

## Why Separate State and Religion?

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### Abstract

The article opens with a discussion of my premises in relation to the separation of state and religion. Section II elucidates the goal of creating a decent and just society in Israel. Section III explains the manner in which liberal democratic values, based on the above premises, enable Israel to fulfill this goal. These values include liberty, tolerance, human rights, equality, truth, and justice. The Respect for Others Argument and the Harm Principle safeguard the rights of women, ethnic, religious, national and cultural minorities, homosexuals and others who might otherwise find themselves at a disadvantage in society. Section IV delineates how and why justice is the all-encompassing value Israel must adopt. The Conclusion focuses on the means of compromise and deliberation used in the decision-making processes.

Keywords: Equality, Democracy, Israel, Judaism, Justice, Liberalism, Religion, Women's rights

### INTRODUCTION

WHAT IS, AND WHAT SHOULD BE, THE ROLE OF RELIGION IN ISRAEL? In previous writings I have argued that state and religion must be separated in order to avoid coercion and allow for the pursuit of the good according to individual concepts so long as they do no harm to others.<sup>1</sup> I have analysed inegalitarian manifestations in Israel's Orthodox Jewish community, especially its discriminatory practices in matters of personal status. I argued that Judaism should institute gender equality in view of Israel's commitment to human rights, and further, that Israeli leaders must strive to close the unfortunate gap between the revered aims and affirmations voiced in Israel's 1948 Declaration of Independence and the reality of unequal political and social rights for women.<sup>2</sup>

I have criticized the widespread institutional discrimination against women,<sup>3</sup> against other forms of Judaism, reform and conservative,<sup>4</sup> and against the Palestinian-Arab minority.<sup>5</sup> The litmus test for assessing the democratization of any given society is the status of its minorities: The more integrated minorities are in society and the more they are treated with equality, respect, and concern, the more of a light unto the nations and an inspiration that society can be. I maintain that Israel should strive to accommodate the interests of Palestinian citizens and grant them equal citizenship rights, free from all forms of discrimination. I have reiterated time and again that Israel should strive to safeguard equal rights and liberties for all citizens regardless of race, religion, ethnicity, colour, gender, class, or sexual orientation.<sup>6</sup>

Israel must strive for equality in housing, municipal budgets, and the allocation of resources. It must fight against racism, bigotry, and discrimination, and introduce changes to accommodate the interests of Israeli Arabs/Palestinians so that citizens will "feel at home" in their own country. Delegates of the Arab/Palestinian minority should be proportionally represented in the Knesset and in the government. Accordingly, since the Arab/ Palestinian minority at present constitutes 21% of the population of Israel, 21% of the Knesset and Arabs should be represented by Arabs. Symbols of state should be adjusted to give expression to all citizens of Israel. Since Israel is defined as a Jewish and democratic state, it bears a responsibility towards all its citizens. This would not negate the essence of Israel as a Jewish state.<sup>7</sup>

Those who truly care about human rights, women's rights and minority rights support the much-needed separation between state and religion based on the premises, values, and overarching theory I succinctly articulate here. These are grounded in a liberal and democratic philosophy. Though the article deals with theory it treats practical issues indicative of those spheres in which the Orthodox Israeli minority exerts power over the secular majority, coercing them to abide by religious dictates they reject.<sup>8</sup> It likewise articulates my conception of the good as encompassing both personal values and societal circumstances. It consists of a more or less determinate range of society's achievable aspirations as well as its attachments and loyalties to various groups and associations. I recognize that for many in society, the religio-cultural context is significant in the choices and decisions they make.<sup>9</sup>

The article opens with a discussion of my premises in relation to the separation of state and religion. Section II elucidates the goal of creating a decent and just society in Israel. Section III explains the manner in which liberal democratic values, based on the above premises, enable Israel to fulfill this goal. These values include liberty, tolerance, human rights, equality, truth, and justice. The Respect for Others Argument and the Harm Principle safeguard the rights of women, ethnic, religious, national and cultural minorities, homosexuals and others who might otherwise find themselves at a disadvantage in society. Section IV delineates how and why justice is the all-encompassing value Israel must adopt. The Conclusion focuses on the means of compromise and deliberation used in the decision-making processes.

