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THE VALUES OF A JEWISH AND DEMOCRATIC STATE

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The beginning of 1992 marked a constitutional revolution in the Israeli legal system. Almost four and a half decades after being commissioned to enact a constitution for the State of Israel, the Knesset passed the two first chapters of Israel's Bill of Rights. These were Basic Law: Freedom of Occupation[431] and Basic Law: Human Dignity and Freedom[432]. Both Basic Laws include "purpose" clauses which provide:

The purpose of this Basic Law is to protect human dignity and freedom [or: freedom of occupation], in order to establish in a Basic Law the values of the State of Israel as a Jewish and democratic State.

This rather vague provision aroused much controversy in the legal as well as the political communities. Opinions expressed ranged from the statement that a Jewish State could be anything but democratic[433] to the declaration that a Jewish State could be nothing but democratic[434]. Like the rabbi in the famous Jewish tale, it is submitted that both statements are correct. The question is: what does one mean by the phrase "a Jewish State".

Those who regard the Jewish State as non-democratic have in mind a Halachic State based on the laws of the Torah. Such a State cannot be democratic. In a Jewish religious State there is no room for tolerance toward a secular way of life. Moreover, in a democratic State sovereignty is entrusted to the people; in a Halachic State the only sovereign is God Almighty. The basic norm in such a State is that the commandments of the Lord must be obeyed.

Those who regard the Jewish State as democratic have in mind a democratic State which derives its values from Jewish teachings. As such, the Jewish State presents no contradiction to democracy. Indeed, western notions of human rights and democratic values have derived much of their substance from the Old Testament, the Bible, as well as from classic Judaic sources.

Thus LECKY wrote in his famous work *History of the Rise and Influence of the Spirit of Rationalism in Europe*[435]:

It is a historical fact that in the large majority of cases, the Protestant advocates of civil rights took most of their principles from the Old Testament, whereas the advocates of oppression took most of their principles from the New Testament.

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431 Sefer Ha-Chukkim (Principal Legislation, Hebrew) (N° 5752) 114. This Basic Law was replaced in [1994] Sefer Ha-Chukkim (N° 5754) 90.

432 Sefer Ha-Chukkim (N° 5752) 150.

433 See LEVONTIN, A., *'Jewish and Democratic' - Personal Reflections*, 19 Tel Aviv Univ. L. Rev. 521, 542 (Hebrew, 1995). Cf. JAKOBOVITS, infra, text to notes 24-25.

434 See Cr. A. 2145/95, State of Israel v. Guetta, 46 (5) Piskei Din (Reports of the Israel Supreme Court of Israel, hereinafter: P.D.) 704, 716 per ELON, D.P.; Cf. GORDIS, infra, text to notes 21-22 and GOLDENSON, infra, text to note 23.

435 Vol. II, 168 (rev. ed., 1871).

The American Bill of Rights is based to a large extent on the constitutions of the colonies which themselves drew extensively from the Old Testament[436].

The Puritan settlers of the first colonies -in Plymouth and Massachusetts Bay- chose the ancient laws of the Hebrews as their governing legal system. An American jurist colourfully described Jewish Law as sailing to America "aboard the Mayflower and the Alberta" and striking "deep roots in rocky New England"[437]. A writer of that period decisively averred that "the people of Massachusetts adopted the laws of Moses"[438]. It has moreover been stated that "[t]he legacy of Hebrew laws, by the Massachusetts Puritans, was to remain part of the American heritage"[439]. A contemporary American jurist states:

The fundamentals of man - as they are stated in the Bill of Rights or in the Universal Declaration of Human Rights - find their roots in the narratives and prophets of the Hebrew Scriptures and the teachings they have generated over the centuries[440].

Another American jurist went so far as to state that "The Hebrew Bible [serves] as the primary source of American civilization"[441].

Mr. Justice BRANDEIS was not less ecstatic, for he stated that "twentieth century ideals of America had been the age-old ideas of the Jew"[442].

Professor Suzanne STONE is critical of the heavy reliance on Jewish law in American legal thinking. She writes:

... the Jewish legal tradition has come to represent in this scholarship precisely the model of law that many contemporary American theorists propose for American legal society[443].

References to biblical law as well as to classic Jewish sources may extensively be found in American judicial decisions[444]. Just one example: in his famous opinion in the Miranda case[445], Chief Justice Earl WARREN relies expressly on Jewish Law, as stated by MAIMONIDES, in establishing the rule against self-incrimination[446].

The reliance on biblical and other Judaic sources is not unique to the Americans. When asked about the source where he derived the principles of the Universal Declaration of Human Rights from, Rene CASSIN is said to have answered that he had just rephrased the Ten Commandments[447].

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436 On Puritan constitutionalism as "a fertile seed-bed out of which American constitutionalism grew", see WITTE, J., *How to Govern a City on a Hill: The Early Puritan Contribution to American Constitutionalism*", 39 Emory L. J. 41, 62 (1990).

437 MEISLIN, B.J., *Jewish Law in American Tribunals* IX (1976).

438 TUCKER, H. St. G., *Commentaries on the Laws of Virginia* 1, 6-7 (Winchester, 1831).

439 MEISLIN, supra note 7, at 28.

440 KONVITZ, M.R., *Judaism and Human Rights* 17 (M.R. Konvitz ed., 1972).

441 AUERBACH, J.S., *Rabbis and Lawyers: The Journey From Torah to the Constitution* xvii (1990).

442 GAL, A., *Brandeis of Boston* 126 (1980).

443 STONE, S.L., *In pursuit of the counter-text: The Turn to the Jewish Legal Model in Contemporary American Legal Theory*, 106 Harv. L. Rev. 813, 819 (1993).

444 For a comprehensive survey on the reliance on Jewish law in American judicial decisions, see ASHBURN, D.A., *Appealing to a Higher Authority?: Jewish Law in American Judicial Opinions*, 71 Univ. of Detroit Mercy L. Rev. 295 (1994).

445 Miranda v. Arizona, 384 U.S. 436 (1966).

446 Chief Justice WARREN quotes from LAMM, N., *The Fifth Amendment and Its Equivalent in Halacha*, 3 Judaism 53 ((1950) and expressly relies on MAIMONIDES' *Mishneh Torah, Book of the Judges, Laws of the Sanhedrin,* c. 18, par. 6 (iii Yale Judaica Series), 52-53.

447 See RUBINSTEIN, A., *Constitutional Law of the State of Israel* 907 (Hebrew, 5th ed., 1996).

It may seem strange that Jewish law, being a religious legal system, would incorporate democratic values and principles of human rights. Such values and principles seem to be in dire contradiction with a religious normative system, in which the task of the individual is to serve God Almighty[448].

