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ISRAEL: THEOCRACY OR DEMOCRACY?-

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Clarification of Terminology:

The terms we use to describe various forms of government are rooted in ancient Greek philosophy and language. In the classic Greek sources three terms are mainly discussed: Monarchy, Oligarchy, and Democracy. Their common suffix "-archy" or "-cracy" ("arch" meaning first, chief) indicates rule or ruler:

MONARCHY: Government by a single ruler; the rule of one person (monos means one, single).

OLIGARCHY:- Government by a small, limited, group; the rule of a few persons (oligo means small, scant).

DEMOCRACY:- Government by the many, the masses (demo means people).

These three systems of government represent three gradual levels of power allocation: The rule of a -single individual (monarch, king, president); of a few (committee, family, group); of the many (the people, the mob, the masses). In other words, the power of government is allocated either to one (monarchy), or to some (oligarchy), or to all (democracy).

The advantages (or merits) and flaws (or vices) of each of the three systems of government were hotly debated in the ancient world. Greek political institutions did not survive; Greek political theory did. Among the three dominant systems, monarchy was the favorite of the ancient philosophers. Monarchy, led by just a single ruler, was considered the most effective and least oppressive; oligarchy, ruled by more than one, a lesser system; and democracy, involving the masses, the lowest form of government, the most hazardous to society's stability and security. The less rulers we have the better.

As for democracy's virtues, its advocates argued that only "popular" government guarantees equality before the law. This means, equality of the free citizens -- the slave-owners, not the slaves. The Greek philosophers did not see any contradiction between the idea of democracy and the reality of slavery; quite the reverse, the democratic system protects the rights of all slave-owners -- equally.

Democracy, on the other hand, so claimed its opponents, is unsafe: The multitude, having never been taught to know what is right, cannot be expected to pursue the right. The mob, peculiarly susceptible to the wiles of the demagogues, is generally prepared to abdicate its authority. The Demagogue (lit., leader of people) is a person who tries to stir up the people by appeals to emotion and prejudice, to win them over, in order to gain power. Democracy is thus related to demagoguery -- evoking a negative connotation.

Now what is Theocracy? This term does not appear at all in the political discussions of the ancient Greeks. For the first time it was coined during the first century by the great Jewish

historian Josephus Flavius (Yosef ben Matityahu). Trying to describe a unique system of government, that of Israel's polity, he writes (Apion 2:165):

Some peoples have entrusted the supreme political power to monarchies, others to oligarchies, yet others to the masses.

Our lawgiver, however, gave to his constitution a form of what -- if a forced expression is permitted -- may be termed as Theocracy, placing all sovereignty and authority in the hands of God.

"Theocracy" -- literally "rule of God" -- is in theory the ideal form of Jewish polity, as seen in the biblical world: The Torah depicts God as the immediate, supreme ruler of the Jewish people, giving only little attention to human self-rule. Monarchy is described and prescribed in the Hebrew Bible, only as a concession to the people's demand; the Monarch (*melekh*) is placed totally under the authority of Torah and the sovereignty of God -- the King of Kings.

Theocracy, at best, represents an ideal, a vision -- or, more precisely, an illusion -- never a reality. In the real socio-political world, mortals function. Human rulers -- "kings of flesh and blood" -- exert their mundane power, make decisions, judge and execute. Even as they claim to represent and submit to the ultimate "Will" of God, human rulers -- whether they are villains or saints -- arrogate to themselves the right to interpret the divine "Will" and implement it in their own way. These mortals remain in charge, with all their human folly and fallibility, and exercise their ruling role, often fanatically and unscrupulously, as executors and executioners, on behalf of the invisible, inscrutable God.

A Theocracy, therefore, is a most dangerous state: A totalitarian rule which grants human tyranny divine sanction, adorning it with the mantel of sanctity and absoluteness. Ironically, more than in a democracy, people are subjected and susceptible to demagoguery -- slick and effective -- in a Theocracy.