## PREMISES

It is important to recognize the dialectic that exists between culture and religion. Israel is a pluralistic country, with many cultures, religions, and denominations. Liberty is an enshrined value. However, some factions of Orthodox Judaism believe they are required to lead life in accordance with the dictates of the Torah and that there is no such thing as liberty. People who belong to those factions feel entitled to abuse the power granted to them by denying liberties to others. Striking a balance between rights and liberties is challenging. There is no quick fix

suitable for all societies. Every society must balance its own history, policies and culture against the pain and suffering that comes with belonging to a particular culture or religion and the consequences of state intervention, or lack of intervention in cultural and religious affairs. These factors vary from one country to another just as their histories and politics do. The challenge in Israel grows increasingly difficult as a result of globalization, immigration, and the changing composition of its society. In my personal worldview, a just framework of governance must provide scope for diversity, respect for others and deterrence of coercion where possible. My premises are:

1-Zionism is of vital significance. The Jewish people need a sovereign homeland where they can safely pursue their conception of the good; Zionism is a revolutionary movement that envisioned the establishment of a Jewish society, free from prejudice and prosecution, where Jews might live as a unified, independent people in a land of their own. The land of Zion, or Israel, is the land of the Bible, a land which has captured the imagination of the Jewish people over many generations.<sup>10</sup> The State of Israel is the only Jewish place of refuge for Jews from around the world.<sup>11</sup>

2-The people of Israel form an inter-generational chain (sharsheret bein dorit in Hebrew) between past and future. As human beings we are shaped by our place of birth, by family and friends, by the circumstances of our upbringing and education. The past is significant in that our orientation requires us to know whence came and whither we go.

3-Gender equality is paramount in the pursuit of the good: Men, women and transgender people should enjoy equal human and civil rights. Men are not inferior to women. Women are not inferior to men.<sup>12</sup> Transgender people are not inferior to men and women. Although men and women are biologically different, their biology should not lead to a differentiation of rights and liberties. Countries that perceive biology as the determining factor are and have always been racist. The Jewish people are fully aware of the tremendous harm of racism.

4-Respect for multiculturalism means respecting diversity and the mosaic of pluralistic traditions that enhance our humanity in allowing ourselves and others to promote myriad conceptions of the good. Citizens should enjoy the same basic rights. The state should make no distinction between a set of rights and privileges for people belonging to one culture/ religion, and those belonging to another.<sup>13</sup>

5-The State should make a clear distinction between public and private communal concerns. Private concerns are, by definition, personal. The State must limit its involvement in such concerns to an absolute minimum and intervene only when there are significant countervailing public interests.

6-The desire to lead lives as autonomous human beings free from coercion must be respected. Coercion is offensive to human nature and leads to an increased sense of alienation and resentment. This is not to say that coercive means are never employed in a democracy, but when they are, they should be firmly backed up with legitimate and reasonable justifications.<sup>14</sup>

7-Governments should not restrict freedom in the assumption that a particular way of life is intrinsically better and that people who lead that way of life are intrinsically better than others. It is not up to government to impose a particular point of view on everyone.<sup>15</sup>

## THE GOAL

The goal is the establishment of a decent and just society. Liberals promote a set of important values instrumental for the establishment of a decent society. By this I mean a society that provides all citizens with social and economic security, social cohesion, social inclusion, and avenues to advance and promote individual capabilities.<sup>16</sup> My vision is a state in which liberty and tolerance are encouraged, where government does not apply partisan considerations that affirm its own interests and conceptions, where peace and tranquility are sought and promoted, where social agencies seek ways to accommodate different ways of life, and where leaders strive to reach compromises that respect variety and pluralism, and continue to realise the aim of sustaining a decent and just society.

Based on the above premises we shall next consider the type of governance that supports the fulfillment of this ambitious and greatly to be desired goal.

## DEMOCRACY

Democracy in my consideration is the best form of government, not because it is perfect but because it takes into account the interests and rights of people more than other forms of government do. The principle of *vox populi*, so central to democracies, provides a framework of governance that aims at entertaining as many public interests as possible, resolving conflicts and offering just accommodations. The concept of 'democracy' has been used in conjunction with the concepts of 'monarchy' and 'aristocracy', a trilogy employed to discern situations of monopoly, oligopoly, and equality. A state is democratic to the extent that the great mass of its population can exert an influence on decision-making processes, that its values of governance are entrenched, and that the diverse interests of society are adequately represented. The democratic creed entails both majority rule and the preservation of the rights of minorities. As Lord Acton phrased this in his essay on the history of freedom, "the most certain test by which we judge whether a country is really free is the amount of security enjoyed by minorities."<sup>17</sup>

Democracy is about institutions and governance, policies, and procedures. Like all forms of government, it is a system in which political power is exercised by the state over the individuals who reside in it. The term is derived from the Greek words *demos* (the people), and *kratos* (power), and means the rule of the people. Political authority rests with the people and is exercised by them to establish, modify or abolish the system of power. Democracy involves non-governmental as well as governmental decision-making. The growth of democracy has been associated with the flow of opinions, free discussion of political issues and the right to disagree, and with the settlement of differences, not by sheer force, but rather by ascertaining "the will of the people."

