

“BE A JEW AT HOME AS WELL AS IN THE STREET”
RELIGIOUS WORLDVIEWS IN A LIBERAL DEMOCRACY*

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Introduction

On December 23, 2011, the Israeli TV station Channel 2 featured an interview with Na’ama Margolis. This 8 year old girl from Beit Shemesh, a town West of Jerusalem, told reporters that she was afraid to walk from her home to school, for fear of the abuse by the ultra-orthodox Haredi men she would meet on her way. Her appearance did not conform to the norms of modesty of the Haredim and they scolded her and called her a ‘whore’.¹ This story sparked a national furor in Israel and a series of heated public debates displaying the growing tensions between the ultra-orthodox communities in Israel and their less orthodox and secular neighbors (Kershner, 2011). Prime-minister Benjamin Netanyahu expressed his outrage and insisted that “Israel is a democratic, Western, liberal state” and pledged that “the public sphere in Israel will be open and safe for all.”

In a way, Netanyahu succinctly formulated the problem that I want to address in this essay: can one expect religious minorities to be committed to a liberal democratic state? Can a democratic, Western, liberal state be open and safe for all – both ultra-orthodox and secular alike – and count on the allegiance of all? Does this require that religious minorities ‘hide’ their religious identity and conform to prevailing laws and customs and express their religious views and practices only in the privacy of their own homes? Or should minorities, like the Haredim, request that they receive public recognition as religious Jews? Ought such minorities tolerate opposing views and practices on matters that are central to their faith, or should

* This piece grew out of a comment I gave on David Novak’s presentation at the LISOR Conference in Leiden, 27th-28th March 2008. I would like to thank David Novak and Arie van der Kooij for their comments and encouragements.

¹ The irony, if that is the right word, ~~was~~ that the parents of Na’ama are modern orthodox Jews who moved from America to Israel. Na’ama was dressed in a manner that many non-believers in the West would find exaggerated – long skirts, long sleeves, non-bright colors – and given the sunny climate in Israel, unfriendly for a child her age.

, so as to be in a Jewish environment

they request that these are not expressed in public? For example, can the Haredim demand that women and men are separated in public transportation, that women dress modestly and do not walk on the sidewalk in front of their synagogues and yeshivas? That is, is it possible for an ultra-orthodox Jew to be a 'Jew at home and in the street', both privately and publicly in a liberal democracy?

pluralist

Liberal Democracy

These questions are part of a larger set of similar questions that all of us, members of Western pluralist societies, face. Atheists, Christians, Buddhists, immigrants, native peoples and, indeed, all those 'in-between', face similar dilemmas when our respective worldviews, religious or otherwise, conflict with those of the majority. These questions about how to behave in the interaction with those with (radically) other religious and non-religious views prompt a set of questions that are very much at the heart of contemporary political philosophy. What are we entitled to expect of each other as members of these pluralist societies, as citizens of modern states? What rights and what duties can we impose on each other? In other words, how ought our state be organized so as to make life in our societies peaceful, pleasant, or even possible?

A diversity in worldviews, religious or otherwise, is a source of conflict. The case of the Haredim of Beit Shemesh is a perfect example. Their religious views command that men and women are separated. Not just in the relatively closed settings of school, temple and religious ceremonies, but also in public transportation or, indeed, the street. Competing claims as to how the basic institutions of the state ought to be organized create real conflict. The question for any pluralist state is how to deal with these conflicts? Setting aside certain current views that embrace conflict as a source of political emancipation and renewal (Fossen, 2008: 376–394), the dominant answer in political philosophy, at least since the 17th century has been to devise institutions that minimize conflict or at least channel it in non-violent ways, while at the same time generating public and legitimate answers to the questions that sparked these conflicts. This answer is the ideal of a *liberal democracy*.

