

## DEMOCRACY AND JUDAISM: THE QUESTION OF EQUALITY

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*This essay considers the place of democratic ideas within the context of Judaic political thought, with special reference to the idea of equality. The views of Louis Finkelstein, Simon Federbusch, and Sol Roth on this question are considered. Distinctions are drawn between descriptive and prescriptive concepts of equality, as well as between absolute equality and the uniquely Judaic concept of infinite human value. Also discussed is the conflict between complete equality and absolute liberty and its resolution in the prescriptive concept of equality of negative liberty. The essay concludes that although there are fundamental ideological differences between democracy and the religious and ethical system of Judaism, the democratic form of government has the greatest current potential for accommodating the Judaic search for higher values.*

There can be little doubt that modern Jews, as a rule, tend to be ardent champions of democracy, although it is often not very clear precisely what they have in mind as the objective of their advocacy. The term "democracy" has a natural and welcome resonance for those reared in Western societies, and implicitly carries the promise of a better life for those who live in other parts of the world. It is therefore not at all surprising that over the last half century an increasing number of Judaic scholars

*Jewish Political Studies Review* 5:1-2 (Spring 1993)

have sought to establish connections between the central ideas of democracy and those of traditional Jewish thought, both biblical and rabbinic. Early efforts in this regard were made principally by writers whose primary interests lay in subject areas other than political theory, a circumstance that may help explain the current rudimentary state of the literature on the question. Moreover, since the central purpose of some of these writers seems to have been apology, a desire to demonstrate that Judaism is fully compatible with modern democracy, the literature reflects very little systematic examination of how the fundamental ideas of democracy actually comport with the ethos and imperatives of traditional Jewish teaching. While some recent endeavors in this regard have attempted to approach the question more objectively, much remains to be done to formulate an adequate conception of the political theory implicit in classical Judaic thought. It is the intent of this essay to help set the stage for a more thorough consideration of at least one aspect of the broader subject.

In approaching the matter of a linkage between the fundamental ideas of democracy and Judaism, it will be helpful to first delimit the context within which the relationship is to be considered. We can do this by asking: what is the question that is of central concern and interest in this regard? Is it whether normative Judaism, as it is conceived and practiced today, is compatible with modern liberal-democratic theory? Or, is the question that of whether Judaism itself, explicitly or implicitly, reflects the essential ideas of democracy; that is, that democratic ideas are inherent within the conceptual framework of normative Judaic thought and practice? Put differently, is the relationship of Judaism and democracy primarily a matter of practical political expediency or does it represent a fundamental ideological affinity?

It would certainly seem that the prior question, concerning the compatibility of Judaism and modern liberal democracy, can be answered with a simple affirmation. To the extent that a functioning democracy incorporates a high degree of societal tolerance for cultural diversity, it surely provides a welcome auspice for the pursuit of a distinctively "Jewish way of life," however that notion may be defined within the several streams that make up contemporary Judaism. But, we should not permit

this consideration to obscure the fact that, throughout the troubled history of the Jewish people, the successful conduct of a "Jewish way of life" has also proven to be possible under a variety of non-democratic but reasonably tolerant regimes, at least for limited periods of time. Moreover, tolerance for a Jewish way of life within some basically democratic societies has not always conformed with the high expectations we tend to associate with such. Democracy, *per se*, does not necessarily assure acceptance by the dominant majority of cultural or other forms of demographic diversity. Indeed, majoritarian sentiment has often proven to be highly intolerant of minorities, a consideration that was of particular concern to the founding fathers of the American republic. The question of the compatibility between democracy and Judaism is therefore more of historical than theoretical interest. On the other hand, the second question, concerning the existence of intrinsically democratic attributes within Judaism, is of far greater theoretical interest, and will therefore be the principal focus of this inquiry. Because of the constraints of time and limitations of space, this essay will focus on only a single dimension of the broader issue, namely, the question of human equality as a fundamental societal value in democracy and Judaism, giving special attention to the views of Louis Finkelstein, Simon Federbusch and Sol Roth on the subject.

Before attempting to address the question of the place of the idea of human equality within the conceptual frameworks of both Judaism and democracy, some preliminary remarks about the latter seem appropriate. Without becoming entangled in an extensive exposition of the numerous problems involved in a definition of democracy, it is important for the purposes of this discussion to establish as clearly as possible just what we have in mind when we use the term. As observed by J.W. Hudson a half century ago, "It has been defined quite variously, most commonly as a political theory, often as an economic program, frequently as an ethical ideal, sometimes as a metaphysics, not seldom even as a religious faith, and occasionally as a state of mind."<sup>1</sup> The term is employed in this essay in its common contemporary political connotation as government by popular will. In this regard, it would not be amiss to recall that the concept of democracy has undergone significant change over the course of the history of nations and societies. The democracy of

ancient Greece bears little resemblance to the liberal democracies of the contemporary Western world which, generally speaking, were liberal states before they became democracies. It is also worth noting that, from antiquity to relatively contemporary times, democracy as a concept of government was never held in particularly high regard by political philosophers. Aristotle, for one, considered it to be a corrupt form of governance, albeit preferable to some other corrupt types of regime such as tyranny and oligarchy.