Theocracy is presumptuous; and in its literal sense, non-existent. What is "Theocracy" in theory, is merely "anthropocracy" in reality.

Josephus, who originated the term, showed his awareness of its imprecision by calling it "a strained expression" (Apion, 2:19, Whiston, p. 630).

For Josephus, however, his newly-coined term "Theocracy" conveyed more than a technical depiction of a certain, uncommon form of government; it also expressed a sharp theological and political ideology of freedom and justice, shared by all devoted Jews of his time. In many ways, this term conveyed a slogan of defiance against Roman oppression. It declares: We serve no other gods, we submit to no other rulers: "Our Father, our King!" -- so proclaim the Jews, in the clear-cut language of the period of the Second Temple's Destruction -- "we have no king, but You!" ("*Avinu Malkeinu! Ein lanu melekh ela ata*"). This is Theocracy in its original, pure and succinct sense.

In common usage, however, Theocracy refers to a state ruled by religious law, or by clergy who presume to implement the divine law. However, the mere fact that a state recognizes or upholds religious laws, or grants judicial authority to the clergy or religious institutions -- as is the case in Israel where Orthodox Rabbis and the Rabbinate maintain exclusive authority in matters of personal status -- does not render the state "Theocratic" in the true sense of the term. It is not

the formal content of the law, but its source of authority (its "cracy"), that counts: Is it relegated to God ("Theo-") or the people ("demo-")?

What is the source of the Rabbis' authority in Israel to regulate and enforce all the religious and halakhic laws within their jurisdiction? Ironically, it stems not from the supernal and eternal dominion of the Word of God, but from the mundane and ephemeral mandate of the secular state. In fact, the state's embrace of those old and hallowed rabbinic laws, by means of its legislative power, strips them of their sanctity: The Rabbinate, functioning as a governmental office, is fulfilling the Will of the State.

The incorporation of religious legislation within the political and legal fabric of the state of Israel serves as a testimony to the sovereignty of the secular State and the authority of its legislative organs, and not to the glory and supremacy of Torah and God. In the words of Nathan Rotenstreich ("Secularism and religion in Israel" (Judaism, 1966, v. 15, p. 267):

It is not by the Law of Halachah, but by the state, that the authority of rabbinical institutions is sanctioned. Hence Orthodox Judaism must acknowledge -- willingly or unwillingly -- the supreme authority of the state as a sovereign organ of legislation.

For all their political, legal, financial, and self-protective gains -- Israel's rabbinic leaders pay costly. Secularists, from the Left, resent their "religious coercion" and "unproportionate" position of power; religious extremists, from the Right, denounce their subservience and leniency; average Israelis, from the mainstream, are indifferent, showing little regard for the Rabbis, which are mostly perceived as archaic or opportunists -- as political, not spiritual leaders. But spiritual leadership in Israel is dearly needed and gravely lacking.

A pervasive sense of national destiny -- often reaching defiant or euphoric proportions -- permeates Israeli society, engulfing all, secularists and religionists alike. Perceived in historical, mystical, prophetic, or messianic terms, this bold sense of Jewish uniqueness, exclusivity, or particularity -- fostered in part by the haunting memories of the Shoah, and the heroic achievements of survival and triumph -- often assumes disturbing forms of arrogance, irrationality and fanaticism. There is an urgent need and genuine quest for spiritual and religious guidance -- for the Word of God. How sad that rather than give testimony to the glory of God, the Rabbis are compelled to serve as a seal of approval to the primacy of the State's sovereignty.

Is Israel a Democracy or a Theocracy?

On Friday, Erev Shabbat, May 14, 1948 (the 5th of Iyyar, 5708) Israel's Declaration of Independence (Megillat Ha-Atzmaut) was signed. It emerged as a composite and compromise of many suggestions and arguments, and was finally drafted by Ben Gurion, and approved and signed by the members of the "Provisional Council of State, on the soil of the homeland, in the city of Tel-Aviv."

