



## **The Role of Religion in Government – Jewish Perspective**

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Is the ideal of Judaism a theocratic government? In order to explain the approach of the Jewish sources to the relationship between religion and state, I would like to say a few words about the nature of the Jewish religion.

The essence of the Jewish religion is that it embraces all areas of life. It contains commandments and prohibitions between man and his fellow, along with those between man and G-d. Its directives are not limited to ritual matters. The social order, including public and private law, is set down in the sources of the Jewish religion. Judaism is not content with a general directive “Love thy neighbor as yourself”, but goes into specific details. A few examples are the sabbatical year, with a canceling of debts and letting the land lie fallow, for the benefit of the poor and the stranger; the jubilee year [the fiftieth year], when fields revert to their former owners; labor laws, such as the prohibition against delaying wages; and the laws of charity. Not only such laws, which have a moral basis, are prescribed by the Jewish religion, but even purely civil laws such as contract and tort, in their details, have a religious basis. Furthermore, the civil laws were commanded by G-d even before the Torah was given at Mount Sinai<sup>1</sup>, which shows their predominance over the ritual laws.

The reason that Judaism deals with all aspects of life, and not only with strictly ritual matters, is that Judaism conceives religion as being inseparable from nationhood. All members of the Jewish people are members of the Jewish religion; and one cannot be part of the Jewish religion without being at the same time part of the Jewish people. Being a distinct nation, Judaism gave religious directions regarding the organization and form of government of the Jewish state.

The Jewish approach is that there is no contradiction between spiritual life and practical life in this world. Judaism does not negate the value of everyday activities, but rather endeavors to integrate religion into that life.

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<sup>1</sup> See Nahmanides, Exodus 15, 25; R' Ya'akov Anatoli, *Malmad haTalmidim, Parshat Mishpatim*, p. 71b.

Does this mean that the ideal of Judaism is a theocratic government? History shows that theocracy has given rise to many abuses, where men without scruples used the name of religion to rule for their own ends. Power can corrupt, and much more so when power is fortified by religion. Does this danger exist under the Jewish system of government? We shall see how the Jewish ideal of government differs from the conventional concept of theocracy, and how the various institutions which make up the Jewish system of government cope with the danger of abuse of power in the name of religion.

### A. The Rule of Law

In the Jewish system of government, G-d is indeed the supreme authority, however the actual rulers do not rule in his name, but rather in the name of the laws he gave, the Torah. The people are not subordinate to the rulers, but rather to the law. The proper name for this system would seem to be “nomocracy”, the rule of the “nomos”<sup>2</sup>, rather than “theocracy”.

As Philo of Alexandria put it<sup>3</sup>, the law of the Torah opposes any sort of personal government. The government that the Torah presupposes is the rule of fixed laws, and these laws are not man-made, but rather revealed by G-d. In the ideal state, the power in the hands of the king and the High Priest is solely the power to upkeep or to elucidate the Torah. The Torah State unites the best of the characteristics of monarchy, aristocracy and democracy.

The Jewish religion itself is not conceived as a religion coerced from outside, but rather as one based on the people’s consent to accept the religion. This is expressed by the people of Israel’s words<sup>4</sup>: “We shall do and we shall listen”. The relationship between the people and G-d is considered a covenant, based on mutual free will.

A central theme in Judaism is that interpretation of the law is in the hands of man and not in heaven. This is illustrated by the famous story of the oven of Onchai, where the Sages disputed a fine point of ritual law, and R. Eliezer, who was in the minority, elicited miracles from heaven to prove his view. Even so, the law was decided by majority vote, with R. Yehoshua giving the immortal

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<sup>2</sup> As the former Chief Rabbi of Israel, Rabbi Isaac Herzog, once suggested: *Tehuka L'yisrael al pi haTorah*, vol. 1, pp. 8, 11.

<sup>3</sup> See H.A. Wolfson, *Philo – Foundations of Religious philosophy in Judaism, Christianity and Islam*, Cambridge, Mass. 1947, Vol. 2, p. 383-384.

passage “The Law is not in heaven”, as justification for ignoring the miraculous evidence given by R. Eliezer<sup>5</sup>. In civil law, rules based on human logic acquire religious validity. Accordingly, even though Judaism gives religion the predominant role in government, this does not mean that decisions are heaven-dependent. Man has a free hand in interpreting the law (with certain restrictions, of course), so that in actuality, this is hardly a theocratic government.

Furthermore, Jewish law gives considerable latitude to consensus, in many areas, especially in civil law. If the people want to change the decreed law of the Torah, for certain reasons, and agree on alternative legislation, that legislation becomes binding law<sup>6</sup>. Even where this agreement is not explicit, it has binding force, if it has the backing of custom<sup>7</sup>. The people’s power to change the religious law points out strongly how the Jewish system of government is unlike the accepted conception of theocracy. Still, religion plays an important role even in this area, by laying down certain over-ruling values, resembling constitutional basic principles, which consensual legislation must take into account.

