

Democracy, Rule of Law and Human Rights in Judaism

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The Alexandrian Jewish philosopher, Philo Judaeus, described the polity of Judaism as a "democracy".ⁱ Philo of course does not use the term in the modern sense of a government elected by the whole populace, but rather defines democracy as a system that "honors equality and law and has justice for its rulers." This, he declares, to be "the most law-abiding and best of constitutions".

Jewish Tradition sees this constitution, its values and precepts, as having been received through Divine Revelation. Albeit the eleventh century sage Saadia Gaon claimed that in theory this revelation could eventually be discerned by the human mind; but in order to "assist" humanity to arrive at this way of life, it was necessary for it to be divinely revealed.ⁱⁱ However one way or another, this revelation which Jews call Torah, meaning "instruction", but generally translated as "law" (even though this translation often reflected the Christian prejudice mentioned below), has traditionally been viewed as the Divine revealed word. Thus "the rule of law" in the Jewish Tradition has meant the rule of Divine Law. I should clarify here that this does not just refer to "the Written Torah", the Pentateuch; but also to the "Oral Torah", the corpus of tradition that explains and expounds the former and which itself was written down "in shorthand" in the Mishnah (compiled c. 200 C.E.) and more extensively developed in the body of the Talmud (of which there are two, the Jerusalem Talmud reflecting the work of scholars in the Holy Land until approximately the end of the fourth century C.E., and the more extensive and normative Babylonian Talmud, reflecting the work of the sages in Babylon continuing on for approximately a century longer than the former.) The "Oral Torah" is also viewed in Jewish Tradition as being the fruit of Divine mandate and inspiration

Some theologians have sought to contrast heteronomous law with autonomous law, to distinguish Divine Law from human morality. However in religious terms this is a misleading contrast. The fuller human sense of the transcendent knows God both as "other" i.e. transcendent, as well as through one's innermost self. As the Jewish theologian Norman Solomon puts it "it is only when we are divided from ourselves that we sense God as imposing, demanding from the 'outside'. When we are reconciled with ourselves, God's demands flow, as it were, from our own being."ⁱⁱⁱ Indeed this inner sense of the Divine and the Divine Will is the deeper meaning of being created in the Divine Image.^{iv} Accordingly "for Judaism, Law is not a "scandal" (as Paul describes it), nor even a mystery; but totally accessible and in conformity with human understanding"^v

This concept of the Divine rule of law as the "best of constitutions" flows of course from the view of God as a moral God of justice, righteousness and mercy, who calls on us to behave accordingly^{vi} and to that end has endowed human beings with free will.^{vii} As a result human beings are morally responsible for their actions and their consequences.

The need for society to have rules to prevent chaos and provide for the effective administration of society (ideally in consonance with Divine law) requires that all should respect the governing authority and its laws accordingly^{viii}, although it goes without saying that this is as long as these do not contradict the Divinely revealed Law itself. Indeed the very establishment of civil courts of law and accountability to them is seen in Judaism as one of the fundamental obligations of God-given universal morality^{ix} that may be said to be inherent in the uncorrupted human conscience.

Central to this concept of the rule of Law is the Torah's teaching already referred to above, that every human being is created in the Divine Image, with the implication that all human life and dignity is sacred. Indeed this concept may be said to be the very foundation of democracy in which all persons' life and dignity are of inalienable sanctity (even if sanction is provided to deprive persons of such when necessary to protect society from criminal activity and in the pursuit of the obligation of self-defense.)

This finds its dramatic expression in the legal passage in the Mishnah that deals with the formal caution given to witnesses in capital cases, warning them of the dire consequences of false testimony that could lead to the miscarriage of justice and a consequent death penalty for the innocent.^x The admonition continues:

"Therefore the first human was being created singly, to teach you that he who destroys one life, it is as if he destroyed the whole world. And he who preserves one life, it is as if he has preserved the whole world."

