

Sat 2 June 2012 / 12 Sivan 5772
Dr Maurice M. Mizrahi (mizrahim@cox.net)
Congregation Adat Reyim
Lunch and Learn
(in honor of Joan and Maurice Mizrahi's 38th wedding anniversary)

B"H

Democracy and Judaism

Question

With the Fourth of July coming soon, we ask: Is democracy consistent with Judaism?

What is democracy?

(1) Free and fair elections of leaders, (2) few and reasonable restrictions on who can be a candidate, (3) one vote per person, (4) all equal before the law, (5) basic rights and freedoms secured by a constitution.

-Without such a constitution (e.g., Torah for Jews), it is not good and not Jewish

-Examples: Nazi Germany, Gaza, France during Terror

-Name can be usurped: People's *Democratic* Republic of North Korea, of Algeria, of Yemen, of the Congo, etc.

-“All are equal before the law” is a principle instituted by Judaism

-Judaism always stressed the importance of the individual:

-Whoever destroys one life is as if he had destroyed an entire world; and whoever saves one life is as if he had saved an entire world. All people descend from one man so that no one can say, “My ancestors were greater than your ancestors”. [Sanhedrin 37a]

History of how collective decisions arrived at in Judaism

-Period of Patriarchs: God gives broad guidelines

-Period of Moses and Exodus: God gives very detailed instructions

-Moses appoints 70 elders to help him judge and govern Israel. The Sanhedrin is born: 71 Sages ruling on Torah matters. [Numbers 11:16.]

-Period of Judges: Loose confederation of tribes, each with own leaders; “judges” recognized by consensus as battle leaders in times of crisis and reconcilers of disputes; ~450 years; lawlessness:

-In those days there was no king in Israel; every man did that which was right in his own eyes. [Judges 21:25]

-Prophets relate what God tells them, advise, but have no power to enforce

-Sanhedrin makes religious decisions, but has limited temporal power

-Period of Kings:

-People demand a king with absolute power

-Prophet Samuel (and God) strongly advises Israel not to have a king

And the Lord said to Samuel, Listen to the voice of the people in all that they say to you; for they have not rejected you, but they have rejected Me, that I should not reign over them... But you should solemnly warn them, and relate to them the customary practice of the king who shall reign over them...

And he [Samuel] said, This will be the customary practice of the king who shall reign over you; He will take your sons, and appoint them for himself, for his chariots, and to be his horsemen; and some shall run before his chariots.

And he will appoint for himself captains over thousands, and captains over fifties; and will set them to plow his ground, and to reap his harvest, and to make his instruments of war, and instruments of his chariots.

And he will take your daughters to be perfumers, and to be cooks, and to be bakers.

And he will take your fields, and your vineyards, and your olive trees, the best of them, and give them to his servants.

And he will take the tenth of your seed, and of your vineyards, and give it to his officers, and to his servants.

And he will take your menservants, and your maidservants, and your best young men, and your asses, and put them to his work.

He will take the tenth of your sheep; and you shall be his servants.

And you shall cry out in that day because of your king, which you shall have chosen; and the Lord will not hear you in that day.

And the people refused to obey the voice of Samuel; and they said, No; we will have a king over us; that we also may be like all the nations; and that our king may judge us, and go out before us, and fight our battles.

And Samuel heard all the words of the people, and he repeated them in the ears of the Lord. And the Lord said to Samuel, Listen to their voice, and make them a king.

[1Samuel 8:7-22]

-So Samuel anoints Saul king, and after Saul comes David, then Solomon, then a long line of kings, some good, some bad -- mostly bad.

-434 years (1021-587 BCE); plus 103 years in Hasmonean period (140-37 BCE)

-Some checks and balances to power of king (sort of constitutional monarchy)

-Prophets: They could loudly tell the people things the king did not want to hear

-The king sometimes harassed them and even killed them for it

-Priests: Led by the High Priest, they had their own responsibilities, separate from kings, prophets or rabbis; and were influential

-Sanhedrin: Still decided legal matters and ran an independent judiciary.

Examples of limits placed on kings:

-The king may neither judge nor be judged, testify or be testified against. [Mishna in Sanhedrin 18a]

-The king or the High Priest may not be members of the [Sanhedrin's] board for the intercalation of the year: The king on account of the upkeep of the army, and the High Priest because of the cold. [Sanhedrin 18b]

-Because the king is biased in favor of adding a month: He pays his soldiers by the year, so adding a month makes the year longer.

-Because the High Priest is biased against adding a month: He has to immerse five times in the mikvah on Yom Kippur, and if Yom Kippur falls a month later the water is colder. [Yoma 31b].

-Note: The Jewish calendar we use today was issued in 358 CE by Hillel II -- the last gift of the last Sanhedrin. Since then, whether or not to add a month to the Jewish year no longer has to be decided each year.

