Religion and State in Israel

A Modest Proposal

By Moshe Koppel, July 2013

Every now and then, people who in the grand scheme of things look and sound more or less like me voice opinions that make me wonder whether I've been sucked through the rabbit hole. Often these opinions have to do with freedoms they would like to sacrifice to government bureaucrats. All too often, those freedoms are of the religious kind.

Once, when I was helping to draft a constitutional proposal for the state of Israel, a prominent rabbi urged me to include a provision that would require judges on rabbinical courts to be God-fearing. When I suggested that this kind of language was likely to prove ineffective in a constitutional context—*and* that it might be better if judges on rabbinical courts weren't appointed by the government in the first place—he gave me an odd look and asked, in all sincerity: who, then, would pay for them if not the

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government? The possibility had never occurred to him that Jewish communities and not the state should support Jewish institutions.

Nor does the possibility seem to have occurred to the state itself. A case in point is a recent ruling by Israel's Supreme Court involving a controversial loophole in Jewish religious law (*halakhah*). The loophole, in force since the establishment of the state, permits the growth and sale of agricultural produce during biblically-mandated sabbatical years. In anticipation of the latest such year, the state-sponsored chief rabbinate decided that local religious courts could allow or disallow the loophole at their discretion. Whereupon an organization of Orthodox rabbis encouraged farmers to petition the Court to strike down the decision of the chief rabbinate and instruct it instead to re-impose a statewide, across-the-board acceptance of the loophole. The Court ruled in favor of the petitioners.

Now, why would Orthodox rabbis approach a secular Supreme Court to intervene in a matter on which a century of rabbinic legists had written hundreds of learned opinions? Why wouldn't such rabbis simply issue their own certification of disputed produce? And as for the Court, what made it think it had any competence to rule on an arcane question of religious law?

In brief, what sorts of ideas lead reasonable people to outlandish expectations concerning the relation of a Jewish state to the practice of Judaism?

I raise these questions because I want to make an argument for drastically limiting the role of the Israeli state in developing and maintaining Jewish institutions. I do so, however, as one who very much wishes to see an *expansion* of the influence of traditional Judaism in the Israeli public square. In my view, this expansion is possible only if the state ceases to usurp power better held by Jewish communities, which have successfully transmitted and evolved Jewish moral traditions for millennia. Strengthening these moral communities is my main objective. Although my specific concern is Israel, the issues at stake, as I hope to make clear, are applicable to every democratic society grappling with the crossroads between religion and state.

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About the Author

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1. Romancing the State

Early supporters of the founding of a Jewish state envisioned it as replacing Diaspora communities that had grown weak and desiccated. The writer Micha Yosef Berdichevsky (1865-1921), turning a biblical encomium—"How goodly are your tents, O Jacob"—into a slur, railed: "How *narrow* are your tents, O Jacob." In particular, the founders hoped the state would become an arbiter and enforcer of new values, using its authority to promote ideas and virtues central to the secular ethos of the time. The most glaring example of this policy was the forced re-education of young religious immigrants by placing them in secular kibbutzim with the intention of transforming "human dust," in David Ben-Gurion's pungent words, "into a cultured nation."

As Ben-Gurion's formula suggests, the values the new state was intended to enforce were in most cases the opposite of those inculcated in traditional Jewish communities. Preeminently, the statist awakening aimed to overcome old habits of quietism and forbearance while replacing the authority of elders and sages with the authority of the young and vital in a redeemed land. While the young Zionists carried with them many elements of a classic Jewish narrative—they recalled a glorious Jewish past, roughly coterminous with the period of the Bible, and viewed their return to the land in millennial terms—those past glories were defined not in moral but in political terms, and the millennialism derived more from Comte and Marx than from Isaiah. As a result, both past glories and anticipated future ones were unmediated by a continuous traditional narrative.

True, not all early Zionists were secularists. What, then, of early religious Zionists? They had to contend not only with their secular Zionist counterparts but with the strong arguments *against* Zionism leveled by many Jewish religious authorities. To the latter, the modern state, any modern state, posed a threat to the traditional Jewish ethos.

