led away by heterodox opinions, and to be swayed by vigorous ranting. It is impossible to formulate a wise internal or external policy in a popular assembly.<sup>93</sup>

Herzl contends that “politics must take shape in the upper strata and work downwards.” The better few will pull the masses upwards. Herzl concludes, therefore:

Hence I incline to an aristocratic-republic. This would satisfy the ambitious spirit in our people, which has now degenerated into foolish arrogance. Many of the institutions of Venice pass through my mind; but all that in them caused the ruin of Venice must be carefully avoided. We shall learn from the historic mistakes of others, in the same way as we learn from our own; for we are a modern nation, and wish to be the most modern in the world.<sup>94</sup>

Scorn for the gullible masses; belief in a responsible elite (be it a monarchy or aristocracy) as the only means of counterbalancing the masses; portrayal of the elite as a rising tide that lifts all boats—all of this leaves no room for doubting that Herzl’s final choice, the aristocratic republic, embodies his political elitism.

We should not conclude from here that Herzl despised or was indifferent to the masses. His books are replete with proposals for protecting workers’ rights, and he repeats many times that the government must work for the good of the people. Even in the above text, he emphasizes that the aristocracy of the Jewish state needs to be dynamic enough that anyone worthy can join it, even if they are from the lower classes. Still, the obligation to care for the common person does not entail

<sup>92</sup> The idea is indeed expressed by Montesquieu but not exactly in this wording; cf. Charles Louis de Secondat, baron de Montesquieu, *L’esprit des Lois* (Paris: Flammarion, 2008) bk. 3, ch. 3, 120. The person who expressed this idea in a closer, although still not identical, formulation to Herzl’s was Robespierre in his speech of 5 February 1794; see Maximilien Robespierre, *Œuvres complètes* (12 vols.; Paris: Société des études robespierristes, 2007) 10:353. On Montesquieu being a primary source of inspiration for Robespierre, even more than Rousseau was, see Céline Spector, “La vertu politique comme principe de la démocratie: Robespierre lecteur de Montesquieu,” in *Virtu et Politique: Les Pratiques des Législateurs (1789–2014)* (ed. Michel Biard et al.; Rennes: Presses universitaires de Rennes, 2015) 61–70.

<sup>93</sup> Herzl, *Jewish State*, 37–38.

<sup>94</sup> *Ibid.* For further analysis of Herzl’s advocacy of aristocratic republic in the overall context of *Die Judenstadt*, see Avineri, *Herzl*, 129–31.

an obligation to allow the common person to rule. In Herzl's opinion, the people themselves are better off with decisions remaining in the hands of the elite.

## ■ Conclusion and Implications

We have seen select sources from misnagdic, maskilic, and Zionist thought espousing political or quasi-political elitism. As noted above, we cannot tell for sure that Hirschensohn was exposed to them directly, but he was exposed to intellectual streams in which the quoted authors were leading figures. All of these constitute sufficient "circumstantial evidence" to support my claim that Hirschensohn's political elitism was not some *lapsus calami* or limited to a one-time event (like the renewal of *semikhah*) but part of a coherent worldview shared by a number of circles in which he was a member. Possibly, he sought to apply it to all branches of government in order to see them run by discerning Torah scholars and not people who "do not understand." At the very same time, he promoted universal suffrage. Hirschensohn did not attempt to resolve the inherent contradiction between these two notions, so there is no reason that we, even with our fealty to the principle of reading charitably, should try to solve it for him at the price of bending his words out of shape.

The implications of the discussion here extend far beyond the proper interpretation of this or that line in Hirschensohn's writings, however important it may be to get that right. The pattern identified in this article should change our perspective on modern Jewish thought. Typically, the progressiveness of modern Judaism is identified with democracy and egalitarianism. There is, of course, some truth to this; however, there is also another, concurrent side of modern Jewish thought that complicates the picture—elitism. The Orthodox conservatives (represented here by the Netsiv and to some degree by HaGra, who lived long before emergence of Orthodoxy among Lithuanian Jewry, but served as its role model) did not have a monopoly on this elitism, as maskilim (represented here by Levinsohn), Secular Zionists (Herzl), and Religious Zionists (Hirschensohn himself) all had their fair share. I should also point out that these five elitists were not elitists in the sense of arrogance. The vast majority exhibited great concern and sympathy for the broader populace, for "the multitudes"; in fact, it was precisely this paternal instinct that made them deem it a bad idea to give the people too much weight in political decision-making. The multitude may be liable to harm others, but it is even more prone to harming itself.<sup>95</sup>

<sup>95</sup> These arguments are relevant to the resurgent debate on elitism and meritocracy of the last few decades. Some recent authors have even coined the word "epistocracy"—the rule of the knowledgeable (or, as others translated it: the knowers, the wise, the experts)—to denote a political system in which the government is elected by an elite who skillfully make political decisions, or, in Hirschensohnian terms, those who "understand." See, e.g., David M. Estlund, *Democratic Authority: A Philosophical Framework* (Princeton: Princeton University Press, 2008) 6, 29; Jason Brennan, *Against Democracy* (Princeton: Princeton University Press, 2016) 14; Alfred Moore, *Critical Elitism: Deliberation, Democracy and the Problem of Expertise* (Cambridge: Cambridge University Press,



I am not arguing that elitism exerted a stronger pull among modern Jewish thinkers than did democracy or egalitarianism—perhaps it is the weaker side of the two. What I am claiming is that the usual portrait is but a simulacrum of a reality that had much more color, depth, and complexity. To paint modern Jewish thought (or at least its progressive trend) as democratic is to paint the past too heavily with the colors of the present. Aside from being historically inaccurate, it limits the palette and flattens the depth of the portrait, muting the vibrancy and variety of prewar political thought, which are sorely lacking today in both Jewish thought and general political philosophy. Perhaps bringing these texts, even if discomforting to some readers, into the spotlight and taking their claims seriously will prove invigorating.

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2017) 18; Piero Moraro, “Against Epistocracy,” *Social Theory and Practice* 44.2 (2018): 199–216. This topic is beyond the aims and scope of the present article.