COMMUNAL DEMOCRACY AND LIBERAL DEMOCRACY IN THE JEWISH POLITICAL TRADITION

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This article describes the emergence of liberal democracy, then compares and contrasts liberal democracy with communal democracy, showing the latter to be a prior form of democratic self-government. It then discusses the two in the perspective of self-government and rights, the two dimensions of democracy. Having given the United States as the best example of liberal democracy and Switzerland as the best modern example of communal democracy, it then goes on to explore the Jewish political tradition and how it is also an example of communal democracy. The article then turns to the crisis of modernity and the Jewish polity and how the modern commitment to liberal democracy won over a majority of Jews even as it posed problems for the Jewish polity, examining classical Judaism and pluralism, looking for accommodations between the two in the contemporary Jewish polity. It suggests a series of accommodations that have been developed, especially for less traditionally observant Jews, and examines their implications for the Jewish political tradition. In conclusion the article suggests that a bridging between modern conceptions of liberal democracy and premodern conceptions of communal democracy has begun and that one way to help that bridging would be for Jews to turn to the concept of federal liberty as it was developed by the English Puritans and their heirs out of the biblical tradition, at the beginning of the modern epoch, as a source of ideas and directions to pursue.

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The Emergence of Individualistic Democracy

For the last decade of the twentieth century it seems to be conventional wisdom to hold that the only real democracy is liberal or individualistic democracy as it emerged from the thought of the great seventeenth century political philosophers, most particularly Hobbes, Locke, Spinoza and Harrington; and from the English experience of the Civil War and most particularly the Glorious Revolution, as it has evolved in theory and practice since then. Liberal democracy has its roots in methodological individualism, namely, the view that every individual is actually or potentially sovereign by nature and only by leaving the state of nature through a political compact enters into society, or, more accurately, civil society.[1] Civil society, in those terms, is a socio-political order informed by an agreed-upon structure of government and authority but one in which the polity is not all-embracing but, rather, leaves substantial space for individual independence and public activity based upon voluntary association and cooperation. While recognizing the inevitable need for government and authority, the individual was conceived to be the measure of things, protected by his or her natural rights and a civil society organized to secure them.

Liberal democracy, then, can be defined by its theory, its form, its culture, and its practice. The theory of liberal democracy emphasizes methodological individualism or the individual standing naked in the world until he binds with other individuals to establish civil society and government. All institutions are subordinate to the individual or perhaps to the civil compact among individuals.

From here on there are two theories. Under one, once established, the institutions of government constitute a state; the individual lives within the state, protected by his natural rights and the constitutional means established to protect them. Any institutions standing between the state and the individual are defined as mediating institutions, they are voluntary and their standing is subsidiary to both the individual and the state. As institutions they do not have rights, only such protections as derived from the natural right of individuals to freely associate with one another.

The second theory holds that all associations of individuals, public and private, are not only established by compact or contract but remain associations, differing only in their purposes and degree of comprehensiveness. Under this theory, the institutions of governance do not constitute a separate "state" but rather the largest and most authoritative set of institutions in a particular civil society. While individuals may by free compact allocate to the institutions of government powers of coercion — indeed they must in order to survive — this does not change the basic reality that all associations are freely established by combinations of individuals and may be altered by them through agreed-upon procedures. Under this theory, not only is there no state to be reified but there are no collective institutions with rights of their own. As in the first theory, they are protected only to the extent that the natural right of free association of individuals extends them subsidiary protections.

Liberal democracy takes several forms but invariably requires a basic covenant or compact translated into a constitution of government and a declaration or bill of rights (there is a difference between a "declaration" or a "bill" with the former more a statement of constitutional principles and the latter more a binding constitutional law), establishing a system of popular institutions of government whose members are chosen by free election (directly or in some cases indirectly). Those institutions will be charged with and capable of acting to protect and defend individual rights and will include checks and balances so as to provide effective limits on the exercise of political power.

The political culture of liberal democracy must include, inter alia, commitment to the individual as the main building block of civil society, a sense of mutual tolerance and respect among members of the political community, a commitment to the democratic processes delineated above, and self-restraint in pursuing one's political goals based on respect for the rights of others including minorities. All these must be reflected in political practice.

In the intervening centuries, liberal democracy has become even more individual rights-centered in detail and practice than those who originally conceived it may have anticipated. In Europe, the medieval structure of mediating institutions was eliminated or drastically weakened and transformed. The insti-

tutions that survived lost most of their original authority and power, either as a result of governmental action or changing modes of thought (e.g., the drastic decline in the acceptance of religious authority). What remained were strong class and ethnic divisions, despite revolutionary efforts to eradicate them.

The United States — the model liberal democracy — was a modern, that is to say, post-medieval civil society from its founding.[2] There new forms of voluntary institutions developed in the seventeenth, eighteenth, and nineteenth centuries which became part of the warp and woof of American civil society. All Americans were expected to find a network of institutions and to be rooted within them. Classic American pluralist doctrine as it developed was based on a considerable amount of free individual choice and people were not expected to be bound into communities or their institutions from birth. Migration and changing affiliation was an accepted part of the American experience, but at some point individuals were expected to find their place and stay with it.

In the twentieth century this voluntaristic "pluralism of associations" was challenged and, after the 1960s, replaced by a "pluralism of individuals" anchored in a new understanding, both ideological and constitutional (through Supreme Court decisions), of individual rights as precluding the long-term binding of individuals even by agreement past the time when the individuals so bound consent to be bound.[3] To give an example of how far-reaching the change was, in pre-modern times marriage between a man and a woman was essentially a linkage of families as much as a union of two people. For Catholic Christians, marriage was freely entered into but, once covenanted, was forever. In the modern epoch, marriage became increasingly a matter of the individual choice of the two parties, but it was still expected that the parties would consider the families and communities of which they were a part to maintain religious, status, and certainly racial boundaries. Even in the liberal United States, where divorce was legal, marriages could be dissolved only for real cause (however defined) and then with the risk of stigmatization. In the post-modern epoch, all of these barriers have fallen. Marriage is considered strictly an individual matter and if one of the couple tires of the other, divorce is an accepted and easily obtained step.

