



Israel: Religion and Society

Why Public Standards of Sabbath Observance?

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Let me say at the outset, I do not believe in religious coercion. Personal religious belief and practice is either a voluntary matter or it is a sham that harms true religion far more than does freedom of choice, even if the latter means that only a minority of the Jewish people will observe Judaism. None of us on earth are G-d's policemen in such matter, by the same token however, it should be clear by now that the modern concept that religion is merely a private matter is simplistic, a slogan used to mask a fundamental falsehood for any but an atomized society. For me, aside from the change in the public ambiance, the worst aspect of Sabbath openings is not that some Jews choose to be entertained in the cinema or theater on the Sabbath, but that in order to serve them other Jews are required to work on the Sabbath or forfeit their opportunities for employment in a particular industry. Were matters merely a matter of letting people choose how they wished to spend their leisure time it might be possible to turn a blind eye to their choices, but there are consequences for others who are denied the right to a Sabbath as a result that cannot be passed over in silence.

Public standards do make a difference in determining a society's norms and the society that seeks to also be a community, even in the limited modern sense of the term, must perforce establish norms which it enforces. Even as Israel has been moving away from public standards in matters of religion, we have had to confront a form of group prejudice called racism. The surfacing of Meir Kahane has led to

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demands for establishment of enforceable public norms to combat efforts to stimulate group prejudice. Why do so many people who believe that religion is strictly a private matter believe that prejudice is not? After all, it could be argued that what one privately believes about one's neighbors is one's own business and if one wants to exercise one's rights to propagate those beliefs, that is part of a democratic society. But most of us do not believe that expression of group prejudice is merely a private matter. We accept the fact that there needs to be public norms that direct a society away from racism, even as we agree that these norms will not include some kind of standardized test that everyone will have to pass with regard to his or her own private opinions or any effort of control private expression on the subject as long as it is not public and inciting.

The problem of how to reconcile the democratic norms of individual freedom with the democratic norms of a just society is not always easy to resolve but we try to do it. So too in the sphere of religion. In the last analysis, just as in the case of racism strict neutrality on the part of government is unattainable; a government that speaks in the name of all the people has to point in one direction or another. Thus both the United States and the USSR are committed to separation of church and state, but the commitment of the former is based up respect and even encouragement of private religious action under governmental protection, while in the latter case separation is designed to foster atheism and the state is actively involved in pursuing that end. The Americans adopted the principle of the separation for the good of religion in a pluralistic society. The Soviets wish religion only ill.

Until quite recently in the United States, when the U.S. Supreme Court began to follow a highly legalistic line with regard to separation of church and state, it was accepted policy that local communities could maintain Sunday as a day of rest, a common Sabbath in which virtually all places of business and in some communities even places of entertainment were closed. In a few communities even vehicular traffic was prohibited on the Sabbath. Of course it did not occur to any of those communities that they could compel anybody to go to church or to observe the Lord's day in their homes, but the public posture of the community was such as to make Sunday a true community day of rest.

As a result of changes in American norms, first with regard to

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entertainment and then U.S. Supreme Court decisions with regard to regulating Sunday business openings, all this has gone by the boards in most American communities. Thoughtful Americans have already noted the results. On one hand there is a great increase in convenience. People can choose to do their shopping on whatever any day of the week now. Indeed, since the trend was part of a larger one toward eliminating even the distinction of day and night for the sake of convenience, Americans can almost shop around the clock.

On the other hand, the sense of community in the United States has been further weakened. The idea of a common day of rest has been replaced by the concept of individual recreation and leisure, which can take place anytime and which in turn is increasingly tied into the highly materialistic patterns of consumption celebrated as characteristic of "yuppies, muppies, and dinks". Young upwardly mobile, middle aged upwardly mobile, and dual income - no kids. American society has become further atomized with far less sense of community than there was in the past and its commercial aspects have been elevated to an importance above all others.

All this is not to say that such actions are not legitimate in a democracy. If people change their way, they can vote to change public norms accordingly, but there is a real price that has been paid. It is hard to say that the United States is a better society since all this has happened, even though it is a more convenient one. It may be easier to pursue the American dream, but it does not strengthen the American vision.