In Diaspora Judaism, the life of the spirit had been paramount. Jews had redefined power as, essentially, the ability to live their lives according to their own traditions and to pass on their cultural and intellectual legacy to their children. The capacity to move armies was not among their aspirations. Indeed, as a matter both of principle and of bitter historical experience, the Diaspora version of Judaism was suspicious of, if not downright antagonistic to, political authority. For its part, Jewish religious law had

adapted itself to these circumstances and, when it came to managing the internal affairs of Diaspora Jewry, functioned reasonably well at the level of individuals or communities. It had not yet been tested at the level of the state—and assuredly not at the level of a modern state conceived along anti-traditionalist lines.

In the face of the arguments of their anti-Zionist counterparts, some early religious Zionists—like Rabbi Yitzhak Yaakov Reines (1839-1915), the founder of the Mizrahi movement—took a pragmatic approach to the Zionist project: pondering both the opportunities and the dangers, they decided that, given the Jews' precarious political situation in the Diaspora, the risk posed to Judaism by a potential Jewish state was a risk worth taking. For many others, though, the prospective return to Jewish sovereignty in the land of Israel inspired a more exalted and momentous response, one that could be formulated in terms of a divine plan.

From this there flowed a new definition of national power that, going the secularists one better, saw the various aspects of state-building—agricultural, military, industrial—not simply as necessary burdens but as sacred endeavors worthy of a veneration earlier reserved for affairs of the spirit. For followers of Rabbi Abraham Isaac Kook (1865-1935), the first chief rabbi of Mandatory Palestine, the state and its institutions, however beset by flaws, were products of the redemptive process.

Fatefully, most religious Zionists were also ready to designate the state itself as the appropriate authority for regulating *religious* matters. The state would appoint rabbis, enforce religious legislation, and fund religious services. The management of these affairs would be entrusted to secular officials: bearers (in this view) of profound religious longings of which they might be unaware.

On some points, secular anti-traditionalists and religious traditionalists differed: while the former looked to the state to replace Jewish tradition, the latter looked to the state to upgrade and subsume it.[1] But on the main point they were perfectly agreed: the state would take over the role of communities in enforcing morality and in funding and regulating religious institutions. In so reasoning, both were guilty of the same fundamental error, conflating peoplehood with statehood and community with state,

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[1] See my article, "The Demise of Self-Negating Religious Zionism," in Chaim Waxman (ed.), *Religious Zionism Post-Disengagement: Future Directions* (2008), pp. 119-132.

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and ignoring the fact that membership in each is determined in completely different ways.

How so? To put the matter at its simplest, a community (in the sense that I use the term here) is by definition composed of members who choose to submit to its authority because they identify themselves with its ethos. A state, on the other hand, imposes obligations (approximately) equally on all within its geographic scope. Thus, communities tend to be small, homogeneous, and voluntary associations, while states tend to be large, heterogeneous, and coercive.

2. The Universalist Delusion

The passage of time, in Israel as elsewhere, has exposed the folly of the romantic belief in the all-encompassing goodness of the state. But the ideas that have replaced statism have been no kinder to moral communities. To appreciate why this is so, it would help to take a brief foray into political philosophy.

Two questions regularly confront all democratic states, Israel among them. The first concerns the extent to which the state should engage in benign paternalism—e.g., by taxing wealthier citizens in order to supplement the income of poorer citizens, or regulating private acts in order to advance public health or safety. In short, should the state promote *welfare*? The second concerns the extent to which governments should encourage or enforce moral standards by outlawing behavior that many people find offensive, or by inculcating religious values or qualities of character they regard as necessary for citizenship. In short, should the state promote *virtue*?

For the statists of yore, it was clear that the state ought to promote both welfare and virtue. But contemporary public discourse in Israel, as in most of the West, is framed by the "progressive" understanding that welfare is the state's business and virtue is not the state's business. This understanding itself, however, has become a device for smuggling into public discourse certain assumptions about the right and the good, in the service of a specific agenda that runs contrary to the one I wish to advocate. Let's see how this works.

