

Charles S. Liebman

JUDAISM AND DEMOCRACY: THE ISSUE IN ISRAELI PERSPECTIVE

(New York City; March 1997)

The question of Judaism and Democracy would be rendered simpler and its emotional charge at least somewhat defused if the Hebrew language distinguished Judaism and Jewishness. But Israelis do not make that distinction. We wouldn't expect the religious to do so but the surprising thing is that the non-religious refuse to do so as well. Hence, they must either fight with the religious, i.e. the Orthodox, over the definition of Judaism-Jewishness, a battle in which, today, unlike a generation ago they are at a disadvantage because most of them know so little about the subject, or as the radical secularists among them do, concede the definition of Judaism to the Orthodox. The radicals are happy to do so since this strengthens their case for dejudaizing Israel. This, in a nutshell is what I have to say. The rest is commentary.

The question of the compatibility of Judaism or Jewishness and Democracy only arose recently on the Israeli political agenda. Up until the 1970's most Israeli leaders considered the two systems compatible. True, the haredim were always critical of Ben-Gurion's insistence that Israel was a medinat hok and not a medinat halakha but their criticism had no positive echo, as far

as I know, in religious-Zionist circles; at least not among its political leaders. And I would remind you, until recently, politicians and not rabbis led the religious-Zionist camp. More specifically, when the religious-Zionists debated the meaning of medinat halakha in the years immediately following the establishment of the State, the debate was resolved by surrendering the effort to operationalize the term. It was retained as a meaningless slogan, similar to the term "socialism" in Mapai, because religious-Zionists could find no way to harmonize medinat halakha with Democracy. It was taken for granted that the newly established state would be a democratic one. On the other side of the political spectrum, the Israeli Declaration of Independence affirms Israel as both Jewish and Democratic. The lack of controversy around this question suggests that the State's founders took the compatibility of the terms for granted.

To the best of my memory it was Rabbi Meir Kahana who first discussed the incompatibility of the two conceptions. This occurred in the 1970's. Rabbi Moshe Levinger, if I recall correctly, also made some noises in this direction suggesting at one point that Democracy was a Greek and not a Jewish concept. These statements were treated, at first, even in religious-Zionist circles as, to use the Hebrew expression, a curioz. But matters became more serious when Kahana, citing chapter and verse

from the Rambam, grew increasingly influential among religious youth, high school students in national-religious institutions in particular. Kahana could be dismissed but the Rambam was a different matter.

Among the more sophisticated youth in the yeshivot hesder, everyone knew that a text could never be interpreted by its simple meaning. Hence, it was Kahana against the rebbeim within the yeshivot hesder and Kahana was of insufficient halakhic stature to win. High school youth, on the other hand, more impressionable, more radical by inclination yet naive enough to believe that texts can be understood in accordance with their simple meaning, and lacking rebbeim of significant stature who could dismiss Kahana by a shrug of the shoulder or a wave of the hand, found Kahana's message more convincing.

The question of the compatibility of Judaism-Jewishness and Democracy emerged as a serious question since the 1980's for a number of reasons.

1. In the 1980's religious-Zionists across the board became increasingly radicalized. **[If there is time tell the Noam story]**. Furthermore, the growing controversy over the issue of "territories for peace" which in national-religious circles was increasingly interpreted as "surrendering Eretz Yisrael", those who favored withdrawal being tarred as "betrayers of Eretz Yisrael," raised questions about whether am yisrael could be

trusted. We must understand, that in the Kookian paradigm, central to the ideology of religious-Zionism since 1967, Am yisrael, Torat yisrael and eretz yisrael represented the three central aspects of Judaism. They were intrinsically intertwined. There could be no contradiction between them. Democracy therefore, which was always conceived as an internal Jewish matter, was legitimate precisely because it was a mechanism to reflect the wishes of am yisrael, wishes which themselves contained elements of sanctity. It is the undermining of this paradigm, which only reached its peak in the last few years, that carries both hope for the reconstitution of religious-Zionism on a more rational basis and the danger that nothing constrains the more radical elements within its midst.

2. The 1990's witnessed what Chief Justice Aharon Barak refers to as the "constitutional revolution". Basic Law: Respect for the Individual and His Freedom and Basic Law: Freedom of Occupation defines Israel as a state to be conducted in accord with values of Judaism and Democracy. Barak has argued that it is for the court to determine what the values of Judaism and the values of Democracy mean and what is to happen when the courts find them in conflict. By cleverly manipulating the terms, Barak would subject that which most of us concede as classical Judaic-Jewish values to Western-humanistic-liberal values as understood by Barak's peers. (Ronen Shamir has written a brilliant deconstruction of

Barak's articles and legal opinions on these matters in the important volume edited by Ariel Rosen-Zvi, A Jewish Democratic State.