## B. The Priesthood

In many theocracies we find in the history of mankind, the government was in the hands of the priesthood, and this offered the opportunity of corruption. Since the clergy ostensibly were G-d’s representative on Earth, the people trusted them and their deeds, and the priests were able to concentrate a lot of power and wealth, which they often put to use for their own benefit.

The Torah system of government does not deposit power in the hands of the priests. Even when the Land of Israel was portioned out to the Israelites, the priests and the Levites did not receive land<sup>8</sup>. The role of the priests is to teach Torah and to serve in the Holy Temple in Jerusalem, as scripture states<sup>9</sup>: “They will teach your laws to the seed of Jacob, and your Torah to Israel; they will offer you incense and bring sacrifices on your altar”. In order to support them in their duties and responsibilities to G-d and to the people, the priests and the Levites are entitled to the tithe and various other privileges, but this does not put them in a position of power.

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<sup>4</sup> Exodus 24,7.

<sup>5</sup> Babylonian Talmud, *Baba Mezia* 59b.

<sup>6</sup> Babylonian Talmud, *Baba Batra* 8b. This excepts ritual matters, which cannot be changed under normal circumstances.

<sup>7</sup> Jerusalem Talmud, *Pesahim* 4, 1.

<sup>8</sup> Deuteronomy 18, 1-2.

<sup>9</sup> Deuteronomy 33, 10.

Even in the purely religious sphere, the priests do not have special power. A person does not need the mediation of the priest in order to have connection with G-d – in contrast to some other religions. Every person has direct access to G-d, without intermediaries. Additionally, learning the Torah is the right and obligation of every Jewish person<sup>10</sup>, and is not the privilege of an elite few, such as the priests.

### C. The King

The fundamental source of power in the Jewish system of government is the people. The people rule through their representatives, whose freedom of action is checked in a number of ways.

Even the king can rule only if he has the assent of the people. The Netziv of Volozhin<sup>11</sup>, explained that for this reason, hundreds of years passed between the arrival of the nation of Israel in the Land of Israel and the appointment of the first king (Saul): the assent of the people is a necessary condition for appointing the king, and this was not forthcoming<sup>12</sup>. Thus, the king is actually the representative of the people, and rules in that capacity.

Choosing the king involves religious elements too. Thus we know that G-d designated Saul to be the first king<sup>13</sup>, and after he sinned, it was G-d again who chose David and his dynasty to take Saul's place<sup>14</sup>. One of the 613 commandments of the Jewish religion is the obligation to appoint a king, and anointing the king (though not done for every king) is a religious ceremony. Still, the principal source of his authority is the consent of the people, and not a religious dictate.

The king is subject to the rule of law. If he transgresses a religious prohibition or commits a civil offence, he is to be judged like any other person<sup>15</sup>. Moreover, King Saul was removed because of his transgression of a religious prohibition<sup>16</sup>. The king's subordination to the Torah is emphasized by his obligation to write two scrolls of the Torah<sup>17</sup>, unlike a common person, who has no such

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<sup>10</sup> Maimonides, *Mishneh Torah, Hilchot Talmud Torah*, 1, 8.

<sup>11</sup> Lithuania, in the past century.

<sup>12</sup> See *Ha'amek Davar*, Deuteronomy 17, 14.

<sup>13</sup> I Samuel 9, 16.

<sup>14</sup> I Samuel 16, 12.

<sup>15</sup> Babylonian Talmud, *Sanhedrin* 19a.

<sup>16</sup> I Samuel 15, 11.

<sup>17</sup> Deuteronomy 17, 18; Babylonian Talmud, *Sanhedrin* 21b.

obligation. There are even prohibitions which are unique to the king: possessing many horses or too much money<sup>18</sup>.

The king has the power to legislate in civil and penal matters, but this power is checked by the rule that the legislation is valid only if it is in the interest of the people, or the stability of the kingdom, and not for his own personal interest<sup>19</sup>. Likewise, if the king gives an order that contradicts a law of the Torah, the order is not binding, and it is forbidden to follow it<sup>20</sup>.

If there is no king, the ruler is chosen by the people. The way he is to be chosen is not specified. It can be by majority vote, or by appointment after consultation with the public<sup>21</sup>. Jewish communities in the Diaspora were conducted democratically<sup>22</sup>. Whatever the process, our sages have an apt definition of leadership: “It is servitude, not domination”<sup>23</sup>. This definition shows that Judaism expects the ruler to know that he is appointed for the people, and not for himself.

