

# Is Judaism Compatible with Democracy?

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## **QUESTION:**

According to Orthodox Judaism in all of its iterations, the Torah is the word of God that was given to and was accepted by the people Israel. The only vote to which the Torah contract was subject was taken when Israel agreed to accept that Torah as its Constitution as a whole package. Once in force, the Torah's parts are equally sacred and uniformly binding.

This Torah Constitution's narrative also proclaims that humans are created in God's "image," with each individual carrying an equal and infinite moral worth.

Democracy is the rule, the *kratos*, of the people, the *demos*. How can the rule of "the people," who are mortal and finite, be compatible with the rule of God, Who is infinite and eternal? How might Judaism, with its immutable Torah, embrace democracy, the ever-changing will of the people?

## **ANSWER:**

The Jewish State of Israel is self-defined as both democratic *and* Jewish. "Judaism" and "democracy" are abstract nouns with distinct semantic fields of meaning. Israel, the nation-state of the Jewish people, stands for some values and excludes others. Democracies also have limits, which distinguish between citizens who are full members of the polity, and resident non-citizens, minors, and incarcerated prisoners, who are not full members of the polity.

The argument that Orthodox Judaism and democracy are incompatible value systems is grounded in some very compelling claims:

- God's ways and laws are *not* human inventions. God's law is absolute and eternal, while human law is finite, fallible, and ephemeral.
- God's laws cannot and may not ever be changed; in contrast, democracy often reflects the ever changing mood of the public. Hence, the two systems cannot be merged.

- “Democracy” is not mentioned, much less endorsed, in the Torah Constitution. Before we perform an act, we require a *heter*, a release, permission, and dispensation of a *Rav*, a duly recognized Orthodox rabbi, because we dare not defy the Divine will, even inadvertently.
- Democracy falsely deludes people with the fantasy called “rights,” which nurtures an egotistical, autonomous individualism that undermines the modest submissiveness that necessarily accompanies the dutiful compliance that Torah law demands. Accordingly, Torah Judaism imposes obligations; there is no place for “rights” in a Law issued by the most absolute of monarchs.
- Last, democracy advances the freedom of the autonomous individual, while Torah law requires that Jews remain the submissive “servants of the Holy One,” deferring to God’s will as it is understood and interpreted by the Great Rabbis, who are singularly authorized to read and apply Torah.

These arguments reflect a popular—but flawed—view of the Orthodox Judaism embedded in the Oral Torah, Orthodox Judaism’s “official religion,” as will be explained below.

- God’s ways are indeed not human inventions or conventions, and God’s will is absolutely and eternally binding. But God does not act as a tyrant. God’s law is no longer in Heaven (Deut. 30:12); Torah’s wisdom is evident even to non-Israelite observers (Deut. 4:6); and there are no normative, secret Torah doctrines (Deut. 29:28). God’s Divine Torah law contains positive, i.e., “to do” rules, and negative, i.e., “not to do” rules. In addition, the Jewish Supreme Court, the *Bet Din haGadol*, is authorized and empowered to legislate Torah law (Deut. 17:8–11). This post-Mosaic law is called (a) “Torah” and (b) is also “the word of the Lord” (Isaiah 2:3). The wisdom of this law is manifest in its transparency. Deuteronomy 1:1 reports that “*these* are the words that Moses spoke.” The word “these” is a demonstrative pronoun, implying that the Torah refers to “these words” that are recorded in Scripture, to which one may neither add nor subtract. Prophets and visionaries who claim that God commanded anything else to Israel commit a capital offense (Deut. 13:1–6). This Divine law has a human component; after all, it is written in understandable human language (Midrash *Sekhel Tov*, *Bereshith*, *VaYetsei* 30:13), whose plain sense meaning is accessible to the Israelite public (b *Shabbat* 63a), which is authorized to hold its leaders to account (*Ruth Rabba* 1:1), thus outlawing tyranny. These Torah facts empower Jewry to hold its elites to account based upon the Torah’s readable benchmarks. These doctrines are *not* taught in Orthodox schools, synagogues, camps, and youth groups because Orthodoxy’s institutional leadership does not wish to be held to account. Those who believe that Judaism and democracy are incompatible suppress Judaism’s democratic qualities; those who take the religion prescribed in Judaism’s sacred library seriously will celebrate democracy and the independent, conscience-driven heroes that Torah narrative commends.
- There are some rules, specifically the 613 Torah commandments and those ancient Laws that were given from the moment (not just the place) of Sinai, that are not subject to change or dispute. Other rules may undergo, and indeed have undergone, change. We are informed that there is a “tradition” that women may not slaughter animals. But (a) the