In his critique of democracy, Aristotle observed: "The democratic conception of justice is the enjoyment of arithmetical equality, and not the enjoyment of proportional equality on the basis of desert. On this arithmetical conception of justice the masses must necessarily be sovereign; the will of the majority must be ultimate and must be the expression of justice. The argument is that each citizen should be on an equality with the rest; and the result which follows in democracies is that the poor — they being in a majority, and the will of the majority being sovereign — are more sovereign than the rich."<sup>2</sup> The problem, as Aristotle perceived it, is that equality by itself does not assure quality. Indeed, the presumption of universal human equality may well prove to be a significant obstacle to the realization of the good society.

In the world of antiquity, democracy effectively meant class rule in the interest of the common people, who were and indeed remain everywhere the most numerous social and economic class. Democracy therefore had its greatest appeal to those who chafed under the dominance of the societal elite, as well as to those who sought to manipulate the masses as a means of gaining their own political advantage. In a word, democracy was seen as a political means of pandering to the lowest common denominator within the society and, as such, could not seriously be considered as a vehicle for realizing social progress. The principal flaw of democracy seemed to lay in the notion of human equality that it promoted. The argument that all citizens of the polity were to be considered equal was perceived as serving to undermine the existing traditional forms of authority, thereby removing the culturally based constraints on human conduct that were deemed essential to bringing about the perfection of both man and society. Moreover, manipulated by

demagogues and charlatans for partisan purposes, democracy always appeared on the verge of being transformed into ochlocracy, the rule of the mob. As a theoretical matter, democracy purported to reflect the appropriate system of rule in a classless society, one predicated on the intrinsic equality of all its members. As a practical matter, like all other ancient political systems, Greek democracy was predicated on the domination of the society by a single class, which in this case happened to include the overwhelming majority of the citizens rather than an elite minority. It should be noted, however, that only a small fraction of the population of Athens were citizens and even fewer were actually enfranchised. Athens was hardly a popular democracy in the modern sense of the term.

Given these considerations, it would seem rather improbable that biblical Judaism, which was nearest in time to the emergence of democracy in the ancient world, would have much affinity with the latter. A religious system and way of life which sought to elevate the society of Israel to the highest moral plane, to become "a kingdom of priests, and a holy nation" (Ex. 19:6), would hardly embody those democratic ideas that would quite likely have produced the diametrically opposite effect on its self-proclaimed goals. Greek-style democracy would surely have been inhospitable to the non-democratic authoritarian ethic of Judaism and intolerant of its inherent elitism. It is also debatable as to whether Judaism is ideologically compatible with democratic theory even in its more modern forms and dimensions, both liberal and non-liberal. Indeed, in a recent article Michael Kaniel, who rejects the idea that democracy is inherent in Judaism, argued:

This notion, popular among some Jews, that Judaism is a democracy, is founded on a fundamental misconception. A democracy is "that form of government in which the sovereign power resides in the people, and is exercised either directly by them or by officers elected by them...." In the Jewish view, there can be no worse moral system than one in which man, rather than God, decides on proper moral and ethical behavior.... What we find in the Bible is that Judaism is founded on the principle of divine authority.... The moral teachings of the Torah thus derive their ultimate imperative

from that divine authority....To state that Judaism is a democracy, therefore, is a perversion not only of Jewish history, but also of Jewish religious belief.<sup>3</sup>

Nonetheless, some modern Judaic scholars are staunch advocates of the proposition that the roots of democratic thought are firmly grounded in biblical and rabbinic teaching, a notion that merits careful examination. Thus, Simon Federbusch suggests that democracy is the natural organizing principle of human society, an idea that he argues may be seen clearly reflected in the formative stages of the nation of Israel, as its history is recounted in the biblical narrative.<sup>4</sup> According to this view, the original tribal structure of the ancient Israelites was fundamentally democratic in character, as is the case with many if not most comparable primitive family and clan based social groups. The Israelite tribe was essentially a classless society, one in which social and economic distinctions among its members were of little import. With the exception of women, children and others who suffered from traditional social disabilities, all members of the tribe were held to be intrinsically equal. This point is also implicitly argued by Meir Leibush Malbim, who asserted that during its initial sojourn in the desert, Israel effectively constituted a single economic and social class, and therefore was at peace with itself. Because of this, he suggested, Moses was able to delay the introduction of a hierarchical leadership structure since "while they were at Horeb the people did not have any matter of conflict or judgment, since they had no houses and landholdings and vineyards that would cause court cases to occur; nor did they have any commerce; moreover, all received equal shares of the manna." This situation, however, was to change radically as soon as it became clear that the Israelites were to enter and occupy the land of Canaan, "because when they enter the land and take possession of it, conflict will break out among them."<sup>5</sup> In other words, societal conflict is naturally at a minimum under a system wherein there are no significant class distinctions, where intrinsic social and economic equality prevails. Accordingly, the initial tribal structure of Israel may be considered to have been naturally democratic since none of the artificial and divisive class distinctions had emerged as yet. The implicit corollary to this argument is that those societal arrange-

ments subsequently called for in the biblical texts which deviate from the practice of democracy are driven by expediency rather than principle.