#### D. The Prophets

Prophecy usually is taken to mean foretelling the future. But the prophets in Israel played a number of additional roles in religion and in society.

The role of the prophet in government, which can demonstrate Judaism’s style of theocracy, was in denouncing dictatorial and immoral practices of the king<sup>24</sup>. This role of the prophet had no “constitutional” basis, and he had no power to correct those wrongs, but practically his protests were of the utmost importance. Anyone could protest the king’s actions, but only the prophet, with the moral force he wielded, could influence the king effectively as a moral opposition. Here we see how the king’s power in Jewish government is secular, while religion serves as a check on it, to prevent the abuse of that power.

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<sup>18</sup> Deuteronomy 17, 16-17.

<sup>19</sup> *Tosafot, Baba Kamma* 58a.

<sup>20</sup> Babylonian Talmud, *Sanhedrin* 49a.

<sup>21</sup> Babylonian Talmud, *Berachot* 55a.

<sup>22</sup> *Hagahot Maimoniot, Hilchot Tefillah* 11, 2.

<sup>23</sup> Babylonian Talmud, *Horayot* 10b.

<sup>24</sup> Isaiah 1, 23.

Another role the prophet served in government was in giving Divine answers to practical questions, such as whether or not to go to war at a certain time<sup>25</sup>. The Urim and Tummim of the High Priest also served in this capacity, as an oracle<sup>26</sup>. But this was a minor role since the king did not have to consult the prophet or the Urim and Tummim, if he did not desire to do so.

An observer might take the reign of David and Solomon as an example of theocracy, as if they ruled as prophets, because of their capability of knowing G-d's will at any given moment. But this perception is not correct. Even though David and Solomon were prophets, they did not rule in that capacity. As we have seen, the Torah leaves decision making to man, not to heaven. Their authority was based on the people's acceptance of their monarchy, alongside G-d's promise that the monarchy would stay in David's family.

(Prophecy has been extinct since the beginning of the Second Temple period, and its role in government has sadly not been relevant since then).

#### E. The Sanhedrin

A major role in government is that of the Great Sanhedrin, which was the high court of seventy-one sages. Besides its role as the supreme judiciary, it serves also as legislature for the Jewish people, enacting laws or emergency means, according to the needs of the country<sup>27</sup>. It has also some executive authority, being responsible for certain appointments in the public service.

This body has theocratic elements, since it judges according to the religious law of the Torah and enacts legislation when religious needs necessitates this. But here too the assent of the people has importance: the Sanhedrin in the time of Moses was made up of representatives of each of the twelve tribes, who were chosen by the people, as can be understood from the passage<sup>28</sup>: "Choose men wise and known to your tribes, and I will put them at your head".

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<sup>25</sup> I Kings 22.

<sup>26</sup> Babylonian Talmud, *Yoma* 73a-b.

<sup>27</sup> Maimonides, *Mishneh Torah, Hilchot Mamrim*, 1, 2.

<sup>28</sup> Deuteronomy 1, 13.

## F. Conclusion

The Jewish system of government can be seen as a combination of both a secular wing and a religious one. The king (or the democratically elected ruler) is the head of the secular wing, while the Sanhedrin is the head of the religious branch. The secular wing also contains religious elements, and the religious wing contains secular elements too.

Unlike theocracies in the past, Judaism does not regard the head of state or the head of the religion as the representative of G-d on Earth. He is not considered to be infallible, unlike in some other religions. Man, being a creature and not creator, is necessarily limited, and cannot even be compared to G-d. This eliminates much of the danger of the ruler using the name of religion for negative purposes.

Judaism creates a unique blend of democracy and theocracy. The state is based on divine moral values, alongside laws agreed upon by the people, subject to those divine values. The institutions that make up the social order are charged with ensuring the harmonious administration of these laws and values.

It should be emphasized, that in Judaism, values currently accepted in democratic society, such as the freedom of man, human rights and the sanctity of life, carry much more weight, because man is seen as being created in G-d's image<sup>29</sup>.

Some of the theocratic-democratic values of Judaism served those who planned to redesign society according to the Bible. This was the model of the Calvinists in Geneva and of the "Priestly Kingdom" of Massachusetts, who attempted to adopt the Jewish approach, emphasizing both man's rights and his duties to his fellow and to society in general.

However, one cannot give a uniform answer, applicable to all religions, to the question of separation of religion and state. For some religions, separation may be a blessing both for the religion and for the state. On the other hand, for the Jewish religion and Jewish society, such separation is contrary to the principles of the religion, and would prevent society's progress and prosperity. Mutual contribution between the two systems, the religious and the social, brings with it great benefits<sup>30</sup>.

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<sup>29</sup> Genesis 1, 27.

<sup>30</sup> See R. Avraham Yitzhak Kook, *Igrot R'iah*, pt. 1, p. 215.