**Religion and State**

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[Note: On 15 Iyar (May 11), the yeshiva will sponsor a *yom iyun* on religion and state in memory of Harav Lichtenstein zt”l. The *yom iyun*, which will be conducted in Hebrew, is open to the public. Details [here](http://haretzion.org/images/stories/YHE/whats_happening/5777/RAL-yahrzeit2-yomiyun-schedule-english.jpg).]

The problematic character of the relation between religion and state is no historical accident. It is rather a natural result of the coexistence of two distinct orders within any given society – indeed, within the structure of human life generally. A polity that acknowledges the existence and significance of religion at all must inevitably come to grips, theoretically and practically, with the formulation of the role of religion vis-à-vis the civil and political spheres. Hence, the problem of religion and state is not a specifically Jewish issue but a universal question that Jewry confronts from its own perspective. Nonetheless, several factors have served, philosophically and historically, to give the issue a particular Jewish cast, sharpening it in one sense and attenuating it in another.

Starting at a general level, it seems fairly clear that the basic approaches possible are quite limited in number. A priori, one can postulate three primary positions. Civil and religious authority may virtually coincide, power being concentrated in the hands of a king-priest or curia, as in numerous primitive societies or in some instances in contemporary Islam. At the other extreme, the two may be theoretically totally separated, as in the United States. Intermediately, there may be some blend of difference and association, this being the prevalent pattern in most modern European countries. The choice of approach may depend upon either pragmatic or ideological considerations – for example, upon an evaluation of which system best preserves social harmony while protecting religious interests, or upon a determination of which best reflects the optimal balance between temporal and supernal values. It may also be affected by tortuous historical processes.

With respect to this cardinal issue, there can be little doubt about the classical Jewish position. Traditional Judaism has thoroughly rejected the fusion of secular and religious authority. Confrontation between prophets and monarchs was a hallmark of the First Commonwealth. Even as regards the relatively more mundane institution of priesthood, Nahmanides states that its members are halakhically enjoined from assuming the throne, and he goes so far as to suggest that the Hasmonean dynasty was divinely punished to the point of extinction because its scions, as priests, “should not have ruled but only labored in the service of God” (Commentary on Gen. 49:10). On the other hand, radical severance has been equally out of the question. A people defined as “a kingdom of priests and a holy nation: (Ex. 19:6) is hardly prone to divorce its political from its religious institutions.

Judaism has consequently opted for the median position – not as a compromise but as an expression of its perspective upon the whole of human life and upon the relation, both metaphysical and functional, between its sacred and secular components. Judaism has consistently regarded the sacral and the mundane as distinct but not disjunct. Pervasive halakhic norms relate to all areas of personal and communal existence, even as objective categories demarcate the sacred and the profane. The goal is harmonious integration, but by no means an obliterative leveling. *Kiddush* and *havdalah,* sanctification and differentiation, are both *mitzvot;* indeed, with regard to the Sabbath, possibly two facets of the same mitzva.

The ideal polity, then, is one within which religion and state interact. From a halakhic perspective, this assertion holds true for all communities. All the more so, however, with respect to *knesset Yisrael* (the congregation of Israel), whose very existence as a national entity is defined, primarily, in spiritual rather than geopolitical terms; whose gestation and birth were the result of religious aspiration rather than contiguity or consanguinity; and which exists as a people, as Saadiah Gaon stressed, “solely by dint of its *torot*” [normative revelations] (*Sefer Emunot ve-Deot* 3:7).

The halakhic state is thus ruled jointly. Within it, a civil sovereign – initially, a chief judge or monarch but conceivably an oligarchic or democratic entity as well – coexists with the Sanhedrin (the term is of Greek origin but the institution biblical), a supreme ecclesiastical assembly invested with both legislative and judicial powers. The latter serves in a dual role. On the one hand, it constitutes the contemporary repository of Torah learning. As Moses Maimonides put it: “The [members of the] supreme *bet din* [religious court] which is in Jerusalem are the mainstay of the Oral Law, and from them law and statutes issue to all of Israel ... and whoever believes in Moses our teacher and his Torah is obligated to base religious action upon them and to rely upon them” (*Hilkhot Mamrim* 1:1). On the other hand, this ecclesiastical body enjoys a measure of governmental authority parallel to that of the civil sovereign. “Then the Lord said to Moses: ‘Gather for Me seventy of Israel’s elders of whom you have experience as elders and officers of the people ... [and] they shall share the burden of the people with you, and you shall not bear it alone’” (Num. 11:16–17). The respective civil and ecclesiastical authorities operate on the basis of radically different mandates and from very different perspectives, but each can make demands and impose limitations, and each can enforce them. Hence, while some areas may be clearly delineated as relating to the service of God or as the province of Caesar, respectively, others are clearly the domain of both religious and secular law. Given the broad latitude of halakhah, this means that large tracts of personal and communal life – virtually the whole social and economic sphere, for instance – are, in effect, independently ruled by two powers whose wills may but need not conflict. In other areas, however – notably that of foreign policy – checks and balances prevail. While foreign relations are generally regarded as the province of the secular order, some initiatives – the declaration of war, for instance – require the consent of the Sanhedrin.