Similarly, what was true of the individual tribes held for the tribal confederacy as well. Each of the tribes considered itself to be fully equal to every other. As a consequence of this strongly maintained belief in equality, it was only with great difficulty that the tribes were ultimately welded together into a broader national political unit. The tribes strenuously resisted any diminution of their unlimited autonomy, something that would necessarily result from the imposition of a central authority. This consideration helps account for the repeated biblical reports of the challenges to Moses's leadership by tribal authorities. Thus the rebellion of Korah and his associates against the assertions of authority by Moses and Aaron may be understood as representing but one egregious example of the reluctance of the tribal leaders to surrender any of their traditional independence and equality of status. Korah and his colleagues, according to Scripture, "were governors of the congregation, the elect men of the assembly, men of renown; and they assembled themselves against Moses and against Aaron, and said unto them: "Ye take too much upon you, seeing all the congregation are holy, every one of them, and the Lord is among them; wherefore then lift ye up yourselves above the assembly of the Lord" (Num. 16:2-3)? These tribal leaders were evidently unwilling to concede any of their autonomy to Moses, and therefore challenged the assertion that his authority was derived from a divine grant, basing their argument on the presumed equality of all men before God.

For other writers, however, the fact that Scripture specifically calls for the establishment of societal structures and instrumentalities that are basically incompatible with the equalitarian presumptions of democracy raises serious questions about the extent to which the Bible may be understood as the source of other apparently democratic ideas, notions whose presence in the biblical literature may perhaps be more coincidental than intentional. Thus, in contrast to the position taken by Federbusch, Zwi Werblowsky and Geoffrey Wigoder argue that "the way of life envisaged for the Israelites in the Bible cannot properly be termed a democracy. The Bible, it is true, greatly influenced the

development of democratic ideas in seventeenth century England and eighteenth century America, and the organization of the ancient Israelite tribes may also have been a kind of primitive democracy. Nevertheless, a system which provides for both an hereditary monarchy and an hereditary priestly caste cannot be so termed, even though kings often ruled by popular consent."<sup>6</sup>

As already suggested, perhaps the most central concept of both ancient and modern democracy is the idea of intrinsic human equality. That is, it is a critical presumption of democracy that, since all persons are essentially equal to one another, there is no legitimate basis for any one social or economic class to dominate another. Accordingly, the political decision-making process within a society should be structured in a manner that will fully reflect this essential equality among its members. Indeed, without the idea of the intrinsic equality of persons as its basis, the principle of majority rule, so essential to the democratic political process, would be quite inconceivable.

This notion of intrinsic human equality is arguably a central theme of Scripture and Judaism as well. According to Louis Finkelstein: "The most significant contribution in literature to democratic thought is probably that in the early chapters of Genesis. In the first, we are told that God made man in His image. In the fifth, we are informed that the descendants of Adam were born in his image, and consequently in the image of God. This assertion that all men — all descendants of Adam — are alike bearers of the image of God, are the possessors of supreme dignity, and that all are equal in this dignity, sets the goal toward which all democratic thinking must strive."<sup>7</sup> For Finkelstein, this idea of human equality before God serves as the true basis for the ideal democratic society, as opposed to alternative conceptions such as equality of right or privilege.

With regard to the concept of equality of right, it has often been pointed out that in Judaism the principal focus is not on rights but on obligations. With respect to God all men are considered to be equal, but this relationship is one that involves only duties; it does not convey any concomitant rights. Thus, Paul Eidelberg observes, "The modern, non-Jewish view emphasizes equality of *rights* secured by heteronomous laws which balance and serve personal or egoistical interests. The Jewish view emphasizes an unequal distribution of *duties*...defined by

autonomous laws which, while securing individual freedom, would unite mankind in the service of God."<sup>8</sup> It is important to note that this proposition is not necessarily in itself an argument against the existence of human rights, either natural or positive, although some take this view. It merely asserts that in the scale of Judaic values, a person's individual rights play a markedly subordinate role to one's obligations to his Creator. Accordingly, Finkelstein quite properly maintains that the essence of the idea of equality of rights certainly does have a legitimate place in biblical and rabbinic thought, even though the idea is not explicitly articulated in propositional formulas, and is not directly predicated on the assumed equal mutual and reciprocal obligations of individuals to one another. The source of such rights, Finkelstein insists, is rather to be found in the equal obligations of all men to God, and the divine dispensation of equal justice to all men.