Oral Law explicitly permits women to slaughter animals, and (b) the reason given for the post-talmudic restriction, that the holy community has not seen women slaughtering, is not a valid rule or reason to forbid an act according to m' *Eduyyot*. 2:2. (See the conversation at *Bet Yosef Yoreh Deah* 1:1.) Here, a culture "tradition" changed a law by disallowing women's slaughter and this change, we are told, is now no longer subject to change. Although b*Betsa* 30a forbids dancing and clapping on Jewish Holy Days, *Tosafot* (*ad. loc.*) contends that the reason for the law's enactment, that people may come to repair musical instruments on Holy Days, no longer applies in *Tosafist* times. At *Iggrot Moshe Orach Hayyim* 2:100, R. Moshe Feinstein concurs with this change that overrides a formal, legislated rabbinic law. Changes that do not violate valid rabbinic norms are halakhically valid. Yet sometimes anomalies and inconsistencies do occur. The merits of these changes in Jewish Law are beyond the scope of this study. These citations show that in practice, Orthodox Judaism does tolerate change by taking popular practice, taste, and habit into account. While Jewry is required to obey Torah rules, Israel is not commanded to preserve culture traditions that are not formal norms. Accordingly, what affiliating Jews do is part, but not the entirety, of the Divine equation. The Talmud (b *Betsa* 30a) reminds zealous rabbis that "it is preferred that people sin in ignorant error than to be tempted to sin in wanton disregard for God's command." The Law's pedagogic agenda reminds rabbis to reprove wisely and appropriately but not obsessively.

- God's perfect Torah is complete. Any act that is neither commanded nor forbidden is authorized and permitted. Although some religions allow its clergy to forgive sin, sell indulgences, or issue *heterim*, or dispensations, the contemporary Orthodox *Rav* is a judge and teacher, not an oracle, magician, or legislator. Therefore, if the Talmud does not forbid an act, like going to college in order to obtain a professional education, then Orthodox rabbis may not declare, with apodictic certainty, that acquiring a secular education or developing critical thinking skills are forbidden activities. Those aspects of collegiate culture that are halakhically problematic, like some professors' "militant secularism" and the collegiate culture of sexual license, require address; but acquiring earning power or gaining a broader education is not forbidden by God's perfect law. In the gaps in the Law, where there is no formal, recorded statutory restriction, personal religious autonomy trumps rabbinic policy preferences. When filling these gaps in Torah legislation, democratic deliberations are the preferred Torah response.
- Unless a norm is legislated and memorialized in the Oral Law library, it is not a binding halakhic norm. Democracy is not forbidden by Jewish law. It is therefore a permitted form of government (a) simply because democracy is not forbidden by statute and (b) if democratic decisions do not abolish or contradict Torah law, those decisions have met the benchmark of a Jewishly valid ruling. In American law, rights are what Ronald Dworkin calls "trumps" possessed by individuals or by a minority in order to protect them against the tyranny of the majority. These rights empower the individual to be a citizen who is capable of being an active moral agent. Individual rights restrict the blind will of the majority. For Orthodox Judaism, rights derive from the legal fact that an act is permitted if it is not forbidden. So if an act is neither commanded nor forbidden, it is fair game for democratic legislation. The biblical *Edah* may also be described as a primitive

democracy because it does not vote on the validity of Torah, but does vote on policy, budget, social services, and defense. In point of fact, democracy is also memorialized in Torah law as majority rule (Exodus 23:2 and *bBaba Mezi'a* 59b). By permitting what is not forbidden, the Torah Constitution carves out areas of personal and communal discretion, autonomy, and freedom. Like the American Bill of Rights, which limits majority rule in order to create a citizen who is a proactive moral agent endowed with personal dignity and conscience, the Torah allows its adherents to make their own, informed moral judgments. Since democracy and Torah both nurture their subjects to be politically and socially equal, democracy is actually the preferred form of *Jewish* self-government. God trusted Israel with the Torah to apply it appropriately.

- There are people who are unable to endure what R. Abraham Joshua Heschel called “the insecurity of freedom.” These voices maintain that it is better to obey the human leadership blindly, and not make mistakes due to limited human understanding, perspectives, and knowledge. After all, the charismatic rabbinic leadership is blessed, we are told, with the Holy Spirit, and faith in God demands faith in these charismatic rabbis’ virtual infallibility. In his *Collected Letters* 3:92, R. Abraham Karelitz claims that the Great Hareidi Rabbis must be obeyed in matters of Law *and* policy, because their opinion is presented to be Torah incarnate.