The precise nature of the relationship is nowhere delineated in primary sources. The Talmud specifies that where civil law conflicts with halakhah, the latter takes precedence (*Sanhedrin* 49a). However, it does not spell out the degree of independence to be accorded secular law. The author of the fourteenth-century *Derashot ha-Ran* allowed for the existence of a wholly separate codex, with its own rules of evidence, torts, and so on. Maimonides seems to have taken a more moderate position, as the only civil punishment he specifically sanctions is the right to inflict capital punishment upon a murderer, inasmuch as public safety is endangered (*Hilkhot* *Rozeah* 2:4). Others, appalled by the prospect of non-halakhic justice, have explicitly rejected any but theocratic law and have largely confined the civil order to executive and administrative functions. Whatever the theoretical formulations, however, the potential for conflict is clear. Within an integrated polity, organized religion may control the state or be controlled – perhaps only supported – by it. As medieval history richly attests, the very existence of coordinate civil and ecclesiastical authorities invites incessant conflict. No theoretical construct can preclude such a possibility, and the halakhic model, within which power is partly divided and partly shared, is not exception. Nevertheless, Judaism’s commitment to integration of the civil and the religious realms clearly points to some mode of interaction.

The structure of government and the allocation of power between the respective orders and their plenipotentiaries unquestionably constitutes an important facet of the problem of religion and state, and from the classical period through the Renaissance it generally loomed as the most dominant. In the modern era, however, – surely, in the modern State of Israel – other aspects have come to the fore. The primary issue is no longer the mutual relation of civil and religious rulers, but the relation of both – particularly of the latter – to the citizen. The growing secularization of Western culture and the concomitant libertarian individualism have brought into question the right of any power – especially of a religious order – to impose its will in spiritual matters. Even those who, during the past century, have championed the massive interference of the state within the socioeconomic sphere have generally defined the religious realm as the domain of personal conscience. Diaspora Jews, in particular, motivated by both principle and self-interest, have sought to sever the religious from the mundane, and they have championed the private character of the former so as to neutralize sociopolitical forces that had often persecuted or undermined them and whose discrimination has hampered their progress in post-Enlightenment Western society.

The emergence of the problem of religion and state as one of the most persistent cruxes of Israeli sociopolitical life needs to be seen against this background. With respect to the specific libertarian issue, Jewish tradition has nurtured differing and possibly conflicting tendencies. On the one hand, it has staunchly championed the significance of the individual as a creative spiritual being. It has defined him as created in the “image of God” (*zelem Elohim) –* “the human face divine,” in Milton’s phrase – invested with cosmic uniqueness; and it has proclaimed that “whoever saves a single soul is regarded as having preserved an entire world” (*Sanhedrin* 37a). Moreover, it has posited freedom – unadulterated Pelagian freedom – as the basis of the spiritual life. On the other hand, tradition has conceived of society in general, and of *knesset Yisrael* in particular, in organic terms, and consequently has emphasized both collective responsibility and historical destiny. Hence, while obviously striving to educate to encourage freely willed religious commitment, it has not flinched from a measure of coercive enforcement – in part out of a need to maintain a modicum of national identity and character, and in part out of a sense that, at some deeper level, those who are coerced identify with the values in whose name action is taken against them and recognize the ultimate justice of that action.

Within the predominantly religious society of classical and medieval Jewry, such recognition was quite pervasive. In the modern State of Israel, however, it often manifestly does not exist. Hence, the imposition of religious law has become far more problematic, both practically and morally. Within the political arena, the issue has generated heated controversy, pitting those who regard some religious legislation as both necessary and justified in order to ensure the country’s basic Jewish character against a coalition of secularists who do not want the country to be too religiously Jewish and libertarians who, while possibly acknowledging the importance of Jewish identity, contend that it should not be attained at the expense of civil rights.

In many cases, the very existence of this opposition has led philosophical advocates of religious legislation to question it wisdom. Some have concluded that, given the scope and intensity of possible backlash, with respect to some laws coercive legislation is both inadvisable and undesirable. They have contended that, in the long-range interest of religion proper, even when the opportunity for passing new laws presents itself both prudence and moral sensitivity may dictate restraint. Others have rejected this counsel, however, and, since, the mid-1970s, as the overall cultural struggle has intensified, attitudes toward the role of government in religion have polarized. While zealous activists at one end of the spectrum have sought to expand that role, radical separatists at the other have challenged not only the corpus of religious laws but also state support for religious institutions. Hence, a broadly based readiness to muddle through, even at the clear expense of consistency, has been somewhat attenuated; and as many have adopted a more rigorous ideological stance the tenuous status quo maintained since the inception of the state has become increasingly fragile.

From the outset, the debate has been exacerbated by two factors. First, unlike the halakhic model, which envisioned an independent religious component sharing in the governmental process by relating to the people directly, the current situation entails the use of secular institutions and their sanctions in order to impose religious norms. This both antagonizes secularists and perturbs halakhists, who fear that the integrity of Judaism is sometimes compromised by the Erastian interference of civil authorities in religious matters. The second aggravating factor stems from the fact that, to an extent, the flow of events caught the halakhic world unawares. In the absence of a Jewish state for close to two millennia, the process of gradual adaptation – the grappling with new problems and the groping for legitimate halakhic solutions – that marked the development of halakhah in other locales barely took place with respect to the governmental sphere. Modes of thought and intuition, models of response and initiative, patterns of judgment and action – a whole tradition of political theory and practice as related to the continuous historical scene – was, as the State of Israel was coming into being, relatively inchoate. And while a whole generation has passed since the establishment of the state, much remains to be articulated and done before such a tradition will be firmly established. On the secular side, likewise, the leading spokesmen are often the voices of crude and strident anticlericalism; here, too, much work remains to be done. Such developments would not necessarily solve the problems at hand, but they would at least clear the air and clarify the issues, thus raising the quality of discourse.

**Bibliography**

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