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In a liberal democracy, citizens are granted certain basic rights and duties, such as the freedom of religion, freedom of speech and the pursuit of happiness and the corresponding duties of religious tolerance and avoidance of harm to others. In addition, citizens have political rights, such as the right to vote; the right to assemble. It is crucial in a liberal democracy

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that citizens do not only have these rights against one another, but also against the state. In liberal democracy the rule of law is institutionalized. All further decision making about policy and politics is done through procedures that derive their legitimacy from the fact that each interest is weighed and that all competing views have been brought to bear upon the issue at hand. That is, in addition to the basic rights and duties of all citizens, it is a democracy.

perfectionism

It should be noted, first, how restrictive the limits on the powers of the state in a liberal democracy are. In a liberal democracy there tends to be little state ~~paternalism~~ – if any – where the state enacts policies that directly enforce certain worldviews or ideals of the Good Life. Liberals, after all, favor state institutions that grant citizens the liberty to determine for themselves what the Good Life is, rather than settling the state with that task. Furthermore, it gives citizens room to change their views when they feel this appropriate. A liberal democracy, for example, will not force its citizens to continue sporting the affiliation of 'Roman Catholic' if they no longer wish to belong to the Church or convert to Islam. In general, a liberal democracy tends to be committed to the ideal of mutual toleration and state neutrality. Therefore, liberal democracies seem ideal arrangements for pluralist societies with diverse conceptions of the Good Life.

On the other hand, liberal democracies tend to favor certain lifestyles and certain worldviews over others. With its insistence on individual basic rights, a sphere of privacy in which the state – or indeed society at large – is not to interfere, liberal democracies tend to be hostile environments for certain kinds of traditional worldviews. Consider, once again, the view of the Haredim that women should dress modestly and be separated from the men. Proponents of such a religious view do not just claim for themselves the right to worship and be allowed to observe the laws of Torah and Talmud. The Haredim also make claims on others to refrain from certain actions that violate their commitments. In particular, they want to prevent women – especially, 'immodest' women – to enter their neighborhoods or make themselves in any way conspicuous around them. That is, the Haredi worldview also makes public claims that would curtail basic liberties of others (such as the liberty to dress as one sees fit or to go to whatever public space one wishes). Such claims typically tend to be regarded as invalid as they infringe upon basic liberties of the non-Haredim. As a result, religious views that claim certain restrictions on the behavior of others in addition to the negative duties of religious toleration and respect for the freedom of religion will be less successful in securing the kind of public environment they want, whereas, say, atheist shopaholics with a strong preference for

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24 hour shopping malls are more likely to get their way. The ideal of a liberal democracy then is far from perfect. It is not a model that has only good and beneficent outcomes for all, but it is our model.

Can a Haredi Jew, or indeed any of us, justify his commitments to such a liberal democracy? Why should one obey the state and regard its institutions as fundamentally right for our pluralist societies? How can we justify our answer, our model, to all those who reside in our states, including the ultra-orthodox Jews? What reasons are there for citizens of a liberal democracy to commit to its institutions and rules? In what follows, I will sketch four possible approaches. I will argue that each of these is problematic, even though some are less problematic than other approaches. This leaves me with the moderately pessimistic conclusion that only certain kinds of religious worldviews can ~~earn their~~ place in liberal democracies.

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Communitarian Consensus

The first type of answer is the communitarian one. In many ways, it is the most straightforward. Communitarian thinkers are a diverse lot. However, what unites them is the idea that a genuine plurality of worldviews within one and the same political community is undesirable. Some go further and argue that it is impossible or at least unstable (MacIntyre, 1981: 8–9). The reason is simple. Suppose that, to stay with the example of the Haredim of Beit Shemesh, a Haredi would disagree (as they do) with the parents of Na'ama Margolis about what is appropriate garb for young girls in public. In particular, let us imagine that they disagree about the questions whether young girls should cover their head. What would they appeal to as a criterion to solve their disagreement? Perhaps the Haredi would refer to the authority of a 19th century rabbi who wrote that girls as of the age of 1 should cover their hair. The parents of Na'ama Margolis would debate the authority of this rabbi. Perhaps the Haredi, in response, would quote a bit of Talmudic scripture. Na'ma's parents would reject the interpretation that the Haredi gives to this passage and before long they would also disagree on proper standards of exegesis. In short, if the consensus between members of a society is not 'deep' and includes a consensus on the most fundamental principles to which to appeal in case of conflict, there will always be conflict and such conflicts tend to be intractable – much like the conflict between my imagined interlocutors.