Yet, as Abba HILLEL SILVER wrote:

> Judaism was essentially a democratic faith, a people's religion. The covenant was made with "all the men of Israel, from the hewer of your wood to the drawer of your water" (Deuteronomy 29:11). The Torah was given to all and in sight of all (Exodus 19). The entire people was summoned to become a "kingdom of priests and a holy nation' (Exodus 19:6)... On the verse: "You stand this day all of you before the Lord your God, your heads, your tribes, your elders, and your officers, all the men of Israel" (Deuteronomy 29:10), a midrash expounds: God says: "Even though I have appointed over you Heads and judges, elders and officers, you are all equal in my sight". This is the meaning of "all the men of Israel" - all are alike (Midrash Tanhuma, on the verse)[449].

In his essay "The Biblical Basis of Democracy"[450], Rabbi GORDIS remarked that "the main current of Biblical thought and Jewish tradition is fundamentally democratic... [and] has helped to mould the democratic ideals of western civilization"[451]. Noting that the word "democracy" is of Greek origin and was unknown in ancient Hebrew, he went on to state, that "Greek had the word for it, but the Hebrews had the substance"[452].

A similar view had been expressed a decade earlier by Rabbi GOLDENSON:

> When we examine the central ideas of the nature of man and society as conceived in Judaism, we discover that democracy is not only congenial to the Jewish mind but is necessarily implied in its ethical thinking and spiritual beliefs. Though the concept is not found in the terminology of the writings of Israel, the sentiments for it is unmistakable[453].

These statements seem far reaching. Obviously, ancient Judaism did not coincide with modern notions of democracy. Rabbi Immanuel JAKOBOVITS wrote that "[o]f all great ideals making up whatever is best known in 'Western Civilization', it is only democracy which does not derive its entire inspiration from the creation of the Hebraic genius and heritage"[454]. And he went so far as to state that "contemporary notion of democracy [is] an idea which is largely foreign to Jewish teachings"[455].

Yet, it was the old ideals of Judaism that could be accommodated in democracy, for as noted by JAKOBOVITS, "[s]ocial justice, human equality and freedom, the education of the masses", which underlie democratic values, "first found expression in the literature and history of Israel"[456]. In GORDIS's words, "[w]hat the Judeo-Christian tradition was able to do was to mould the ideals of men, so that when the objective political and social conditions made political democracy possible, men were able

448 See LEIBOVITCH, Y., *Judaism, Human Values and the Jewish State* 14 (1992).

449 SILVER, A.H., *Where Judaism Differed* 275-76 (1956).

450 4 (4) Conservative Judaism 1 (1948).

451 Ibid., at 2.

452 Id.

453 GOLDENSON, S.H., *The Democratic Implications of Jewish Moral and Spiritual Thinking*, 49 Central Conference of American Rabbis 331, 335 (1939).

454 JAKOBOVITS, I., *Journal of a Rabbi* 105-106 (1967).

455 Ibid., at 106.

456 Id.

to accommodate it to their world-view, which had grown up almost unconsciously in the centuries"[457]. In a more confined way, it will be correct to state that "there is [a] democratic element in the Jewish conception of government" and that "Judaism... through its... return to the political and constitutional arena of world affairs, can make its most significant contribution to modern thought and the solution of present-day world problems"[458].

The democratic nature of Judaism may be demonstrated by the fact that in the Jewish religion there is no room for a Pope. Each and every individual is directly commanded by God and is personally responsible to him; there is no mediator between them. It is of significance that the sages tell us that it is upon the individual to choose his rabbi ("asse lecha rav"[459]), rather than for a rabbi to be imposed on him. Even the institute of the Chief Rabbinate, accepted by Jews today, does not have its origin in Jewish religion. Rather, it had been created in the Diaspora, in order to represent the Jewish community before the gentile authorities. It is significant that nine of the greatest rabbis cannot form a minyan, the quorum needed for congregational prayer, while ten illiterate men, even sinners (avaryanim) will suffice[460].

In his notable work of 1927, *Judaism in the First Centuries of the Christian Era: The Age of the Tannaim,* George FOOT MOORE wrote:

Judaism... made religion in every sphere a personal relation between the individual man and God, and in bringing this to clear consciousness and drawing its consequences lies its most significant advance beyond the older religion of Israel[461].

It would be impossible to summarize democratic elements in Judaism in a nutshell. I would like to touch, however, on a few examples.

The rule of law and equality before the law is of universal application in Judaism. We are told in the Babylonian Talmud of Alexander YANNAI, one of the most powerful kings, who was summoned to court in a tort case of vicarious liability for the actions of his slaves. The king rejected the summons and when he finally appeared in court, he insisted on remaining seated during the trial. The president of the court, Rabbi Shimon BEN SHATACH, reprimanded the king and said:

> Stand up on thy feet, King Yannai, and let the witnesses testify against thee; yet it is not before us that thou wilt stand, but before Him who spoke and the world came into being, as it is written [in the Torah], "Then both the men between whom the controversy is, shall stand before the Lord" (Deuteronomy 19:17)[462].

Thereupon, the Talmud tells us, the King rose to his feet.

God Almighty is himself subject to the rule of law. The Jerusalem Talmud states:

> It is universal custom that when an earthly king issues a decree, at his will he observes it himself, and at his will only others are bound to observe it. But it is otherwise with the Holy One Blessed Be He, for He is Himself the first to observe all his decrees. This is

457 Supra note 20, at 4.

458 JAKOBOVITS, supra note 24, at 106.

459 Tractate Berakhot 1, 6.

460 See HOFFMANN, D., MELAMED LEHOIL , ORAH HAYYIM, resp. 29, 28-29 (1925-26); Cf. GUTTMANN, A., *Participation of the Common People in Pharisaic and Rabbinic Legislative Processes*, 1 Jewish Law Association Studies 41, 51 (1985).

461 Vol. I, at 121.

462 Tractate Sanhedrin 19b.

> deduced from the text "And ye shall observe that which I observe... I the Lord" (Leviticus 22:9). That is to say, I, the Lord am the first to observe the commandments of the Torah[463].