Like other contemporary people, non-religious Israelis seem to be motivated by the same desire for individual convenience at the expense of community standards which Americans have pioneered. To the extent that that is the case, it is impossible to deny them a far broader right of self expression that may have been acceptable in this country 30 years ago. On the other hand, it is not at all clear that this is the case to an equal degree throughout the country. In Jerusalem, for example in addition to a handful of militant secularists and a larger group of militant ultra-Orthodox, there is a large silent group of modern Orthodox and traditional Jews who have chosen Jerusalem precisely because it offers a certain kind of Jewish atmosphere.

When my son expressed his desolation over the change, I tried to comfort him by saying that the changes need not affect us since our

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neighborhood, even though it is mixed religious and non-religious will likely remain the same. He responded, "but I go to Scouts in town on Shabbat afternoon and traffic will be heavier and theaters will be open and for me the Shabbat will be changed." He is right -- strengthening the private rights of one group will come only at the expense of the rights of others. If this is to be, then it should only be done after a public referendum on the subject in which the citizens of Jerusalem have the right to choose whether or not they want the norms of their city to be changed. Moreover, in light of the experience of other countries, there is little doubt in my mind that the pursuit of convenience in the area of shopping and other commercial activities on a seven-day-week basis as well. This is a worldwide pattern that reflects the nature of the new "convenience society" dominated by what M.K. Amnon Rubenstein, not exactly a member of the ultra-Orthodox camp, has referred to as the world of "secular hedonism." As Professor Rubenstein's words reveal, it is not only the religious who are concerned by the orgy of materialistic individualism that is engulfing Western society and there may be those among the non-religious who can appreciate why it is good public policy to require people to rest from their pursuit of materialistic consumption for at least one day a week.

This brings us back to the problems of how to reconcile private rights with a public good. Let us sum the argument:

- 1) There is a real difference in the tone of a society when there is a common Sabbath day which is reflected in the public realm and when there is not.
- 2) In our time there is clear conflict between that segment of the population, not all Orthodox by any means, who want the peace of the Sabbath to be the predominant atmosphere in their community and those, not all secular by any means, who believe that these are so thoroughly matters of private choice that even if the general Sabbath peace is broken, the public authorities should not intervene.

Civil society is able to exist only when its members agree, to a minimum "social contract" that ensures civil peace by achieving a sufficient moral consensus, at least with regard to the public sphere. Such a social contract is effective because it is accepted by common consent, not because it may be embodied in law. For many years, the famed "status quo" agreement formulated by Ben Gurion and Rabbi Maimon at the

time of the establishment of the state was Israel's social contract in religious matters. Recent events have demonstrated that it no longer has sufficient common consent to hold. Hence a revised social contract must be negotiated in this sphere. It will have to allow for some local option in matters of Sabbath entertainment.

Given the present divisions in Israeli society, statewide rule on this question would be difficult even though there may be good public policy reasons for opting for a social standard that establishes Sabbath peace. (For example in an age of ecology there is every reason to believe that a law closing down motor vehicular traffic of all kinds for one day may become necessary in order to preserve the physical atmosphere for humans, religious or not. Given the present state of private interests, such action by public authorities would be viewed by a majority as extremely coercive). There is a difference between, say, Tel Aviv and Jerusalem with regard to the character of the population and its public expectation in this sphere. Public policy decisions on this issue should reflect that difference through allowing each municipality to make its own decisions, especially in a small country like Israel where people in the minority in one municipality can easily find another close by where their views will be in the majority.

One useful way to determine public policy on issues of such fundamental importance is through a public referendum in which an especially large majority is required to change the status quo. For a hundred years or so, the most advanced democracies have included the principle of referendum on constitutional issues as a vital one for dealing with just such problems. Ordinary legislation can be dealt with by elected representative bodies, but constitutional issues, that is to say, those that shape the very character of the society, require more direct involvement of people in constitutional choice. This is such an issue hence we would urge the Knesset to enact legislation establishing a general framework for observance of a society-wide day of rest and within that framework, providing for local option through referendum. Since the issue is constitutional in character, any change in the previous status quo should require a special majority -- somewhere between 60 and 67 percent of the voters -- to reestablish a consensus. Simple majority on such issue cannot do that. Let us then have an open public debate on the issues and a democratic way of revolving it.

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Israel is still in the process of determining its character as a Jewish state and democratic one. Movement to resolve this issue through a judicious balancing of public concern and private rights through increased use of local option and the referendum would be an appropriate step in that direction.

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