The best then we can hope for, according to these thinkers, is that as a society we agree on the basic features of the Good Life. That is, we have to aim for a consensus that is deep. Not only do we have to agree on the

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desirability of the institutions of a liberal democracy, we also have to (roughly) agree on the wider picture of the Good Life and the standards and principles by which we regulate our interactions. How to achieve such deep consensus? The basis ^Crecipe, ~~then~~, is to set political borders ~~so as to~~ ^{that} coincide with cultural or religious borders of the community. It is easy to see how, say, the Israeli Haredim could form a community. If the whole of Israel was populated only by Haredim, there would be all kinds of institutions, laws and regulations, that would enforce the Haredi religious worldview.

It is clear that this strategy opens the door for 'Enlightenment Fundamentalism' as it has been dubbed in public discussion in my part of the world.² The proper citizens of a liberal democracy, on this view, would be those liberals who endorse lifestyles that celebrate the institutions of liberal democracy. On this view of liberal democracy, religious views ought to be liberalized, tamed, 'enlightened' and relegated to the private sphere if ~~it~~ ^{they are} ~~is~~ to be tolerated at all. Some have gone further and argued that religion, even in the private sphere, is an anomaly and a sign of profound irrationality (Dawkins, 2006). The borders of liberal democracies on this view should coincide with the separation between 'enlightened', 'liberal' groups and 'non-enlightened', 'illiberal' (religious) groups. In such a society, there is no place for Haredim or any other religious person for that matter. Their ideal of the Good Life – a religious life – is one that will be discouraged and banned from public.

Is a consensus along communitarian lines feasible for a liberal democracy? Such a deep consensus, though not on the institutions of liberal democracy, was perhaps feasible in earlier times. Maybe at one time it was possible to justify, for instance, the prohibition of blasphemy in such a way, since all citizens were Christian and abusing God's name is prohibited in any Christian view (at least the ones that I am familiar with). In contemporary pluralist societies, including Israel, however, it is unlikely we could find any deep consensus, let alone a consensus on the basic tenets of liberal democracy, with its insistence on individual basic rights and the importance of democratic decision procedures. In short, it is unlikely that we can find any deep consensus on liberal democratic institutions in contemporary, Western societies. Therefore, this will not succeed in justifying the commitment of religious groups to the ideal of a liberal democracy.

² I am thinking of views on religion such as those expressed by Ali, 2007.

State Neutrality

The failure of communitarian consensus might inspire one to look for a justification elsewhere. If it is impossible to find sufficient support for liberal democratic institutions by appealing to the largest common denominator, perhaps we can find a way to endorse these institutions by explicitly avoiding such an appeal. The idea is that a liberal democracy is the only institutional arrangement that is completely neutral with regards to the Good.³ It does not prescribe any form of Good Life or make any assumptions about it. Therefore, so the proponents argued, it should be acceptable to all – including those with a religious worldview.⁴

However, as critics were quick to point out, there are several difficulties with this proposal. First, it should be made clear exactly what the state is supposed to be neutral about, so as to assure acceptance by all citizens. There are several distinctions between types of neutrality in the literature. Here, I will mention one (hotly debated) distinction (Rawls, 1988: 262). First, a state could strive for neutrality of *effect*, such that none of its actions promote or suppress specific worldviews. Alternatively, a state could be neutral in *aim*, meaning that does not justify its policies with an appeal to the superiority or inferiority of a particular conception of the Good.

It is impossible to demand that the state strive for neutrality of effect, as virtually all conceptions of the Good require certain social conditions to prevail. Consider the example of the Sabbath. Suppose that the state were to require that all shops are closed on the Sabbath, in order to enable observant Jewish shop owners to live a decent Jewish life without incurring economic disadvantages relative to their non-Jewish competitors as a result. However, this would be grossly unfair to their Christian competitors who will need to close on Sundays, thus missing a whole day of revenue. Surely, then the solution is to allow Jewish shop owners to observe the Sabbath and Christians to be open for business on Saturday and close shop on Sundays? Again this is not neutral: the Christians will be bothered by the fact that so many of their competitors are open on Sunday thus never realizing the ideal of the fourth commandment.⁵ I am sure orthodox

³ This idea was particularly dominant in the last part of the previous century, e.g., Rawls, 1971; Ackerman, 1980; Dworkin, 1985. For a sustained criticism, see Barry, 1990: 1–14; Raz, 1990: 3–46.