The British philosopher Jeremy Bentham (1748-1832) famously maintained that the state should act in such a way as to maximize the aggregate utility of its citizens —"utility" being an economic term less squishy than "happiness." Bentham's utilitarian theories have been subjected to much valid criticism in the intervening centuries, much of it focused on the fact that maximizing aggregate utility fails to take into account another essential element of a just society: the distribution of utility among individuals. The basic question at issue is how to balance these two criteria or, more broadly, how to determine which arrangement of life in society is the most just. Among thinkers who have tackled that question in recent times, none has been more influential than the late Harvard philosopher, John Rawls, in *A Theory of Justice* (1971).

Rawls argues that in order to understand what justice entails, we need to imagine a group of people who are together trying to establish from scratch ("the original position") the rules that will govern them as a society. This setup is similar to the one invoked by Rousseau and Locke in imagining the origins of the social contract, but Rawls adds a wrinkle. In order to prevent participants from leveraging any prior advantages they may have, we should imagine they are behind a "veil of ignorance" and do not know anything about themselves: their age or sex, their natural abilities, their social, religious, and moral affiliations, their beliefs and preferences, and so on.

What arrangement would these rational participants arrive at? According to Rawls, it would be one in which each person would have the maximum degree of liberty consistent with others having the same degree, and in which, of all possible distributions of goods, the poorest member would be the best off (because that poorest member might be you). Furthermore, since, by the rules of the game, participants do not know anything about their prior moral affiliations, they should all agree that the state must remain limited in its moral commitments and not adopt any particular community's definition of what constitutes morality.[2]

Here, then, is a principled argument in favor of the state's promotion of welfare and against its promotion of virtue. But note that it depends on two crucial and rather crippling assumptions. The first is that a person's self, or identity, does not rest on communal affiliations. Yet once I peel away my affiliations, loyalties, and beliefs— everything that makes me *me*—no self is left standing with interests to negotiate. The claim that there is some "unencumbered self" (in Michael Sandel's useful term), independent of and prior to the affiliations that constitute my identity, already begs a conclusion: namely, that the rights attaching to this "unencumbered self" trump those deriving from communities with which I may be affiliated. This is a conclusion that anyone attached to a community would wish to resist.

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[2] In later work, Rawls required only that in engaging in public debate, citizens bracket their moral commitments, loyalties, and beliefs and argue only in terms that are comprehensible across moral communities. But if this requirement is more than mere prudential advice, it suffers from the same weaknesses as his stronger initial claim.

The second assumption is that one can speak of individual liberty independently of any theory of morality. But such moral neutrality is actually impossible. It's easy enough to implement the rule that your right to wave your fist ends at my nose. But how do we implement the rule that your right to make a public display ends where my sensibilities begin without first deciding which sensibilities are worthy of protection and which are not? In fact, the whole notion that the state can be neutral toward its citizens' moral doctrines turns out to be a chimera once you start thinking about concrete examples. As the legal philosopher Steven Smith has argued in *The Disenchantment of Secular Discourse* (2010), seemingly benign words like "neutrality," "equality," and "reciprocity" are often in practice used as Trojan horses for insinuating into the discussion any number of strongly biased ideas that one might wish to shield from scrutiny.

Suppose, for example, that we are arguing about whether abortion should be legal or illegal. You say a fetus is a human being, but I say that a fetus is nothing but protoplasm and that the state, since it must remain neutral on questions of morality, must permit abortion. By invoking neutrality—and hence implicitly assuming that abortion is not murder—my argument shields from discussion *the*crucial issue. One never knows where the neutrality card will be played in order to disqualify some position, or conversely where it will be conveniently ignored. Should the state remain neutral on voluntarily contracted slavery? How about consensual incest? Blackmail? Drug dealing? Supersized sodas?[3]

These two assumptions—that both individual identity and individual rights are meaningful independently of any moral community or comprehensive moral theory—collectively constitute a view that might be called *universalism*. What I want to show is that the universalist view not only assumes the marginality of communities; it also advocates an agenda that weakens and undermines the roles of such communities.