A colourful demonstration of the idea of the Torah's supremacy over its giver is to be found in the Babylonian Talmud. The Talmud tells us of a halachic dispute that arose among the Tannaim (sages who lived in the first two centuries), where all the sages had disagreed with Rabbi ELIEZER. Rabbi ELIEZER tried, nevertheless, to convince his colleagues that justice lay with him, and so are we told:

> On that day Rabbi Eliezer brought forward every imaginable argument, but they [the sages] did not accept them. Said he to them: "If the Halacha [Law] agrees with me, let this carobtree prove it! Thereupon the carobtree was torn a hundred cubits out of its place - others affirm, four hundred cubits." "No proof can be brought from a carobtree", they retorted. Again he said to them: "If the Halacha agrees with me, let the stream of water prove it!" Whereupon the stream of water flowed backwards. "No proof can be brought from a stream of water", they rejoined. Again he urged: "If the Halacha agrees with me, let the walls of the schoolhouse prove it", whereupon the walls began to lean. But Rabbi Joshua rebuked them, saying: "When scholars are engaged in a Halachic dispute, what have ye to interfere?' Hence they did not fall, in honour of Rabbi Joshua, nor did they resume the upright, in honour of Rabbi Eliezer; and they are still standing thus inclined. Again said he to them: "If the Halacha agrees with me, let it be proven from heaven!" Whereupon a heavenly voice cried out, "Why do ye dispute with Rabbi Eliezer, seeing that in all matters the Halacha agrees with him!" But Rabbi Joshua arose and exclaimed, "It is not in heaven" (Deuteronomy 30:12). What did he mean by this? - Said Rabbi Jeremiah: The Torah had already been given at Mount Sinai; we pay no attention to a Heavenly Voice, because Thou hast long since written in the Law at Mount Sinai, "After the majority must one incline" (Exodus 23:2)[464].

There is an addendum to this legend:

Rabbi NATHAN met ELIJAH [the prophet] and asked him: "What did the Holy One, Blessed Be He, do in that hour?" - "He laughed [with joy]", he replied saying: "My sons have defeated Me, my sons have defeated Me!"[465].

Commenting on these two Talmudic passages, the late Justice Moshe SILBERG of the Supreme Court of Israel, wrote:

> Here we find the Rule of Law in the absolute sense of the term: The law ruling the lawgiver; the inclusion of the legislator himself within the framework of legal and decisional relationships created by the laws given by him. He observes "the precepts of the Law", submits to the authority of the law, and furthermore submits to the authentic interpretation given by the interpreters, i.e., submits himself to the jurisdiction of an authoritative body, the majority, authorized by him to determine in case of doubt, which for him is of course no doubt at all. If the law is "After the majority must one follow", then this rule is to be applied even when the lawgiver himself is an interested party[466], and Justice SILBERG summarizes:
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> The idea is too great to be grasped by our ordinary mind, but one conclusion certainly

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463 Tractate Rosh Hashana, Chap. 1, 57a.

464 Tractate Baba Mezia 59b.

465 Id.

466 SILBERG, M., *Law and Morals in Jewish Jurisprudence*, 75 Harv. L. Rev. 306, 310-11 (1961). See, however, ENGLARD, I., *Majority Decision vs. Individual Truth: The Interpretation of the 'Oven of Achnai' Aggadah'*, 15: 1-2 Tradition 137.

> rises from it: that the jurisdiction of Jewish law is not confined within the boundaries of relations between man and man. Matters concerning the relationship between man and God... are caught by the net of legal relations as well[467].

SILBERG was not unique in viewing the relations between God and the Jewish people in legal terms. In his work *Leviathan*[468], HOBBES rejected the Christian notion of "the Kingdome of God", as "Eternal Felicity, after this life, in the Highest Heaven". Instead, HOBBES searched "for the Monarchy, that is to say, the Sovereign Power of God over any Subjects acquired by their own consent, which is the proper significance of Kingdome". This he found in the Bible, as "a Kingdome properly so named, constituted by the Votes of the People of Israel... wherein they chose God for their King by Covenant made with him"[469].

HOBBES concluded:

> It is manifest... that by the Kingdome of God, is properly meant a Commonwealth, instituted (by the consent of those which were to be subject thereto) for their Civil Government, and the regulating of their behaviour, not only towards God their King, but also towards one another in point of justice, and towards other Nations both in peace and war which properly was a Kingdome, wherein God was King...[470].

The idea of a covenant, whereby the Jewish people chose Jehovah to be their God, not less than the Jewish people having been chosen by God to be his people, is a basic principle in Jewish philosophy[471]. It is therefore of paramount significance that this central event in the creation of the Jewish community is described in terms acceptable to democratic theories. NACHMANIDES, one of the classical commentators of the Bible, wrote: "[God] said to [the People of Israel]: 'I hereby put my words in front of you, choose if you wish to live according to them'"[472]. Only after the Jewish people accepted the Torah upon themselves were they regarded as bound by its commandments[473]. The rabbinic teaching emphasized the covenant concept as "a manifestation of reciprocity... the reciprocity of the relationship between ruler and ruled"[474].

Referring to the covenant theory, Jose FAUR wrote:

> The effect of this conception of religion is the establishment of a ilateral pact, a berit, between God and man which both parties freely agree to maintain a relationship between themselves. Thus conceived, religion for Judaism is a relationship between God and man, the sole ground of which is the free and mutual election of God and man[475].

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467 Id.

468 HOBBES OF MALMESBURY, T., *Leviathan or The Matter*, Forme, & Power of a Common-wealth Ecclesiasticall and Civil (1651).

469 Ibid., at 216.

470 Ibid., at 218.

471 See, inter alia, GOLDING, M.P., *Community, Covenant and Reason: A Study in Jewish Legal Philosophy* (Ph.D. Thesis, Columbia University, 1959); ELAZAR, D.J., *Covenant as the basis of the Jewish Political Tradition*, in Kinship and Consent 21 (D.J. Elazar ed., 1981); *Rediscovering Judaism* (WOLF, A.J. ed., 1965).

472 Commentary to Exodus, 19:8. Another source suggests that God had offered the Torah to each and every nation and only after they all rejected it did he offer it to the Children of Israel; PESIKTA RABBATI; ASERET HADIBROT 21:99 a-b.

473 See R. HIZKIYAHU's commentary to Exodus, 24:7-8. The Babylonian Talmud tells us that God had forced the Torah upon the Israelis at Mount Sinai. Therefore, this source goes on to say, if God summons the Jews to a court of law for breaching its commandments they would be justified in their argumentation as no undertaking made under duress is enforceable. However, at a later stage the Jews ratified their acceptance of the Torah out of free choice. It is, therefore, that the Torah is binding upon them; Tractate Shabbat 88b, commenting on Exodus 19:17 and on the passage from Esther 9:27: ".. .