It is remarkable that in the initial and primary official document of the State of Israel, proclaiming its establishment and independence, neither term -- Democracy or Theocracy -- is mentioned at all. In fact, neither the State's territorial borders nor its political character are described in Israel's Declaration of Independence. After pointing out that on the 29th of November, 1947, the General Assembly of the United Nations adopted a resolution calling for the establishment of a Jewish State in the Land of Israel, the Declaration firmly states:

This recognition by the United Nations of the right of the Jewish people to establish their own state is irrevocable.

This right is the natural right of the Jewish people to be masters of their own fate, like all other nations, in their own sovereign State.

Accordingly, we, the members of the People's Council, representing the Jewish community in Eretz Israel and the Zionist Movement are here assembled --- and by virtue of our natural and historic right --- hereby declare the establishment of a Jewish state Eretz-Israel, to be known as the State of Israel.

We declare that from the moment of the termination of the Mandate..., until the establishment of the elected, regular authorities of the State in accordance with the Constitution which shall be adopted by the Elected Constituent Assembly not later than the 1st of October, 1948, the People's Council shall act as a Provisional Council of State...

Ben-Gurion's favorite slogan was that Israel is a State of -Law-, not of -Halakha- ("Medinat Israel hi medinat hok, lo medinat halakha"); namely, a State of legislated law, not of rabbinic or revealed law. But, for legislated law you need a legislative body. According to the Declaration this must, and shall, be determined by The Constitution. It was clear at that time, that there can be no law -- in the modern, secular, "democratic" sense -- without a constitution ("*ein hok lelo huka*"), and that Israel must and will soon adopt one. But Israel still operates without a constitution.

The Elected Constituent Assembly, referred to in the Declaration, that had been expected to adopt the State's Constitution, "not later than the 1st of October, 1948," was even not yet elected prior to its deadline. Only 18 days after the "deadline" date -- on November 18, 1948 -- did the Provisional Council adopt an ordinance providing for the election of a Constituent Assembly. This Assembly met for the first time on February 14, 1949. Instead of delivering, according to its charter, Israel's Constitution, the Assembly, by majority vote, resolved to begin immediately to act as the legislature, and to postpone the adoption of a formal constitution to a later date.

Thus, on February 16, 1949, the Assembly adopted the Transition Law, laying down, in outline, the constitutional arrangements for the government of the state, the first clause of which dictates:

The legislative body of the State of Israel shall be called "the Knesset." The Constituent Assembly shall be called "the First Knesset."

The Knesset (Heb., "assembly") thus emerged as the "parliament" of Israel. The newly-emerged Knesset was modeled in essence after the legislative body of Great Britain, holder of the previous mandatory regime, which was replaced by Israel's establishment; but, unlike the British Parliament, the Knesset was structured to consist of one House only. It borrowed its name and number of its members (120) from the "Knesset Ha-Gedolah" (Avot 1:1; "Great Assembly"), of the early Second Temple era -- the first Jewish autonomous government in post-exilic Israel, under Persian Empire, after the First Return ("Shivat Zion").

The symbolism of all this must not escape us. The Founding Leaders of Israel saw themselves in spirit as if historically transplanted into the biblical period of Shivat-Zion -- the first Jewish

Restoration of Zion (after the first Temple's destruction), and the rebuilding of the Second Temple -- and they drew their inspiration from its (romanticized) heroics and exciting drama. History repeats itself. The Balfour Declaration of 1917, heralding "the establishment in Palestine of a national home for the Jewish People," was perceived as a fateful reverberation of the biblical Declaration of the Persian king Cyrus (559-529), allowing and calling upon the exiled Jews to return to their ancestral homeland, and rebuild it. Now, in a symbolic gesture of poetic justice, the British Mandate is replaced with a parliamentary institution carrying the name and form of the ancient Assembly -- Knesset.