⁴ A lot more needs to be said at this point as to why neutral starting points should be acceptable to all, rather than be met with indifference. I will skip this problem here.

⁵ “Remember the Sabbath day and keep it holy” (Exodus 20: 8). I am told that Catholics and Lutherans consider this the third, rather than the fourth commandment. Apparently even the numbering of this specific commandment is not a neutral matter.

[Capitalize:
'Good Life']

Jews have similar worries. Perhaps then the only neutral solution is to require that all shops are closed both on Sabbath and on Sundays? At this point, I can hear certain atheists complain who feel frustrated in their desire to have the liberty to shop at any time they want. In short, a truly neutral state is not possible because most if not all conceptions of the ~~good life~~ have a social dimension: they also require a certain social environment to flourish. If such neutrality is impossible, it is not very convincing to justify liberal democratic institutions with an appeal to neutrality of effect.

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What about neutrality of aim? Is a liberal democracy justifiable as long as it is not justified with an appeal to a particular conception of the good?⁶ Again, we have to wonder if such neutrality is feasible in the first place. What sort of reasons could be used to justify a liberal democracy in this manner. Ronald Dworkin has proposed that 'equality of concern' is a neutral value that could be used to establish a liberal democracy. Whereas many values only make sense within specific worldviews, such equality seems to be neutral in the right way. It is substantial enough to justify, for example, equal voting rights, but it does not seem to presuppose the truth of any worldview. However, at a deeper level, it does. Consider the ideal of equality of concern (Dworkin, 2000). If one invokes this to justify equal voting rights, one has to assume that ~~some 'voice'~~ ^{participation} in political deliberation is a good for the worldviews present in one's society. In other words, any political theory, including a 'neutral' political theory, invoked to justify liberal democracy has to presuppose a 'thin theory of the good' (Rawls, 71: 96; Waldron, 1992: 751–793). It has to make some assumptions about the range of goods and claims that will characterize the citizens' worldviews. Liberal democracies typically do so as well: they have to assume that freedom from harm, freedom of property, freedom of religion, freedom of assembly and the freedom to pursue one's happiness are essential to the worldviews within their borders. Otherwise, why would you grant citizens these, rather than other rights?

We can conclude then that an appeal to neutrality will not be successful in justifying a commitment to liberal democracy. Neutrality of effect is not possible and complete neutrality of aim would leave it ~~completely~~ indeterminate which rights and duties to assign to citizens. Furthermore, even if it were possible to identify a set of institutions that is neutral. ~~What~~ ^{, w} would recommend it to a person? It is clear, a person could pronounce a *nihil* ~~obstat~~ ^s to these institutions as they would not offend any of his commitments

⁶ This is certainly the hope of Rawls, 1993. Similarly, Dworkin, 1985a: 181–204.

to the Good Life or his religion. Unfortunately, that is rather a minimal basis for endorsement. I conclude that we cannot expect members of religious minorities to commit to a liberal democracy, if this democracy is justified in a neutral manner, were that even feasible.

Human Nature

If it is impossible to found liberal democracy on a consensus of the various conceptions of the good prevail in such states and it is impossible to be completely neutral to such conceptions, perhaps we could try to justify liberal democracy by appealing to a foundation that necessarily has to be shared by all conceptions of the ~~good life~~. This foundation is likely to be some version of human nature. In other words, on this proposal we adopt a Kantian approach to the business of justifying liberal institutions.⁷ Typically, we could stipulate that man essentially is a rational being, capable of autonomy, and claim that any conception of the Good Life has to accept this foundational essence on pains of irrationality. That is, even a Haredi would have to acknowledge on this view that in addition to being God's creation and a commitment to living a life obedient ~~to his~~ commands, His man ~~men~~ is a rational animal capable of autonomy.