3. The 1992 elections which gave rise to the Labor-Meretz coalition further undermined the basic assumption of the religious-Zionists about the intrinsic tie between am yisrael and eretz yisrael. The alternative was for religious-Zionists to argue that there was no Jewish majority "against eretz yisrael" (note the reification of the term EI in their terminology). This argument deligitimated Arab votes or Arab representation in the Knesset adding fuel to the Religion-Democracy debate. But the manner in which the Knesset confirmed Oslo II (by a one vote majority that not only relied on the votes of Arab parties but by bribing Jewish Knesset members), reinforced the notion that a Jewish majority still remained on behalf of eretz yisrael.

4. However, the assassination of Yitzchak Rabin and the popular reaction, the revulsion against the murder and the affirmation of the peace process, had a strong emotional impact on many religious-Zionists which undermined the basic assumption of am yisrael and eretz yisrael.

On the other hand, media and political figures, among them Labor as well as Meretz representatives, reacted to the assassination by emphasizing the incompatibility of Democracy and the Jewish religion. They implied that those socialized to

religious norms were necessarily anti-democratic. Post-Zionists, capitalizing on these developments, went further. They suggested that a Jewish state, in which one ethno-national group, the Jews, was deemed more privileged than non-Jews, was by definition incompatible with Democracy. Post-Zionists such as Boas Evron, Baruch Kimmerling, Tom Segev and Orit Schochat are happy to concede that Judaism and the Jewish religion are one and the same. While I don't intend to cast doubt on the sincerity of their conviction it does serve an important tactical purpose. They are no doubt aware that calls for the separation of religion and state are endorsed by most Israelis (54% according to the Guttman Report), whereas the overwhelming majority of Israelis still favor a **Jewish** state. Hence, by defining the Jewish religion and Judaism-Jewishness as the one and the same they can transform the demand to separate religion and state into a demand to dejudaize the state.

In conclusion, any solution to the problem of Judaism (or Jewishness) and Democracy, in the framework of a Jewish state requires defining what is meant by Democracy and what is meant by Judaism. A major effort in this direction is made, in my opinion, in the recently published volume edited by Ariel Rosen-Zvi, to which I already referred. It is found in articles by Rosen-Zvi himself, by Asher Maoz and by Ruth Gavison. Ruth Gavison stresses the importance of defining Democracy in "minimalist" terms. Such

a definition of democracy, as Michael Walzer has pointed out elsewhere, does not necessarily preclude favoring the culture and the political interests of one ethno-national group over another. Judaism or Jewishness, on the other hand does not necessarily mean halakha but should be understood as Jewish values. Indeed the Basic Law itself refers to values rather than to some undefined essence. The meaning of the phrase state of Israel as a Jewish state is that the policies of the state of Israel will be informed by values which are central to the Jewish tradition.

My own reading of the political scene convinces me that many secular leaders and perhaps most religious spokesmen don't understand what democracy means. Insofar as halakhic issues themselves are concerned, I am impressed by statements of Amital, Lichtenstein and Bin-Nun following the Rabin assassination. Each pointed, in his own way, to the absence of an halakhic political tradition, no masoret shel piska. This vacuum renders halakhic decisions dealing with contemporary political matters highly problematical on the one hand and allows decisors an unusual degree of flexibility on the other. The absence of an halakhic political tradition allows halakhic decisors to arrive at almost any conclusion to which their own political orientations inclines them.

In my own formulation, the problem is not a tension between halakha and democracy as much as attitudes which are engendered

by an halakhic mentality which contradict attitudes which are basic preconditions of a democratic society. Strong halakhic commitment, in my opinion, tends to predispose one to anti-Democratic values. But this tension can be overcome precisely because it does not entail surrendering principles but rather reconsidering the sources of one's own values.

There are, however, issues, in which tension exists between the values of the Jewish (halakhic) tradition and even minimal definitions of Democracy. There are also issues in which tension exists between that which our moral conscience dictates as proper and that which we accept as mainstream Jewish norms. The key issue is attitudes toward the non-Jew. These attitudes have important consequences in the present. As the recent Machon Carmel study of Israeli high school youth demonstrates, youth in religious schools are far more likely to report hating Arabs than are youth in non-religious high schools. An issue which is not necessarily part of the definition of democracy but which has to concern anyone with humanitarian sensitivities is the issue of gender.

Resolution of these and similar tensions requires stress on themes within the Jewish tradition, with hoary statutes, which never quite became normative. Unfortunately, a lot of superficial and intellectually flawed material has appeared on this topic in the west, in the U.S. in particular under the imprint of modern

Orthodox, Conservative and Reform auspices. The intentions of these authors were honorable but as a friend of mine once commented "sincerity is no excuse for stupidity". Fortunately, much more serious work has appeared recently. It includes Eliezer Schweid's studies of Hirshenson, in Moshe Greenberg's essays on the Bible and Jewish thought (see especially his essay on "Mankind, Israel and the Nations in the Jewish Heritage"), and contemporary work in Jewish ethics and philosophy by Avi Sagi and Danny Stadtman, in Zvi Zohar's work on decision making among rabbinic authorities in the Sephardic tradition and a brilliant and as yet unpublished article by Yedidya Stern, Dean of the Bar-Ilan Law School which casts serious doubt on whether, within the halakhic tradition itself, halakha is applicable to the area of public policy.