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[3] In adjudicating these contentious issues, Rawls rejects "comprehensive theories" (his term for religion) and endorses appeals to "a reasonable balance of public values." But his statement that, among other things, such a "reasonable balance . . . will give a woman a duly qualified right to decide whether or not to end her pregnancy during the first trimester" has invited the following response from Judge Richard Posner: "When a brilliant philosopher like Rawls gets down to the policy level and talks about abortion and campaign financing and the like, you recognize a perfectly conventional liberal and you begin to wonder whether his philosophy isn't just elaborate window dressing for standard Left liberalism."

Despite its arguments in favor of neutrality, universalism is itself anything but neutral. In amoralizing certain behaviors, it moralizes others. When universalists get their way, the state's withdrawal from some matters of morality are counter-balanced by a full charge into others, often under the guise of promoting public health and welfare. Thus, while legislated restrictions on sex are in constant retreat, new legal restrictions on food consumption crop up like mushrooms after the rain. As Mary Eberstadt has pointed out, many who are licentious about sex have become puritanical about food ("Is Food the New Sex?," *Policy Review*, January 2009). The consumption of meat, industrial breeding, genetically-enhanced produce, the use of pesticides, trans-fats—these are not simply regulated but regarded as moral transgressions.

Moreover, the redefinition of moralization at the heart of today's universalist agenda is raised as a bludgeon against moral communities and their traditions. The loosening of sexual taboos, for example, weakens traditional family structure and so damages the continuity necessary for the maintenance of moral communities. Meanwhile, the social engineering implicit in legislating the alleged welfare of the public obviates the need for evolved communal means of dealing with social problems. In making state policy, the instincts of ordinary people, past or present, count for little. When experts are trusted to engineer societies, as Thomas Sowell writes in *The Vision of the Anointed* (1995), the world's most pressing problems tend to become precisely the ones amenable to social engineering.

There is a final way that the universalist framework undermines communities. In my elementary-school days, my classmates and I spent our recess time playing punchball on West 89th Street in Manhattan. Each day we'd choose up sides and then together agree on ground rules: which cars were in fair territory and which in foul, where to place the bases, and so on. Since we generally settled such matters efficiently and fairly, deliberately ignoring the strengths and weaknesses of our respective teams, we were, unbeknownst to us, pretty good Rawlsians. But once the ground rules were established, we stopped being neutral and played to win. Imagine how boring a game it would have been if we actually played as though we didn't know which team we were on.

In the Rawlsian game, by contrast, there is no distinction between setting the ground rules and playing the game. One is forever supposed to play for a tie. You want to argue about abortion? Fine, but we want a nice clean fight, so kindly leave your most deeply

held beliefs at the door. Only the neutral should wield power, and only self-declared universalists are truly neutral. It follows that they alone must regulate the affairs of moral communities to which they do not belong but be immunized from the influence of the presumptively benighted denizens of those communities. Unlike in punchball, team members have to play the game, but they don't get to make the rules.

3. In Praise of Prudence

If we wish for communities to flourish, what policies *should* we then pursue? Should we, reversing the Rawlsian paradigm, maximize the power of particular communities to determine state policy, or at least maximize direct state contributions to the development of communities? Not in my view. Rather, the single most important thing communities need from the state is the ability to organize their own lives according to their beliefs and convictions, free from state interference.

Let's begin with religious *values* and then proceed to religious *institutions*. While I reject Rawls's normative arguments against the legislation of these values, there is a closely related prudential argument that I find compelling. In plain English, I don't think state involvement in religion is wrong in Rawls's sense, but I think it's usually a bad idea.

To be sure, I don't see why arguments in support of particular public policies based on religion ("comprehensive theories") are unacceptable while arguments from other no less rigid ideologies ("public values") are fine. I don't see why restrictions on selling pig meat because it is offensive to Jewish tradition are more objectionable than restrictions on selling dog meat because it is offensive to European tradition, or why forbidding the sale of whale blubber on grounds of kashrut is illegitimate but forbidding it on ecological grounds is praiseworthy.

