# Some Thoughts on the Role of Judaism in the State of Israel

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What does it mean to say that the State of Israel is the “State of the Jews” or, more accurately, the “Jewish State”? The State’s Declaration of Independence defines it as a “Jewish State.” It goes on to promise that “it will be based on freedom, justice and peace as envisaged by the prophets of Israel,” “will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race, or sex,” and “guarantee freedom of religion, conscience, language, education, and culture.” I read these words as meaning: Since our State is a Jewish state based on the vision of our Prophets, it guarantees liberty and equality to all its citizens. In other words, the Jewishness of the State guarantees its liberal democratic commitment. Isaiah, Jeremiah, and Amos mean democracy.

Israel is the State of all its citizens, Jews and non-Jews. It is thus awkward to speak of it as “the State of the Jews,” for this phrase may be misconstrued to mean that a Jew in Brooklyn or Antwerp is more of an Israeli than a Muslim in Kafr Qara, a Christian in Nazareth, or a Druze in Daliyat al-Karmel. The phrase could be justified by saying that it means only that all Jews should consider Israel to be their cultural center, as it is written “for out of Zion shall go forth the Law, and the word of the Lord from Jerusalem” (Isaiah 2:3). Nonetheless, it is less confusing to speak of a “Jewish State,” as did the Declaration of Independence. Moreover, the State is constitutionally defined as “Jewish” in its Basic Laws (Human Dignity and Liberty, 1992; Freedom of Occupation, 1994; cf. The Knesset, amendment, 1985). But in what sense is it Jewish?

In terms of numbers, Israel today has almost 8 million citizens, roughly three-quarters of whom are Jewish. If one includes the Arabs living in Judea, Samaria, the Golan Heights, and the Gaza Strip, then Israel has almost 12 million subjects, but only about half are Jewish. It goes without saying that if Israel loses its Jewish majority, it will be difficult for it to remain a Jewish State in any meaningful sense. This demographic consideration will have to be taken into account when Israel negotiates its permanent borders with its neighbors. However, I am not concerned here with demography, but with content. In what respects should the State privilege or advance Jewish content?

Certainly the State's laws must not discriminate in any way between Jew and non-Jew, since the Declaration of Independence guarantees "complete equality" to all citizens. The Law of Return (1950) might be considered an exception to this. However, it does not discriminate between citizens but between applicants for citizenship. Moreover, the Declaration explicitly promises that the State is "open to Jewish immigration." That promise had at the time of Israel's birth a vital significance for stateless Holocaust refugees who could then enter the Land as free and enfranchised citizens. Had the State been proclaimed only one decade earlier, who knows how many Jews could have been rescued from the Topheth?

It cannot be overemphasized that the principle of the equality of citizens in the State of Israel is not a grudging compromise that Judaism has made with modern secular ideologies, but it derives from within Judaism—from the vision of its Prophets. Indeed, in the years before the establishment of the State, leading rabbinic authorities, including the illustrious Chief Rabbis Ben-Zion Meir Hai Uziel and Isaac Halevi Herzog, planned for the future Jewish State to be governed in accordance with Jewish law, and ruled that the halakha ensures the equality of all citizens (see, for example, Rabbi Uziel, Mishpetei Uziel, Hoshen Mishpat, 1940, no. 17; Rabbi Herzog, "Rights of Minorities according to Halakhah," Tehumin 2 [1981], pp. 169–179).

Unfortunately, the principle of equality has not always been carefully guarded by Israel's Knesset and Supreme Court, especially in the past few years. One example of an infringement upon the principle of equality is the Knesset's legislation of Hatikvah as the national anthem of Israel in 2004. This stirring poem, written by Naphtali Herz Imber in 1877 (with later revisions by him and others) and put to music by Samuel Cohen in 1888, has been the beloved anthem of the Zionist movement since its early days. It speaks of the age-old yearning of the "soul of the Jew" (nefesh Yehudi) for Zion, and proclaims the Jewish people's desire to be a "free nation in our Land" (`am hofshi beArtsenu). As the anthem of