Communal Democracy: A Prior Form

This sea change has advanced so far in the name of democracy that many people in the contemporary Western world have forgotten that democracy in some countries and among some peoples developed along different lines. The Swiss, for example, developed communal democracy 700 years ago or more, whereby individuals were bound by custom and condition to communities but were full participants (originally just the men, of course) in guiding the life of the community and determining its governance. The Swiss did not have to go through a process of rejecting the bonds of community in order to achieve democratization. Quite to the contrary, they fought for democracy to preserve those bonds. Just as one can learn about individualistic democracy from the United States, one can learn about communal democracy from the Swiss experience.[4]

Communal democracy begins from the theoretical premise that communities as well as individuals are of nature and that the individual finds his or her rights best protected within the framework of his or her community. To be democratic, that community, even if its origins are an organic outgrowth of its past, must at some point establish or reestablish its existence and the relationships among its members on the basis of a covenant or compact which either constitutes or leads to a constitution of government including means for protecting rights or liberties, both communal and individual. The theory of communal democracy gives the community a political status in its own right.

The form of communal democracy must include the fully republican elements of popular participation at all points in the process of governance, albeit with a greater emphasis on achieving consensus rather than winning by majority vote. The institutions of communal democracy are constructed accordingly since the maintenance of community is as important as the satisfaction of the individual. Indeed, the two are presumed to be in no small measure inseparable. The political culture of communal democracy is oriented toward the kind of self-restraint that comes from multiple and multigenerational interlocking ties needed to preserve community while also emphasizing a concern for the direction the community will take. While it emphasizes consen-

sus, it also allows for vigorous contests to define the consensus. The resolution of issues must ensure that everyone receives an appropriate piece of the communal pie. It is oriented more toward consultation than confrontation in decision-making, although confrontational methods may be used to bring about consultation under appropriate circumstances. How this is done varies in practice in different communal democracies. In any case it is expected that the individual will share with the community as part of maintaining his or her place within it. The community itself rests not only on shared history and fate, but on shared norms.

The system of liberal democracy that developed out of seventeenth century political thought and the modern political experience originally preserved elements of democracy. However, as radical individualism and liberal democracy became essentially identical, there was no place for *a priori* community. Indeed, the very idea of shared norms became difficult in the face of relativism, a doctrine that went hand in hand with radical individualism. Nevertheless, the human need for community remained. To accomodate it in the twentieth century, the concept of liberal democracy was enlarged by the idea of pluralism. In essence, the idea of pluralism was developed by those who, endorsing the individualistic and rights-centered understanding of liberal democracy, wanted to make some space for the preservation of voluntary group identities as well. Thus pluralism came to mean not only the right of every individual to choose his or her associations and commitments, but also the obligation to recognize the existence of groups without judging them within the body politic, provided that such groups existed on a strictly voluntary basis. Today liberal democracy can be said to rest on the twin pillars of individual rights and pluralism which are in some quarters defined as the sum and substance of democracy.

Self-Government and Rights: Two Dimensions of Democracy

In the recent debates on the subject involving Jews in Israel, as well as the diaspora, democracy seems to have been equated

by the majority almost exclusively with individual rights and pluralism and with their most individualistic variety at that. That is only half the story. Even liberal democracy can be understood as having at least two dimensions: 1) self-government, that is to say, meaningful participation of individual citizens in the establishment of the polity in which they live and in its subsequent governance; 2) individual rights, that is to say, the right of every individual to develop for him or herself a way of life and a set of beliefs and opinions appropriate to it, consistent with agreed-upon common norms, and to live accordingly, with minimum interference on the part of others, including and especially, on the part of government.

Neither self-government nor individual rights are absolute. Living in society requires the tempering of all in the face of the realities of the human condition, but, for those who believe in them, they remain not only basic aspirations but basic requirements for the good society.

The Traditional Jewish Polity[5]

Like the Swiss, the traditional Jewish polity, following the classic Jewish political tradition, also followed the path of communal democracy. Let us examine that more closely. The Bible makes it clear that God and the Jewish people established an initial relationship through covenant, and God played the major role in setting forth the constitution, especially the religious and moral constitution of the people. Ultimate sovereignty is God's, but day-to-day governance, including most constitutional decisions, is in the hands of the people within the framework of the Divine constitution.

When it comes to democracy as self-government, the classic Jewish political tradition is very positive indeed. In political matters, the Torah makes it clear that there is no single preferred regime (not even the Davidic monarchy which later was raised to messianic status, especially after it no longer existed), and that it is up to the people to establish political systems appropriate to the circumstances that must meet basic moral, social, and religious requirements. Thus an acceptable political system must be just and pursue justice; it must provide for the care of

the less fortunate (the biblical "widows and orphans"); and it must maintain the religious constitution of the Jewish people, as interpreted by the judges of the time. It must also be republican, rooted in popular consent and involving the people in governance.

Let me reiterate: there is no doubt about the republican character of the classic Jewish polity, nor has there been throughout Jewish history. The particular character of Jewish republicanism had a certain aristocratic tinge because of the prominent role it gave to notables from leading families, and priests, prophets, and sages who had responsibilities for interpreting the Torah, all of whom had to share power in some way. Even when this led, at times, to the appearance of oligarchic rule in the ancient Jewish polity and in diaspora Jewish communities, as degenerated forms of aristocratic republicanism, in every case the regime remained republican. According to the Torah and *halakhically*, it must be constituted by all of the people, including women and children, and it may be changed by the people. Whatever the problematics of counting women in a *minyan* for prayer, the Bible makes it clear that they were required to be present and counted at the great constitutional ceremonies establishing the edah (the Jewish polity), its covenants, and its subsidiary *kehillot*.