What, if anything, would follow from this? First, it implies that a truly Good Life has to be regarded as such by those who aim to live it. That is, a Good Life necessarily is one that is seen as such by those who (aspire to) live that life. A religious example illustrates this. Suppose you do not believe in a Supreme Being. Leading a religious life then has no value. All that you accomplish is some of the outward actions and appearances of the religious life, but that is all it is: the outward appearance of a religious life. What is missing from it is faith: the firm conviction that this Supreme Being exists. The same holds for any other ideal of the Good Life: a good life is good only if it is 'lived from within'.⁸ It is valuable only if those who have to live it see it as the Good Life. From this follows an important political conclusion: citizens should have the freedom to choose their own conception of the Good Life. It will not do to force them to a specific life. Those who are forced will resist. Resistance means that pursuing so a life is not voluntarily

⁷ Kant's political philosophy is mainly to be found in his *Doctrine of Right* and some other essays.

⁸ Ronald Dworkin calls this liberal constraint on ideals of the Good Life, the 'endorsement constraint'. Dworkin, 1989.

chosen and, therefore, not regarded as a good life by who are forced.⁹ In other words, state paternalism is out of the question and citizens should have all the freedoms necessary to pursue the Good Life by their own lights.

There is more. People are regarded as rational creatures on this conception of human nature. They are supposed to pursue those ideals of the Good Life they regard correct. However, people are not imagined to be infallible. People can make mistakes about the Good Life. If at one time I sincerely believed that the life as chaste ~~heretic~~ is the right one, but subsequently come to believe that I was mistaken and that the life of an academic is the Good Life, respect ~~for~~ my essential rational autonomy requires that I have the freedom to disengage from the pursuit of one ideal of the Good Life in favor of another one. So in addition to the freedoms necessary to pursue the Good Life by one's own lights, citizens are entitled to those freedoms necessary ~~to~~ revise their ideal of the Good Life. Since they are supposed to be rational and respond to reasons, it must mean that this revisability of their ideals should be based on reasons (Kymlicka, 1995: 81; Rawls, 1980: 544.). This in turn means that there must be a free exchange of ideas, freedom of speech, a free press and a lively, unfettered public debate in which reasons for and against all ideals of the Good Life can be offered (Mill, 1985). One implication of this is that it is not enough to allow citizens to worship the God of their choice; citizens should also be allowed to proselytize. ~~Again, we see that~~ the appeal to human nature gets us liberal democratic institutions.

The appeal to the fundamental nature of man as a rational being with the capacity for autonomy gives us two important necessary conditions of any Good Life. The Good Life is lived from within and is revisable by reasons. These two conditions necessitate in the eyes of their proponents the full gamut of institutions, rights and duties of a modern western liberal democracy. Rejecting a liberal democracy is a profoundly irrational act on this view, as it denies what cannot be denied by reason, to wit, the rational nature of man.

Is this a promising strategy to commit all citizens of a liberal democracy to its key institutions? It has advantages over the previous two strategies. Unlike communitarian consensus, it allows for a large variation of ideals of the Good Life. In fact, it encourages such variation up to some degree,

⁹ This assumes that those who are forced are rational and capable of acting upon the reasons as they see them. Forcing irrational creatures is a different matter. However, it is clear that a refusal to pursue a specific ideal of the Good Life is not in itself a sign of irrationality.

so as to promote public debate and 'experiments in living' (Mill, 1985: 222). Furthermore, unlike the appeal to neutrality, this view endorses if not a complete view of the Good Life, quite a detailed framework for any 'reasonable' conception of the Good Life. So it is not neutral by any standard.