The very question as to why the first human being was created singly arises from the fact that in the biblical story of creation, all creatures are created in couples and ultimately Adam is separated into both male and female. If Adam is going to be separated into male and female anyway, then why didn't God save himself the whole business and create them to begin with as separate individuals, just as he did with all other creatures? Accordingly, the sages conclude that the reason for the creation of one human person singly is to convey a moral message. There is of course an essential moral message in the text itself in the very union of male and female together, establishing the fullness of Adam (and therefore the Talmud states that one who does not have a spouse is not a complete human being, emphasizing the Jewish view of marriage as the ideal state for human fulfillment^{xi}) But the Mishnah does not focus on that particular message. It focuses upon what it sees to be the most basic moral message of the idea of the creation of the single human person; namely, the supreme sanctity of human life, to the extent that each person is seen as a whole world. But the moral message goes further. The text of the Mishnah continues:

"and (also) a single human being was first created for the sake of peace amongst mankind, so that no person can say to another, my father was greater than yours."

In other words, the purpose is also to emphasize our common humanity. The text continues:

"and (another reason why) a single person was created first (was in order) to proclaim the greatness of the Holy One, Blessed Be He. For when a human being (mints coins, he) uses one mould (and) all the coins are identical. But the King of Kings coined every man out of the mould of the first human being and not one is like the other. Therefore every person is obliged to say, the world was created for me."

Of course, the Talmud goes on to say we should keep our sense of proportion and remember that the mosquito was created before the human and that moreover a person should always acknowledge that in addition to the fact that he or she is a world in himself or herself, we are but dust and ashes. In other words, there has to be a creative tension between avoiding arrogance and at the same time appreciating one's worth and value as a human being created in the Image of God. Thus the Mishnah not only seeks to impress upon us the supreme value of human life and dignity, but also to direct our moral conduct accordingly.

This democratic moral imperative is further explicated in the famous Midrashic (homiletic) text on the discussion between two second century sages, Rabbi Akiva and Ben Azzai, on what is the principle moral rule of the Torah, of Judaism.^{xii} The text appears in different midrashic texts in different forms and chronology. However, its original form is clarified by the seventeenth century Midrashic commentary, the *Matnot Kehuna*,^{xiii} as follows:-

"and you shall love your neighbor as yourself"^{xiv}, Rabbi Akiva stated (that) this is the great (guiding) principle in the Torah. Ben Azzai states 'this is the book of the generations of Adam (in the likeness of God He created him. Male and female He created them and blessed them and called their name Adam on the day He created them.^{xv})', this is a greater principle; lest you say 'in as much as I have been despised, so let my fellow be despised with me; in as much as I have been cursed, let my fellow be cursed with me.' Said Rabbi Tanhuma, 'if you do so [i.e. if you say because I have been despised let my fellow be despised], know whom you despise, 'for in the image of God, He made the human person''.

Ben Azzai seeks to clarify that notwithstanding the importance of the Golden Rule, it is even more important to emphasize that every human being is created in the Divine Image. This is not just because of the universality of this concept, as opposed to the possible particularity of the term "neighbor"; but explicitly because of his concern with the danger of making one's subjective experiences the basis for one's moral conduct, with the possibility that one might interpret Leviticus 19.18 to mean love your neighbor as you have been loved. Moreover Ben Azzai is not only concerned with the immorality of tit-for-tat, as well as the danger that an individual's lack of self-respect might mean lack of respect for others' dignity; but above all the danger of relativizing one's moral responsibilities. Regardless of how one may be treated and no matter how badly others may have dealt with one or one's people; we are all still obliged to behave toward others with respect for their lives and dignity, simply by virtue of the fact that each and every person is a human being – created in the Divine Image. Rabbi Tanhuma further highlights this by clarifying that any act of disrespect to another human person, is an act of disrespect towards God Himself. It is therefore not possible to be truly God fearing unless one behaves with respect towards all human beings.