the Zionist movement, it was a superb choice. However, it is not appropriate as the national anthem of the State of Israel, since non-Jewish citizens lack the "soul of the Jew." Even though Hatikvah had always functioned as the Israeli national anthem de facto, its status was not made official until 2004. There had been serious objections to it because of its exclusionary nature and also for other reasons (for example, it's too secular, too Ashkenazi, and simply anachronistic in speaking of "the hope" of a stateless people). Many alternatives have been suggested to replace it as Israel's national anthem—including biblical texts, medieval poems by Rabbi Judah Halevi and others, and modern poems by Bialik, Tchernichovsky, Naomi Shemer, and others. It has also been suggested that the melody of Hatikvah be retained but new words substituted. Hatikvah will always be the cherished anthem of the Zionist movement, but the State of Israel deserves an anthem that can be sung with equal commitment and passion by all its citizens.

To be sure, the Declaration of Independence's guarantee of "freedom of religion, conscience, language, education, and culture" applies not only to Muslims, Christians, Druze, and other non-Jews, but also to Jews. This means that Jewish religious coercion is unacceptable, and Jews may freely pursue all brands of Judaism: Orthodox, Ultra-Orthodox, Conservative, Reform, Reconstructionist, and the sundry forms of Atheism, Agnosticism, and Secularism. In this connection, it should be mentioned that Israel's laws concerning personal status (marriage, divorce, conversion, and so forth), which derive from the old Ottoman millet system, are very problematic, especially as interpreted by a Chief Rabbinate that is increasingly estranged from the people. Rulings of Israeli Rabbinical Courts are often discriminatory against women, converts, and the non-Orthodox. These laws are in need of revision.

The rejection of religious coercion is fundamental to the Zionist project. Zionism, from its beginning, was a political movement, not a religious one. It has always been open to religious and non-religious alike. It is a project of the entire Jewish people, including all groups and sectors, all ideologies and all philosophies, all theologies, and all heresies. Rabbi Isaac Jacob Reines, the visionary founder of the Mizrahi faction of Zionism in 1902, explained to his fellow religionists how it was possible that the movement's leader, Theodor Herzl, was not religious. He begins by noting that the great Jewish leaders of yore were all distinguished by their holiness and piety, and then writes: "Yet here we see a political man who has not gone out to meditate in the deserts or forests, who has not sanctified himself by ablutions of the body, who does not adorn himself with prayer shawl and phylacteries, who does not ponder over the divine Torah, who does not afflict his

soul by fasting, who has not rolled about in the snow or slept among ants, and who nonetheless is succeeding!" Rabbi Reines asks, "Is this not an astonishing thing?!" And he answers: No, not at all, it is a "very simple thing." It is simple, he explains, because those previous Jewish leaders were spiritual leaders concerned about spiritual redemption, while Herzl is nothing but a political leader concerned about political redemption.

The Zionist movement, continues Rabbi Reines, is not spiritual but "material, economic, and political." It is not a spiritual movement of religious Jews but a political movement of all Jews. It may thus have non-religious leaders, since its policies are to be determined wholly in accordance with material, economic, and political considerations, and not in accordance with spiritual genius or messianic faith (Or Hadash `al Zion, X, 2).

In short, in our desire to cultivate the Jewishness of the State of Israel, we must be careful not to do so at the expense of the equality and liberty of its citizens; and we must remember that many citizens are not Jewish, and many of the Jewish citizens are not religious.

I would like now to say some words about three areas in which the Jewish dimension of the State may be beneficially promoted: (1) the Hebrew language, (2) the Hebrew calendar, and (3) Jewish law.

The Hebrew Language

The revival of Hebrew as the primary spoken language in the Land of Israel is an amazing phenomenon. Israeli children grow up today speaking the language of the Prophets and Sages. They read the Hebrew Bible with a naturalness that is impossible even for learned rabbis in the Diaspora. The treasures of classical Jewish literature are accessible to them in a way they were not accessible to their ancestors who were not native Hebrew speakers. It may be said, with only a modicum of exaggeration, that the most Jewish thing about the State of Israel is its use of the Hebrew tongue.
However, mention of the Jewishness of Israeli Hebrew raises a serious question; for contemporary Israeli Hebrew is every day moving further and further away from its biblical, rabbinic, and medieval roots. I just wrote that Israeli children read the Bible in a natural way and the Jewish classics are open before them. While this is still true, it was truer in the past, and becoming less and less true all the time.