Because God is characterized in Judaism as being intimately bound up with the idea and profession of justice, Finkelstein suggests that "artificial inequalities, unless necessary for fulfillment of a transcendent purpose set by God, are abhorrent to Him, and a violation of His will." Therefore, he insists, "Because God demands that communities, being His servants and agents, act justly toward their individual members, these members have a right to equal standing. The concept of equality thus derives from justice and not, as is often asserted, justice from equality. Men clearly are born with varied gifts, but such inequalities have no relevance to God's concern with His creatures, nor, therefore, with the community's duty to do justice to every man."<sup>9</sup>

In sharp contrast to those who maintain the view that the idea of human equality is clearly reflected in both Scripture and rabbinic tradition, Sol Roth has most recently asserted that, "To the best of my knowledge, no such concept is ever enunciated in the Torah or in rabbinic thought." Nonetheless, this rather extreme statement should not be construed to suggest that Roth denies that human equality represents a significant Jewish value, but rather that it certainly does not constitute the fundamental principle of Judaism that writers such as Finkelstein and Federbusch suggest or imply. In this regard, Roth directs our attention to the consideration that "Jewish tradition stresses not

the *equality* of all human beings but rather the infinite *value* of life of every human being, which is a more far-reaching concept."<sup>10</sup>

The distinction that Roth draws between human equality and the infinite value of every human is one that merits closer examination. Equality is generally defined as a likeness in dimensions, values, attributes, qualities and other characteristics. In a mathematical sense, equality may be understood as a one-to-one correspondence between two numbers or groups of numbers, each of which, in the aggregate, is identical or equivalent to the other. Thus, within the context of a democratic political process, the vote of each eligible member of the society is treated as being of equal weight and value to every other comparable ballot. The necessary consequence of this is that the votes of two people represent greater democratic value than the vote of only one. Accordingly, in the general application of the democratic principle of majority rule, equal but conflicting votes cancel one another, thereby leaving the decision to be made in accordance with the number of the remaining uncontested ballots in favor of any particular choice.

By contrast, the notion of infinite value implies a radically different conception of equality. The essence of this idea may be seen as reflected in the description of the mathematical concept of infinity offered by Bertrand Russell: "A collection of terms is infinite when it contains as parts other collections which have just as many terms as it has. If you can take away some of the terms of a collection, without diminishing the number of terms, then there are an infinite number of terms in the collection."<sup>11</sup> In other words, infinity is a unique condition of equality in which one part is not merely equal to another part, but is equal to the whole which encompasses both parts. Under this latter conception of equality, the very notion of majority rule would be quite meaningless.

Roth argues that this unique conception of equality is inherent in the manner by which the *halakhah* "defines the infinite value of every human being."<sup>12</sup> He suggests that this principle of infinite value underlies and explains the otherwise enigmatic rabbinic teaching: "For this reason was man created alone, to teach thee that whosoever destroys a single soul of Israel, Scripture imputes [guilt] to him as though he had destroyed a complete world."<sup>13</sup> That is, in terms of the value system of

Judaism, where life itself is at stake, the part, the individual, is considered as equal to the whole, the community. This principle of infinite human value is given even more dramatic expression in the talmudic dictum: "If they say to you: Give us one of you that we may kill him, and if not we will kill all of you, they shall risk slaughter rather than hand over a single person."<sup>14</sup> Once again, the infinite value of the individual is considered as being equal to that of the collectivity.

We can only speculate on how the moral dilemma implicit in this latter dictum might be resolved under the democratic principle of arithmetic equality, but it seems reasonably certain that the resolution would be fundamentally different from that of the normative rabbinic teaching. One can imagine lots being drawn to determine which individual would be sacrificed in order to preserve the community. The rabbis, however, categorically rejected this approach, insisting in effect that the democratic ideal of equality was unacceptable as the operative principle of society under the postulated circumstances. Instead, Judaism demanded that the higher principle of infinite human value serve as the relevant norm.

Should this be understood as indicating that there is an inherent bias within Judaism against the democratic principle of equality and the application of the principle of majority rule to societal decision-making? The evidence of the literature in this regard is mixed. On the one hand, there is nothing in the classical sources that may reasonably be interpreted as suggesting the desirability of a democratic political process. On the other hand, there is a well established rabbinic procedural rule, which governs the *halakhic* regulatory process, that obligates one to follow the decision of the majority, at least in matters that require communal agreement.<sup>15</sup> While one might be tempted to use the latter as a basis for arguing that the use of democratic procedure in public decision-making is fundamental to Judaism, the validity of such an extrapolation would seem rather questionable. The application of the principle of majority rule in the *halakhic* process is just as likely to have been instituted as a matter of practical expediency, given the difficulty of attaining unanimity among a group of otherwise autonomous *halakhic* scholars and decisors, as to have been a considered and principled response to an ideological imperative. As Maimonides

described the decision-making process of the Sanhedrin: "If they were not certain of the law, they...discussed it until they either reached a unanimous decision or put it to a vote and decided in accordance with the majority opinion."<sup>16</sup> Presumably, if the scriptural basis for the law was known, the majority rule process would be inapplicable. In other words, according to Maimonides, the democratic process was employed as a matter of expediency rather than principle. Furthermore, it should be noted that the *halakhic* rule-making process is essentially an elite rather than a popular enterprise, and the democratic voting procedure utilized in the process is restricted to the elite peer group involved, and is considered to be operative only within certain parameters. Thus, as already suggested, a ruling by a majority of a rabbinic court that contradicts an explicit or obvious provision of the written Torah is considered to be null and void, and is to be ignored. In effect, the rabbinic majority rule provision under discussion here applies only to the limited democracy of an intellectual aristocracy, and cannot be used as evidence of the general acceptance of the idea of democratic equality in Judaism.

