Does Judaism Have Anything to Say About Democracy? Not Yet!

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Our question is surely of great interest to Jews everywhere, but in the State of Israel it has existential force, and must be confronted every day. As we were writing this article, a brouhaha developed over an Arab justice on the Supreme Court who refused to sing *Hatikvah* at the installation of the new Chief Justice. All of the tensions between Judaism and democracy in Israel were brought out into the open by this event, however irrelevant it is to the real questions before us.

An apt way to open our discussion is to cite a verse from Psalms. The Psalmist says (19:8): *Torat Hashem Temimah…, The Torah of the Lord is perfect, renewing life; the decrees of the Lord are enduring, making the simple wise*. Does the word *temimah* here mean "perfect," without flaw, or "perfect" in the sense of complete? If the latter, then Torah must have a position on democracy.

Rambam, however, tells us that the first meaning of the word *temimah* in our verse is to be preferred (*Guide of the Perplexed* II.39, Pines translation p. 380):

Things are similar with regard to this Law, as is clear from its equibalance. For it says (*Devarim* 4:8): *Just statutes and judgments* now you know that the meaning of *just* is equibalanced. For these are manners of worship in which there is no burden and excess—such as monastic life and pilgrimage and similar things—nor a deficiency necessarily leading to greed and being engrossed in the indulgence of appetites, so that in consequence the perfection of man is diminished with respect to his moral habits and to his speculation—this being the case with regard to all the other nomoi [laws] of the religious communities in the past. When we shall speak in this treatise about the reasons accounting for the commandments, their equibalance and wisdom will be make clear to you insofar as this is necessary. For this reason it is said with reference to them (*Tehillim* 19:8): *The Torah of the Lord is perfect*. As for those who deem that its burdens are grievous, heavy, and difficult to bear— all of this is due to an error in considering them. I shall explain later on how easy they are in true reality according to the opinion of the perfect.[1]

According to Rambam, then, the word Torah, in our verse, refers to God's commandments (paralleling the word *edut* [decrees] in the second half of the verse); these commandments, unlike those in other putative bodies of divine law, are equibalanced: neither demanding too much nor too little. There is no

claim here that the Torah is perfect in the sense of being complete, covering all aspects of life.
We start our discussion, therefore, with the following assumption: The Torah does not have positions about everything. The implications of this simple-sounding statement are actually substantial. If this assumption is correct, then there can be true and correct values independent of Torah. These values can cohere with the Torah, contradict the Torah, coexist with the Torah while remaining independent of it (i.e., neither cohere with nor contradict the Torah), or be hitherto unnoticed consequences of Torah. If this is correct, then the expansive notion of *da'at Torah* popular in many Orthodox circles today is clearly false.[2] It also follows that while many aspects of life are commanded, and others are forbidden, there are also aspects of life about which Torah, as it were, has no opinion. This latter approach is supported by Rambam, who writes in "Laws of the Foundations of the Torah," chapter ix:

It is clearly and explicitly set forth in the Torah that its ordinances will endure for ever without variation, diminution or addition; as it is said, *All this word which I command you, that shall ye observe to do ; thou shalt not add to it, nor take away from it* (*Devarim* 13:1); and further it is said *but the things that are revealed belong unto us and to our children for ever; that we may do all the words of this Law* (*Devarim* 29:28). Hence the inference that to fulfill all the behests of the Torah is an obligation incumbent upon us forever, as it is said, *It is an everlasting statute throughout your generations* (*vaYikra* 23:14, *Bemidbar* 18:23). It is also said, *It is not in heaven* (*Devarim* 30:12)—hence, the inference that a prophet is forbidden to make innovations in the Torah. Accordingly, if any one should arise, whether among the Gentiles or among the Israelites, and, showing a sign and token, declare that God had sent him to add a precept to the Torah or take away a precept from the Torah, or give an interpretation to any of the commandments, such as we had not heard from Moses; or should assert that the commandments ordained to Israel are not of perpetual obligation for all generations but only temporary, such a man is a false prophet, because he sets out to deny the prophecy of Moses. He is to be put to death by strangling because he spoke perversely in the name of God that which God had not bidden him, for the Lord enjoined Moses that this Commandment shall be unto us and to our children after us forever. And God is not a man that he should lie. Since this is so, why is it said in the Torah, *I will raise them up a prophet from among their brethren, like unto thee* (*Devarim* 18:18)? The answer is that the prophet here referred to, will come, not to found a religion, but to charge the people concerning the words of the Torah and exhort them not to transgress it; as the last of the prophets expressed it, *Remember ye the law of Moses, My servant* (*Malachi* 3:22). And so, if the prophet gives an order in regard to things permissible, as for instance, if he says "Go to that place" or "Do not go to it," "Wage war today" or "Do not wage war," "Build this wall" or "Do not build it," it is a duty to obey him. Whoever transgresses his instructions incurs the penalty of death by the hand of God, as it is said, *And it shall come to pass, that whosoever will not hearken unto the words of the prophet which he shall speak in My Name, I will require it of him* (*Devarim* 18:19).[3]

