

EZRACHUT – HaETGAR, Chapter 5

The State of Israel as a Jewish State

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Religion and State in the State of Israel

Throughout the course of human history, there has been a constant struggle between the institutions known as religion (in western countries, “church,”) and state. Both religion (its institutions and clergy) and the state (its institutions and leadership) seek to attain absolute authority and position to shape society and exert control over the population. (editor’s note: This sounds hyperbolic.) Religion expects its adherents to cleave to its values and sacred traditions, and to unconditionally believe, and the state, from its own perspective, expects its citizens to show allegiance to its laws and institutions. Sometimes, a balance is reached between these conflicting requirements, in the form of agreements or compromises, and sometimes there is even a form of cooperation or symbiosis. Some states are hostile to religion, through their institutions or their leaders, and they seek to hinder religious observance; other states view religion as an entirely personal matter, a matter of belief, and therefore do not get involved in religion; and still other states collaborate with religious institutions and leaders, and make arrangements with organized religion in order to muster public support for the state.

Nowadays, we distinguish between four general models for religion-state relations that have formed in various countries:

1. **Theocracy:** There is one religion within the state whose laws are binding, and religious practice is utilized even for political practice. This model is fairly rare today. The best example would be Iran under the Khomeini regime.
2. **Separation of religion and state:** The state does not get involved in religious matters. It protects the freedom of religion for every faith, prohibits religious discrimination, and upholds the right of one to choose his own religion and mode of worship. This model is also fairly rare. The best example would be the United States.

3. **Official Church:** One particular religion has special official standing, yet this does not preclude the freedom of other religions. For example, the unique status of the Anglican Church in the United Kingdom.
4. **Recognition of certain religions:** In this model, the state recognizes certain religions and grants their members certain services and assistance. The state recognizes the church that represents its adherents, yet the individual adherents have the right to secede from their church and forego the religious services the church or state provide. Example: Germany.

Which of these models best describes the State of Israel?

The first is incompatible, because there exists no theocracy in Israel. As a democratic state, Israel boasts of freedom of religion and worship.

The second model also does not fit, as the state is involved in religious matters, and even operates the State Ministry for Religious Affairs that provides services for adherents of various religions.

Some hold that Israel fits the third model, with Judaism being the official religion. They point out the existence of an official Israeli religious organization, the orthodox rabbinate.

Still others believe that Israel recognizes a number of religions. They point to the State Ministry for Religious Affairs that deals with issues involving many state-recognized religions, and not just Judaism, and that the office of President, the head of state, does not, by law, have to be filled by a member of the Jewish faith.

The citizens of Israel follow many religions. The majority are Jewish, the minority are Muslim, and some are Christian, Druze, Bahai, or Adyghe (Circassians), or other. Israel has no official religion, although Judaism does enjoy a special position of superiority. The state recognizes certain religious groups that enjoy internal autonomy. Every community establishes its own protocol for its clergy, its religious courts, and funding for its institutions. Some communities have institutions that function by right of state law, while other communities decline state funding for their activities and institutions, and operate according to protocols they have set for themselves. The Ministry of Religious Affairs seeks to provide religion-oriented services, and deals with matters related to all religious communities.

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The Ministry of Religious Affairs is responsible for exercising government policy in the realm of providing religion-oriented services to the public. To this end it runs a general administrative-executive system: departments for issues relating to religious councils, various departments for issues related to burial, ritualaria, and holy places, and other departments for religious issues and communities outside of Judaism.

The main tasks of the Ministry of Religious Affairs:

- * Arranging and guaranteeing religion-oriented services to the followers of the various religions.
- * Legislative initiatives in the religious sphere.
- * Preservation of holy places, maintenance thereof, and keeping public order.
- * Construction of synagogues, ritualaria, yeshivas, and Torah education institutes, mosques, and institutions of other sects.
- * Administration and budgeting for the Chief Rabbinate, local rabbinates, and religious courts.
- * Appointing 45% of the members of the religious councils, and funding 40% of their budgets.
- * Strengthening the religious connection with diaspora Jewry.