474 FREEMAN, G., *The Rabbinic Understanding of Covenant As A Political Idea*, in Kinship and Consent 59 (ELAZAR, D.J. ed., 1981).

475 FAUR, J., *Understanding the Covenant,* Tradition 9:4, at 41, 42 (Spring, 1968).

Another writer described the covenant between God and Israel "in every way comparable to Rousseau's 'contrat social'"[476].

The covenant theory, notably in its social contract manifestation, is bound with ample flaws. In essence they result from the fact, rooted in Jewish theology, that "God is the ultimate source of authority"[477], and that "God's existence and indeed his legitimate power over man must certainly precede the covenant in Jewish thought"[478]. Nevertheless, it is of significance that the covenant model "clearly expresses the relationship between God and the Jewish people on which Jewish law is built"[479]. It is of importance that this relationship is based on human freedom[480], and imposes mutual rights and duties on God and man[481].

From heaven to earth. The concept of the covenant does not merely underline the relations between man and God but also the relations between man and man. The covenant which God concluded with the Children of Israel at Mount Sinai is twofold: "a covenant of God with a group of individuals and that of a group covenanting amongst themselves"[482]. As such, the covenant serves as the basis of the organization and functioning of the Jewish community.

The concept of communal life is emphasized in Judaism. Suffice it to mention the religious duty of pilgrimage to the Temple in Jerusalem to celebrate the Jewish festivals amongst all Israelites and the religious duty to participate in communal prayers nowadays. Other religious precepts demand as well participation in communal life. The Israelites were always characterized by their intensive communal life.

After stating that "Judaism... made religion in every sphere a personal relation between the individual man and God", Moore adds:

> It was, however, a relation of the individual to God, not in isolation, but in the fellowship of the religious community and, ideally, of the whole Jewish people, the Knesset Israel. Not alone the synagogue but the entire communal life -even what we should call the secular life- knit together by its peculiar beliefs, laws, and observances was the expression and the bond of this fellowship[483].

MOORE points out that "[o]f all the religions which at the beginning of the Christian era flourished in the Roman and Parthian empires, Judaism alone has survived", and then adds:

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476 SILVING, H., *The Jurisprudence of the Old Testament*, 28 N.Y.U. L. Rev. 1129, 1130 (1953).

477 RACHMAN, E., *Secular Jurisprudence and Halakhah*, 6 *The Jewish Law Annual* 45 (1987).

478 JACKSON, B.S., *Secular Jurisprudence and the Philosophy of Jewish Law: A Commentary on Some Recent Literature*, ibid., 3, 9. It has therefore been suggested that the Biblical covenant, rather than being a contract between subjects, was a pact between subjects and the sovereign; JACKSON, ibid., 8-9. Cf. NOVAK, D., *Natural Law, Halakha and the Covenant*, 7 *The Jewish Law Annual* 43, 59 (1988); DORFF, E.N., *The Covenant: The Transcendent Thrust in Jewish Law*", ibid., 68, 83-84.

479 DORFF, ibid., 95. The Bible, moreover, records a covenant between God and all living beings, following the flood: Genesis 9:8-17.

480 While accepting that "the authority of the conventional requirements is the will of God", NOVAK stresses that man was given the freedom of choice, that is the freedom to accept or reject the covenant, supra note 48, at 59.

481 While NOVAK categorically argues that God seems to have bound himself to [the covenant] for ever" (supra note 48, at 51), DORFF views it in the context of a covenant with an absolute monarch: "there can be no suits against him to force him to carry out his responsibilities, but he is generally trusted to do so, at least as long as his reign lasts"; supra note 48, at 89. The Covenant theory played a negligible role in the Reformation. Christianity has become a cornerstone of sixteenth and seventeenth centuries' Puritan theology. Their teachings are said to have influenced several philosophers and served as "a prototype of the social contractualism of Locke, Spinoza and Kant"; WITTE Jr., J., *Blest Be the Ties That Bind: Covenant and Community in Puritan Thought*, 36 Emory L.J. 579, 600 (1987).

482 GOLDING, supra note 41, at 58.

483 Supra, text to note 31.

> ... and it did survive because it succeeded in achieving a unity of belief and observance among Jews in all their wide dispersion then and since... The ground of this remarkable unity is to be found not so much in a general agreement in fundamental ideas as in community observance throughout the Jewish world[484].

Of special interest is the phenomenon of the organized Jewish communities in exile when Jews were deprived of political independence and were scattered all around the globe. This did not put an end to Jewish communal creation but rather strengthened it. Some of the greatest Jewish creations were made while in exile. The exile from Eretz Israel and the decline of the Babylonian centre led to the organization of the Jews within local autonomous communities (kehilot). We come across the Jewish community as "a unit of self-government with fully developed institutions, with firmly rooted customs, and with an established method of co-operation with neighbouring communities" already around the tenth century[485], preceding the communal organization of the European town commune by several generations[486]. It is from that era that we have a responsa by Rabbi GERSHOM, one of the greatest Jewish authorities in the Middle Ages, that "the community is a legal entity having the judicial and legislative authority of the Sanhedrin, the high Court of Jerusalem"[487].

The organization of the communities in the Middle Ages marked a basic transformation in the Jewish civil leadership. From one-man government in the era of political independence in Eretz Israel and through the Babylonian hegemony we come to popular ruling. The civil leadership of the Kings, Patriarchs (Nessiim) and Exilarchs (Roshei Gola) is being replaced by the ruling of the members of the community. A researcher of the Jewish communities during the Middle Ages described their political organization as follows:

> We encounter... a government democratic in form, based on ideals of justice, freedom and equity. The principle that "the majority rules" is generally accepted in the matter of election of officers and in legislation designed for the public welfare and for strengthening the religious observance, while unanimous agreement is required for the introduction of arbitrary new practices[488].

The writer relates the establishment of the majority rule to the turn of the tenth century and concludes that the democratic system of government in the communities was an outgrowth of Jewish law in its constant adjustment to the problems of life...[showing] the sensitivity of the community government to the interest of each individual member[489].

Another researcher, however, relates this rule to a later period following the revival of the study of Roman law in Europe. He refers, therefore, the adoption of the majority rule to the influence of Christian jurists and canonists rather than to talmudic tradition[490].

The legislative measure which marks the Jewish community of the Middle Ages are the takkanot ha-kahal - legislation enacted by the community. Though such legislation has its roots in the legisla-

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484 Supra note 31, at 110.