Maimonides taught us that the principle for determining correct usage in any language is the practice of its native speakers. Not the grammarians but the native speakers are the authorities on what constitutes proper usage (Commentary on the Mishnah, Terumot 1:1). Correct Hebrew is thus determined by its native speakers, the Israelis; and the language of the native speakers is obviously influenced by the speech they have heard and the literature to which they have been exposed. Israelis who have been educated on classical Hebrew literature will speak a Hebrew that is connected to that literature, while those who have not been educated on it will speak a Hebrew disconnected from its roots.

I have been teaching in Israel at the Hebrew University of Jerusalem since 1977, when I moved to Israel from North America. Over the years, I have noticed a steep decline in the familiarity of my students with the Hebrew Bible. This decline reflects the progressive neglect of biblical studies in Israeli schools. In response to the dramatic erosion of the ability of young Israelis to comprehend the Hebrew Bible, there is now being published in Israel a “translation” of the Bible into “Israeli Hebrew” by the veteran educator Avraham Ahuvia. The “translation” is known as Tanakh Ram, and thus far the Pentateuch (2008) and Major Prophets (2011) have appeared. One may debate the pedagogic value of Ahuvia’s “translation,” but it cannot be denied that contemporary Israeli Hebrew is undergoing a process of disengagement from classical Hebrew. It is, in other words, undergoing a process of disengagement from Judaism.

I am convinced that contemporary Israeli Hebrew, i.e., what is sometimes called “tzabbarit” or, in the term coined by the poet Avot Yeshurun, “Tel-Avivrit,” is still essentially the same language as biblical, rabbinic, and medieval Hebrew. One can still today see an Israeli child pick up a Hebrew Bible and read it fluently and joyfully. I believe the regrettable process of disengagement of Israeli Hebrew from its historic sources can be reversed. All that is needed is a return—even a partial return—to the old Israeli educational ethos, which gave priority to the teaching of the Hebrew Bible and other classical Hebrew texts. Needless to say, I am not talking about theology or ideology, but literature. I am not talking about teaching “Judaism” or “Zionism,” but Hebrew and its literature. I’m talking about language.

It is the native speakers, according to Maimonides’ principle, who determine the nature of a language. If Israeli children are given a solid education in classical Jewish literature, then their Israeli Hebrew—no matter how vibrant and innovative— will remain Hebrew, that is, it will remain Jewish; and few of them will want a crutch like Tanakh Ram.

The Hebrew Calendar

The public use of the Hebrew calendar in the State of Israel is important, as it provides a temporal Jewish framework for everyday life in the State. The rhythm of the year is that of the Jewish Sabbaths, feasts, and fasts.

The general public day of rest in Israel is the Jewish Sabbath, not Sunday or Friday (although, according to the 1951 law, Muslims and Christians have the right to observe Friday or Sunday). Spring vacation is every year during the week of Passover. The celebration of the New Year occurs in Tishre, not January. Visitors to Israel on the Christian New Year are often surprised to discover it is a regular workday, and those looking for a gala New Year's Eve ball must be content if they can find a little Sylvester party. Hardly anyone in Israel knows that the holiday of Sylvester is named for a fourth-century pope, and many mistakenly associate it with the more famous cartoon cat. In any case, according to the Jewish calendar, the New Year celebrates the Creation of the World, not the birth of Jesus or the hijra of Muhammad. In this sense, the Hebrew calendar is more secular than the Christian or Muslim calendars, since it does not commence with birth or deeds of the founder of a religion but with the beginning of the universe.

In Israel today, the Hebrew calendar is generally used alongside the Christian calendar, sometimes one is preferred and sometimes the other. The Muslim calendar is also used in many contexts. In business letters, it is customary to write both the Hebrew and Christian dates. Similarly, books often give both Hebrew and Christian years on the title page. Academic years at Israeli universities are commonly cited by the Hebrew date alone. This is probably for convenience sake, since the academic year begins right after the holidays of Tishri, and since it is elegantly designated by only one Hebrew year (e.g., 5773) but inelegantly designated by two hyphenated Christian years (e.g., 2012–2013). The Hebrew calendar thus gives a Jewish rhythm to life in the State. However, some Israeli politicians would like to see the Israeli public calendar brought closer into line with the Christian calendar. For example, some politicians would like the State to adopt a Saturday-Sunday two-day weekend, as in many countries in the Christian West. Other politicians agree that a two-day week-end is desirable, but, sensitive to the interests of the Muslim minority, prefer that it be on Friday and Saturday—and this makes more sense since Friday is already effectively a half-holiday in Israel, with many people either not working or working only part-time.