Thus Israel became a parliamentary state -- the Knesset being its supreme authority: The government of Israel takes office only with the Knesset's formal approval and must resign if it loses the confidence of the Knesset. The Knesset's legislative acts are, as a rule, immune from challenge in the courts. Israel preferred to erect a powerful, unlimited ruling body -- the Knesset -- rather than to adopt a clarifying, delimiting document -- the Constitution. It created a legislative golem rather than a liberating idea.

Why didn't Israel adopt the Constitution? The reason given by official historians of Zionism is that the Jewish State had been too busy to fight wars, build economy, etc., and could not afford the time and tranquility for writing the Constitution. On a deeper level, however, the truth is that the leaders felt that the arguments and disagreements concerning the content and philosophy of the proposed constitution -- for example, whether Israel should be a Theocracy or a democracy? -- might have split the people and lead to a literally bloody civil war.

Israel thus is politically a "non-constitutional" state. Theoretically, therefore, any law passed by the Knesset -- even if it is racial or oppressive; supporting, harassing or persecuting religion -- is by definition never legally "unconstitutional." For there is none. Everything goes. What the Legislator wants, the Legislator gets.

Israel is neither a Theocracy nor a democracy. It is certainly no Theocracy. Its so-called "religious laws" are actually legislated by a secular, civil, "democratic" body -- the Knesset. Israel's "religious" laws derive their ultimate authority and power from the will of the people, as expressed by the votes of their elected representatives in the Knesset. What a flimsy basis for the eternal divine laws! To apply the rhetoric of theology: "The Knesset giveth, and the Knesset can take away."

How far from theocratic Israel is, can be learned from the composition of its Declaration. David Zvi Pinkas of the Mizrahi proposed that the Declaration should begin with a statement asserting that Eretz Israel was promised to the Jewish people in the Torah and by the Prophets. His proposal was rejected; the phrase did not even make it as part of the other flowery paragraphs. Instead of pointing to the Hebrew Bible as the spiritual source of the People's bond to the Land, the Declaration points to the Land as the territorial background of the Bible:

Here [in the Land of Israel, the Jewish people] created cultural values of national and universal significance and gave the world the eternal Book of Books.

This assertion is, to say the least, questionable -- both conceptually and historically. Conceptually it is self-defeating, and historically incorrect: How does the claim -- that in the Land of Israel the People (generously or begrudgingly?) "gave to the world the eternal Book of Books" -- support the Jewish exclusive claim to the Land? One might argue to the contrary, that

the Land, where such a universal gift ("the Book of Books") was given to all, should also belong to all! Why not internationalize and universalize the Land, along with the Book it produced, for all humanity?

Historically, too, the opening statement of the Declaration is not exact: More than in the land of Israel, the creativity of the Jewish people was largely expressed in the diaspora. Ben Gurion, along with the then prevailing trend of "galut-negation" of classical Zionism, considered all cultural creativity of the Jewish people in the diaspora, after their loss of political independence in the Land -- spanning almost two thousand years -- as null and void.

This narrow vision is reflected in the whole tenor of the Declaration: Biblical sources, yes; Rabbinic, no. The "Book of Books," not uniquely representative of Judaism, is mentioned; the Mishna and Talmud, uniquely Judaism's property, are not. The "prophets of Israel" are recognized; the Rabbis are not. To be sure, the prophets "made it" into the Declaration, because of their social message, not their divine promises. The claim to the Land is linked not to the content of the Book, its prophecies or histories, but to the fact that the Land was its fertile soil. So what!

How prudent and insightful loom our Sages of old in their insistence that the Torah was given in the desert, rather than in the Promised Land, in order to nullify any territorial claims, by Jews or gentiles, related to the Revelation's location. Both divine revelation and human creativity, transcend all territorial boundaries!