Returning to the views of Roth, in an earlier work in which he articulated a somewhat more accommodating position regarding the place of the concept of human equality within the ideological structure of Judaism, he acknowledged that the idea did have solid roots in traditional Jewish thought. But, he insisted, its actual relevance and applicability had to be assessed within an appropriate conceptual context. "It is well known," he asserted, "that Judaism does not insist on the universal and exceptionless application of the principle of equality."<sup>17</sup> For the purposes of exploring this matter of relevant context, it will be useful to consider the concept of equality from two distinctly different standpoints, one descriptive and the other prescriptive.

Considered descriptively, men are indeed held by Judaism to be universally equal in the sense that they are all equally created in the image of God. This biblical concept clearly establishes a certain natural equality among all humans with respect to their Creator. However, this should not be construed to be the same as asserting that men are therefore intrinsically equal to one another in any other respect. Consider, for example, how the

great medieval commentator Rashi interprets the biblical verse: "And God said: Let us make man in our image, after our likeness" (Gen. 1:26). He takes the last clause of the citation to mean, "to comprehend and to discern."<sup>18</sup> This widely accepted commentary hardly reflects an equalitarian approach to understanding the intent of the passage. Suffice it to note that the attributes of comprehension and discernment are intellectual qualities which clearly are not distributed very equally among men. In this regard, the sages of the talmudic era were keenly aware of the inherent natural distinctions or inequalities that prevailed among men. They taught: "If a man strikes many coins from one mold, they all resemble one another, but the supreme King of Kings, the Holy One, blessed be He, fashioned every man in the stamp of the first man, and yet not one of them resembles his fellow."<sup>19</sup> Given this perspective, it becomes rather unclear in what way men can be conceived as intrinsically equal to one another, if in fact they are not equal in essential attributes. And if such is the case, the presumed societal implications of the postulated intrinsic equality of men before God remain highly speculative at best.

Some proponents of the idea of intrinsic equality have attempted to respond to this challenge by arguing that, while it is true that men are obviously different from one another with respect to their physical and mental characteristics, these differences are such that they tend to offset each other, much as would be the case in a zero-sum game. Such residual distinctions as remain between persons, in the final accounting, are not considered to be very significant, thereby leaving men fundamentally equal to one another. This, in essence, is the position that was argued by Thomas Hobbes: "Nature hath made men so equal, in the faculties of body, and mind; as that though there be found one man sometimes manifestly stronger in body, or of quicker mind than another; yet when all is reckoned together, the difference between man, and man, is not so considerable, as that one man can thereupon claim to himself any benefit, to which another may not pretend, as well as he. For as to the strength of body, the weakest has strength enough to kill the strongest.... And as to the faculties of mind, I find yet a greater equality amongst men, than that of strength."<sup>20</sup> Opponents of this argument, however, consider it to be nothing more than a rhetorical position

that is incapable of being put to an empirical test, and therefore reject even its plausibility. They point out that there is no feasible way of producing the final balance sheet that would be necessary to prove Hobbes's point. Even assuming that one could assign an acceptable figure of merit for any particular human trait or attribute, there is no known calculus by which such incommensurables can be meaningfully aggregated or synthesized.

How then should we understand the proposition that all humans share an intrinsic equality with respect to their Creator? In what manner is such equality manifested? Roth suggests that in order to fully grasp the equalitarian implications of man having being created "in the image," it would be helpful to adopt the mathematical concept of a "range property." As described by the contemporary philosopher John Rawls: "The property of being in the interior of the unit circle is a range property of points in a plane. All points in this circle have this property although their coordinates vary within a certain range. And they equally have this property, since no point interior to a circle is more or less interior to it than any other interior point."<sup>21</sup> A range property, which defines a common qualitative relationship, is therefore not subject to quantitative distinctions and may be said to be possessed equally by all who are positioned within its boundaries. In essence, the idea of a range property reflects the same concept of equality articulated somewhat earlier by Alfred North Whitehead, who wrote: "The relation of equality denotes a possible diversity of things related by an identity of character qualifying them."<sup>22</sup> In other words, being created "in the image" constitutes a range property which all men share by virtue of their very existence, regardless of any other inequalities that may define their individual personalities.

