

SUMMARY

SEPARATION OF RELIGION AND STATE: SLOGAN AND CONTENT

by

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In discussions on the question of religion and state, the concept of "separation of religion and state" is often raised. However the meaning of the question is not always clear. It is to be understood that the concept of "separation" is an extreme and rather rare alternative from the complex of types of relations between religion and state. In Israel, where there is "non-separation of religion and state", the statement is not self-explanatory. There are three main areas in which religion is anchored in the political sphere: the symbolic one, the institutional one, and the legislative one.

The influence of religion on the symbolic level is expressed by the widespread use made by political institutions and their representatives of symbols which are essentially religious. Thus the candelabra, originally a religious symbol *par excellence*, is the symbol of the state; religious symbols appear on stamps; there are allusions in speeches, official texts and ceremonies to the words of Jewish sages and phrases from prayers. The simplest explanation of these facts is the almost general support given by Jews in Israel to the idea that their state should be "Jewish". Since there is hardly a Jewish symbol which is not religious in origin, the separation of religion and state on the symbolic level would not be possible without casting doubt on the Jewish identity of the state.

In this connection it might be useful to note that "the religious question" in Israel comes to the fore mainly in the area of relations between religious and non-religious Jews living in the state. The focus of relations between Jews and non-Jews in Israel is "the national question" and not the religious one. So far as there are tensions in these relations, they have an ethnic or national background and not a religious one.

However, Jewish nationalism being a condition dependent upon Jewish religion, it thus is clear that members of a different religion cannot obtain the status of the Jews in Israel. Even if they would like to become a part of the Jewish nation, they cannot do so unless they also are willing to adopt the Jewish religion. The privileged status of the Jewish faith is not

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principally an outcome of the lack of separation of religion and state, but of religion and nationality being inseparable in Judaism. Nevertheless it is possible for the different faiths in the state to enjoy fully equal status in spite of the link existing between religion and state.

The place of religion in the array of symbols, values and custom of Israeli culture is assured by the willingness of wide circles of the Jewish population to accept these symbols without their being imposed by law. However the tendency is to minimise the original religious meanings of these symbols and to give them national ones. Wide circles of the secular public see in the linking of national and public institutions to religious symbols an expression of a positive attitude to the values of the Jewish faith, even if they would not go so far as to accept observance of the religious commandments. This linking of religion and state on the symbolic level does not exclude separation on the institutional or legislative level. However, as we shall further explain, it is difficult to distinguish between the different areas, the more so as it is possible to attach symbolic meaning to different phenomena in the institutional and legislative realm.

On the institutional level

Under this heading we take the existence of religious institutions legally recognised and financed by the state, as are the Chief Rabbinate, the local rabbinates and the religious courts, as well as the state religious schools. This recognition and financing is not only applicable to institutions of the Jewish faith, but to Christian and Muslim ones as well. However the Christian communities have refused the financial aid offered them by the state in order to preserve autonomy over their own religious system.

The central problem within this system is that of the measure of autonomy enjoyed by the religious institutions and the possibility that state institutions or the secular public may exert their influence to supervise the organisation and activities of these institutions. Moreover, in spite of the fact that religious institutions hold recognised legal status, they are not, in fact, fully a part of the political system. This can be seen from the fact that large segments of the public, and among them political or jurisdictional bodies, refuse to recognise the authority of the Rabbinate in any but the well-defined areas where secular law has given it power. On the other hand the Rabbinate holds itself autonomous and refuses to recognise the authority of the secular jurisdictional system, or even secular laws over it. Thus, notwithstanding the formal link existing between religious and governmental institutions, in reality we have two separate institutional systems each of which considers its power as springing from a different source.

In the United States the principle of separation is usually interpreted as non-participation of the state in any form of financial aid to religious services. In Israel there is a growing tendency to see religious services as

part of the "welfare state" which serves, from public funds, segments of the population who desire these services even if the population as a whole does not. Among supporters of governmental financial aid to religious institutions are those who nevertheless oppose their recognised legal status.

Religious education – In Israel there is hardly any opposition to state recognition and financing of religious schools. The differences of opinion are centred on defining this education and the character of its privileges as compared to those of secular education. The argument boils down to this: may the religious sector direct and supervise its educational system, or is this the privilege of the state?

Here is the place to review the attitude of Israeli society to the question of sub-group institutions being financed by the public. At the time of the Mandate and during the early years of the state a cultural-political tradition held sway which authorised and supported "sub-group" activities of an autonomous and particularistic character. This trend slowly grew weaker after the establishment of the state, but its influence is still felt considerably. The Israeli public is more willing than, for instance, the English public, to finance activities and services which are meant only for a sub-group in the population, and this not out of consideration for the essence of the activity, but for the interest of the sub-group itself. The Israeli public does not require national justification for every government-financed activity and is willing to accept a certain amount of sub-group autonomy. Add to this the fanatical attachment of the religious sector to its institutions and its opposition to any attempt at fargoing intervention on the part of the secular majority of the population or the government in the affairs of religion, and one gets the success of the religious institutions in retaining a considerable amount of autonomy in their relations to state authorities, and a special link with the religious public, notwithstanding their obvious dependence on government funds.

What maintains the links between religion and state on the symbolic and institutional level is the fact that one cannot regard them as "religious coercion" of the individual. This is not so in the case of religious legislation, as we shall now consider.