This shows that the Ministry of Religious Affairs deals mainly with providing religion-oriented services to the adherents of every religion, especially for Jews, who comprise the majority of the population.

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A. Israel is defined as a Jewish state in its declaration of independence.

These are the words the founding fathers chose to emphasize when they announced the creation of the state:

1. "We hereby proclaim the establishment of a Jewish state in Eretz Yisrael, the State of Israel."
2. "It is the natural right of the Jewish people, just like any other nation, to live as a free and sovereign nation in its own land."
3. "The state of Israel will be open to Jewish immigration and the ingathering of the exiles."
4. "We appeal to the United Nations to assist the Jewish people in building its state."
5. "We appeal to the Jewish people throughout the diaspora to rally behind the Yishuv."

These selections from the Declaration of Independence illustrate the view of its writers: the State of Israel is a Jewish state, sovereign, the state of the Jewish People, that maintains a tight bond with diaspora Jewry and stays open to Jewish immigration.

The Declaration of Independence describes the establishment of the state as a result of the yearning of the Zionist movement to establish a Jewish state within Eretz Yisrael to serve as the Jewish National Home. It is the result of the connection that the people preserved with their land throughout the years of exile. The Zionist dream is the establishment of a state with a Jewish majority, which would eventually bring together the majority of world Jewry. The first stage of this dream has already been realized, and today the majority of the state is Jewish, whereas the second stage of the dream has not yet been realized. According to the Declaration of Independence, the state's Jewish character is also expressed in the cultural and spiritual life of the nation in its land, and therefore, the Jewish character is exhibited in many different ways: the majority of her citizens are Jewish; the language is Hebrew; and the symbols of the state, its institutions, its laws and culture are all distinctly Jewish.

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B. The symbols of the State are Jewish symbols.

Or better: they are Jewish-Zionist symbols: The state seal, flag, and anthem are predicated on traditional Jewish themes, the Jewish people's connection to the land of Israel, and the idea of the renewal of Jewish sovereignty over the land. The **state seal is a seven-branched candelabrum** (menorah) flanked on both sides by olive branches, and written above the word "Israel." The seal was chosen by the Provisional State Council in 1949. The candelabrum of the seal is modeled after the one depicted on the Arch of Titus in Rome. The candelabrum is a symbol of biblical origin; it was one of the appointments in the tabernacle and temple, and over the course of time it became one of the national-religious symbols of the Jews.

The state flag is that of the pre-state Zionist movement. The colors of the flag, sky-blue stripes on white, resemble a traditional Jewish prayer shawl. The Star of David in the center of the flag is a traditional Jewish symbol adopted by the leaders of the Zionist movement.

The national anthem, “Hatikvah”, expressing the sore longing for the land of Israel, and the desire for Jewish rule therein, was originally the anthem of the Zionist movement: “to be a free people in our land, the land of Zion and Jerusalem.”

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C. The Jewish character of the state is expressed in laws passed by the Knesset.

Two of the laws that express the Jewish character of the State of Israel were mentioned in the previous chapter: “The Law of Return” and “The Israeli Nationality Law.” According to the former, every Jew has the right to emigrate to Israel and live there, and according to the latter, every Jew has the right to obtain citizenship of the state.

The Jewish character of the state is also expressed by the following laws:

The Nazis and Nazi Collaborators Law, 1950: One of the first laws enacted by the state, it provides for individuals suspected of causing the murder of Jews during the holocaust to be brought to justice. According to the law “a person who has committed one of the following offenses -

- (1) done, during the period of the Nazi regime, in an enemy country, an act constituting a crime against the Jewish people;
- (2) done, during the period of the Nazi regime, in an enemy country, an a act constituting a crime against humanity;
- (3) done, during the period of the Second World War, in an enemy country, an act constituting a war crime, is liable to the death penalty.”