According to this view, democracy violates the sovereign authority—and immunity—of the Great Rabbis. While it is true that the Torah’s norms are not subject to vote, Torah opinion must be argued and defended by appealing to a rational reading of a shared Torah canon (Deut. 33:4) and by demonstrating how and why suggested changes do or do not violate legislated Oral Torah norms. Halakhic authority does not reside in charisma, intuition, or non-appointed office holders who lay claim to special inspiration, and authority. This power is not given to any elite other than the *Bet Din haGadol* sitting in plenary session at the yet to be rebuilt Jerusalem Temple (*bSota* 45a), not in any rabbinic committee, organization, or association. If Torah law were truly inviolate for anti-democratic Orthodoxy, R. Karelitz would require rather than forbid military service of men and women, as reported at and required by *bSota* 44b. R. Karelitz passionately opposed Orthodox military service at his *Collected Letters* 1:111. An informed Jewish citizen will rightly ask, “If the Oral Law is not subject to change, then by what authority does R. Karelitz forbid what the Torah canon requires?” Democracy empowers its citizens with rights, allowing Jewry to ask its leaders, “Why did you decide the Law as you did?” R. Karelitz is able to forbid a universal draft because for him the Law is the means of control that only the Great Rabbi is authorized to apply. But for R. Karelitz and his cohorts, “tradition” is the received—or remembered—culture of the Hareidi street, which is ruled by the Great Rabbis whose charisma invests them with religious infallibility and political immunity. Orthodox rabbis who disapprove of democracy shift the locus of Torah authority from the plain sense reading of the canonical *text* to the inspired charisma of their own canonical *persons*. After all, since their teachings are “the way of Torah,” no one may comment on what the Torah requires but them. Alternatively, Orthodox rabbis who approve of democracy believe that the Torah library is readable, and that rabbinic leaders may be held to account for their decisions. The Jew praises God every morning “for not making me a slave.” The Torah law that was given to all Israel liberates Jewry from being mental slaves by teaching Jews to judge their judges if and when they deserve to be judged. The fact that the Torah was engraved (*harut*) on stone generates political freedom (*herut*) because the Torah laws do not tolerate manipulation or misrepresentation so that the Jew knows when, where, and how to legitimately assert one’s autonomy. The Torah’s moral agenda aims to produce a population committed to a Law that is both a prescriptive code and a liberating descriptive map. The committed Jew is bound by the Torah’s legal norms, not the policies of any oligarchic elite.

- Last, Torah law requires that Jewry remain the “servants of God” by complying with the norms recorded in the Torah documentary trove. Those who believe that Orthodox Judaism and democracy are *not* compatible maintain that (a) since God’s word is unreadable, (b) His will is inscrutable, and (c) Jewry must take direction from its Great Rabbis, who are singularly qualified to issue *Da’as Torah*, or apodictic Torah opinions. The ideal Jew is a submissive, obedient, compliant individual who faithfully and unquestionably defers to the Great Rabbis, who are guided by God’s inspiration. And those who believe that democracy and Orthodox Judaism *are* compatible take God at His word, that the Torah is readable, God’s will is revealed in the plain sense of the sacred canon, the post-talmudic rabbi explains what the sacred canon says, but is neither a canonical person nor legislator for anyone who does not reside within his geographic jurisdiction.

For democratic Orthodoxy, the ideal Jew is a moral agent who knows how to determine “what is right and good” (Deut. 6:18), who is prepared to hold her or his Jewish leaders to account, and for whom God’s will is no more and no less than fidelity to Torah’s norms and to one’s own Torah informed moral compass. The democratic Orthodox Jew has the courage to challenge human authority if and when that authority conflicts with Torah’s norms. Non-democratic Orthodoxy is reflected by the Torah’s portrait of Joshua as a young man. When Eldad and Medad were prophesying in the camp without an official commission, Joshua begs Moses to arrest them. Moses asks his squire rhetorically, “Are you *really* jealous for me” (Numbers 11:26–29)?” Moses here teaches Joshua that Torah truth is not a franchise owned by an oligarchy; it is a gift that God in principle gives to all Israel. Learning this lesson very well, Joshua is willing—and able—to publicly contradict the ten spies who lacked the faith and courage to take God at His word, that Israel is capable of conquering Canaan. Joshua is able to defy the Israelite elite simply because this elite defied and denied God’s commission to scout the Promised Land (Numbers 14:6–9) in preparation for a Divinely assured conquest. The spies were not commissioned or authorized to pass judgment on the content of God’s promise. The Torah democracy’s “hidden curriculum” nurtures religiously independent moral consciences, not robots who defer to their fears or to the social franchise of institutional Orthodoxy. Put in contemporary terms, when scandals like sexual abuse arise in the Orthodox community, some have an instinct to protect Orthodox institutions, franchises, and leadership, so as not to embarrass its supposedly infallible elite. But we should have a reflexive response to protect the innocent, to uproot evil, and to call the authorities in order “to remove the evil from our midst.” When a person is pursuing or endangering the Jewish public, the civil authorities are called immediately. When there is danger of profaning God’s Name, respect for rabbinic elites must be suspended (b*Berakhot* 19b and elsewhere). Democratic Orthodoxy challenges its adherents to become moral agents; anti-democratic Orthodoxy infantilizes its affiliates by demanding social compliance and conformity to whatever folkways its rabbinic elite believes will generate a shared communal sense of sectarian otherness. The modern political “right” is called “*zekhut*” in contemporary Hebrew, and in rabbinic Hebrew the concept is called *reshut*, literally “permission.” By denying that there are Jewish rights, Orthodoxy’s democracy-deniers blur the halakhic boundary between prohibition (*issur*) and permission (*heter*). Since democratic Orthodoxy empowers its Jewry with God-given rights, it is the right course for contemporary Orthodoxy to take, because the rights that God gives no one may take away.