485 See AGUS, I.A., *Democracy in the Communities of the Early Middle Ages*, 43 *Jewish Quarterly Review* 153, 155-56 (1952-53). See, generally, FINKELSTEIN, L., *Jewish Self-Government in the Middle Ages* (1964); ELON, M., *Power and Authority: Halachic Stance of the Traditional Community and its Contemporary Implications*, in *Kinship and Consent* 183 (ELAZAR, D.J., ed., 1981).

486 See BAER, Y., *The Beginning and the Foundations of the Organization of the Jewish Communities in the Middle Ages*, 15 *Zion* 1, 32-36 (Hebrew, 1950-51). BAER traces the foundations of the kehila to the first generations of the Second Temple era.

487 AGUS, supra note 55, at 156.

488 Ibid., 157.

489 Ibid., at 158. Cf. ELON, M., *The Basic Laws: Their Enactment, Interpretation and Expectations*, 12 *Mechkarey Mishpat* 253, 263-64 (Hebrew, 1995).

490 BAER, supra note 56, at 38.

tion of the townspeople (Benei ha-ir) in the Tannaic and Talmudic eras[491], there was a basic difference between the two sources. While in the earlier periods such legislation required unanimous approval of the members of the community the takkanot ha-kahal were enacted by a majority of the members of the community. This was a result of a basic transformation in the legal concept of the community. While during the Talmudic era the townspeople were regarded as "an aggregate of the individuals who comprise its membership", the community became legally independent. Thus, "the community was converted from a juridical partnership to a corporate body with numerous features characteristic of a legal person"[492]. It was, therefore, that the decisions of the majority could not be vetoed by the minority.

A source of controversy in those days was whether equal weight should be given to all votes. Rabbi Elijah MIZRAHI was called upon to rule on whether it would be permissible to give preferential weight to the votes of the wealthy and learned, the argument being that most decisions are made on the spending of communal taxes. Rabbi MIZRAHI ruled that even though all the wealthy and learned members may oppose a decision, it is the majority that should prevail[493]. Rabbi MIZRAHI was, however, extreme in his egalitarian approach. Other rabbis favoured the learned and the wealthy at least in some matters[494].

The power of enacting takkanot was limited by the demand that they must be just and equitable. Thus, the majority could not prejudice the rights of the minority. Likewise the takkanot should have applied equally to all. There was also a rule against retroactive enactments, especially in the area of taxation[495]. Regardless of the practice of the non-Jewish neighbourhood, taxes within the communities were imposed on a progressive basis[496].

The leadership of the community was elected by popular vote, the weight of which varied according to different approaches as illustrated earlier[497]. The Rashba described these lay leaders as

> ... persons chosen not on account of wisdom, wealth or honor, but simply... persons sent by the public to be in charge of public matters[498].

Indeed, the Jewish community in Lisbon rebelled against the seven wealthy leaders of the community and replaced them with other leaders "some wealthy, some of the middle class and some poor". Rabbi Isaac ADARBI ruled that the act, backed by a majority of the community, is binding[499].

It is submitted that the short description of Jewish sources reveals democratic elements in Jewish philosophy and practice. It is, however, the status of human rights in Judaism which is of main concern to us. For it is in this area that Jewish thinking has influenced western civilization most and it is this area referred to by the new Basic Laws. It may, therefore, be a surprise to find out that the mere term "human rights" is unknown in Jewish classic texts[500], as is the term "rights" in general, for "Jewish law...

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491 See BAVA MEZIA, T.,, 11, 23. Babylonian Talmud, Bava Batra, 8:2.

492 KIRSCHENBAUM, A., *Legal Person*, in *The Principles of Jewish Law* 160, 161 (ELON, M. ed., 1974). See also NAMDAR, A., *The Rule of the Majority and the Rights of the Minority in the Balkan Jewish Communities in the 16th Century*, 10 *Israel Yearbook on Human Rights* 299 (1980).

493 Res. R. Eliyahu MIZRAHI, sec. 53, at 145-46.

494 See, e.g., *Responsa of Maharashdam, Orakh Hayyim*, 37, ruling that the majority rule applies "only when {the} parties are equal". Rabbi Isaac ADARBI, on the other hand, ruled that decisions in fiscal matters should follow the economic majority, while all other matters should be decided by "simple" majority; ADARBI, R. I. *Responsa Divrei Rivot* 68; 224. See, generally, ELON, supra note 55, at 196-99.

495 ELON, M., *Takkanot Ha-Kahal*, in *The Principles of Jewish Law* 654, 660-61 (ELON, M. ed., 1974); ELON, supra note 55, at 194-96.

496 ELON, M., *Taxation*, in *The Principles of Jewish Law*, supra note 65, at 662, 671 et seq.

497 Supra notes 61-62.

498 1 Resp. RASHBA, N° 617.

499 Divrei Rivot. sec. 224, at 115, side 1.

500 See KONVITZ, supra note 5, at 13.

postulates a system of duties rather than a system of rights"[501]. Yet, the protection of these rights might be even more effective under such a system[502]. Take, for instance, the right to life. This is, no doubt, the paramount right in western democracies. Yet, as an American court stated a century ago, one will break no law, watching a two-year old baby on a railroad track, without trying to rescue him from an approaching train. "[H]e may be styled a ruthless savage and a moral monster", the learned judge tells us, "but he is not liable in damages for the child's injury, or indictable under the statute for his death"[503].

No "right to life" exists in Jewish law. Yet, the Torah commands us: "Neither shalt thou stand against the blood of thy neighbour"[504]. This duty takes precedence over almost all other commandments. MAIMONIDES summarized this rule as follows:

> If one is able to save another and does not save him, he transgresses the... injunction. Neither shalt thou stand idly by the blood of thy neighbor[505].

An omission to save a human life is deemed tantamount to actively shedding blood[506].

A main crossroad where democracy meets Judaism, is human dignity. Human dignity is central in several international instruments including the 1945 Charter of the United Nations, the 1948 Universal Declaration of Human Rights and the 1966 Human Rights Covenants. These documents regard human rights as deriving from the "inherent dignity" of the human being[507].

Several State constitutions, mainly recent ones, such as the German Grundgesetz, explicitly recognize human dignity. Constitutions which do not mention human dignity specifically, however, do not disregard it. An American writer even stated:

> The basic value in the United States Constitution, broadly conceived, has become a concern for human dignity[508].

Another writer noted:

> Understood abstractly enough, the right to human dignity would gain unanimous adherence in the United States and in many if not all other contemporary societies[509].

As with human rights, the term "dignity" is absent from Jewish writings. Indeed, no parallel term exists in Hebrew. The term used is "kavod", literally meaning "honour". However, the value of kevod ha-beriot ("the honour of the creatures"), which Justice COHN correctly translates as human dignity[510], underlines the teachings of Judaism. This value is supreme and supersedes even the commandments of God Almighty[511].