-Latter-day views on kings

-Rabbi Nehemiah: It is NOT a religious duty for the people to have a king [Sifrei to Deut. 17:14]

-Abravanel (15th century Spain): A republic is better than a monarchy because it is better that power be shared.

-The Sanhedrin was closest to democracy: All decisions made by majority vote and each rabbi has one vote.

-Basis in Torah:

-Lo tihyeh acharei rabbim lera'ot -- You shall not follow the majority for evil [Exodus 23:2]

-Talmudic interpretation:

-If you must not follow the majority for evil, then surely you must follow the majority for good [Sanhedrin 2a].

-Three types of courts:

-Basic bet din: 3 judges, for ordinary cases

-Small Sanhedrin: 23 judges, for capital offenses and other life-and-death matters

-Great Sanhedrin: 71 judges, to decide Jewish law ("Supreme Court" of Israel).

-Rabbis who refuse to accept and teach the majority decision are expelled from the Sanhedrin and placed under cherem (Eliezer, Akavya ben Mahalal'el).

-This is not full democracy, in that not everyone gets a vote: Only designated judges appointed to decide specific matters posed before them get to vote.

-Talmud: God [said]: "The majority must be followed. When the majority declares a thing permitted, it is permitted, and when the majority declares a thing forbidden, it is forbidden... The Torah is capable of interpretation, with 49 points [arguing one way] and 49 points [arguing the other way]." [J Sanhedrin 22a]

-Principle: "Acharei rabbim l'hattot":

-Where there is a controversy between an individual and the many, the halachah follows the many. [Ber. 9a]

-Even God cannot overrule a majority opinion. [Bava Metzia 59a]

-How about the common people? The rabbis have a tradition of listening to them:

1. " Puk chazi mai 'ammah d'var -- Go out and see what the people are doing":

-Raba, son of R. Hanan, said to Abaye, according to others to R. Yosef: "What is the law?" He replied: "Go out and see what the people are doing." [Berachot 45a]

-Said R. Hanan to Abaye, 'What is the law?' The other told him: "Go out and see what the people are doing." [Eruvin 14b]

-They said, "Does anyone know whether Pessah overrides Shabbat?" Hillel... knows... So they summoned him... and said..., "Master, what if a man forgot and did not bring a knife on the eve of Shabbat?"

[Hillel] answered, "I have heard this law, but have forgotten it. But leave it to Israel: if they are not prophets, they are the children of prophets!" [Go and see what the people actually do.]

The next day, [they found that] those who had a lamb as a Pessah sacrifice stuck the knife in its wool; and those who had a goat as a Pessah sacrifice stuck it between its horns. [Pesachim 66a]

-Note: We are talking about deferring to what **observant** Jews do. Unlike what some say, Judaism is not 'what Jews do'. Sadly, in any generation, the majority does not care and does not follow the rules.

2. Rabbis will not issue a ruling that the people can't follow:

-“En gozrin g'zerah 'al ha-tzibbur ela im ken rov tzibbur y'kholin la'amod bah -- We do not enact a decree upon the community unless a majority of the community is able to live up to it":

-No prohibition of meat and wine after Temple destruction [Bava Batra 60b]

-No prohibition on non-Jewish oil [Avodah Zara 36a]

-No prohibition on raising large animals in Israel [Bava Kamma 79b]

-Do some ultra-Orthodox rabbis refrain from outright banning TV or Internet today because of this principle?

3. R. Isaac said: We must not appoint a leader over a community without first consulting the people. [Berachot 55a]

-What does “consulting” consist of? Left up to interpretation.

Today, how are Jewish leaders chosen and Jewish decisions arrived at?

-The State of Israel: Western-style democracy

-New religious decisions: Each rabbi roughly on his own:

-No Sanhedrin for central decisions. Majority rule is a thing of the past.

-New halachic decisions made by individual rabbis, who make them stick only by virtue of the respect they inspire.

-Their decisions are sometimes controversial even centuries after their death.

-People shop for a community whose practices most closely reflect their views.

-Congregations and Jewish institutions: Minimal democracy to select secular leaders and reach decisions:

-A Board handpicks a nominating committee, who handpicks the next leaders as a package, then entire congregation votes yes or no on the whole package.

-No parties, no running for office, no campaigning, no resumes circulated, no debates, no interaction, no candidates advertising their qualifications, experience, plans, or vision to the people.

Conclusion

-Jewish law does not preclude democracy as practiced in the West, but does not mandate it either.

-Operating principle: We must listen to the people.

-Even God, while agreeing with Samuel that a king is a bad idea, nevertheless tells Samuel:

Listen to the voice of the people in all that they say to you... Listen to their voice... [1Samuel 8:7-22]