But this hardly means that legislating religion is a good idea. In fact, some such legislation will almost certainly weaken precisely the communities we wish to strengthen.

Here is a prudential version of Rawls's veil of ignorance. Suppose we have the power to pass some legislation designed to anchor a community-specific moral principle in law— say, forbidding the sale of non-kosher meat. The underlying moral principle in this case is meaningful to me but no doubt completely opaque to many other people. What are the benefits to me of such a law? I'm likely to get a public square more to my taste. If the sight and smell of pig flesh make me ill in the same way polluted air makes others ill, such a law might help me avoid them. If seeing people blithely flouting the common Jewish heritage offends my moral sensibilities the same way that the sale of cat or dog

meat offends others' sensibilities, such a law might spare me the offense. If I genuinely fear for the souls of sinners, it might help me save them from the fires of hell. Such a law might even help to strengthen national solidarity by contributing to a core of shared values.

But what is the cost I incur from such a law? Well, obviously it can backfire. It might cause resentment among people who otherwise have shown no particular interest in consuming the flesh of pigs, and thus result in more commerce in that commodity than there would otherwise have been. It might also increase divisiveness and weaken solidarity. But I think the main cost to me and those who share my moral commitments has to do with a very real veil of ignorance. We might have the power to pass legislation today to enforce some moral principle that we believe in, but we are quite ignorant about how the chips of power will fall tomorrow or the day after. If we push through a ban on non-kosher meat today, people with stricter sensibilities and sharper eyes might push through a ban on broccoli tomorrow, and the following day some tender souls might ban animal slaughter altogether.

In short, it might be in our interest—it might be in everyone's interest—to call a truce on certain kinds of moral legislation, simply in order to avoid mutual harassment. At the very least, whenever we contemplate such legislation, we need to consider how important it is for us, and to estimate the expected benefit against the expected cost. As a practical matter, legislation of morality is likely to be worthwhile only if the issue is extremely important to us (so we have a lot to gain), or if there is a strong consensus on our side (so we have little to lose), or if no neutral position is possible.

How does this pragmatic argument differ from the normative argument I reject?

First, it does not preclude the possibility of legislating in the event that the benefit to a sufficiently strong coalition outweighs the cost.

Second, it does not posit the superiority, or even the existence, of any neutral view. In fact, there are many issues about which there is no neutral position; abortion is either murder or it's not. True, the possibility of such a neutral position might be an important consideration in determining the degree to which one law is better than the next best

alternative. In those relatively rare cases where a neutral position does exist on a matter of considerable controversy, we might indeed be well-advised to seize it.

Third, no position is disqualified from public discourse.

As a practical matter, we incur the smallest cost in legislating morality when the moral principle being legislated is least controversial; in that light, the most judicious investment of effort on our part would be in creating consensus around our moral views. The best way to achieve such consensus is to strengthen moral communities generally— or at least the kinds of communities that share a significant portion of our moral views. If we wish to strengthen the right kinds of communities, the worst thing to do is precisely what many people in my little corner of the world advocate—namely, to cede community power to the state.

4. Against Monopolies

So much for the legislation of religious values. Let's now consider the advisability of state funding of religious institutions, which in Israel specifically includes state sponsorship of both religious functionaries and religious services. There are at least four reasons why this is bad for communities.

First, a rabbi imposed on a community by distant bureaucrats is unlikely to be chosen according to the particular needs of that community; he is more likely either to be the recipient of patronage or bland enough not to threaten anyone on the relevant committee.

Second, even if the rabbi is competent, as a civil servant he will not have to maintain the respect of his community in order to keep his job and is hence unlikely to work any harder than absolutely necessary.[4]

Third, even in the event that a state-appointed rabbi is full of enthusiasm and positive energy, he can always be intimidated by state officials. An independent religious figure can lead resistance against overreaches of state power—think of Martin Luther King, Jr. —but is unlikely to do so if taking unpopular positions can get him fired by offended bureaucrats.