In Israel's Declaration, remarkably, the name of God is demonstratively absent. Instead, it concludes: "With trust in the -Rock of Israel- we affix our signature..." ("*mitokh bitahon be-tzur yisrael anu hotemim*"). This non-specific "Rock," a metaphor (or euphemism?) for the Almighty, became a rocky bone of contention, fighting its way to the last, pre-signatory, paragraph. The "Rock" finally prevailed, thanks to Ben Gurion's defense, arguing that everyone from Right to Left believed in the "Rock of Israel" in his own way.

The Declaration steers the State far away from a Theocracy. Now, is Israel, then, a democracy? Not in the full sense of the term, as measured by the norms and standards of American democracy. Israel is without a constitution; without the check and balance of power. In Israel, the Knesset is the sole sovereignty, combining and directly controlling all branches of Government: Any law rejected by the courts (the Judiciary) as illegal, may become legal by the Knesset's unlimited legislative power; any act of the government (the Executive) is subject to immediate rejection by the Knesset -- which is the ultimate "tyrant" in the State of Israel.

The Declaration promises no discrimination whatever. But also -- to be a Jewish state:

The state of Israel will be open for Jewish immigration and for the ingathering of the Exiles; it will foster the development of the country for the benefit of all inhabitants; it will be based on freedom, justice and peace as envisaged by the prophets of Israel; it will insure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex; it will guarantee freedom of religion, conscience, language, education and culture...

The contradiction is apparent: Israel is a Jewish State. It belongs to the Jews all over the world, not just to those who live in Israel. Every Jew is de-jure, and potentially, a full-fledged citizen (Law of Return, 1950; and the ensuing "Who is a Jew?" controversy). But -- Israel must also insure "complete equality of social and political rights to all inhabitants" -- Jews and non-Jews

alike. Are the two principles compatible? A Jew in Israel can have his relatives joining him from abroad ("making aliya"), as equal citizens; a non-Jew cannot. His relatives may get an immigration visa, and join him as aliens; they can become citizens only by naturalization. This inequality is legally defensible; citizenship -- either instant or by naturalization -- is not an inalienable human right. Politically, too, this discrimination can be validly explained by the proclaimed Jewishness of the State and its existential reason. Substantively, however, do we really have "complete equality" for "all inhabitants, irrespective of religion, race or sex" as promised? Does the State's manifest Jewishness square with our modern notions of democracy?

The paradoxes inherent in the very core of Israel's existence must be clearly recognized and faced: In what manner is the State Jewish? Is it the State of the Jewish people all over, or only of the Jewish inhabitants of the land of Israel? Is it Jewish in racial or national terms of Jewish peoplehood, or in cultural and religious terms of Jewish experience and outlook? Within the scope of the state's Jewishness, how is the Jewish historical diaspora (Galut) experience, and the post-biblical (Rabbinic) spiritual and literary heritage assessed and treated?

How ironic that a State originally negating both the Galut experience and the Rabbinic heritage - that declared its emergence by focusing on the centrality and excellence of the Land, seeing in Galut its tragic and catastrophic aspects (Shoah) only, and glaringly ignoring its creative and heroic achievements; extolling the "Book of Books" (pointing to its Eretz-Israelian origin and universal appeal), and "the prophets of Israel" (pointing to their vision of freedom, justice, and peace), and indicatively circumventing the Rabbinic heritage -- this state is now so much obliged to, and very dependent on, Galut Jewry and its material prosperity, and the Rabbinic tradition, and its spiritual, halakhic, authority.

Maturing and growing, Israel continues to realize its inextricable ties with Judaism -- constantly wrestling with its Jewish religious essence. But Israel has yet to come to terms with its self identity as a modern state. There is little comfort in the current claim that Israel is, supposedly, "the only democracy in the Middle East." Geographically Middle Eastern, Israel is culturally Jewish and Western.

With or without a constitution -- Israel must aspire to reach high standards of a just and workable political regime -- true to its Jewish origins, unique in its Jewish character -- and second to none in the world.