Another example of a range property that exemplifies the principle of equality in Judaism is that of man's moral potential. Although men may differ radically in their physical and mental attributes, and are clearly quite unequal in their individual capacities for moral attainment, they are nonetheless considered to be relatively equal with regard to their potential for moral development. In this regard, the moral potential of the common person is considered to be fully commensurate with that of the moral elite. As Maimonides put it, "Every man is capable of

being righteous like Moses our teacher or a scoundrel like Jereboam."<sup>23</sup> The principal emphasis here, of course, is not on moral outcomes but on intentions and commitment. Roth thus concludes his brief discussion of descriptive equality with the observation that "there are two ways in which the descriptive judgment of equality may be made. First, human beings possess equally some trait which derives from their possession of the image of God, though they differ in the degree to which they possess it. Second, all men have equal potential for commitment to moral precept, though they differ in the extent of moral God; it does not in any way touch upon the notion of that arithmetic equality ("one man — one vote") that is deemed so essential to the concept of democracy.

It is when we turn to the consideration of the idea of prescriptive equality in Judaism that we seem to come much closer to the central ideas underlying democratic thought. Nonetheless, here too the biblical and talmudic evidence is primarily inferential, although the idea of prescriptive equality may be seen as having its roots in the biblical creation narrative, which clearly seems to lend itself to such interpretation.

To facilitate the formation of a prototypical societal environment suitable for man to fulfill his elemental needs, according to Scripture, the Creator provides him with a counterpart, a helpmate or *ezer kenegdo*. The latter is another complete individual human, endowed with a personality comparable in every essential respect to the first man's own. Intended to complement man's creative endeavors, the helpmate will be one who complements and augments his natural endowments, thereby compensating for any relative weaknesses in his makeup. Together, the man and his helpmate will constitute the primal society.

Finding himself in the most rudimentary but fundamental of societal structures, association with another integral human being, man is compelled to develop a pattern of relationships that will enhance and promote the viability and practical utility of that association. The essential principle that must necessarily serve as the foundation for this uniquely human social structure is that of the inherent equality of all its members. Just as the first man is created in the image of God and is therefore special, reflecting infinite value, so too is his counterpart and companion, as well as all subsequent human beings. It thus becomes

essential that the helpmate be considered as completely equal to the man in all respects if the divine purpose is to be realized and man's social and economic needs are to be fully satisfied. If such a presumption of intrinsic equality were not to be made, the fundamental scriptural element of complementarity would be defective.<sup>25</sup> Samson Raphael Hirsch, in his discussion of the essential character of man's helpmate, argued most forcefully that the biblical passage implies the complete equality of the woman with the man: "Even looked at quite superficially this designation expresses the whole dignity of Woman. It contains not the slightest reference to any sexual relationship, she is placed purely in the realm of Man's work, it was there that she was missing, she is to be *ezer kenegdo*. And *ezer kenegdo* certainly expresses no idea of subordination, but rather complete equality, and on a footing of equal independence. Woman stands to man *kenegdo*, parallel, on one line, at his side."<sup>26</sup> In a word, the primeval society depicted in the biblical creation narrative is one predicated on the complete equality of its members.

It is also clear from the narrative that this primeval society is one in which, with the exception of a minimal number of divine injunctions that impose some constraints on his conduct, man is at almost complete liberty to do as he chooses, a condition that can be maintained only as long as there are sufficient natural resources to satisfy everyone's needs and desires. However, when a point is reached where demand exceeds the available supply, abundance being replaced by scarcity, men will inevitably enter into competition with one another to satisfy their needs and wants. The character of this competition is also likely to become increasingly violent and predatory as long as each person is basically free to pursue his interests as he pleases. As a result, the original autonomous condition of man must necessarily undergo a radical revision. Once man enters into association with others, it becomes readily apparent that his personal freedom of action can no longer be considered absolute. Indeed, the very notion of absolute individual liberty is essentially incompatible with the concept of human equality. Theoretically, as well as practically, it is simply not possible for all the members of a society to be considered as equal to one another, and at the same time for each to act as if the others did not exist. If all are equally free to behave as they please, one will inevitably

encroach on the interests of another. But the claim of a right to such encroachment on the basis of one's absolute freedom of action would necessarily entail a denial of the ultimate worth and comparable right of another human, thereby negating the principle of intrinsic human equality. The societal implications of this are given expression in the classical literature in the following homily: "It is comparable to a group of men who found themselves seated in a boat. One of them took hold of an augur and began to bore a hole beneath him. His companions challenged him: What are you doing? He retorted: What concern is it of yours? Am I not doing it under my own seat?"<sup>27</sup> The message seems abundantly clear. One may directly affect the lives of others in an unacceptable manner even through an indirect action.