Finally, even if, despite everything, a state-appointed rabbi makes an independent decision, that decision will be subject to second-guessing by the courts.

That is precisely what happened in the Supreme Court case in Israel that I mentioned early on: an excellent example of how the very existence of a state-sponsored and state-regulated rabbinate can often do more harm than good. I asked there why a rabbinical organization that objected to a prevailing system of certification did not simply issue its

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4 David Hume puts it this way: "And in the end, the civil magistrate will find, that he has dearly paid for his pretended frugality, in saving a fixed establishment for the priests; and that in reality the most decent and advantageous composition, which he can make with the spiritual guides, is to bribe their indolence, by assigning stated salaries to their profession, and rendering it superfluous for them to be farther active, than merely to prevent their flock from straying in quest of new pastures." *The History of England* (1754-61), Volume 3, Chapter 29.

own certification. The straightforward answer is that the only organization legally allowed to issue an official kashrut certificate in Israel is the state rabbinate.[5]

In the free-market system of kashrut supervision used, for example, in the United States, a certifying organization depends on its reputation to stay in business; if it is not respected by consumers, food manufacturers will have no incentive to pay for its services and it will go out of business. Different organizations tend to serve different markets, and for each, some level of stringency is a condition of survival. The system has proved to be quite efficient.

Under Israel's quasi-monopolistic system, by contrast, the standards of supervision are extremely low. Since inspectors are paid directly by the establishments they supervise, they have strong incentives to overlook problems; also, inspections in Israel are extremely infrequent. Under normal market conditions, such poor service would be punished, first by suspicious restaurant patrons and next by the restaurants paying for the supervision; in a state-funded system, kashrut supervision is immune to punishment by clients.

An added disincentive is the fact that the state rabbinate is itself not at liberty to raise standards: on several occasions, the courts have ordered it to provide certification to establishments that did not meet the rabbinate's own standards.[6] Such, again, was the case in which the Supreme Court enjoined the chief rabbinate to force local religious courts to grant certification against their own best judgment. In a free-market system, it would not have been possible for the courts to have dictated standards to the rabbinate; nor would it have been *necessary* for them to do so, since the market demand for more lenient supervision would not have been frustrated by a legal monopoly.

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[5] Strictly speaking, any organization can issue a certificate so long as it refrains from using the term "kosher." But since the chief rabbinate is subsidized and can undercut the market, and since it unilaterally sets kashrut standards for all state institutions, its effective monopoly is secure.

[6] In two pertinent court cases (*Raskin* v. *Jerusalem Religious Council* and *Maadanei Aviv Osoblanski* v. *Chief Rabbinate of Israel*), the legal argument was that the rabbinate's authority is limited to enforcing the fraud-in-kashrut law; hence, it can't invoke any standard whose violation stops short of fraud.

Similarly serving little constructive purpose is the official rabbinate's monopoly on recognized marriage. Currently, the marriage of two Jews in Israel is recognized by the state only if the officiating rabbi is authorized by the state rabbinate. Most arguments against this arrangement frame it as a violation of civil rights. But this is no more compelling than, hypothetically, an argument against laws restricting the performance of surgery to surgeons authorized by the official medical establishment. Once the government gets into the business of recognizing marriages, it has no choice but to establish standards. The line will be drawn somewhere, and no particular "somewhere" is inherently fairer than any other. The real problem is simply that the current arrangement is counterproductive by the rabbinate's own criteria.

From the rabbinate's point of view, the case for the current arrangement appears at first glance to be strong. For one thing, it compels Jews to meet a rabbi at a crucial point in their lives and hence has educational value. For another, it is said to reduce instances of *mamzerut* ("bastardy"), i.e., situations in which the children of adulterous unions are forbidden by *halakhah* to marry most Jews. For still another thing, it prevents same-sex marriages and inter-religious marriages, to both of which the rabbinate is strongly opposed.