There is no question about the communalism of the Jewish polity. Properly hedged, one can even speak about communal democracy in the Jewish polity as at least not a foreign import, without trying to claim that Judaism was democratic per se. Democracy per se was not defined as a goal of the Jewish polity, but there was a striving for some kind of a mixed regime with strong democratic elements for certain purposes and aristocratic elements for others. Under some conditions monarchic elements did exist. Overall, the effort to balance the rule of God and the rule of Jews generated each particular combination in time and place. The degree to which Jews saw themselves as ruling themselves as distinct from being ruled by God probably had some impact on the character of the institutions involved, though I myself would be hesitant to say whether the impact was positive towards democracy or negative. That is to say, one could make a case based on the sources that, in recent times, when Jews saw themselves ruled directly by God they were more democratic

and when they saw themselves ruled less directly, they were less. On the other hand, one could also make a case for the reverse in the Middle Ages and in modern times. There needs to be more research on that issue (and there are piles and piles of materials available in the archives of the Israel Historical Society and others that nobody has ever opened). While I would be very hesitant at this point about drawing conclusions one way or another, a strong case can be made that within whatever parameters of self-definition used at the time, the pre-modern communal self-government of the Jews was certainly republican and at times had strong democratic elements.

None of this would fit all that well under modern definitions of democracy; not in terms of universal suffrage, the principles on which suffrage was extended, questions of individualism and pluralism, and the like. All of these belong to the category of liberal democracy which clearly introduced a new dimension. The problem of reconciling the two within the Jewish polity remains one of the primary tasks of that polity today as it has been for the past 200 years.

With regard to communal democracy, there seem to be two critical elements to be noted: the importance of custom and the importance of consensus. Both are critical elements in terms of defining what is the community and what does the community expect, and serve as guidelines for wider participation in decision-making. In other words, if people shared the same customs and were committed to achieving a consensus around a particular way of life, it was not a problem if decisions were in the hands of the many instead of the few; that the distinction with regard to the many and the few had to do with other extraneous factors — wealth, social status — elements that are present, as it were, in any discussion of human polities that tend to limit the participation of the many or favor the participation of the few, but once custom and consensus were accepted by everyone or virtually everyone, they became binding forces.

In that sense, drawing from Alan Mittleman's article, the emphasis on shared practices is a good point. It also is very common to communal democratic systems. The Swiss may have done so through the way they handled pasturing animals and the Jews may have done so through Talmud Torah; both are shared practices.

We do have to add that matters are not quite that simple with regard to the Jewish polity because, after all, its constitution is a deliberate effort to limit the influence of custom and to transform custom. The Torah as the Jewish constitution has to be seen as a revolutionary document. It was designed to take a people that had common customs and either to force them to abandon certain of those customs or to transform those customs into ones that were at the very least compatible with the Torah or perhaps were new wine poured into old bottles to make them not only more compatible but actually extensions of the effort to revolutionize the Jewish people through the Torah.[6]

It is true that custom reasserted itself in Jewish life over the next several millennia as the Torah became the basis for custom, but still there is the constant recourse to first principles, of varying degrees of strength, but periodically going back to the Torah and attacking the existing customary system. Certainly modern Jews have made it a point to attempt to go back to first principles, whether the Reform movement's concern with "Prophetic Judaism" (which has its problems) or Zionism's "Back to the Bible" movement, in some quarters using a secularized Bible to overcome the heritage of talmudic Judaism. There have been other periods or situations where there has been recourse to first principles — for example, in the high Middle Ages to construct a constitutional basis for Jewish communal life.[7] So, in the Jewish political tradition custom is necessary but not sufficient. That is extremely important in defining the communal and democratic dimensions and the limits on both in the history of the Jewish polity.

There is also an emphasis in communal democracy on common and mutual obligations rather than on individual rights. This is universal in communal democracies. Even the most democratic of communal democracies by the standards of majoritarian democracy or consensus democracy, whichever one chooses, emphasizes the common good as prior to individual rights. True, they see a convergence along a whole host of fronts, but if there is a divergence, common good takes precedence.

In all of Jewish history, with the possible exception of small congregations here and there, there are no cases of autocracy, of one-man rule, certainly none beyond the arena of the local

community. The one possible exception was Herod, who was imposed upon the Jews of Eretz Israel by the Romans. He was given power through nominally legitimate processes and then usurped that power to eliminate the other instruments that shared power with the king within the constitution.

This leads to the other dimension of Jewish republicanism, namely, that in the traditional constitution and throughout Jewish history power has always been divided among three domains, known in traditional Hebrew as *ketarim* (crowns): that of *torah*, responsible for communicating God's word to the people and interpreting the Torah as constitution to them; *kehunah* (priesthood), responsible for being a conduit from the people to God; and *malkhut*, which may be best translated as civil rule, responsible for the day-to-day business of civil governance in the *edah*. While there have been struggles for power among these *ketarim* and times in which one was stronger than the other, all three, particularly *torah* and *malkhut*, have always been actively present in the governance of every Jewish polity from the local arena to the people as a whole.[8]

According to classic Jewish sources, the best Jewish regime is a kind of aristocratic republican mixed regime with the aristoi being essentially the leaders of the *keter torah*. Perhaps the best modern Jewish regime in the diaspora is a kind of trusteeship with the principal trustees being the *keter malkhut*. This is a fundamental shift that has taken place but within limits; that is to say, a trusteeship is also a kind of aristocratic republicanism. The major difference is that the aristoi draw their aristocratic element from above. The trustees presumably draw it from below.

When speaking of the *keter torah* today, we must speak of *dayanim*, of senior religious leaders, of Jewish intellectuals, many of whom are both professors and rabbis, who are seen as speaking for the spiritual dimension of Jewish life. Most congregational rabbis today should be considered to be of the *keter kehunah*, that is to say, they serve as channels for their congregants to express their efforts to connect with a transcendent power beyond them.