Human dignity stems from creation itself. We are told in the book of Genesis[512], that man was created in the very image of God. Thomas PAINE regarded this Biblical source as proof "that the equality of

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501 COHN, H.H., *Human Rights in Jewish Law* 18 (1984).

502 Cf. COVER, R.M., *Obligations: A Jewish Jurisprudence of the Social Order*, 5 J. *L. & Religion* 65 (1987).

503 Buch v. Amory Mf.g. Co. 44 A. 809, 810 (1898).

504 Leviticus 19:16.

505 MAIMONIDES, Torts, *Murder and Preservation of Life*, 1:14.

506 Mishna, Sanhedrin 4:5. See, generally, KIRSCHENBAUM, A., *The 'Good Samaritan' and Jewish Law*, 7 *Dine Israel* 7 (1976).

507 See, generally, COHN, H.H., *On the Meaning of Human Dignity*, 13 *Israel Yearbook on Human Rights* 226 (1983).

508 MURPHY, W. F., *An Ordering of Constitutional Values*, 53 South. Cal. *L. Rev*. 703, 745 (1980).

509 BREST, P., *Accommodation of the Majoritarianism and Rights of Human Dignity*, 53 South. Cal. *L. Rev.* 761, 762 (1980).

510 COHN, H.H., *On the Meaning of Human Dignity*, 13 I.Y.H.R. 226, 247 (1983).

511 Tractate Berakhot 19b.

512 1:26-27.

man, so far from being a modern doctrine, is the oldest upon record" and relied on it to support the dogma of the American Declaration of Independence that all men were created equal[513].

Indeed, this short, yet meaningful, biblical statement might be regarded as the basis of human rights in Judaism. So many interpretations were attributed to this verse as to cover most aspects of human dignity and freedom. The full verse reads as follows:

> And God said: 'Let us make man in our image after our likeness'...So God created man in His own image, in the image of God created He him, male and female created He them.

The poet of Psalms described man as not worthy to be minded by God, yet he continued to say:

> ...[T]hou hast made him a little lower than God[514], and thou crownest him with glory and majesty[515].

Ben AZZAI, one of the early Jewish scholars, inferred, from this verse, that all descendants of Adam -regardless of religion, race or colour- bear the imprint of divine creation and divine likeness, and must be treated accordingly[516].

It is appropriate to mention a traditional commentary as to why God created Adam alone: "Therefore each one ought to say: 'It is for me alone that the world was created'". The practical application of this idea may be traced in the warning administered by the Jewish Religious Courts to witnesses in criminal cases. The Court must warn the witnesses not to give hearsay or speculative evidence:

> Man was created single to teach you that whoever destroys one human life Scriptus imputes to him as though he had destroyed the whole universe and if a man saves alive a single soul, Scriptus imputes it to him as though he had saved alive the whole world[517].

Another interesting reason given as to why man was created single, is "that no one may be heard to say to another: 'My father was greater than yours"[518]. This may remind us of another statement of the Bible: "Have we not all one father? Hath not one God created us?"[519].

This is not a mere philosophical point as God commanded the Children of Israel:

> One law and one manner shall be for you and for the stranger that sojourneth with you[520].

No doubt, Jewish law has proven a promising source of human rights. It is possible to continue describing this source endlessly. Dozens of books and hundreds of articles were written to describe this facet of Judaism.

Jewish law bears its imprint also on the status of human rights in Israeli law. Suffice to mention just two cases, one from the period preceding the enactment of the Basic Law: Human Dignity and Freedom, another following its enactment.

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513 PAINE, T., *The Rights of Man* (1971).

514 Interestingly, King James could not accept the idea that man is just a little lower than God, and in his translation replaced God with "the angels".

515 Psalms 8:6-7.

516 Sifra, portion Kedoshim 4:12.

517 Mishna, tractate Sanhedrin 4:5. Cf. the version in MAIMONIDES, *Book of Judges*, 16b.

518 Ibid.

519 Malachi 2:10.

520 Numbers 15:16. See also Exodus 12:49.

In 1979 criminal proceedings had been instituted against a Jewish husband who forced himself upon his wife[521]. In his defence against the accusation of rape, the husband submitted the well established common law rule, that, by the marriage contract, the wife was under duty to cohabit, an essential part of which was to consent to sexual relations. A husband could not, therefore, be convicted of raping his wife, as this offence is committed only if one has sexual intercourse with a woman without her consent[522]. The Court rejected the common law defence -based on ecclesiastical law- as inapplicable to Jews in Israel. This decision was upheld on appeal[523]. The Court based its decision on Jewish family law which applies to Jewish couples under Israeli law[524]. Under this law, although a wife is under marital obligation to have intercourse with her husband, the common law doctrine of the husband's "domain" over his wife and of the wife's "submission" to him is totally unacceptable, and the husband is prohibited from forcing himself upon her. To use MAIMONIDES' words: "The wife is not a captive taken by sword to please her master's desires"[525]. One of the Justices of the Supreme Court summarized the decision as follows:

> The conclusion... is consistent with the fundamental principles of protecting a woman as a free person, not as a slave subject to the whims of her husband on such a sensitive matter principles which, unfortunately, have not been embodied in the legislation or judicial opinions of some of the most enlightened and progressive nation... The Jewish people should be proud of the progressive and liberal approach of its traditions and Halacha to the subject according to Jewish law throughout the ages[526].

But why quote an Israeli justice? This is what the editor of the Australian Law Journal had to say about the novel Israeli decision:

> It is supremely ironical that the newly contemplated States legislation... merely echoes after thousands of years the age-old doctrine of rabbinical law that aggressive sexual assaults by a husband on his wife are prohibited[527].

Over a decade later the House of Lords handed down a decision in line with that of the Israeli court[528]. When rendering the court's decision their Lordships were aware of the Israeli decision as it had been reported by an English Law Commission shortly before the House of Lords' decision[529]. It is, thus, most likely that MAIMONIDES has influenced the legal approach to rape within marriage both in Australian and in English law[530], and, indirectly, in other legal systems[531].

The other case involved the question of whether the severity of an offence is, in itself, a sufficient cause for arresting the suspect and the accused, where his release would not jeopardize the legal proceedings nor present a serious threat to the public. The majority in the Supreme Court, led by Justice

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521 Cr. C. 163/79, State of Israel v. Cohen, 5740(1) Psakim Mehozi'im (Law Reports of the District Courts) 245.