However, this strategy opens once again the door for a kind of Enlightenment fundamentalism. For what characterizes many non-liberal views of the Good Life, including religious doctrines, like of the Haredim, is that they reject this picture of human nature. To insist, then, that man is a rational creature capable of autonomy is begging the question against such religious ~~substantial~~ views.¹⁰ Autonomy is a decidedly liberal value and to assume it is a necessary ingredient of any Good Life begs the question. It would require the Haredim and other such groups to consider their religious identity as a part-time identity that can only be expressed in the private sphere. For most, if not all, orthodox Jews and many other religious groups a religious identity should be expressed and lived both in the private and the public sphere: "Be a Jew at home as well as in the street". Adopting a view of human nature that assumes autonomy as the basis for the justification of liberal democracy, then, seems not a very promising route to achieve consensus on liberal democratic institutions in pluralist societies.

Overlapping Consensus

This brings me to the fourth way of defending liberal democracy against its critics. Whereas all the previous ways of justifying liberal democracy tried to establish a common beginning point for the foundation of liberal democratic institutions, we could instead try to see if all the various conceptions of the good in our pluralist societies could agree on liberal democratic conclusions. Instead of focusing on a common ground, we focus on common end points of our justifications of liberal democracy. This way we seek a decidedly political, not metaphysical, justification of liberal democracy (Rawls, 1984: 223–251; Rawls, 1993; Taylor, 2007). As long as citizens can agree on these institutions, we can allow a wide diversity of different views on the good life, including religious worldviews.

We can illustrate how a justification goes with the example of religious toleration. Liberals who emphasize autonomy will endorse religious toleration because they believe that people ought to live their life from within,

¹⁰ See also the contribution of David Novak in this volume.

[Capitalize: 'Good Life']

such works

by their own light. And if that light happens to shine on a religion, it would be wrong to prevent a person from living his life within that religious tradition. Other liberals might endorse such toleration because it is a precondition for a wide diversity of conceptions of the good life. If a good life is chosen, so the argument goes, there has to be something to choose and one can only choose if there are, as Mill put it, 'multiple experiments in living' from which one can learn and choose (Mill, 1985).¹¹ However, it is not just such liberal perfectionists who could endorse such toleration. Many protestant Christians would endorse it, but for very different reasons. True faith, in their worldview, is based on the firm conviction that God exists and has a plan with this world. Forcing people to conform to the outward behavior and rituals required by the church is not true faith and, hence, worthless. Such Christians cannot but allow non-believers to persist in their sinful ways as it is no use trying to force these people to accept the errors of their ways. All one can do is plea and remonstrate with them to accept the true faith. Forcing them to attend mass and bible study will not lead to true faith since it is not the result of inner conviction.¹² In short, such Christians are committed to religious toleration just as much as liberal atheists – be it for completely different grounds. There exists, then, among Christians and atheists an 'overlapping consensus' about religious toleration (Rawls, 1984; 1993). The hope is that such consensus can be reached on the basic tenets of liberal democratic institutions.

It is essential to realize that such an overlapping consensus is not the same as a temporary compromise based on the prevailing balance of power. Rather, in an overlapping consensus the commitment of each citizen is based on reasons that are grounded in their conceptions of the Good. This ensures that the overlapping consensus on liberal democratic institutions will be both stable (or at least, as stable as one's conception of the Good) and reasonable. The commitment of a particular citizen to, say, religious toleration, is reasonable and justified provided one accepts the conception of the good of that particular citizen as starting point.

Be a Jew at Home as Well as in the Street

It is important to realize why religious groups, such as the Haredim, might be enthusiastic about this strategy of justification. First of all, since it is a

¹¹ For similar liberal pleas for diversity, see Joseph Raz, 1986.

¹² This is the same argument as that of Locke, 1689.

political conception of liberal democracy, it allows for a wide diversity of worldviews within society. No consensus on the Good Life or a view of human nature is required to be committed to liberal democracy. So it is possible to be a Jew at home as well as in the street. There need not be a conflict between being a citizen of a modern pluralist state and being a Haredi.

Secondly, since one's religious identity is the source of one's commitment to liberal democracy, it is required to express one's religious identity clearly. For in this way, one demonstrates that one's commitment is not accidental or simply a compromise that is made because of the presence of competing religious and other worldviews. So it is not just the case that the state can allow expressions of one's identity in the public sphere – the state requires them. This is not a sign of weakness of the state. On the contrary, it is a sign that all are deeply committed to its institutions. So it is not merely possible to be a Jew at home as well as in the street: it is even required.