There is a certain blurring between *ketarim* that came in the nineteenth century when Jews abandoned the Jewish polity. In the twentieth century as the Jewish polity has been revived, the

articulation of each *keter* has become sharper. In Israel there is
much less blurring than in the diaspora, but there is much less of
it now in both than there was fifty years ago. While there are
some people who hold positions in more than one *keter*, by and
large, the people who bear the title rabbi and sit with the *keter
malkhut* are not *keter torah*. They are people who may have been
given their formal titles through *keter torah*, but actually they are
responsible to other leaders of *keter torah* if they have not shifted
over to keter *malkhut* altogether.

The rabbis who sit in the government and the Knesset are
musmachim (ordained rabbis) from yeshivot but they are not any
of the Moetzot Gedolai or Hakhmei HaTorah (Council of Torah
Greats or Sages). They are politicians whom the *keter torah* has
inserted into the process of *keter malkhut*, but they are not
themselves the leaders in *keter torah*. The ultra-Orthodox world
indeed like the *keter torah* to be dominant or at least to be a *vaada
paratetit* (a review committee with veto powers, as in Israel). But
that is not the same as wanting to take over the responsibilities
of *keter malkhut*.

Jews have always had people like that and it is not so unique.
But the fact of the matter is that, basically, whatever straddling
people like that were able to do also kept them from usurping the
other domains. They, too, had to specialize, in different times in
different ways, but even they had to specialize; that is the point
to make.

The Lubavitcher Rebbe, for example, literally claims all
three. His followers openly say about him that he heads all three
ketarim. That is the nature of *hassidut*, but that is a corruption of
the tradition.

The relationship between Judaism and democracy has to be
judged whole and it must be judged in the context of the Jewish
polity as a communal democracy whose pre-modern origins
antedate the development of liberal democracy. Thus when it
comes to the popular constitution of the polity, the responsibil-
ity of the governors to the governed, and a proper separation
and distribution of powers among the governors — the three
great criteria for democracy — the Jewish polity passes every
test. The proof of the pudding is that in Western civilization the
Bible is considered the foundation of democratic republicanism
and has been so treated by democratic reformers throughout the

history of the Western world. The strong biblical base of American democracy, which grew out of the Protestant Reformation in Europe and which remains vital today, is a case in point.[9] The weakness of Jews (and other peoples) has been in the inventing of appropriate institutions for the successful implementation of these principles. Sometimes Jews did and sometimes they did not.

The Crisis of Modernity and the Jewish Polity

With the coming of modern individualism and liberal democracy, the classic Jewish political tradition was — and is — confronted by an unavoidable challenge. Modern liberalism and individualism, by freeing individual Jews from the bonds of Torah, shattered the traditional constitution of the Jewish people and have forced it to reconstitute itself along new lines. The struggle to find appropriate lines has been at the heart of Jewish politics for at least the last 200 years. That struggle involves the confrontation between the theories and practices of communal and liberal democracy and the search for some synthesis of both forms.

The most visible aspect of this struggle today is between the ultra-Orthodox and the secularists in Israel, but that is by no means its only manifestation. The establishment of a Jewish state itself was one answer to the modern challenge. Its socialist founders, while militantly secularist in most cases, also argued for a collectivist form of communal democracy while essentially rejecting liberal democracy. The extreme forms of their secular, socialist collectivism at times bordered on totalitarianism, but were kept under control because adherence to other ideas and institutions remained voluntary. That version of renewed communal democracy has since been abandoned.

There also were adherents of Western liberalism among the Zionist founders. Even these Zionist adherents of liberal democracy emphasized the organic character of the Jewish nation, assuming that if the Jewish nation were living in its own land, the principles of liberalism would not contradict those of nationalism. In the post-modern epoch, this too has proved to be an erroneous assumption.

In the Eastern European diaspora, a modernized view of
Jewish communal democracy was asserted by the diaspora au-
tonomists and nationalists. In the West, on the other hand, those
Jews who embraced liberal democracy and fought for Jewish
emancipation on liberal and individualistic grounds, abandoned
and rejected the very existence of a Jewish polity, seeking to
depoliticize Judaism, abandon Jewish peoplehood, and become
a liberal Western religion like every other one.

In a certain sense the idea of pluralism, which was invented
by American Jews, was a liberal democratic way of trying to
bridge the religious and ethnic (read "national") dimensions of
Jewish existence on a voluntary basis under modern condi-
tions.[10] Pluralism became particularly normative after the estab-
lishment of the State of Israel, an act that brought Jews back to
the reality of Jewish political existence, even as the fact of being
Jewish and how became even more a matter of individual choice
in the U.S.A. That is why pluralism has become the cornerstone
of the American Jewish faith.

Classical Judaism and Pluralism

Judaism is emphatically pluralistic when it comes to recog-
nition of the separate identity of different nations. The biblical
vision, regularly reaffirmed in the Jewish political tradition, is
that the nations and peoples of the world have a right to exist and
be autonomous under God. In this sense Judaism, unlike Chris-
tianity and Islam, is not ecumenical. It does not seek a single
world state, an *ecumene*, in which all national and religious
differences are obliterated. Quite to the contrary, the Jewish
vision of the messianic world order is one in which all nations
recognize the sovereignty of God but retain their separate na-
tional and perhaps even religious characteristics, if monotheis-
tic. This is a view reiterated by the prophets of ancient Israel and
canonized in the Bible. It is equally a tenet of modern Zionism,
which offered a socialist or secularist variant for God's sover-
eignty, which, while profoundly untraditional, follows the sense
of the tradition in this respect.[11]

Judaism is not pluralistic when it comes to recognizing
paganism among the nations — it does not believe that anything

and everything goes in such matters — and classical Judaism does not accept the permanent legitimacy of a pluralism that rejects the minimum Torah requirement of acceptance of the Noahide covenant and commandments, that is to say, it is not relativist. The question in both cases is one of interpretation. Jewish monotheism is very strict indeed on the religious level. Rejecting the one God is not acceptable human behavior.