However, a still better idea was proposed more than four decades ago by Rabbi Norman Lamm in his article, "The Rosh Hodesh Plan" (National Jewish Monthly 85, July–August, 1971, pp. 24–25). He suggested that the first day of each Hebrew month, that is, Rosh Hodesh, be observed in Israel as a legal day of rest. His plan

was championed at the time by the then young National Religious MK Zevulun Hammer. According to the Lamm-Hammer initiative, only one day of Rosh Hodesh would be observed as a legal holiday each month, even when Rosh Hodesh is two days. Since Rosh Hodesh sometimes falls on Sabbaths and holidays, the plan would add about seven to nine days of rest each year. If it were decided to have two legal holidays in months when Rosh Hodesh is two days, then it would add 10 to 12 days. It is now time to reconsider the Lamm-Hammer initiative. It would answer the Israelis' desire for more legal days of rest, give new relevance to the ancient Jewish celebration of the New Moon, and enhance the Jewish rhythm of life in the State.

Jewish Law

At the time of the creation of the State of Israel, those who proposed it be governed according to Jewish law offered a simple argument: If Britain is governed by British law and France by French law, then should not the Jewish State be governed by Jewish law? The proposal received some support, but was not adopted. Israeli law was instead concocted out of an ad hoc mixture of British law, Ottoman law, German law, and other diverse elements. Nonetheless, the importance of giving Jewish law—or as it is called in Israel "mishpat `ivri"—a place in the legal system of the Jewish state was recognized by early jurists and politicians, and they appointed leading experts in Jewish law to Israel's Supreme Court: Rabbi Professor Simcha Assaf (appointed 1948), Professor Moshe Zilberg (appointed 1950), and Professor Menachem Elon (appointed 1977). In addition, Chief Justice Haim Cohn (served on the Court, 1960–1981), a skilled talmudist, often cited rabbinic sources in his decisions. In recent years, however, the importance of having major authorities of Jewish law on the Supreme Court has not been widely recognized. One exception to this tendency was Chief Justice Aharon Barak, who in 1994 sought unsuccessfully to appoint the distinguished dayyan Rabbi Shlomo Dichovsky to the Supreme Court as a replacement for the retired Justice Elon.

Today almost no one speaks of the necessity of having experts in Jewish law on the Supreme Court. Instead, it has become fashionable to speak of the "religious seat" or "religious seats" on the Supreme Court. In the elections to the Supreme Court in 2011, Religious Zionist politicians worked very hard to elect a "religious" judge to the court, but, as far as I could see, they made no attempt at all to get an expert in Jewish law elected. The subject apparently did not interest them. As a believer in the enduring value of Jewish law, I would like to see outstanding experts in Jewish law on Israel's Supreme Court—whether or not they are

“religious.” Truth to tell, I couldn’t care less how many “religious” justices are on the court. I have no desire to know which justices don’t eat pork, which shut off their computers on the Sabbath, or which fast on Yom Kippur. However, I think it is important that Jewish law have a firm place in Israeli law, and this is only possible if there are men and women in the legal system who are well versed in it—and, in particular, if there are experts in Jewish law on the Supreme Court.

The place of Jewish law in the Israeli legal system was given a formal definition in the 1980 Foundations of the Law Act. According to this document, whenever the courts are in doubt regarding a decision, they shall “decide it in the light of the principles of liberty, justice, equity, and peace of the Jewish heritage [moreshet Yisrael].” This flowery dictum has been interpreted in many ways, but some jurists have seen in it an invitation to make use of Jewish law. Now, whether or not it is an invitation to use Jewish law, it is surely a license to do so; for although it is true that “Jewish heritage” does not necessarily mean Jewish law, it is undeniable that Jewish law is part of the “Jewish heritage.”

