

# Israel: Jewish *and* Democratic?

BY: Gilah Kletenik

Can Israel be at once a Jewish and democratic state? Any attempt to explore this thorny question must first define its knotty terms, "Jewish" and "democratic." These two words, while familiar to all, are heavily loaded descriptions that require not only identification, but also an investigation into their practical relevance and application to the modern State of Israel.

"Democracy," literally "rule by the people," has come to connote far more than its simple meaning and has a handful of possible definitions. The popular definition of "democracy" focuses on direct civil participation in government, whereas the procedural definition is more interested in how leaders come to power. However, especially today, the term "democracy" connotes far more. It is used to describe a government that embraces liberal democratic values, such as equality under the law, respect for civil liberties, protection of human rights and the safeguarding of minority rights.

Defining "Jewish" is even more complex. The traditional definitions of "Jewish" focus on religion. Jews are a people who share a belief system and worship God through the dictates of the Torah and by following halakhah. By this definition, "Jewish" has an entirely religious connotation and suggests that for Israel to be "Jewish" its government ought to have religious elements. Hence, in exploring the conundrum of Israel's Jewish and democratic characteristics, it is appropriate to first investigate the relationship between religion and state in general.

John Locke is often credited with pioneering the notion of the separation between religion and state. The Lockean social contract, which paved the intellectual road to liberal democracy, maintains that matters of individual conscience are too important to be ceded to the government, and are instead better left to the rational discretion of each individual. The United States Constitution, in this spirit, was the first document to call for the separation of religion and state. In the spirit of Locke, the Framers sought to protect religion by circumscribing the government from endorsing and favoring one religion over another because they were wary of the dangers of religious persecution. To the Framers, this separation between religion and state was very much a matter of freedom; a civil liberty, without which America could not be considered a liberal democracy.

Israel does not maintain a separation between synagogue and state. And, while the Declaration of the State of Israel pledges to "ensure complete equality of social and politi-

cal rights to all its inhabitants irrespective of religion," the Israeli government endorses the Jewish religion with policies that largely put this pledge into question. These include laws prohibiting public transportation on Shabbat and the public sale of *hamets* on *Pesah*. Most problematic, though, is the Chief Rabbinate. Comprised of male Orthodox rabbis, it is a government agency granted ultimate authority in matters of divorce, marriage and burial. Practically, this means that in order for a marriage to be recognized by the State of Israel it must be between a man and a woman wed in a religious ceremony. This policy deprives same-sex and inter-religious couples of marrying and benefiting from the laws applicable to married couples. Beyond this, for a woman to remarry she must first be granted a divorce contract or *get* from her husband – and if he refuses to



grant her one, it is illegal for her to remarry. Laws such as these apply to all citizens of the state – whether they are *haredi* or *hiloni* – and essentially amount to the deprivation of civil liberties.<sup>1</sup>

If "Jewish" is to be defined as a religion, then the government of Israel can safely be labeled as such. Despite the fact that most of the state's leaders are not scrupulous in following halakhah, many policies of the state are deeply religious in scope and are informed by halakhah. This amounts to a union of synagogue and state which is highly problematic from a democratic perspective. As such, by this religious definition of "Jewish," it is clear that Israel cannot be at once a Jewish and democratic state.

A different and often popular definition of "Jewish" focuses less on the halakhah of the previous definition and more on the Torah's values. This approach maintains that "Jewish" connotes what has come to be called "Jewish values." These values refer specifically to the Jewish values of morality and social justice, among others. However, there are a number of issues in suggesting that the state of Israel follow "Jewish values" as opposed to, though not *per se* in conflict with, liberal democratic values. The first is the problem with separating

"Jewish values" from the rest of Judaism – are there even values beyond the realm of halakhah? Many, among them Yeshayahu Leibowitz, claim that there is no such notion as morality or values independent of halakhah.<sup>2</sup>

Nevertheless, even if there are "Jewish values" beyond the realm of halakhah, a government bound by these values is problematic from a democratic perspective. This is because there is no single consensus on what "Jewish values" means – unlike halakhah, there is no bottom-line conclusion on matters of value. And, however reconcilable these "Jewish values" may be with liberal democratic ones – that which the Declaration of the State of Israel calls: "justice and peace as envisaged by the prophets of Israel" – deciding where to draw the line is precarious. Why is the seeming second-class-citizenship of women in Judaism any less a "Jewish value" than feeding the poor? Herein lays the danger in suggesting that Israel express its "Jewishness" by following these "Jewish values" – there are no such clearly defined "Jewish values" and following even one of these values because of its "Jewishness" paves the path for a slippery slope open to further abuse. Consistent calls against abortion, stem-cell research and same-sex marriage in the US based on religious beliefs, are a case in point demonstrating the dangers of having religious values inform, even on a personal level, state decisions. All of this imperils civil liberties, which in turn conflicts with democracy.