Democracies offer a mode of administering and facilitating discussion among individuals, parties and organizations that hold different, and at times conflicting interests. Their aim is not to secure complete agreement on every issue, and though they certainly welcome consensus they endorse various means of settling differences in practice. Therefore, the commonly accepted principle is compromise, whereby that which divides is rejected in favor of that which unites the people.

Historically, democracy and liberalism are closely related. While democracy is significantly older than liberalism, democracy is sustained by liberalism as a theory of government and society. Most modern democracies preserve and promote liberal values. It is my hope that Israel will persevere as a liberal rather than an ethnic democracy.<sup>18</sup>

A liberal democracy is a form of government enshrined in liberal ideology in which political power devolves to society as a whole rather than to a single person or a particular group of people. The enshrined values of liberalism include liberty,<sup>19</sup> tolerance,<sup>20</sup> human rights,<sup>21</sup> equality,<sup>22</sup> truth,<sup>23</sup> and justice.<sup>24</sup> The liberal ideology promotes human rights, pluralism, freedom, equality before the law, and the inherent dignity of all people. These values underpin the foundations of liberal democratic societies.

All liberal democracies support and promote the ideas of respect for others and their protection from harm. The Respect for Others Argument, derived from Kantian philosophy<sup>25</sup> and in recent years supported by the Rawlsian theory of justice, requires us to respect the dignity of all human beings, while John Stuart Mill's Harm Principle holds that the only purpose for which power can be rightfully exercised over any member of the community, against his or her will, is to prevent harm to others.<sup>26</sup>

Kantian ethics is based upon reflexive self-consciousness. It speaks of respect for people as rational beings, and of autonomy in terms of self-legislation. Kant calls the ability to be motivated by reason alone the autonomy of the will, as contrasted with the "heteronomy" of action which is influenced by external forces. An autonomous agent is one who is able to overcome the

promptings of heteronomous counsels, like self-interest, emotion, and desire when these conflict with reason. Only an autonomous being perceives the genuine ends of action (as opposed to what are mere objects of desire), and only such a being deserves our esteem as the embodiment of rational choice. The autonomy of the will, Kant argues, "is the sole principle of all moral laws, and of all duties which conform to them; on the other hand, heteronomy of the will not only cannot be the basis of any obligation, but is, on the contrary, opposed to the principle thereof, and to the morality of will."<sup>27</sup> Autonomy is the foundation of human dignity and the source of liberal morality.

The Respect for Others Argument is founded on the assertions that we should respect others as autonomous beings who exercise self-determination according to their own life plans, and respect those who develop their inherent faculties as they choose (e.g., people who develop only those capabilities they wish to develop, but not all the capabilities they have been blessed with). At the same time, we should insist on a requirement of mutuality and show respect for those who respect others.<sup>28</sup>

The boundaries of tolerance are determined by the qualification of not harming others, which is added to the Respect for Others Argument. Mill's Harm Principle holds that something is eligible for restriction only if it causes harm to others. Mill wrote in *On Liberty*: "Acts of whatever kind, which, without justifiable cause, do harm to others, may be, and in the more important cases absolutely require to be, controlled by the unfavorable sentiments, and, when needful, by the active interference of mankind."<sup>29</sup> A similar idea was pronounced by Rabbi Hillel in his dictum: "What is hateful to you do not do unto your fellow."<sup>30</sup>

While Kant spoke of unqualified, imperative moral duties, Mill's philosophy is consequentialist in nature. Together the Kantian and Millian arguments constitute a forceful plea for moral, responsible conduct: Always perceive others as ends in themselves rather than as means to an end and avoid harming them. Liberal democracies accept the principles of respect, no harm, and human dignity as the foundations of governance whereas theocracies deny the background rights and moral values of liberal democracies and adhere to a very different conception of justice.