Let me give one example that illustrates the place of Jewish law in Israel today and the attitudes Israelis have toward it. The example concerns a 1986 law forbidding the public display of hametz on Passover (except in non-Jewish neighborhoods). This law was for years not enforced. However, when in 2001 a religious Interior Minister threatened to enforce it, he stirred up angry opposition. Non-kosher restaurants and food-stores, which legally served non-kosher food all year round, were now suddenly required by law to obey certain particular dietary laws. The requirement seemed at times absurd. For example, Italian eateries that sold pizza pepperoni were told to make it from unleavened dough—the pork and cheese were fine, as long as served on matzah! Many rebelled against the law and ridiculed it. Journalists denounced it as one of the most obnoxious examples of religious coercion in Israel’s history, and argued that it discriminated against the non-religious and prevented them from making a fair living. Professors of law argued that it was unconstitutional. Knesset members organized to repeal it. It seemed quite clear that its days were numbered.

Then on Passover 2007, in Jerusalem, special officers raided a grocery store, two restaurants, and a pizzeria, and gave them summonses for selling hametz in public. The case attracted much media attention, and was tried in the Jerusalem court of Judge Tamar Bar-Asher Zaban, who had clerked for Justice Elon on the Supreme Court. Her astute ruling is exemplary for two reasons: first, she succeeded in giving the unreasonable law a new reasonable definition, and thus saved it from being repealed; and second, in redefining the law, she made use of

the Talmud and Rashi’s Commentary.

The judge acquitted the four defendants. Her decision was based on a distinction between two senses of “public,” designated by two different Hebrew words: “pumbi” and “tzibburi.” The law, she explained, forbids display of hametz “in public” (pumbi), that is, in a place visible to passers-by. A restaurant or food store is “public” (tzibburi) in the sense that it is not private, but not “public” (pumbi) in the sense that passers-by can see what’s going on inside. The law, thus, does not forbid the sale of hametz inside a restaurant or store, but would forbid it on the street in a place visible to passers-by. Supporting her distinction between the two senses of “public,” she cited a 1998 Tel-Aviv case in which a man was acquitted of the charge of committing an indecent act “in public” (pumbi) in a stall of a public rest room, since the stall, although public (tzibburi), was not “public” (pumbi). In order to provide a theoretical basis for her decision, she referred to the talmudic definition of “reshut haRabbim” (“public domain”) in BT Shabbat 6a: “What is reshut haRabbim? A thoroughfare, a big plaza, and alleys open at both sides,” such as, according to Rashi, an intercity highway, an urban market, and streets at least seven meters wide. The judge reasoned: just as not all public roads or markets are considered “reshut haRabbim” by the Talmud, so not all public places are considered “pumbi” by Israeli law.
The hametz law, as now redefined by Judge Bar-Asher Zaban, seems acceptable to most Israelis, and talk of repealing it has ceased. One would think that religious Jews, concerned about preserving the spirit of Passover in the public domain, would have praised the judge’s decision that prevented the law from being repealed. However, the religious politicians and journalists vociferously attacked her for not convicting the four defendants.

The case illustrates how an Israeli judge knowledgeable in Jewish law found a helpful discussion in the Talmud that enabled her to turn an unreasonable law into a reasonable one. It also illustrates that non-religious Israelis, although adverse to religious coercion, are willing to accept laws concerning the public celebration of Jewish holidays, provided they do not impinge on their basic freedoms.
If we want mishpat `ivri to play a meaningful role in Israeli jurisprudence, it is necessary to strengthen its study in Israeli law schools. Judges who have been educated in Jewish law will be able to refer to it when appropriate.

Conclusion

What is the role of Judaism in the State of Israel? It provides the prophetic vision that is at the foundation of the State’s values of justice, liberty, and equality. The

Hebrew language spoken by Israelis gives them a uniquely intimate access to the classical texts of Judaism. The Hebrew calendar used in Israel gives a Jewish rhythm to life in the State. Jewish law, when cited in Israeli courts, adds a Jewish dimension to Israeli law. The State must not teach Jewish religion but it must teach Hebrew language and literature—and I believe that if it does that effectively the many and various expressions of Judaism will flourish in it.