In fact, Judaism recognizes that humans do have the freedom to choose, even in the matter of belief in one God, but are subject to God's response as He chooses if they choose to reject Him and His covenant. A choice against God represents freedom to stay outside of the moral order, not to be democratically accepted as part of it and to participate in its governance. Such freedom is like the freedom of states in international relations; it is anarchy, not order, while democracy implicitly and explicitly reflects the existence of order.

This article cannot do justice to the problem of pluralism within Judaism. In traditional Judaism it is accepted that there is one Torah binding on all Jews, and a clear *halakhic* tradition growing out of the Torah. Still, at the very least, regional and local differences in customary observance are recognized as legitimate — some even say binding. Moreover, since the Middle Ages, it has been difficult to overrule local rabbinical courts on any *halakhic* matter. In civil matters which are equally within the province of the Torah and its *halakhah* in traditional Judaism, there is even greater latitude. Suffice it to say that Jewish tradition recognizes that within the four ells of Torah there is considerable room. Moreover, any honest look at Jewish constitutional history clearly reveals that the interpretation of Torah itself has changed greatly from epoch to epoch. In other words, there have been a series of reconstitutions, the very fact of whose existence suggests the possibility of a real degree of pluralism in such matters. My colleague, Professor Stuart Cohen, and I have traced these reconstitutions in considerable detail in our book, *The Jewish Polity*.[12]

Obviously, a majority of contemporary Jews no longer accept this formulation as binding. In fact, it is rejected by the ultra-Orthodox and the non-Orthodox alike, but in different ways.

Contemporary ultra-Orthodoxy, with its effort to develop a monolithic approach to *halakhic* and religious matters, is just as erroneous as contemporary liberal Judaism which claims that there is no legitimate authority in Jewish life, that any Jew can do whatever he or she wants in matters *halakhic* and religious. In fact, even most monistic Orthodox recognize a certain pluralism within *halakhah*. That is why today Jews have a Chief Rabbinate, the Moetzet Gedolai HaTorah (Agudath Israel's Council of Torah Greats), the Moetzet Hakhmei HaTorah (the Sephardic Council of Torah Sages), and the various *batei din* (religious courts) of the extreme ultras. Whatever the fights among their members and partisans, the legitimacy of all is more or less mutually recognized.

Non-Orthodox religious Jews, particularly in the United States, have made religious pluralism within Judaism their standard and have rallied around it with increasing frequency in recent years. For Reform Jews who have unqualifiedly accepted the most radical contemporary premises of liberal democracy, individual rights and pluralism have become the ultimate values, superceding anything in Jewish tradition that they see as standing in their way. For Conservative Jews the problem is more complicated since they claim to be within the framework of *halakhah*, but the thrust of their decision-making has been to try to walk a middle course. In Israel, secular Jews, like American Reform, increasingly identify themselves exclusively with liberal democracy, individual rights, and pluralism as understood in that context, having abandoned the secular collectivism of their parents.

Accommodations in the Contemporary Jewish Polity

All of this is true in the religious realm. It is testimony to the importance of that realm for Jewish existence, even in a secular age, that all efforts to establish a Jewish polity entirely separate from the religious realm have failed. Any and every Jewish polity, including the State of Israel, must come to grips with that religious dimension. At the same time, a tentative resolution or accommodation of communal and liberal democracy, especially in Israel, has led to a much stronger separation between the *keter*

malkhut, on one side, and the *keterim* of *torah* and *kehunah*, on the other.

The contemporary *keter malkhut* not only is a separate arena but its standards have become secular standards. No longer must its leaders or its messages be contained within the framework of the traditional constitution of the Jewish polity in every case. The State of Israel, for example, is a secular democratic state under the rule of law, not *halakhah*, as secular Israelis and the ultra-Orthodox both agree. (Only the religious Zionists are still trying to meld *hok* and *halakhah* in the state.) The secular left fiercely guards this distinction. Yet the Israeli regime must make provision for all three *ketarim* and for the peculiarly Jewish synthesis of religion and polity.

Israel's *keter malkhut* is secular and its leaders are chosen on a secular basis (although rabbis can and do stand for election to the Knesset and serve in the government, but they do so as secular leaders). Nevertheless, even the Knesset saw fit to shift the basis of Israeli law from the English to the Jewish legal tradition.[13] The official *keter malkhut*, the Israeli Chief Rabbinate, with its two chief rabbis and chief rabbinical council, the local rabbinical courts and local chief rabbis, were established and empowered by law of the Knesset, and the two chief rabbis are elected by the Knesset. While there are other elements in the *keter torah* that are not formally dependent on the Knesset for their existence, their institutions are funded heavily from the state budget. The *keter kehunah* in Israel is manifested by the local *moetzot datiot* (religious councils) that are responsible for grassroots supervision and other state activities in the field of Jewish ritual or the provision of state support for those activities.[14]

Similar arrangements are to be found in diaspora communities. Following the pattern of the British government, the Board of Deputies of British Jews, the *keter malkhut* of Britain, supports the chief rabbi and the *beit din* as the representatives of the *keter torah* and the United Synagogue for the *keter kehunah*. Even in the United States, where for years the federations and the synagogues tried to stay apart on the separationist grounds dominant in the U.S.A. with regard to "church" and "state," the last two decades have witnessed a growing together of these institutions. In France, following the way of the country, the *keter kehunah* was dominant for years in the form of the Consistoire.