522 See HALE, M., 1 *The History of the Pleas of the Crown* 629 (1773).

523 Cr. A. 91/80, Cohen v. State of Israel, 35(3) P.D. 281.

524 See Rabbinical Law Jurisdiction (Marriage and Divorce) Law, 1953, 7 Laws of the State of Israel (L.S.I.) 139; MAOZ, A., *Enforcement of Religious Courts' Judgments Under Israeli Law* , 33 *Journal of Church & State* 473, 473-75 (1991); MAOZ, A., *Religious Human Rights in the State of Israel*, in *Religious Human Rights in Global Perspective - Legal Perspectives* (VAN DER VYVER, J.D. & WITTE Jr., J. ed., 1996) 349, 354-57, The Cohen precedent has been applied in all cases of rape within marriage overlooking the fact that its ratio relates to Jewish couples only.

525 MAIMONIDES, *Laws of Marriage* 14:9. See also RAKOVER, N., *Coercion of Conjugal Relations,* in *Jewish Law and Current Legal Problems* 137 (RAKOVER, N. ed., 1984).

526 Supra note 89, at 291, per BECHOR, J.

527 *A Wife's Right to Say 'No'*, 55 Aus. L.J. 59, 60 (1981).

528 R. v. R., [1991] 1 All E.R. 747.

529 See Law Commission Working Papers No. 116: *Rape Within Marriage* 126 (1990).

530 Since the publication in the Australian Law Journal all of the Australian States did away with the common law defence.

531 Note the language of the House of Lords which resembles so much that of MAIMONIDES: "[M]arriage is... no longer one in which the wife must be the subservient chattel of the husband."

BACH and Justice BARAK, answered this query in the affirmative[532]. After the enactment of the new Basic Law most justices changed their mind and ruled against such imprisonment. They emphasized the protection of human dignity and freedom as calling for such a shift[533]. It is of interest that Justice ELON did not need the provisions of the new Basic Law to come to the same conclusion, for he had ruled accordingly even before[534]. He did so relying on the attitude of Jewish law.

Finally, it is worth mentioning the judgment of a Military Court in the West Bank[535]. The Court was asked to impose capital punishment on a terrorist, a punishment it was authorized to impose under prevailing Jordanian law. The Court declined to do so and stated as follows:

> The Military Court is one of the judicial arms of the State of Israel. Therefore, although it has the authority to impose capital punishment, the moral concepts of the Jewish heritage of the State must serve us as a guideline. In our heritage a Sanhedrin [the ancient Supreme Court] that had imposed capital punishment was named "a murderous court"[536].

Of special interest is the role of justice in Judaism. MOORE concludes:

> In no sphere is the influence of the highest conceptions of Judaism more manifestly determinative than in that to which we give the general name of justice, including under it, first, fair dealing between man and man, the distributive justice which gives to each his due; second, public justice, the function of the community in defining and enforcing the duties and rights of individuals and classes; and, third, rectitude, or integrity of personal character. In all parts of the Bible, justice in the broad sense is the fundamental virtue on which human society is based. It is not less fundamental in the idea of God, and in the definition of what God requires of man[537].

The potential interplay of Judaism and democracy is being obscured by the misappreciation of both components.

In his article "'Jewish and Democratic' - Personal Reflections"[538], Professor LEVONTIN asserts that "Israelites have no escape from slavery"[539], as the Torah orders: "For unto Me the children of Israel are servants"[540]. Yet, based on this verse, our sages concluded that the children of Israel cannot become "servants of servants"[541]. Moreover this passage did not serve to eliminate the institute of slavery of Jews as this institute ceased to exist since the revelation on Mount Sinai[542]. From this passage the sa-

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532 See Cr. A. 3717/91, State of Israel v. Goldin, 45(4) P.D. 807; Cr. A. 3717/91, State of Israel v. Shem-Tov, 45(3) P.D. 645.

533 See Cr. F.H. 2316/95, State of Israel v. Ganimat, 49(4) P.D. 589 .

534 See Cr. A. 5700/91, Avidan v. State of Israel, 46(1) P.D. 677.

535 Ramallah 3009/89, The Military Prosecutor v. Takruro, abridged in 25 Ha-lishka 33 (Hebrew, 1995).

536 For an analysis of the approach of Judaism to capital punishment see DI-SOLA, D., *Capital Punishment Among the Jews,* in *Jewish Eugenics and Other Essays* 51 (1916).

537 Supra note 31, vol. II, at 180.

538 Supra note 3.

539 Ibid., at 532.

540 Leviticus 25:55.

541 Kiddushin 22b.

542 See MENDELSON, I., *Slavery in the Ancient Near East* 123 (1949). The status of the non-Jewish slave was by far better not only in comparison with slaves in the ancient world, but even compared with recent developments. Thus, the Bible orders that a fugitive slave may not be returned to his master. Rather "he shall dwell with thee even among you in that place which he shall choose in one of thy gates where it liketh him best"; Deuteronomy 23:15-16. How advanced is this command compared with nineteenth century United States of America where its Supreme Courts ruled that it was unconstitutional to assist a runaway slave; See Prigg v. Pennsylvania, 42 U.S. 539 (1842), Jones v. van Zandt, 46 U.S. 215 (1847). The constitutional basis for such ruling still exists in Art. iv section 2[3] of the Constitution of the United States of America. See SHELEFF, L., *The Rule of Law and the Nature of Politics* 273-76 (Hebrew, 1996).

ges rather inferred that no remains of servitude is permitted, therefore a hired servant may withdraw his labour in the middle of his work and be entitled to his proportional salary[543].

Rabbi JAKOBOVITS, on the other hand, regards democracy "the result of superior numbers" which "give the majority the prerogative for having its views and decisions turned into law and imposed by force upon the minority"[544]. It is, therefore, that democratic order presents "a certain challenge to fundamental moral principles", which underlines Judaism[545].

It is submitted that Rabbi JAKOBOVITS represents a technical concept of democracy. In its truest analysis -to use Rabbi JAKOBOVITS' phrase- democracy, as accepted in the western world today, includes moral concepts, which, in many aspects, are not far from Jewish morals[546]. Moreover, the majority rule represents a basic value in itself -the concept of equality and the fair distribution of the power to influence society-[547].

A substantial challenge is raised by Yeshayahu LEIBOWITZ. In his view,

> no social, political or economic program could be derived from Judaism. Judaism does not engage in social or in human problems as such. This is so because man is meaningless... there is no intrinsic value in man himself but only in his position before God. Judaism is not humanism... The social constitution of the Torah is neither social nor philanthropic: it does not stem from the concept of human rights but rather from man's duty[548].