Inextricably bound up with the concept of the dignity of the individual is the value of freedom, which is of course at the heart of the historical orientating experience of the children of Israel – the Exodus. "The recognition of the right to freedom is not limited to personal liberty. It ensures all against any form of slavery and subjugation".^{xvi} Indeed, the very fact that imprisonment as a penalty does not exist in the Bible and was only introduced as such by the Rabbis for the case of intentional bloodshed, reflects the principle "that the human person is endowed with inviolable rights, amongst them the right to liberty".^{xvii}

It is nevertheless a fact that the institution of slavery is provided for in the Bible. However, Biblical and Rabbinic legislation transform it into a kind of restricted employment, which is either used to facilitate restitution (i.e., in the case of a thief) or to enable a destitute individual to find shelter and occupation. Indeed, the Biblical legislation makes it clear that the individual engaged into another's employ in this manner was required to go free after

seven years and if he voluntarily refused, his ear was to be pierced.^{xviii} Rabbi Yohanan Ber Zakkai explains^{xix} that the ear was to be pierced as the ear heard God proclaim freedom from human subservience at Sinai! Moreover, in the Jubilee year, the servant had to go free whether he wished to or not. The legislation laid down in Judaism to protect individual rights against the ownership of one's person by another became so substantial that the Talmud^{xx} states that "he who acquires a servant, acquires a master".

Naturally, this value of freedom is central to labor law in Judaism. In addition to the basic right to earn and protect one's livelihood and the right to rest from labor enshrined in the Sabbath laws, the Talmud makes it clear that an employee always has the right to retract (his labor) even in the middle of the day^{xxi}

While it is not in the scope of this presentation to cover the whole spectrum of human rights that Judaism addresses, the Talmud deals particularly extensively with property rights and inter alia, deals with the rights of privacy, space and light (regarding domicile), as well as the right to protection against property, various forms of injury and pollution, etc.^{xxii}

Arguably, the full grandeur of the Judaic concept of human rights is to be seen in its generality as applied to the stranger as well as the citizen.^{xxiii} This, as indicated, is grounded in the concept of the inalienable value of the life and dignity of every person, created in the Divine Image. This is also the basis for the moral limitations on the power of the king who is obliged to respect the rights of his subjects.^{xxiv}

Even those who do not accept the obligations of Jewish jurisprudence, are still to be treated with respect for their humanity and its concomitant rights. Maimonides rules^{xxv} on the basis of the Talmud.^{xxvi}

"We are obliged to maintain the poor of idolaters, attend to their sick and bury their dead, as we do with those of our own community, for the sake of peace. (For the whole of Judaism is for the sake of Peace.^{xxvii}) Behold it is said "Her ways are pleasant ways and all her paths are Peace"^{xxviii} And it is written, "God is good to all and His mercy extends to all His creatures"^{xxix}.

In adding this reference, Maimonides is emphasizing the idea of *Imitatio Dei* (i.e., emulating the Divine Attributes) relating it to conduct towards "the other"^{xxx} and in effect clarifies that respecting and protecting human rights is our Divine imperative.

The evident centrality of human rights in Judaism is not to minimize its concern with obligations and responsibilities. "Right and obligations are two sides of one coin and the same medal", points out R. J. Z. Werblowsky,^{xxxi} warning against the dangers of exclusive emphasis on the one at the expense of the other.

Indeed, while the life and dignity of the individual is at the foundation of the democratic dimension in Judaism, the community as such, the body politic, occupies a central role. The revelation at Mount Sinai is described as a communal experience taking the form of a covenant between a people and the sovereign of the world.^{xxxii} (The collective nature of the experience is even seen by some Jewish philosophers, notably Yehudah Halevi,^{xxxiii} as serving as proof of its authenticity). A pledge of loyalty is tendered both on behalf of the whole group and on behalf of every individual towards the group. The well being of the people therefore depends upon the participation of all, which is also the basis for the

function of policy formulation on the part of the congregation or its representatives, the Elders.