Equivalent institutions have emerged in the *keter malkhut* (CRIF and the FSJU), and the *keter torah* itself is developed from out of the Consistoire structure.[15]

What about contemporary Israel? In the Jewish state, the regime that was chosen and adjudged the best in the pioneering period was consociational, in the sense that consensus democracy tries to keep everybody in the system, even at a price. Consociationalism in Israel was developed at the end of the modern epoch. By the mid-1960s, it had ceased to be the comprehensive system it was in the 1930s, 1940s and 1950s. Today it is a residual system in many respects. The parties still reflect the effort to keep diverse publics tied together within the system but the people no longer see themselves as fitting neatly into the various camps and parties, the movements that made classic consociationalism viable in Israel.

The same thing is true in the diaspora. Increasingly, the trusteeship notion is under assault by groups that want to do it themselves, that are less willing to entrust their participation or money or anything else to trustees. This is more than demanding greater accountability. They want to have "hands-on" control. Surely they want greater accountability, but even their willingness to have accountable office-holders has diminished somewhat. I would not try to speculate what will develop. We are, after all, only in the middle of the second generation of the postmodern epoch. It is far too early to begin to make any assessments as to what will end up being the best regime either for the state or for the diaspora.

What we can say is that there is likely to be no less of a commitment to democracy, with strong elements of liberal democracy that developed in the latter part of the modern epoch that are part of the Jewish future. Which leaves us with the question of bridging the gap.

It was relatively easy to modify Jewish aristocratic republicanism when it was the norm under the classic regime because of the fact that leaders and other elites were expected to have both occupations and shared practices, and that publics and leaders alike shared a sense of being bound by a common Torah and common Yir'at Shamayim. Modernity and post-modernity has kept the idea that was once more exclusively Jewish and spread it that leadership is not to be a leisure class but to be a

working class. If anything, postmodernity has turned matters around. Leadership is very much a working class whereas the rest of the population is increasingly a leisure class. In every field elites work harder than the ordinary public is expected to work. Now the ordinary public may work just as hard. I do not think the distinction between elites and publics is such an easy one and everybody decides how hard he or she wants to work depending on circumstances, expectations, and ambitions, but there is no question that if one is going to be in leadership position one has to work hard.

But the sharing of practices is a different problem, certainly in the Jewish sphere. If we were to take many of the countries of the West, certainly a country like the United States, the equivalent of shared practices today is sports. That is why the extraordinary emphasis on sports in the United States and increasingly in other parts of the world as well. People do not maintain much in the way of patriotic practices any more. In the United States, people do not serve in the army any more as a shared practice, but they do do sports.

For most non-observant Jews, however, there are no new shared practices of the quality of religious observance and Talmud Torah. Look how many Jews no longer or never participate in those shared practices. "Giving" is seen by some as a replacement, but giving is not a shared practice in the same sense as membership and participation in the congregation. A shared practice involves rituals. The rituals themselves are part of the event. Going to a certain cycle of meetings has become a rather pale shared practice for "giving." If we see how the top contributors to the UJA and Federations give, we see that they have created a kind of neo-Sadducean set of rituals, just as there are traditional Pharisaic rituals of observance, with its own calendar and practices — "dinners," "the campaign," missions, and meetings of various sizes and shapes. In short, it is possible to sketch out the rhythm of people who are active in the *keter malkhut* in the United States. They literally have monthly events through the course of the year that people key themselves up for and participate in.

It is very difficult to develop successful shared practices that have the power of ritual. Seder in the United States, for example, has become a shared American practice as much or more than a

shared Jewish practice. While 90 percent, plus or minus, of American Jews claim that they participate in a Seder subjectively, in many cases it may be a shared family meal, no more, and have no Jewish content to it. To assume that this is a shared Jewish practice is true only at the lowest sociological level. On the other hand, certain religious non-Jews have adopted it as a religious practice in which there is a ritual and a meaning and an activity that is linked to freedom or "roots" with more content than many "Jewish" *sedarim*.

At the same time, Jews may be much more committed to Thanksgiving than the generality of the American population precisely because they can be unambiguously American about it. Thanksgiving was supposed to be a ritual for home and community. Now, however, Thanksgiving is becoming a restaurant-centered practice for many. Going out to buy a meal commercially means that it is changing to become questionable as a ritual. The Detroit Lions game is more of a ritual on Thanksgiving today than is the meal for more and more people.

In Israel, voting is very definitely a meaningful ritual practice. The difference between voting in Israel and voting in the United States is stark. In Israel it is a Shabbaton, a holiday. People go to the polls in their neighborhoods and see their friends and neighbors voting along with them in a holiday spirit. In Israel, there is almost universal voting, officially about 80 percent for Jews and Arabs alike. Given the way registration is conducted there, studies have shown that 10 percent of the people on the list do not live in the country and another 10 percent are comprised of aged people, the sick, the traveling, and everything else. An 80 percent turnout is as close to 100 percent as is physically or humanly possible. The state is still new enough that the act of voting is truly a very important ritual practice. In the United States we can see by the low voting turnouts how voting has ceased to be a ritual practice in that sense.

The problem of maintaining ritual practices is linked with maintaining a rhythm of life, following a calendar that has meaning. That is where, in the United States, Thanksgiving, for example, fits into a calendar reflecting the rhythm of the American way of life. It is a sign of the times that fewer Americans

today talk about the American way of life, people talk about lifestyles of Americans. It is a very telling shift in language.

Clearly, there is a rhythm of Jewish life and there are those who live by it. In Israel, Jews, whether they are religiously observant or not, must take note of it. Outside of Israel the number of Jews who follow that rhythm in its fullness, in its completeness, is small. Some communities have created another rhythm.

In both Israel and the diaspora this accommodation begins with the liberal democratic distinction between public and private spheres, then defining the public sphere as a place where traditional religious norms including certain minimal norms of observance (e.g., *kashrut* and basic rituals of the Jewish rhythm at public institutions and functions) are to be maintained. In essence, public institutions have a covert or subsidiary educational function designed to teach Jewish tradition in some variant of its classic form. At the same time every individual clearly has the right to define his or her form and degree of Jewish expression including religious expression.