## JUSTICE

An all-encompassing theory of justice should include the values of liberty, tolerance, human rights, equality, and truth as well as respect for others and no harm. In the 20th century, the writings of John Rawls became integral to the discourse on the meaning of justice. His book, *A Theory of Justice*, published in 1971,<sup>31</sup> had a tremendous impact on political philosophy as well as on my personal philosophy and helped me better understand the complexity of human

relationships. A society that creates a just system of governance can secure individual rights, human rights, health rights, social rights, and legal rights.

Imagine that you understood the importance of the above premises, concepts, values, and ideas but did not know whether you were male or female, religious or secular, Jewish or Muslim, which form of religious administration would you choose for yourself? Aware of the consequences of your decision but not of your place in society you would surely opt for a fair and reasonable system that does not discriminate against anyone. You would not wish to find yourself in a situation where the system you recommend causes you to be marginalized, discriminated against and potentially excluded. If religion might undermine justice, then it should be separated from politics. Hence, justice dictates separation between state and religion.

Behind the veil of ignorance, we expect people to embrace equality, liberty, and tolerance. When people know, in general terms, the facts of human society and its political organization; when they are mindful of the principles of economic theory but are unaware of their place in society, their level of intelligence, strengths and weaknesses, gender, social and political status, their culture, religion and nationality, we might expect them to choose the Equal Liberty Principle. This would give every individual the most extensive liberties compatible with similar liberties for all (Egalitarianism). To ensure fair opportunity regardless of social class and origins, Rawls advocates state education and training for the less well-off, and guaranteed minimum income and health care for all.<sup>32</sup> Furthermore, while we may expect social and economic inequalities to emerge, state provided benefits should be organized in a way that will (a) bring the greatest benefit to the least advantaged members of society and (b) offer equal opportunities to all.<sup>33</sup> The Rawlsian second principle of justice, the Difference Principle, means that society may undertake projects that require giving some persons more power, income, status and so forth e.g., paying physicians and upper-level managers more than assembly-line operators, provided that two conditions are met:

(1) The project improves life for those who are currently worst off, for example, raising the standard of living for everyone in the community and empowering the least advantaged among them as consistent with their well-being.

(2) Access is allowed to positions of privilege without discrimination or exclusion due to irrelevant criteria. All social primary goods should be distributed equally, and if that becomes unfeasible for any reason, the distribution should work to the advantage of the least favored members of society.<sup>34</sup>

David Ben-Gurion, a visionary leader and a prolific author, wrote extensively about his vision for the State of Israel. The people of Israel, he wrote, must not compromise on three principles: Independence-there is no foundation for sovereignty without moral and intellectual

independence; the most dangerous enslavement is spiritual; and Israel must forge its own way in history.<sup>35</sup>

Liberty is important. The state, Ben-Gurion wrote, is not "a religious church".<sup>36</sup> A person's thought is not dictated by a government or majority. Echoing John Stuart Mill's belief in freedom of opinion on all subjects, including Newtonian philosophy,<sup>37</sup> Ben-Gurion said that an individual must be allowed to "stand against the whole world."<sup>38</sup> The spirit has no boundaries. Individuals may contest any truism, criticize any accepted view, and no government should be allowed to determine what truth is or is not.<sup>39</sup>

To safeguard liberty, Ben-Gurion invoked democracy at a time when democracy was not popular to the extent that it is today. Echoing Kant, Ben-Gurion argued that human beings are not a means but an end in themselves. Echoing Mill, Ben-Gurion declared that all individuals are as free as their fellows and individual rights and liberties are constrained only by the rights and liberties of others. The freedom to criticize is fundamental. A people that lacks the freedom to criticise and replace its representatives is not a free people but "a poor herd that lives at the mercy of its tyrannical shepherds."<sup>40</sup>

Finally, we come to the issue of tolerance. Both Ben-Gurion and Rawls object to religious coercion. But whereas Rawls supports separation between state and religion in order to promote individual choice and prevent state coercion, Ben-Gurion enabled a system of governance where religion drives many decisions and enters into the most private aspects of human life: birth, marriage, divorce, and death. It was more important for him to keep the Jewish people united in the face of its many enemies than to enable religious pluralism and equal rights. While I appreciate Ben-Gurion's constraints and the realpolitik that led him to make painful compromises with representatives of the religious Orthodox sector, the resulting ethnic democracy has made the realization of Ben-Gurion's vision difficult and prevented Israel from fulfilling the principles he outlined.