Each of these points is vulnerable to objection. Jews who meet a rabbi out of legal compulsion are, to say the least, unlikely to come away from the experience with a warm and fuzzy feeling. This is especially true when, thanks to limitations on competition, rabbis have little incentive to provide the best possible service. Similarly, compelling people to marry according to halakhah when they are not strongly committed to the sanctity of marriage actually increases the chances of subsequent *mamzerut*. Nor does the rabbinic monopoly prevent same-sex marriage or intermarriage; it just causes them to be performed abroad, after which they are recognized in Israel.[7]

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[7] A far more productive arrangement would have the state recognize all marriages between a man and a woman, including regulated civil unions that are explicitly stipulated to be not valid by halakhic standards. Those married according to halakhic standards would not be eligible to re-marry without obtaining a divorce according to the same standards. Such an arrangement would reduce *mamzerut*, alleviate anti-religious resentments, and hence ultimately increase the influence of rabbis. Cf. Y. Artsieli, *The Gavison-Medan Covenant: Main Points and Principles*, Israel Democracy Institute, 2004, pp. 42 ff.

I don't wish to overstate my case. While state intervention in what should be communal affairs is generally harmful to communities, there are areas lying at the intersection of religion and state in Israel where a bit of nuanced thinking is required to properly appreciate the tradeoffs between the costs and benefits of such intervention. Let's consider three examples.

The first involves regulation of education. Communal resistance to the not-always-benign influence of state bureaucrats is assuredly important, particularly in sensitive areas like civics education, but in certain circumstances some state intervention can actually be beneficial. In the yeshiva elementary school I attended in my youth, most of our day was devoted to religious studies (and some punchball). For practical reasons, the vast majority of parents wanted their children to get a reasonable amount of "secular" education as well; but they and the head of the yeshiva were also eager to signal that ours was the most religious yeshiva in town. If left to the devices of the parents and the head of the school, this could have easily led to a race to the bottom in which the end result—very limited secular studies—would have left almost everybody unhappy. Conveniently for all concerned, it was necessary to conform with New York State educational requirements. This permitted all parties to maintain a principled position while still getting their preferred result. Thus, even bearing in mind the considerable risks of paternalism, one ought not ignore the potential benefits to communities of a state that is on occasion capable of identifying arms asking to be twisted.

A similar situation sometimes holds with regard to the enforcement of internal standards within a community. Surely, communities should wish to establish their own social norms, as well as mechanisms for limiting membership to those who conform to those norms. Nevertheless, when, for example, a "modesty patrol" harasses non-cooperators into leaving an ultra-Orthodox neighborhood, a fine line can be crossed between maintaining standards and criminal coercion. Enforcers of social norms have their own, possibly shifting, interests to attend to, and the system can too easily devolve into gang wars among groups with competing interests. (See, for instance, Eric Posner's comments on *charivari*, a European precursor of modesty patrols, in *Law and Social Norms*, 2000, pp.76-77.) As opposed to such volatility, almost everybody would prefer the stability and (mostly) disinterested nature of state law enforcement.

Finally, consider the difference between charity, in which you give your money to a needy person or institution of your choice, and "social justice," in which the state gives your money to a person or institution of its choice. The latter has the undeniably important advantage of being distributed according to transparent and objective criteria. Moreover, states have tools for coordinating and tracking disbursements to avoid duplication and waste, as well as enforcement mechanisms to punish and deter fraud.

Nevertheless, private or communal charity, while subject to no small amount of arbitrariness and duplication, also offers certain profound advantages. Those responsible for distributing local charities tend to be familiar with both donors and recipients, and they can establish criteria of eligibility that don't encourage those who could be self-reliant to become dependent on handouts. Charity within a community is often regarded by today's donors and recipients alike as a form of good fellowship that, in tomorrow's circumstances, might be flowing in the reverse direction. It strengthens communal bonds and increases aggregate social capital.