Moreover, in Israel matters of personal status, especially marriage and divorce, are by law left in the hands of the recognized religious leaders of the various recognized religious groups within the state — Jewish, Muslim, and Christian. This enables the state itself to be relatively neutral toward the religions of its citizens while at the same time protecting the communal dimension of those religions, particularly the Jewish and Muslim. This is particularly important in a state of the Jewish people where the religious, ethnic and national identity of Jews is so intertwined. In turn the state provides support for the educational, cultural and religious activities of all of its ethno-religious communities.

Implications

Were all this simply a matter of biblical teachings, we might say that Judaism has a classic tradition in harmony with democracy but that it has long since disappeared. That is emphatically not the case. There is a Jewish political tradition which has persisted as an integral part of Jewish tradition in which all of

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these principles have found expression throughout Jewish his-
tory, while the Jews were in their land and in the diaspora, not
without struggle and not perfectly by any means any more than
can be said of any other people, but in real ways. We at the
Jerusalem Center for Public Affairs have been exploring that
tradition since our founding and have compiled detailed evi-
dence for its existence and influence, citing chapter and verse.
We have published the results of our investigations under the
best academic auspices and in more general form, making them
available to a variety of audiences. Moreover, we have empha-
sized the importance of the Jewish political tradition in helping
Jews to become better citizens of Israel and the Jewish polity as
a whole. For us, the tradition offers standards of evaluation of
Israel's political institutions and behavior in proper democratic
fashion, as well as those of the diaspora.

The principal way in which the Jewish polity has tried to
bridge the gap between communal existence and individual
need up to now is through a recognition of the stronger separa-
tion of public and private which fits in with liberal democracy.
Individuals are free to choose how they want to live their lives
but the public calendar will remain a calendar that follows the
principles of the Jewish rhythm.

This is different from the pattern of 80 to 100 years ago. When
Jews ceased to keep kosher, they ceased to keep kosher in their
institutions as well as in their private lives. But, in the late 1960s
and subsequently in the American diaspora, which had gone
furthest in a rejudaization of the public institutions, some stan-
dards of expected *public* observance were established. That is
when American Jewish leadership came to the point where they
wanted to bridge the gap. Before that they had accepted the
premises of modern liberal democracy whole and were aban-
doning the older premises of communal democracy entirely.
After the Six-Day War and the events of the 1960s, not only the
the United States but in France and elsewhere as well, those who
were active and concerned at all recognized the importance of
public rejudaization. That is when the effort to bridge the gap
began as a postmodern phenomenon.

Is this public-private distinction tenable? That is an open
question.

Even if it is transmitable or it continues to exist in Israel for political reasons, there may be more chance for the situation to change in Israel than in the diaspora. Precisely because there are boundaries and it is not so easy to stop being Jewish, there may be more insistence on the part of the secular majority that public institutions square with private belief and practice. A diaspora Jew who chooses to go to a synagogue dinner, to be a member of a synagogue, or to be active in a community federation, expects to get kosher food at the annual banquet and say Birkat Hamazon after the meal. It is part of being Jewish. But if someone lives in Israel and is told that he or she must serve in the army for three years and while in the army, must eat kosher — one cannot put milk in one's coffee so easily — there may be a point where secular people will say, "Enough, we refuse to be forced to live this way when we are doing our service to our country. You are asking us to fulfill our military obligations and we will not be forced to be what we are not in the process." So in a certain respect, the possibility is even more likely that this form of bridging will run into trouble in Israel if the cleavage between public and private behavior grows too great.

The second question is, is there sufficient bridging? Assuming we could at this point strengthen that form of bridging, have we found a sufficient solution to our problem? Let us say everybody agrees to keep the liberal democratic norms in private behavior but, because we want to maintain a communal framework as well, we will maintain common public norms.

Now that liberal democracy has triumphed in both the Western and ex-Communist worlds and in its triumph has taken on more radical forms, its weaknesses as well as its greatness are becoming exposed. By excessively atomizing society, it has achieved the unintended consequences of weakening the social bonds necessary for even liberal civil society to be a good society, not to speak of its inability to take cognizence of the very real existence of communities whose tenaciousness constantly surprises the partisans of undiluted liberal democracy. Thus, if the classic Jewish political tradition is no longer able to alone provide the answers that moderns and post-modern humans seek, the contemporary refusal of many Jews to abandon either communal democracy or liberal democracy and the struggle of

the Jews as a people and a polity to find an appropriate synthesis should speak to contemporary humans.

Democracy and Federal Liberty

In this article we have confined our discussion of communal democracy to Switzerland and the Jewish people. As post-World War II political anthropology has demonstrated, there are many other examples of communal democracy ranging from the tribal to post-colonial syntheses of tradition and modernity.[16] Our concentration here on Western models is justified in that those are the models to which the classic Jewish political tradition contributed and to which contemporary Jews adhere.

The Bible emphasizes communal liberty and what the Puritans in the seventeenth century defined as federal liberty, that is to say, the liberty to live up to the terms of the covenant (federal, from the Latin *foedus* meaning covenant), rather than individual liberty, which, as natural liberty, meant the lack of restraint except insofar as nature itself restrains us all.[17]

Communal liberty stands in contrast to atomistic individualism as the highest good. The Jews, like the Swiss, have emphasized individual liberty within the community, not apart from it. This approach differs from the radical individualism espoused by many in the contemporary Western world. Hence those espousing the latter will inevitably accuse Judaism of being undemocratic. Here we have a confrontation between different understandings of what constitutes liberty and, by extension, democracy. Despite its claims, radical individualism is not the only starting point for defining democracy.