This is an optimistic vision of liberal democracy. A legitimate modern liberal democracy will be multicultural and will display its diversity, both in private and in public. This is a grand vision and I am certainly not immune to its attractions. If such overlapping consensus is possible, we can allay in one fell swoop both the worries of the communitarians about the fate of modern society as well as those of liberal perfectionists who argue that a *Kulturkampf* against unenlightened religious views is inevitable.

Public Commitments to Liberal Democracy

So is it possible? An overlapping consensus of the kind that Rawls and Taylor envision is grounded in the commitment of citizens to their way of life and the corresponding ideals of the Good. These commitments are private in the sense that they stem from ~~one~~ ^[one's] conception of the Good Life and this conception need not be shared by society at large. So while an individual citizen may be committed to liberal democracy, this commitment will look dubious, insincere or straightforwardly irrational to those who do not share her conception of the Good. This suspicion explains in no small amount the sustained criticism that religious people receive in contemporary secular societies, such as Denmark or the Netherlands.

This doubt about the feasibility of an overlapping consensus on the fundamental principles and institutions of a liberal democracy, points to a different aspect of the overlapping consensus that John Rawls (among others) made very clear (Rawls, 1993: 212–254). The commitment to liberal

[insert 'such institutions'. It then reads: "... sincerely accepts such institutions, based on reasons that stem from her own conception of the Good."

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democracy needs to be public. That is to say, it is not enough that each citizen accepts, sincerely accepts, based on reasons that stem from her own conception of the Good, ~~such institutions~~. This acceptance has to be known to all. The reason that such commitments have to be public is due to the critical function that the basic rules of liberal democracies play in solving conflicts. An appeal to, say, the right to freedom of speech, should function as a determinate standard accepted by all to resolve a conflict, for example, a conflict about the question whether it is to be tolerated that the Prophet Muhammad is depicted in a cartoon.

Imagine now a Haredi Jew who has found reasons to commit himself to the institutions of a liberal democracy in living in one society with other groups. It is not enough that he has found these reasons – others will have to be assured of this. How could he do this? How can the avowal of support for liberal democracy look sincere and reasonable to a non-Haredi? They probably regard his reasons as incomprehensible and irrational. Hence, his fellow citizens will continue to second-guess his commitment to liberal democracy. To the extent they are convinced it is real, it will look irrational to them. To the extent they are convinced he is rational, they will doubt the sincerity of this commitment.

David Novak's Jewish Social Contract

We can illustrate this point with the example of the theory that orthodox Jewish theologian David Novak develops in his book *The Jewish Social Contract* (Novak, 2005). David Novak is not Haredi. He is Canadian and has a successful life as rabbi, author and university professor in Toronto. If any religious person should be able to come up with public reasons for his commitment to liberal democracy, it should be Novak. However, I will argue that Novak's defense of his commitment to liberal democracy suffers from the very problem I described in the previous paragraph.

Novak subscribes to the Rawlsian idea of overlapping consensus. In the book, he discusses what resources in his religious identity, practices and traditions a devout Jew has to justify his commitment to the principles of liberal democracy in a pluralist society like Canada.

Novak suggests that the Noahide laws are such a resource. The Noahide laws are the rules that non-Jewish people should follow if they want to live according to God's laws. The Noahide laws, then, function as those rules that should regulate the interactions between Jews and Gentiles according to rabbinic tradition. Novak believes these rules can fulfill a double role in

this regard. On the one hand an appeal to these laws can justify to his fellow Jews his commitment to liberal democracy, to a multicultural and diverse society. On the other hand, the Noahide laws could function as public reasons for a Jew's commitment to liberal democracy according to Novak. That is to say, the ideal of human flourishing; the conception of (distributive) justice that is embedded in the Noahide laws are such that they can transcend the strict bounds of orthodox Judaism and can be used to communicate one's commitment to liberal democracy.