Religious legislation

There are two kinds of religious legislation; one which does not interfere with life on the personal level, as is the case with national symbols and aid to religious institutions, and the other which does, for example the marriage and divorce law. There are also two kinds of objections to religious law, one on grounds of personal convenience and the other on grounds of "freedom of conscience". The latter objection is uncompromising and absolute, since it holds that even in a democracy the majority cannot force its will on the conscience of the individual. Objections on these ground are brought

to bear mainly against the marriage and divorce law, since in other cases one could hardly speak of a "coercion of conscience". However in fact there is a growing tendency among the public towards objection to the Sabbath laws which interfere with the personal convenience of a large segment of the population (no public transportation on Saturday, no entertainment, all shops and restaurants closed), whereas the greater part of the population is willing to accept the laws of marriage and divorce and does not see them as an infringement on freedom of conscience. This indicates that secularism as a principle or an ideology is on the wane and has instead become a way of life with no value-principle attached to it.

Those who object to the religious legislation of the state as opposed to democracy use the argument, besides the "freedom of conscience" one, that it is "coercion by the religious minority of the secular majority". However it has never been proved by any data that the majority does in fact object to the different manifestations of religious legislation. Different public-opinion polls show that there exists a discrepancy between personal conduct in religious matters and the stand taken on the question of religion's place in the life of the state.

Even if granted that religious legislation is not supported by the majority of the population, the question remains: is this an infringement of democracy? In a representative democracy there is no need for the majority of the public to agree on a certain law; it is enough for the majority of the representatives, chosen by the people, to decide for or against. Again, it can be argued that religious legislation does not represent the "true" opinion of the majority of the members of the Knesset or the Cabinet, for the religious parties exploit their position in the coalition to push through religious laws. Yet this sort of play on the part of minority or majority parties for the sake of their own interests is perfectly valid and acceptable in a democratic regime. However the National Religious Party's role in the coalition is not the only and not even the principal cause of religious regulations. The religious laws that have been accepted have come first and foremost through the awareness of so-called "non-religious" elements of the importance of these laws, or through their awareness of the intensity of the religious community's feelings about the legislation (and from the point of view of theoretic democracy the intensiveness of a certain issue is a perfectly valid consideration).

From a religious point of view it could be argued that religious legislation which is against the will or conscience of the individual negates the purpose of religious behaviour, which is to be an expression of religious consciousness. But this is an argument stemming from Protestant theological thought and not from Jewish sources. From a Jewish religious point of view the Jewish way of life is not a covenant between the individual and God, but between God and his people, and the saying "Jews are guarantors for

one another" expresses the principle of mutual responsibility in Judaism. The practical meaning of this is that Judaism is intended to shape the image of the people and the state, and for this end it needs to exert a certain measure of coercion. Yet there is a growing tendency among the religious parties to take a "protective" stand on religio-political questions. This stand manifests itself in the emphasis put upon legislation protecting the interests and privileges of the religious sector rather than for the sake of shaping the image of the state. This stand can be explained by the minority position in which the religious sector finds itself. The fiercest disputes on religious questions have not broken out in the wake of "religious coercion" but of "anti-religious coercion". These were the campaigns about religious education, the drafting of religious girls, the law of anatomy and pathology, the structure of religious institutions and their independence of political and judicial interference.

The interaction or separation of religion and state: positions and reality.

A synthesis or "overlapping" of religion and state would mean that the religious element would be identified with the national and vice-versa. This would be a possibility if there were general agreement about political culture, accompanied by a process of social and ideal integration and "mutual adaptation" of the different elements of society. However the problem of hegemony (the religious or the political element) in such a synthesis excludes such a possibility.

Those who favour complete separation of religion and state would like to see a minimisation of political activity and to have more social and cultural pluralism. The ideal type, from the point of view of this school, is the "neutral state" which is not identified with any *Weltanschauung* or defined social vision. This type of state is difficult to find in the modern world where the state has taken upon itself the supervision of education and thus cultivates certain symbols and values it wants to instil in its young. This separation of religion and state, however, is not influenced only by liberal-western ideas; it is also the aim of totalitarian and "revolutionary" regimes where the state actively interferes and suppresses religious expression. Thus from the religious point of view separation might not be all for the best, for it might endanger, rather than strengthen, religion's position. Religion needs to be protected by the state from interference in its internal affairs, as is the case in the United States. Yet even then separation can weaken religious influences on culture and society, and even make it difficult for a religious person to give his children an appropriate education. The greatest problem that separation of religion and state would pose for a religious Jew would be his inability to identify himself with such a "Jewish" state. Even as it is, the religious Jew is not in an easy position in a Jewish state ruled by a secular majority whose Jewish identity is expressed in terms not fitting his own conception of Judaism. Especially difficult is the case of religious Zionism which attaches

holiness to the existence of the state and sees it as "the beginning of redemption" and by this very fact feels more acutely the distance between the state as ideal and as reality. The religious Zionists' problem is compounded by having to fight on two fronts: for the greater influence of religion in the state and for the protection of the religious sector.

The case of the non-religious is not easier, and may even be more difficult. This sector is chiefly interested in preserving the national and political unity of the Jewish people and its historical continuity. Yet it is not willing to take on the full obligation of a Jewish traditional religious life. The existence of a religious minority, the need to maintain a common ground with them, and the need to define their own Jewish identity complicate the problem.

We have shown that the existing situation – neither separation nor full interaction – is quite a complex one. It represents an attempt to overcome – by way of political agreements – the problems arising from a religio-cultural split in society. This problem cannot be solved by political or legal arrangements; however, these arrangements make co-existence possible.

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