For their part, states are too large and too committed to "neutral" policies to adopt criteria that might encourage self-reliance. Besides, the objective and static rules they must employ are easily gamed, thus rewarding precisely those least loyal to the state. Such entitlements often incentivize unemployment, encourage the dissolution of families, and reward manipulators. Moreover, just as citizens learn to game the system of entitlements, politicians learn to exploit it to increase their own power. The result is often a spiral of increasing power held by the state and of diminishing social capital within communities.[8]

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[8] Israel's current welfare policies have a number of unintended consequences. For example, special entitlements granted to single mothers and child-allowance payments are strongly correlated with illegal polygamy and astronomic birth rates among Bedouin.

5. Toward a Division of Roles

Let's conclude by considering a plausible division of roles between the state and communal institutions. Just as there are a number of economic roles that even the most determined free-marketeers like Milton Friedman (in *Capitalism and Freedom*, 1962, Chapter 2) are prepared to concede to the state—starting with the protection of property rights by means of a police force, an army, and a justice system—so even in the realms of domestic virtue and public welfare there are some limited tasks that a central authority, particularly one with a monopoly on the use of force, can execute effectively.

The precise calibration of tradeoffs is a challenge of substantial proportions. The task of a state wishing to marshal the efforts of its citizens in their own collective interest is to maintain a delicate balance between liberty and solidarity. But the state's ability to coordinate these efforts depends on the citizenry's qualities of character, and those qualities are cultivated only through communal institutions. Even disparate communities are likely to share a regard for community-based moral instincts of the type rejected by many universalists. Such instincts—respect for authority and tradition, willingness to make personal sacrifices for communal benefit, and so on—are precisely the ones that ultimately strengthen states in the right way, increasing their viability without extending their reach.

Strong voluntary communities offer the promise of liberty both from the power of the state and from the power of our own base passions. It is when communities are weak that societies begin to conflate morality with legality, leaving no middle ground between oppressive legislation and moral dissoluteness. As communities weaken, citizens' lives are animated less and less by shared narratives that provide meaning, direction, and motivation for virtuous acts. Meanwhile, the state, unchecked by the mediating influence of these communities, expands its power. The resulting dystopia is characterized by the "soft despotism" of the state captured so perfectly by Tocqueville: "an immense, tutelary power, which takes sole charge of assuring [men's] enjoyment and of watching over their fate [and whose] object [is] to keep them irrevocably fixed in childhood" (*Democracy in America*, Vol. 2, Book 4, Chapter VI).

Tocqueville was optimistic about the ability of 19th-century Americans to resist the soft despotism of the state, because he found in them an abiding love of liberty. One might wonder about the disposition of present-day Americans in this regard. But whatever the case may be in the U.S., historically Israel's situation has been different.

The United States was founded by citizens of European states who sought freedom from those states; Israel was founded by members of a stateless people seeking their own state. And so it is unsurprising that Israel's founding myths should have been all tied up with statism. As things have played out, today's descendants of the Zionist group instrumental in founding the state constitute an entrenched elite pursuing a universalist agenda that, under Israel's geo-political circumstances, imperils both state and society. Their religious counterparts, similarly, have become largely addicted to a statist agenda: religious Zionists out of faith in the state's redemptive powers, and religious non-Zionists out of dependency on state welfare.

Recent events on the political front, including the repeated failure of diplomatic and other concessions to advance peace, the state's rejection of the religious-Zionist territorial agenda, and the dramatic weakening of religious parties whose constituents depend in part or in full on state welfare, have precipitated some fresh thoughts on all sides. Nevertheless, the basic lineaments of the statist agenda remain in place, and any real change for the better will be slow and hard-fought.

Israel's promise is that it will free the Jewish people from dependence on other nations and facilitate the transformation of Judaism from a counter-culture to a national culture; in short, that independence and liberty will allow the Jews to mature as a people.[9] It would be worse than merely ironic if instead the Jewish people were to allow their own state to infantilize them, turning them from a stiff-necked people into, in Tocqueville's words, "nothing more than a herd of timid and industrious animals, of which the government is the shepherd."

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[9] For more on this point, see my article, "Judaism as a First Language," in *Azure* 46 (2011), pp. 63-98.