Within the context of primeval society, man is consequently confronted by a conflict of fundamental values, absolute liberty against intrinsic equality. Since these values, each held to be fundamentally inviolable, are essentially irreconcilable, a principled compromise must be reached if the society is to remain viable. One approach to such a compromise is to establish a balance between the two conflicting principles that is clearly tilted in favor of sustaining the concept of the intrinsic equality of men at the expense of their absolute freedom of action. This seems eminently reasonable since it is the unrestrained exercise of individual liberty rather than the notion of equality which tends to be socially destabilizing. Accordingly, it becomes necessary to impose certain additional constraints on the liberty of the individual. The fundamental principle of human freedom is therefore effectively reformulated in negative terms. That is, within certain specified limits the individual is to be left at liberty to act as he wishes without regard to the effects of his actions on others. Beyond these bounds, however, he is enjoined from acting in a manner that is likely to have detrimental effects on others. Moreover, since the essential value that is to be sustained intact is the prescriptive equality of all members of human society, this principle must also be applied in setting the parameters for the individual's negatively defined freedom of action. A properly constituted society is therefore to be characterized by an equality of negative liberty among its members. That is, the outer limits of any individual's freedom of action are

to be the same for all persons within the society, irrespective of the differences in descriptive equality that may exist among them. Employing Rawls's terminology, the idea of negative liberty may be seen to constitute a "range property" of prescriptive equality.

The prescriptive principle of equality of negative liberty was given expression by the sage Hillel in the often quoted dictum: "What is hateful to yourself, do not do unto your fellow man." The teaching in itself is unexceptional, since it had already been set forth as a principle of proper human conduct in much earlier times; it can be found in the teachings of Confucius and Isocrates, as well as in the Indian classic, the *Mahabharata*. Moreover, it was also articulated in the early Pharisaic period in the apocryphal teaching, "Do that to no man which thou hatest."<sup>28</sup> However, Hillel went beyond these traditional formulations of the principle. Thus, when asked to summarize the central teachings of the Torah in a very concise statement, Hillel responded with his dictum, but then added: "That is the whole of the Torah, and the remainder is only commentary. Go and learn it!"<sup>29</sup> This addendum requires explication.

Hillel's purpose would appear to go beyond mere exhortation to desirable conduct. The critical question with which he seems to have been concerned was how to operationalize the principle of equality of negative liberty as an effective guide to human action. Given the natural and substantial differences of character and temperament among men, it seems quite evident that the threshold of acceptability by others of any particular action is likely to vary widely in accordance with individual idiosyncrasies. Without externally established behavioral parameters, such variations in acceptable conduct would effectively nullify the possibility of establishing meaningful society-wide norms, thereby placing the practical application of the principle in jeopardy. Accordingly, Hillel proceeded to indicate that while the principle of equality of negative liberty, as reflected in his formulation, was indeed the central teaching of the Torah, it was not self-implementing. The formula itself provided no guidance as to how to apply it in practice. This, he asserted, was to be gleaned from the teachings of the Torah which constituted, in effect, a commentary on the central principle. That is, it is only in the teachings of the Torah that one will

discover the parameters of desirable, or at the very least acceptable, conduct that are to be used as guidelines in the practical application of the fundamental principle of equality of negative liberty. He therefore concluded his dictum with the exhortation: "Go and learn it!"

The idea of prescriptive equality is also reflected in the Judaic conception of the equality of all men before the law. Thus, Scripture declares: "Ye shall have one manner of law, as well for the stranger, as for the homeborn" (Lev. 24:22). This passage is interpreted by Samson Raphael Hirsch as meaning, "just as all the rights and all the high value of human beings are rooted in the Personality of God, so does this form the basis for complete equality in law and justice."<sup>30</sup> Similarly, the sages declared: "All are equal before the law. The duty of observance is for all."<sup>31</sup> Indeed, as Emmanuel Rackman has argued, "since God created all men equal, their natural inequality can only be justified with reference to His service, which means the fulfillment of the very equality God had willed."<sup>32</sup>

The Judaic concept of equality before the law may perhaps best be understood as a synthesis of the professed natural equality of men in respect of their Creator, and the acknowledged natural inequality of men in respect of one another. The idea of the natural equality of men before God is given expression in the classical literature in the following homily: "R. Judah b. Shalom said: If a poor man comes and pleads before another, that other does not listen to him; if a rich man comes, he receives and listens to him at once. God does not act in this manner: all are equal before Him — women, slaves, rich and poor."<sup>33</sup> The matter of the natural inequality of men with respect to one another is addressed in the literature as well — perhaps with a poignant touch of irony — in the midrashic recounting of a purported dialogue between King David and the Lord: "David said, 'Lord of the Universe, make equality in Thy world.' God replied, 'If I made all equal, who would practice faithfulness and lovingkindness?'"<sup>34</sup> This latter teaching, of course, is principally concerned with man's moral posture, rather than with the more obvious distinctions between persons with regard to their intellectual and physical attributes and capacities. Nevertheless, the general point it makes is unmistakable; there are in fact signifi-

cant differences among men, differences that can be equalized only in certain limited respects.