In fact, in Jewish thought this idea goes so far as to include the sinner, so that the community of the covenant can never be conceived as an aristocratic, elitist structure. The notion that the pious depends on the sinner as much as vice versa, expresses the democratic principle even in the spiritual sphere.^{xxxiv}

While the biblical model of governance is monarchical, the people as a whole play a key role in his election and authority. Moreover, in being subject to the law, the king is bound by a social contract that makes demands of him in relation to the people as well as to God, ensuring that no illusion of superhuman status gains sway, that would undermine this democratic spirit.^{xxxv} Government is clearly not an end in itself, but has the purpose of serving the public. A special ceremony every seven years, precisely to affirm the rule of law, emphasized the status of the king as representative of the people.^{xxxvi} Similarly, the priesthood, albeit a position dependent upon tribal affiliation by birth, derived its mandate from the idea of representation, as the priest is viewed as an agent of the people.^{xxxvii} Accordingly, a democratic concept was superimposed upon the otherwise hierarchical structure of the Temple service.

The democratic process is evidenced above all in the primary biblical text regarding the appointment of leadership,^{xxxviii} where Jethro, Moses' father-in-law, advises him not to carry the whole burden of leadership himself but to delegate authority. The criteria for fulfilling the role are essentially meritocratic:

“You should seek out from all the people, men of ability who fear God, men of truth, hating unjust profit.”^{xxxix}

In Moses' own account of the incident, this preliminary exposition of the qualities needed by an aspirant for leadership is embellished by further details including the crucial question of who should make the appointment:

“Bring from among yourselves men of wisdom and understanding, well known to your tribes, and I will appoint them as your leaders.”^{xl}

It seems clear from this description that the actual choice was made by the people, Moses' aim being to guide them in their search for suitable candidates.

On the basis of this text, Maimonides categorizes the seven qualities which characterize an ideal leader accordingly: (i) ability and standing; (ii) fear of God; (iii) humility; (iv) truth and honesty; (v) freedom from monetary ambitions and from susceptibility to corruption; (vi) wide knowledge and understanding (i.e. the ability to adapt existing knowledge to deal with new and unparalleled situations); (vii) enjoyment of public confidence.^{xli} Clearly there may be no candidates available possessing all these qualities, and the Biblical text appears to indicate that those actually appointed by Moses fell short of the ideal. But the yardstick by which to assess different aspirants for leadership is nevertheless made clear.

The importance of consultation with the public before appointments are made, is affirmed in the Talmud.^{xlii}

"Rabbi Isaac said one must not appoint a public leader without first consulting the community; for it is said, "Moses said to the children of Israel, see the Lord has nominated Bezalel."^{xliii} The Almighty said to Moses, "Moses, do you think Bezalel is suitable?" Moses replied, "Master of the universe if You think he is suitable, I certainly think so." The Almighty said to him, "Nevertheless, go and ask the children of Israel." Moses went and asked the children of Israel, "Do you think Bezalel is suitable?" They replied, "If both the Almighty and you think he is suitable, we certainly think so."

On this text, Rabbi Hayim Zundel (author of the Etz Yossef commentary) states:-

"In the selection of the court of three judges to deal with a monetary quarrel, each side (i.e. each litigant) nominates one judge and the third judge is chosen jointly; we do this so as to ensure that the judgment will be acceptable. Likewise in the choice of a leader, we wish to ensure that his policies will be accepted and we therefore arrange that he should be chosen by the public."

In keeping with the above, the theme of public consultation recurs throughout the Bible and Talmud. Saul is selected by Samuel with the guidance of the Almighty, and is then brought to the people of Israel for their approval.^{xliiv} David is selected and anointed in a similar manner, but it takes seven years of his reign to secure the approval of all the tribes of Israel.^{xlv} Legislation introduced by the great sages of the first century before the Common Era, Hillel and Shammai, is rejected by the public and thus not considered to be in force^{xlvi} until it is accepted only a generation later. These ideas are formally incorporated into the Code of Jewish Law, where the authority of communal leaders is discussed, clarifying that their authority derives from their acceptance by the people.^{xlvii} Moreover, the presidents of the academies of learning established after the destruction of the Second Temple could be removed from office by popular vote.^{xlviii}

Not only the functioning of religious judicial authority, but also the study and religious decision process of Jewish law is based on democratic ideas. Problems are open to public discussion and decisions are made by majority rule.^{xlix} Moreover, not only did rabbinic enactments need public support, but also rabbinic appointments depended upon popular or representative vote.¹

Accordingly the rule of Divine law, the rule of Torah, reflects a creative tension between the autonomy of the individual and responsibility for the collective. While respect for public authority is essential, the legitimacy of the system depends above all on its capacity to provide for the greatest protection and enhancement of human life and dignity of all.