The point we wish to emphasize here is Rambam's assertion that prophets have the right to command with respect to permissible matters. In this regard, prophets are distinct from rabbis, who do not have that right. Rambam posits what today would be called a "separation of powers" between rabbis, prophets, and, we might add, kings. From Rambam's perspective, the attempt to expand rabbinic authority into areas of social and political questions (the so-called doctrine of *da'at Torah*) reflects an attempt by rabbis to expand their authority in the face of the vacuum created by the absence of prophecy and the absence of royalty. Rambam wrote his works long after the cessation of prophecy and long after the disappearance of royalty in Judaism; it is therefore probably safe to assume that he would not look with favor upon contemporary attempts to present *da'at Torah* as an essential element of classical Jewish thought. That does not mean that he would oppose its use as an *ad hoc* measure to stem the tides of assimilation. There is simply no way of knowing.
Let us examine some of the issues about which Torah appears not to have an opinion. Our late teacher and friend Steven S. Schwarzschild would disagree with what we are about to write, but we do not believe that Torah has a position on the debate between capitalism and socialism.[4] This should be hardly surprising: there were no capitalists or socialists at Sinai, or at Yavneh. Torah has no position on

"Obamacare" or on the wisdom of American policy in Iraq and Afghanistan. Torah certainly has no opinion on whom to vote for in the upcoming American elections, or even in Israeli elections.
There are many other issues about which Orthodox Jews who take Torah very seriously cannot agree. Torah has a position on these issues, but honesty compels us to admit that we cannot say what it is (even though we certainly have strong opinions ourselves on what Torah teaches in these matters). Here are some examples:

- Are human beings in some significant sense all equally created in the image of God? The tradition is (sadly) deeply divided over this issue. In general, is Torah fundamentally universalist or fundamentally particularist?
- Is Kabbalah a part of Torah, or a dangerous deviation from it? The issue has been decided within the world of tradition, but for centuries it divided that very world. Similarly, does Torah have a clear cut position on the value of the "secular" arts and sciences?
- Is the State of Israel part of the messianic process, religiously neutral, or a dangerous deviation from Torah?
- Is territorial compromise with Palestinians opposed by Torah (the view of many Zionist rabbis), demanded by Torah (the view of a much smaller cadre of Zionist rabbis), or a practical matter to be decided by generals and politicians, not rabbis (reportedly the view of the late Rav Joseph B. Soloveitchik)?
- How does the Torah deal with scientific theories, such as evolution? (Rav Kook saw in the theory of evolution an expression of the way in which God works in the world; many of his followers today are deeply embarrassed by that.)

One could easily multiply these examples. There have been thinkers who have tried to finesse these debates, denying that there is any true tension between the various apparently opposed positions, and there are many among us today who adopt one side of each of these debated issues and condemn as un-Jewish those who disagree with them. It is more historically and theologically accurate to admit that we simply cannot determine what Torah's position is on these issues.
Not only are there long-standing disagreements within the tradition over fundamental values, it is hard to deny that those values have changed over the generations and continue to change in front of us. The Torah commands genocide: are there any (sane) Jews today who actually expect to do to Amalek what the Germans did to us? The Torah condones and in some cases enjoins slavery. Is there any (sane) rabbi today who would accept the reinstitution of biblical slavery? Polygamy, which was practiced among some Jews within living memory is another example. We should be honest about this: our values have changed. How to relate those changes to our understanding of Torah is too big an issue to address here, but we do not want to pretend that it does not exist. In addition to values which have changed, we have values which are changing before our very eyes: the status and role of women, for example. There are other values which will likely change in the not too distant future: the attitude of Orthodoxy towards homosexuals, for example.[5]
Now, finally: what about democracy? Does Torah have a position on democracy?
First of all, what is democracy? Is it a set of procedures (such as majority rule)? Is it a set of values (such as human equality)? Or, as we hold, is it a set of procedures determined by certain values? Procedures in democratic states and societies vary widely. Some have constituency-based elections (as in the USA), in which the electorate chooses individuals; others have party-based elections, in which voters choose a party list, but not the individuals making it up (largely the case in Israel). In some democracies (as in the U.S.) free speech is a fundamental value (unlike the case in the UK, where protection of speech is much weaker than in the U.S.). Separation of Church and State is a fundamental dogma in the United States, very much not the case in the United Kingdom, and, sadly, certainly not