At this point it becomes crucial what exactly is contained in the Noahide laws. On a very literal reading, the laws contain seven very general obligations. First, that there should be courts to arbitrate conflicts; that there should be prohibitions of blasphemy and idolatry; that murder, incest and kidnapping are forbidden and, finally, that no one should be allowed to eat the flesh of a living animal. Novak argues in his book that these laws contain a commitment to a pluralist society. I am in no position to disbelieve him on this point, but cannot refrain from ~~uttering~~ ^{expressing} my admiration for the ~~power~~ ^{creativity} of theological hermeneutics. However, it does seem to me dubious that the Noahide laws could fulfill the role of public reason – that it could be a source for Jews to refer to when they seek to justify a commitment to liberal democracy as well as a publicly accessible standard to Gentiles who wish to ensure themselves of the commitment of their Jewish fellow citizens.

To an atheist, such as myself, the whole idea of taking one's reason from a source that somehow transcends the world-as-we-know-it is dubious. So how could the Noahide laws convince me of Novak's commitment to liberal democracy as the source of these laws is totally alien to me? Since this is the case, why would I not be doubtful of his commitment to the grand vision of a liberal democratic pluralist state?

Novak faces a dilemma at this point. Either, he insists on the Noahide laws as a source of public reasons, in which case he has excluded many non-theists from his overlapping consensus. Any atheist who denies the authority of God or these laws cannot be a fellow citizen of Novak. As a result, the sort of society that could endorse liberal democracy would be far from pluralist and multicultural.

Or, and this is the other horn of the dilemma, we accept that the Noahide laws are typical for the Jewish perspective on the justification of our political order and are not really accessible to non-Jews. In that case, we are back to the threat posed by the doubts and suspicions that will emerge between groups about the commitment of others to liberal democracy. Such a threat, of course, is minimized to the extent that the pluralism and

diversity of society is diminished. Again, it seems that only relatively homogenous societies could become stable liberal democracies.

In other words, Novak’s appeal to the Noahide laws illustrate the difficulties the sort of overlapping consensus necessary to justify a liberal democracy in a pluralist society. Novak’s ideal state, therefore, will not be anything like the vision of the diverse and multicultural society where each citizen can express her allegiances publicly without raising doubts about her commitment to a just political order.

Conclusion

This problem is not one exclusive to Jews orthodox or ultra-orthodox like the Haredim. It is a systematic problem for the whole idea of overlapping consensus. A consensus on the institutional conclusions of a liberal democracy that is also public looks improbable in a very diverse pluralist society. More to the point, if we seek to justify a liberal democracy and want it to be genuine ~~exclusive~~ for all groups in its jurisdiction, an overlapping consensus will only be possible if the various groups in that society already share a lot more than just their conclusions. If this is not the case or if the differences between groups are sufficiently deep, to prevent such consensus, liberal democracies face a real legitimization crisis. The case of Na’ama Margolis is but one of the many illustrations of the particular form of that crisis in Israel.

So where does this leave us? I have discussed and rejected four different ways of justifying liberal democracy in a pluralist, diverse society. We have seen that such justifications are impossible, improbable or require a large degree of homogeneity in worldviews in society. How this problem is to be avoided is unclear. Perhaps it is the tragedy of liberalism that it cannot create such overlapping consensus (van den Brink, 2000).

It seems to me that at this point we face a kind of dilemma. We could insist on the ideal of autonomy, embrace the fact that this is a worldview among others, but defend it wholeheartedly against objection from groups that do not share this ideal. That is, we could move into a kind of “liberal perfectionism”. The cost would be that this alienates some of our fellow citizens – much like the Haredim feel alienated from Israeli society.

Alternatively, we could celebrate the ideal of multiculturalism and diversity implicit in the theory of overlapping consensus and strive for such a consensus. We could only achieve this if we drop the requirement commitment of each citizen to liberal democracy be public in the sense that his reasons for the commitment are publicly accessible and comprehensible.

inclusive

However, then we will risk all kinds of mutual distrust between groups with divergent worldviews.

Either way, the modern, Western ideal of a liberal democracy that accommodates many divergent religious (and other) groups and worldview will be under threat. Much like it is under threat in the streets of Beith Shemesh.

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