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- i. F.H. Colson, Philo, VII, Appendix, 437-38, Loeb Classical Library; E.R. Goodenough, The Politics of Philo Judaeus, p. 86-90.
 - ii. Emunot veDeot, Introduction
 - iii. Norman Solomon, Making Moral Decisions, p. 127, ed. Holm & Bowker, Continuum, London 2000.
 - iv. Genesis 1:17
 - v. Loc.cit.; cf. Deuteronomy 30:11-14

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- vi. Genesis 18:19
 - vii. Cf. Deuteronomy 11:26-28; 10:12,13
 - viii. Ethics of the Fathers 3:1; TB Gittin 10b)
 - ix. Tosefta Avodah Zarah 8.4; TB Sanhedrin, 56
 - x. Sanhedrin, 4:5.
 - xi. Babylonian Talmud, Yebamot, 62a.
 - xii. Sifra, Kedoshim, Leviticus 19.18, 4:12. Genesis Rabba, 1:24.
 - xiii. Rabbi Yissachar Ber Katz, a.k.a. Berman Ashkenazy.
 - xiv. Leviticus 19:18
 - xv. Genesis 5.1-2.
 - xvi. 'In His Image', Samuel Belkin publ. Abelard-Schuman, 1960, p.122
 - xvii. Belkin, p.111.
 - xviii. Exodus 21:6
 - xix. BT, Kiddushin 22b
 - xx. BT, Kiddushin 20a
 - xxi. BT, Bava Metzia 77; cf. S. Warhaftig, Dinei Avodah baMishpat HaIvri, Tel Aviv, 1969, p.131
 - xxii. BT, Bava Bathra Mishnah 2:4; BT, 2b and 6b
 - xxiii. Numbers 15:6; cf. Leviticus 19:34 and 25:35
 - xxiv. Deuteronomy 17:16-20 and Maimonides, Yad, Hilchot Melachim
 - xxv. BT, Yad, Hilchot Melachim 10:12
 - xxvi. Jerusalem Talmud Gittin 5:9; BT, Gittin 59b
 - xxvii. Gittin 59b
 - xxviii. Proverbs 3
 - xxix. Psalms 145:9
 - xxx. See I. Unterman, "Darkei Shalom Vehagderatam", published in Kol Torah Jerusalem, 1996
 - xxxi. On Religion and Human Rights – Comprendre, Revue de Politique de la Culture, Societe Europeenne de Culture, Venise, 1984
 - xxxii. Exodus 19:5-6.
 - xxxiii. The Kuzari, Sect. 1.
 - xxxiv. See S. Schechter, Studies in Judaism, Philadelphia, J. P.S. 1915, XVII-XXIII.
 - xxxv. Deuteronomy, 17.14-20.
 - xxxvi. Mishnah, Sotah, 7:8 (cf. Deuteronomy 31.11-12).
 - xxxvii. Mishnah, Yoma 1:5; Babylonian Talmud, Yoma, 19 a-b.
 - xxxviii. Exodus 18:21
 - xxxix. Exodus 18:21
 - xl. Deuteronomy 1:13.
 - xli. Yad, Sanhedrin, 2:4.
 - xlii. BT, Berachot, 55a.
 - xliii. Exodus 35:30
 - xliv. I Samuel 11:14,15.
 - xlv. II Samuel 5:3
 - xlvi. BT, Shabbat, 17a.
 - xlvii. Shulchan Aruch, Choshen Mishpat, Chapter 2.
 - xlviii. See Gedaliah Alon, Jews, Judaism and the Classical World, translated by I. Abrahams, Magnus, Jerusalem, 1977, 374, ff.
 - xlix. Based on Exodus, 23.2.
 - l. Jerusalem Talmud, Bava Bathra, 60 b; Maimonides, Yad, Mamrim, 2:7.