There is thus a clear disjunction between descriptive and prescriptive equality. With regard to the former, it is by no means self-evident that there are any solid grounds for arguing that the democratic idea of equality is deeply rooted in the biblical and rabbinic literature. On the other hand, with respect to prescriptive equality, the situation is rather different. Thus, Roth asserts: "The imperative of equality...is rooted in a theoretical construction, a legal fiction, a declaration, independent of facts, that each person is to be regarded *as if* he were his equal. I must perceive and treat men as my equals whether they are equal to me or not." But, he insists, this Jewish concept of prescriptive equality is radically different from the descriptive equality that forms the basis of democratic thought. "Judaism affirms standards; it seeks excellence. It looks for the constant, uninterrupted spiritual growth of those who identify with it. It achieves this by recognizing differences and by the judgment that some are better than others, thereby motivating all to strive for the ideal. This approach differs radically from that adopted by advocates of equality in its American form who...push for the application of the principle of equality beyond the boundary even of its reasonable application. In America, this idea has come to mean that mankind must create the social conditions in which all men will achieve equality in fact, though this enterprise may well throttle the attainment of excellence."<sup>35</sup> This expression of concern about the equalitarian implications of modern democracy is strikingly reminiscent of some of Aristotle's expressed concerns with the democracies of his own time.

Accepting that the concept of prescriptive equality seems to have a well founded place in classical Judaic thought, one could still make a strong argument that Judaism and democracy are nonetheless committed to fundamentally different and perhaps even mutually inconsistent ends. However, as pointed out at the outset of this discussion, this is not to suggest that, as a practical matter, a democratic form of government does not offer the greatest contemporary potential for accommodating the Judaic search for higher values. Although the record of religious and cultural tolerance in democratic societies is uneven, for the most part Jewish life in modern times has thrived in the political and

social environment of Western-style liberal democracies. This makes liberal democracy the clearly preferred form of contemporary political system for Jews, notwithstanding the fundamental ideological differences between democracy and the religious and ethical system of normative Judaism.

## Notes

1. Jay William Hudson, *Why Democracy: A Study in the Philosophy of the State* (New York: D. Appleton-Century, 1936), p. 1.
2. Aristotle, *The Politics* (New York: Oxford University Press, 1962), p. 258.
3. Michael Kaniel, "Judaism: 'Godocracy,' rather than Democracy," *Jerusalem Post International*, April 20, 1991.
4. Simon Federbusch, *Mishpat haMelukhah beYisrael* (Jerusalem: Mossad Harav Kook, 1973), p. 33.
5. Meir Leibush Malbim, *HaTorah veHaMitzvah* (Jerusalem: Pardes, 1957), on Deut. 1:9.
6. R.J. Zwi Werblowsky and Geoffrey Wigoder, *The Encyclopedia of the Jewish Religion* (New York: Holt, Rinehart and Winston, 1965), p. 112.
7. Louis Finkelstein, "Hebrew Sources: Scripture and Talmud," in F. Ernest Johnson, ed., *Foundations of Democracy* (New York: Cooper Square Publishers, 1964), p. 27.
8. Paul Eidelberg, *Jerusalem vs. Athens: In Quest of a General Theory of Existence* (Lanham: University Press of America, 1983), p. 37n.
9. Finkelstein, "Human Equality in the Jewish Tradition," in Lyman Bryson et al., eds., *Aspects of Human Equality; Fifteenth Symposium of the Conference on Science, Philosophy and Religion* (New York: Harper & Brothers, 1956), pp. 179-180.
10. Sol Roth, "Judaism and Democracy," in *The Torah U-Madda Journal*, vol. 2 (1990):67.
11. Bertrand Russell, *Mysticism and Logic* (Garden City: Doubleday, 1957), p. 81.
12. Roth, "Judaism and Democracy," p. 68.
13. *Sanhedrin* 37a.
14. *J. Terumot* 8:6. Note that this principle is not held to apply if the individual demanded is specifically identified.
15. This principle is based on a rabbinic interpretation of Ex. 23:2.
16. Maimonides, *Hilkhot Mamrim* 1:4.

17. Roth, *Halakhah and Politics: The Jewish Idea of the State* (New York: Ktav Publishing House, 1988), p. 52.
18. Rashi, commentary on Gen. 1:26.
19. *Sanhedrin* 37a.
20. Thomas Hobbes, *Leviathan* (New York: E.P. Dutton, 1950), p. 101.
21. John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), p. 508.
22. Alfred North Whitehead, *The Principle of Relativity* (London: Cambridge University Press, 1922), p. 42.
23. Maimonides, *Hilkhot Teshuvah* 5:2.
24. Roth, *Halakhah and Politics*, p. 55.
25. Obadiah Sforno, *Biur al haTorah*, on Gen. 2:18.
26. Samson Raphael Hirsch, *The Pentateuch*, on Gen. 2:18.
27. *Leviticus Rabbah* 4:6.
28. *Tobit*, iv. 15.
29. *Shabbat* 31a.
30. Hirsch, *The Pentateuch*, on Lev. 24:22.
31. *Sifre Deuteronomy*, "Ekev" 11:22.
32. Emmanuel Rackman, *One Man's Judaism* (New York: Philosophical Library, 1970), p. 145.
33. *Exodus Rabbah* 21:4.
34. *Ibid.*, 31:5.
35. Roth, *Halakhah and Politics*, pp. 60-61.