We are helped in this by examining the concept of federal liberty. Federal liberty can be interpreted rather narrowly as some would have it or it can be interpreted more broadly. It can be interpreted as having to do primarily with religious commitment as the Puritans did in the past and many of the ultra-Orthodox do today, or it may be interpreted as having to do with the maintenance of constitutional liberties, as the U.S. Supreme Court has interpreted it with regard to racial and gender discrimination. In both cases, judges have relied implicitly upon the principle of federal liberty — which they enunciate under the

terms of what is constitutional and what is not — to modify what would otherwise be, in their eyes, unbridled individualism.

For example, in terms of natural liberty, if a restaurant owner wanted to close his restaurant to use by people of another race, he would be able to do so since the restaurant is his property. However, the U.S. Supreme Court has held that, under the terms of the United States Constitution, a resident of the United States has, explicitly or implicitly, accepted that constitution by virtue of his residence, and cannot so discriminate, since such an act would be unconstitutional. This is precisely what federal liberty is about.

Federal liberty in this sense stands in contrast to natural liberty, that is to say, the right of every individual to do as he or she pleases, restrained only by nature. The latter is only possible outside of society. Otherwise it is both self- and socially destructive to the highest degree. Governments, including and especially democratic governments, are instituted to overcome the deficiencies of natural liberty which lead to anarchy and the war of all against all, whereby the strongest win at the expense of all others. So, if the biblical teaching stands in opposition to unbridled individualism, that is a sign that it is among the best friends of true liberty which is based on restraining natural liberty through covenant.

The distinction between federal and natural liberty is a starting point for the development of a contemporary theory of communal democracy that includes a strong dimension of individual liberty and rights, guaranteed constitutionally. A proper theory of rights and obligations is another dimension. In the Jewish tradition of communal democracy, obligations are the source of rights, that is to say, the covenantal obligations of Jews to be a holy people establish a set of rights for every individual.[18] This theory must then be translated into meaningful practice.

Notes

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4. Denis de Rougemont, *La Suisse: Ou L'Histoire D'un Peuple Heureux* (Paris: Hachette, 1965); Benjamin Barber, *Death of Communal Liberty: History of a Swiss Mountain Canton* (Princeton: Princeton University Press, 1974)

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7. Menahem Elon, *The Principles of Jewish Law* (Jerusalem: Encyclopedia Judaica, 1975).

8. Stuart A. Cohen, *The Three Crowns: Structures of Communal Discourse in Early Rabbinic Society* (Cambridge: Cambridge University Press, 1990).

9. Cf., e.g., William Everett, *God's Federal Republic,* (New York: Paulist Press, 1988).

10. Cf. Horace M. Kallen, *Culture and Democracy in the United States* (New York: Arno Press, 1970); Mordecai Kaplan, *The Religion of Ethical Nationhood: Judaism's Contribution to World Peace* (New York: Macmillan, 1970).

11. Daniel J. Elazar, "Toward a Meaningful World Covenant," *Reconstructionist* 37, No. 6 (September 1971):14-20.

12. *Jewish Polity*, op. cit.

13. "Hok Yesod Hashfita" (Basic Law: The Judicature), in *The Constitution of Israel* (Jerusalem: Jerusalem Center for Public Affairs, 1988).

14. See entire issue "Israel as a Jewish State," *Jewish Political Studies Review* 2:3-4 (Fall 1990): including Daniel J. Elazar, "Israel as a Jewish State"; Alan Dowty, "Jewish Political Traditions and Contemporary Israeli Politics"; Benyamin Neuberger, "Does Israel Have a Liberal-Democratic Tradition?"; Yosef Gorny, "The Jewish State and the Jewish People: Israeli Intellectual Thought from the Six-Day War to the 1980s"; Shmuel Sandler, "The

Origins of the National and the Statist Traditions in Zionist Foreign Policy," and Efraim Inbar, "Jews, Jewishness, and Israel's Foreign Policy."

15. Daniel J. Elazar, *People and Polity: The Organizational Dynamics of World Jewry* (Detroit: Wayne State University Press, 1989); Charles Hoffman, *Gray Dawn* (New York: Harper Collins, 1992).

16. Louis Hartz, *The Founding of New Societies* (New York: Harcourt, Brace and World, 1964); Lucy Mair, *Primitive Government* (London: Scholars Press, 1977); Lloyd Rudolf and Suzanne Rudolf, *The Modernity of Tradition* (Chicago: University of Chicago Press, 1984).

17. John Winthrop provided the classic formulation of the distinction in his "A Model of Christian Charity." See also Perry Miller, *The New England Mind: The Seventeenth Century* (Boston: Beacon Press, 1939) and *The New England Mind: From Colony to Province* (Boston: Beacon Press, 1953).

18. Haim Cohn, *Human Rights in Jewish Law* (New York: Ktav, 1984); Daniel J. Elazar, Jonathan Sarna, and Rela Geffen Monson, eds., *A Double Bond: The Constitutional Documents of American Jewry* (Lanham, Md.: Jerusalem Center for Public Affairs and University Press of America, 1992). See also entire issue "Obligations and Rights in the Jewish Political Tradition," *Jewish Political Studies Review* 3:3-4 (Fall 1991): including Daniel J. Elazar, "Obligations and Rights in the Jewish Political Tradition: Some Preliminary Observations"; Harvey Shulman, "The Political and the Sacred: Political Obligation and the Book of Deuteronomy"; Norbert M. Samuelson, "The Right to Belief in Jewish Philosophy"; Ira Robinson, "Individual and Community: Rights and Obligations as Reflected in Two Nineteenth Century Responsa"; Gershon C. Bacon, "Haredi Conceptions of Obligations and Rights: Polish Jewry, c. 1900-1939"; Alan Mittleman, "Two Orthodox Jewish Theories of Rights: Sol Roth and Isaac Breuer"; and Daniel J. Elazar, "Is There a Practical Way to Bridge the Gap Between Traditional Jewish and Modern Expectations of Rights and Obligations?"