It is clear that the definitions of "Jewish" that focus on halakhah and values are dangerous from a democratic perspective because these understandings approach Judaism from a religious perspective and are consequently incompatible with democracy. However, at least traditionally, "Jewish" has been used to describe primarily people and not ideas or entities. In fact, even though a non-Jew may choose to convert to Judaism and is treated as if he or she was born into it, primarily, one is Jewish by virtue of birthright. From this perspective, "Jewish," has a national, even ethnic connotation. In the Declaration of the State of Israel, the two justifications for the establishment of the State are of national character. The first focuses on persecution, suggesting that the Holocaust "was another clear demonstration of the urgency of solving the problem of its homelessness by re-establishing in Eretz-Israel the Jewish State." During the Holocaust, Jews were persecuted because of their ancestry and not due to their religious or other beliefs – the attack was on an ethnicity, a nation. The second justification for the establishment of Israel is national in scope, maintaining that it is "the natural right of the Jewish people to be masters of their own fate, like all other nations, in

an enclitic *mem* is not always clear, it probably simply signifies a minor emphasis on the preceding word. The word "*motuyim*" would be translated "the loins of," as if there were no *mem*. In addition, an *n*-sound is used to indicate possessive in Classical Egyptian, and it is possible that the *mem* here is some variant of that form. See Antonio Loprieno, *Ancient Egyptian: A Linguistic Introduction*, Cambridge University Press, 1995, p. 118. If this is the case, the word would also be translated "the loins of."

<sup>1</sup> *Devarim* 33:8-11

<sup>2</sup> Rashi, Ramban, and Abarbanel (ad. loc.) all make the case that Shimon is included in Yehudah's blessing, but, as Nechama Liebowitz notes in her *Iyyunim*, this is not the intuitive way to read the *pesukim*.

<sup>3</sup> *Sifrei Devarim*, 389. An alternative explanation is offered by *Midrash Tehillim* 90:3.

<sup>4</sup> A weakness of using events that happened after the Exodus to explain why Shimon and Levi were treated differently is that it fails to account for why Moshe, who was from the tribe of Levi, was chosen to lead the Jewish people before Levi distinguished itself during the incident of the Golden Calf. However, the midrash focuses on the relationship between the morality and treatment of Shimon and Levi as tribes; individual members of the tribe could presumably be granted positions of importance if they showed themselves fitting for it. Importantly, Moshe's leadership was not a dynastic position passed on to members of his tribes; after his death, the leadership of the people went to Yehoshua, from the Tribe of Efrayim (*Bemidbar* 13:8).

<sup>5</sup> See *Shoftim* 1:2-4, 17-19; *Yehoshua* 19:1-9; *Shemuel I* 27:5-6; 30:13-14; *Shemuel II* 24:5-8; etc. Also, see John Skinner, *A Critical and Exegetical Commentary on Genesis*, Charles Scribner's Sons: New York, 1910, p. 518.

<sup>6</sup> See, for example, *Devarim* 10:8-9.

<sup>7</sup> *Devarim* 12:18; 14:27; 16:11.

<sup>8</sup> *Beresheet* 49. In contrast, Targum "Yonatan" (*Beresheet* 49:7) posits that the reason that Shimon and Levi were not allowed to rule territories is that they were too strong, not that they had moral flaws.

<sup>9</sup> Sternberg points out (ibid., pp. 467-472) that it is not at all clear that only Shimon and Levi looted the city; it seems that all of the brothers joined together in the looting.

<sup>10</sup> "After Kibiyeh," first published in *Be-Terem* 1953; republished in *Yahadut, Am Yehudi u-Medinat Yisrael*, Tel Aviv: Schocken, 2005, pp. 240-245. See also his *Sihot al Parashat ha-Shruya*, Israel: Hemed, 2004, pp. 136-137.