the case in Israel. In some democracies, the separation of powers is a dogma, while in others (as in many parliamentary systems), the executive is a subset of the legislative. In the United States the executive and legislative branches together choose the judiciary, whereas in Israel the judiciary is largely independent of the other branches of government and to a very great extent self-perpetuating. Some democracies, like Canada and the United States, are very much "states of all their citizens" in which citizens have no shared ethnicity or religion, and relatively little in the way of shared values (and the nature of whatever shared values there may be is hotly debated), while others, such as Israel, France, Norway, Hungary, Greece, Turkey, and probably most other functioning democracies, privilege one ethnic or cultural group over all others.

Even assuming that Torah has an opinion about democracy as a form of government (something which we very much doubt), it certainly takes no position on the matters sketched in the last paragraph. In fact, if pushed to the wall, it probably makes sense to claim that Torah does not look with favor upon democracy, since most authoritative texts look forward to a messianic *monarchy*. Rambam, whom we have already cited twice, certainly was no democrat and looked forward to a messianic king and a renewed Sanhedrin. Further, democracy is based upon a notion of rights, while the Torah appears to be based upon a notion of obligations (from which, of course, one may derive certain rights, but they remain derivative).

The Torah may have no view on democracy, but we certainly do. We hold these truths to be dear, if unfortunately not yet self-evident, that all human beings are created in the image of their Creator, and that each is thereby endowed with certain inalienable rights, that among these are life, liberty, and the pursuit of self-fulfillment, where such pursuit does not infringe upon the rights of others. It follows from this, as night follows day, that we support forms of government which protect these rights. We are fundamentally uninterested in the question of whether we hold these values because they are derived from, or at the very least consistent with the Torah as we understand it, or because we were both raised in classic liberal homes, or for some combination of these and other possible reasons. It is simply the case that these values are very important to us; furthermore, we believe that they can to a great extent be justified rationally and morally—they are not simply a matter of taste or sentiment.

It follows from all that we have said that, aside from matters of *issur veHeter*, we do not look to rabbis as such for guidance. We have seen no evidence that halakhic competence, however great, is smoothly translated into social or political wisdom.[6]

Having brought the discussion this far, we discover that we have several problems. For one thing, we would like our basic values (commitment to Torah and commitment to democracy) to cohere in some significant sense, rather than simply be consistent one with the other.[7] We would particularly like them to fit together and interpenetrate each other.

We also have a problem that, because we live in the State of Israel, we face every day. It is not enough for us to affirm that in principle halakha and democracy do not conflict. We want a halakha for a democratic *and* Jewish state (in the world today). At the moment, we are Jews, we are also Israelis, and we are also democrats; we would prefer to be Israeli Jewish democrats. Torah and democracy can, of course, conflict, especially when each side of the equation seeks to expand beyond its appropriate boundaries. As noted above, the doctrine of *da'at Torah* is an example of the world of halakha seeking to impose itself in areas it was never meant to enter. The same can happen with respect to democracy. A good way of seeing both is to take note of a statement attributed to the former Chief Justice of the Israeli Supreme Court, Professor Aharon Barak: *haKol shafit* (everything is judiciable).[8] Similarly, all too many rabbis believe that *haKol pasik* (everything is subject to halakhic *pesak*, or decision). When judges decide that they know how democratic values (as they construe them) should impinge on every aspect of society, and when rabbis decide that Torah has something decisive to say about every social issue, conflict cannot be avoided. When these judges and rabbis are *Israelis*, then …