In LEIBOWITZ' opinion:

> [t]he attempt to fuse morality and religion is not a happy one... Judaism did not produce an ethical theory of its own, was never embodied in a moral system, and made no pretence of representing a specific moral point of view[549].

LEIBOWITZ' approach is that of the believer. Even among religious Jews his philosophy is unique[550]. Yet even if sound from a religious point of view, this position is irrelevant to the thesis advocated in this paper. In LEIBOWITZ' opinion, "the religious end is the ultimate end" and "is desecrated when it is made to serve as a means to some other end"[551]. In his view "a person acting as a moral agent cannot be acting as a religious agent". This is so since "human actions... can only be identified in terms of the agent's intention". Therefore, "a religious action cannot be simultaneously a moral action"[552]. LEIBOWITZ stresses the idea that [t]he Bible does not recognize the good and the right as such, only

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543 Bava Mezia 77a. See WARHAFTIG, S., *Labor Law*, in *The Principles of Jewish Law* (ELON, M. ed., 1974).

544 Supra note 24, at 107.

545 Id.

546 What we have in mind is liberal democracy. Analytically we may have to distinguish between democracy and liberalism as the former is a form of government while the latter is a political theory; see RAZ, J., *Liberalism, Skepticism and Democracy*, 74 Iowa L. Rev. 761 (1989). JAKOBOVITS raises an interesting dilemma embodied in democracy: "If the masses who are to be raised ever higher towards the ideal level of the moral law, are themselves the ultimate masters and creators of that law, its administration and enforcement, how can any moral advance of the human society be achieved?"; Supra note 24, at 107.

547 Moreover, Judaism itself accepts the majority rule though it may lead to wrong decisions as evidenced by the dispute between Rabbi ELIEZER and the Sages, supra note 33.

548 LEIBOWITZ, Y., *Judaism, Jewish People and the State of Israel* 310 (Hebrew, 1975).

549 LEIBOWITZ, supra note 18, at 6-7.

550 For criticism of LEIBOWITZ see *Negation for Negation's Sake: Versus Yeshayahu Leibowitz - Essays and Comments* (Hebrew, BEN-YERUCHAM, Ch. & KOLITZ Ch. E. eds., 1983); GRANOT, M., *A Singular Faith* (1993); GILBOA, M., LEIBOWITZ, Y.: Ideas and Contradiction (Hebrew, 1994).

551 GOLDMAN, E. in his introduction to LEIBOWITZ's book, supra note 118, at xvi.

552 Id.

'the good and the right in the eyes of God'"[553]. Yet the question is whether that which is good and right in the eyes of God is also good and right in the eyes of western democracy. I have tried to show in this paper that to a large extent this is so.

Speaking of "the character of God", MOORE writes:

> God's justice is first of all man's assurance that God will not use His almighty power over His creatures without regard to right[554].

It is, moreover, disputable whether what is "good and right in the eyes of God" is the ultimate good even in the eyes of the Bible. The Bible records many episodes where the acts of God are being challenged from a moral point of view. Thus when God Almighty informs Abraham of his decision to destroy Sodom and Gomorrah as an act of retaliation for their inhabitants' sins, Abraham reprimanded "the Judge of all the earth" for failing to do justice[555].

An illuminating demonstration of the relationship between what is good and right in the eyes of God and human behaviour may be found in the Talmudic interpretation to the Biblical verse "Ye shall walk after the Lord your God"[556]:

> What means the text?... Is it then possible for a human being to walk after the Shechinah [the Divine Presence]; for has it not been said "For the Lord thy God is a consuming fire"?[557] But [the meaning is] to walk after the attributes of the Holy One, blessed be He. As He clothed the naked..., so do thou also clothe the naked. The Holy One, blessed be He, visited the sick..., so do thou also visit the sick. The Holy One, blessed be He, comforted mourners..., so do thou also comfort mourners. The Holy One, blessed be He, buried the dead..., so do thou also bury the dead[558].

We have dealt so far with religious Jewish sources. Yet, when referring to Jewish values, we are not referring to the Jewish religion as such. Judaism is a culture and a way of life. Jewish religion constitutes a major part of this culture, yet it is the heritage of Judaism as a whole to which we are referring.

Judaism is a product of thousands of years and of several generations. Its messages are not uniform. Yet, at the end of our brief tour of Judaic values, it is my submission that, by and large, they are compatible with democratic notions. To use GORDIS' metaphor, "Judaism is a mighty river with many currents and eddies", yet it is submitted, its main stream complies with the values of a democratic State. It is therefore that "Jewish and Democratic" represents no contradiction but rather completeness and harmony[559].

This is not merely an academic argumentation. Democracy is fragile even in the modern era and often comes under fire. Democratic values cannot exist in the abstract divested of social concepts. Religion plays a major role in society. Jewish ideals and values infused into western culture directly and through Christianity enriched its humanistic and liberal thinking. It is capable of enriching it yet more.

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553 Supra note 118, at 7, quoting from Deuteronomy 12:28.

554 Supra note 31, vol I, at 387-88.

555 Genesis 18:25.

556 Deuteronomy 13:4.

557 Deuteronomy 4:24.

558 Tractate Sotah 14a.

559 Justice ELON speaks of a synthesis to be achieved between Jewish and democratic values; see C.A. 506/88, Shefer v. State of Israel, 48(1) P.D. 87, 167-68. See also ELON, supra note 59, at 258 et seq. See, generally, MAOZ, A., *"The Values of a Jewish and Democratic State*, 19 Tel Aviv Univ. L. Rev. 547 (Hebrew, 1955).

Of special interest is the contribution of Jewish values to Israeli democracy. The establishment of a democratic State in this part of the world was not obvious: Israel is located in a region with almost no history of democracy; its founders and most of its citizens immigrated from non-democratic countries. Finally, Israel was born in war and continues to strive for its very existence[560]. The fact that, against all odds, the State of Israel maintains its democratic character proves that democratic values are deeply rooted in Jewish heritage, for as BIALIK, the great Hebrew poet, said: "there can be no more heaven above our heads than we have ground beneath our feet"[561].

560 See, MAOZ, A., *Constitutional Law*, in *The Law of Israel: General Surveys* 5, 49 (ZAMIR, Y. & COLOMBO S. eds., 1995); MAOZ, A., *The System of Government in Israel*, 8 Tel Aviv Univ. Studies in L. 9, 57 (1988).

561 Quoted by GORDIS, supra note 20, at 11.