Lack of separation between state and religion has led to the continuing agony and alienation of many sectors within Israel's population. Members of the secular community are required to abide by a set of norms and halachic regulations that are not part of their worldview. Coercion is employed against those who protest against the dictates of Jewish law. The 2013 Religion-and-State Index showed that if they were free to choose, two thirds of secular Israelis would prefer not to be married in an Orthodox ceremony.<sup>41</sup> Furthermore, couples who decide to go their separate ways, including those who have married in a civil ceremony abroad, are still required to obtain a divorce in a religious court. Most Israelis are not aware of this.<sup>42</sup> Only when couples separate, do they realize that they are forced to undergo a discriminatory ritual in rabbinical courts that are of little significance to them.<sup>43</sup>



Furthermore, civil marriages are not allowed in Israel. Only Orthodox marriages, performed by an Orthodox rabbi, are recognized. Couples who wish to marry must be recognized halachically as Jewish. In 2021, the issue reached media headlines following the Tokyo Olympics when the complex situation of Israel's first gold-medal Olympic gymnast, Artem Dolgopyat, became public knowledge. Dolgopyat was born in Ukraine to a Jewish father and a non-Jewish mother. Therefore, while he can represent Israel in major sport tournaments and bring Israel honor and pride, he is not considered Jewish in Israel. Dolgopyat had been dating his girlfriend for years but the two cannot wed in Israel.<sup>44</sup>

About 400,000 people are defined as absent religion (chasrei dat) who do not belong to any recognized religious community.<sup>45</sup> They are subject to various restrictions, especially in the area of marriage and divorce. Conservative and Reform marriages performed inside Israel are not recognized by the State. The only Jewish marriages in Israel that are recognized are those performed by the Orthodox Rabbinate. Most couples, after having a Jewish Reform or Conservative ceremony in Israel, go overseas to Greece, Cyprus, other European countries and even the United States to conduct a civil ceremony.<sup>46</sup> This marriage is then recognized in Israel for purposes of registration.

Thus, the present situation infringes on basic human rights, freedom of religion, freedom of conscience and equality. It is argued that one group has no right to coerce the entire society into following its conception of the good and abiding by its cultural norms. In the event that a religious or cultural group makes such an attempt, other segments of society have to open further channels of communication and resolve the situation by peaceful means. If these means fail, they should resort to authoritative means to draw the boundaries and fight against coercion.<sup>47</sup>

## CONCLUSIONS

The article advocates separation between state and religion in order to promote Israel as a liberal democracy. Israel today gives precedence to Judaism over liberalism. I submit that the reverse should be the case. Moving forward, Israeli leaders should employ two methods to achieve the goal of creating and sustaining a decent and just society:

Compromise-Many of the issues that engulf society and create cleavages can be resolved via deliberations and compromises. Political and social conflicts can be mitigated and tamed by compromises. While politics is bound to include a conflictual dimension, liberal democracy is oriented towards a sustained quest for compromise:<sup>48</sup>

Deliberative democracy-Governments should not behave like a bull in a china shop. A government should conduct its affairs vis-a-vis minority cultures with sensitivity and determination, setting reasonable ends, opening channels of communication, seeking accommodation and compromise that demonstrate respect for the values of the state as well as for minority cultures.<sup>49</sup>

What is needed is a deliberative process involving all parties to reach a compromise. The compromise process involves open and sincere communication between parties with an acknowledged diversity of interests.<sup>50</sup> Israel should enhance and promote civic education that includes discussions on the merits of tolerance, based on respect for others, and on the merits of compromise, based on genuine concessions between different groups of society.

All democratic governments must play the role of an umpire in the sense of applying just considerations when reviewing different conceptions of the good and trying to reconcile conflicting interests, trends, and claims. This delicate task demands sincerity, integrity, impartiality, and accountability. Governments should not exploit their roles to their own advantage, and in making decisions should bear in mind the relevant considerations and demands that concern society as a whole, and not just one or certain factions within it. The constant challenge for all democracies is to secure basic human rights for all, the powerful as well as the powerless, those who are able to take care of themselves and those who struggle to maintain their independence and autonomy. It is unfortunate that in Israel, women, secular communities, and minority groups are all at a disadvantage due to the lack of separation between state and religion. Religion is, and should remain, a private matter. When religion is institutionalized and politicized to the advantage of some and the detriment of others, the goal of enjoying a decent, just society cannot be fulfilled. Israel, like all liberal democracies, should separate state and religion and allow its people to develop their own conceptions of the good.

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## Notes

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