Zionists believe that, especially after the Holocaust, a Jewish state is not only a religious and moral requirement, but also a necessity. But ingathering the exiles, and establishing Jewish sovereignty in our ancient homeland is something for which Jewish history and Jewish tradition are wholly unprepared. Even those who are sure (or would like to hope) that the State of Israel is the *athalta deGeulah*, the first phase of messianic redemption, have to admit that Jewish history, Jewish texts, Jewish teachings

give no indication of how to create a *Jewish* state. With the possible exceptions of Rabbis Aharon Kook, Shlomo Goren, Haim David Halevy, and David Hartman (for all their differences) almost no rabbis in the Land of Israel have had the courage to look this new reality in the face and ask themselves: what must be done in order to create a *Jewish* state in the modern world? When we add to that equation the demand that a modern *Jewish* state be a *democracy*, then we can hunt high and low and not find any rabbi who has approached the problem in any significant way.

A third problem was brought home to us recently when we heard a very secular radio personality opening her talk show by intoning, *Oseh shalom bimromav, hu ya'aseh shalom aleinu veAl kol haOlam* : "May He Who makes peace in His heights, make peace upon us and upon all the world." Surely a sentiment with which we agree, but, we wondered, what is so terrible about the traditional ending of the Kaddish: *Oseh shalom bimromav, hu ya'aseh shalom aleinu veAl kol yisrael*: "May He Who makes peace in His heights, make peace upon us and upon all Israel." This person clearly has a problem with Jewish particularism. Without knowing much about her, it is probably safe to say that she thinks that there is a tension between democracy and Jewish identity, and, feeling forced to choose, prefers the former over the latter. Given realities in the world of traditional Jewish observance today, what could we say that would convince her that she is wrong?

In conclusion, it appears that our problems follow from the imperfect nature of our world. The Torah is *temimah*, perfect, but its interpreters certainly are not. Seeking the sort of perfection in which all of our ideals not only do not conflict with each other, but actually entail each other, appears to be a messianic dream. If that is the case, does it not behoove us to make our world as messiah-worthy as possible? For us, that means working towards a world in which M. Sanhedrin iv.5 serves as guide. That Mishna teaches that every single human being must say, "The world was created for my sake," meaning that the world was created for the sake of every other human being as well. This mishnaic ideal entails the notion of human equality, and indeed, a notion of human dignity. From this it appears clear to us that democracy, as a set of procedures meant to embody the ideals of human equality and dignity, is the form of government the wide adoption of which is most likely to make the world messiah-worthy. So, in the final analysis, halakha and democracy may not cohere today, but they should, and, at some point in the future when we are worthy of it, they will.

[1] Compare Rambam's parallel remarks in the fourth of his Eight Chapters.

[2] Further on this, see "Rabbis in Politics: A Study in Medieval and Modern Jewish Political Theory," *State and Society* 3 (2003): 673–698 (Hebrew).

[3] We cite the translation of Moses Hyamson (New York: Feldheim, 1974).

[4] If asked, Rambam would probably come down hard against socialism. In his Epistle to the Jews of Yemen, he makes fun of a messianic pretender who sought to redistribute wealth in a radical fashion. On the other hand, given his views on the nature of charity and the obligations of society towards the poor, one hardly can see him waxing enthusiastic about the current Israeli government's style of capitalism. For Steven S. Schwarzschild's views on Judaism and democratic socialism, see his "A Note on the Nature of Ideal Society—A Rabbinic Study," in M. Kellner (ed.), *The Pursuit of the Ideal: Jewish Writings of Steven Schwarzschild* (Albany: SUNY Press, 1990): 99–108.

[5] See Rabbi Chaim Rappoport, "Judaism and Homosexuality: A Religious Response to JONAH and Its Allies," *Hakirah* (forthcoming).

[6] See the recent statement by Rav Aharon Lichtenstein to this effect: "If There Is No Da'at, How Can We Have Leadership?" Circulated widely on the internet; see, for example, at http://www.zootorah.com/RationalistJudaism/DaatTorahLichtenstein.pdf.

[7] We are aware of the many people who think that they are inconsistent; they have the right to be wrong, because, thank God, we do live in a democracy.

[8] Justice Barak once told one of us that he never made that claim; be that as it may, he certainly acted as if he believed it.