The law details the atrocities perpetrated by the Germans and their collaborators, and establishes that any statute of limitations does not apply to such crimes, and that the General Amnesty Ordinance, which allows for the head of state, i.e. the president, to pardon the condemned, does not apply either.

The Hours of Work and Rest Law, 1951: A socio-economic law that has been modified many times since its original enactment. It defines various parameters of labor law: work-hour limits per day and week; overtime regulations and pay rates; daily breaks; overnight work; and others. The law also deals with the worker’s weekly rest period, and establishes that it include, for a Jew, Saturday, and for a gentile, either Saturday, Friday, or Sunday, depending on his choice of day of rest. The law



establishes that it is prohibited to employ a worker on his day of rest unless granted an exemption by the Minister of Labor because of matters of national security, personal security of life and property, support of the national economy, or for providing essential public needs. The law also prohibits discrimination in the form of denying employment to one who refuses to work on the day of rest established by his faith.

The World Zionist Organization - Jewish Agency for Israel Status Law, 1952: This law defines the legal standing of the World Zionist Organization and the Jewish Agency for Israel, the two leading bodies of the pre-state Zionist movement. According to this law, the state grants them official recognition as authorized agencies for the continual development of the land and its settlement, and the absorption of immigrants.

The Rabbinical Courts Jurisdiction (Marriage and Divorce) Law, 1953: This law establishes that all matters related to marriage and divorce involving Jewish citizens and residents of the state be exclusively the jurisdiction of the rabbinical courts, and will be subject to Torah law. The law establishes that with regards to divorce and *halitza* issues, the rabbinical courts may enforce their decisions with the threat of imprisonment of recalcitrant parties.

The Public Education Law, 1954: According to this law, the education of Jewish children in Israel will be based on Jewish culture and the traditions of the nation of Israel. The modified version of the law, passed in 2000, sets certain goals of state-sponsored education, many of them with a distinctly Jewish flavor: 1. To educate one to love others, his people, and his land; to be a solid citizen of Israel, who respects his parents and his family, his heritage and cultural identity, and his language. 2. To pass on the principles of Israel's declaration of independence, and the Jewish and democratic values of the State of Israel, and to develop a relationship of respect toward the concepts of human rights, basic freedoms, democratic values, and law abidance; also to teach respect of the cultures and opinions of others, and to educate students to seek peace and tolerance in interpersonal relationships. 3. To teach the history of Eretz Yisrael and the State of Israel.

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The Local Authorities Law, 1956: This law allowed for local authorities to limit or prohibit the raising of pigs, or the sale of pork and other pig products, within their jurisdictions.

In 1962, the Knesset set specific areas wherein it is permissible to raise pigs. The permissible areas are limited to those that host a large christian population, research institutes, or public zoos.

Basic Law: Israel Lands, 1960: “The ownership of Israeli lands, being the lands in Israel of the State, the Development Authority or the Jewish National Fund, shall not be transferred either by sale or in any other manner.” This law is discussed in depth on page 34.

The Broadcasting Authority Law, 1965: This law, which defines the role of the Broadcasting Authority as a public service, states that among its goals is to: “strengthen the bond with Jewish heritage and values and enhancing the knowledge thereof; reflect the life and cultural assets of all tribes of the people from the different countries; reflect the life of the Jews in the Diaspora communities.”

The Foundations of Law, 1980: “Where the court, faced with a legal question requiring decision, finds no answer to it in statute law or case-law or by analogy, it shall decide it in the light of the principles of freedom, justice, equity and peace of Israel's heritage.” This means that if a judge can not find a legal precedent in the resources available, i.e. in previous decisions or legislation, he should base his decisions on the traditional Jewish principles of freedom, justice, uprightness, and peace.

The Chief Rabbinate of Israel Law, 1980: This law defines:

- * The role of the council of the Chief Rabbinate, where it sits, and its composition;
- * Issues that touch on the election of a Chief Rabbi: who is qualified to serve, which body selects the Chief Rabbi, what is that body's composition, what mechanism is used to elect the Chief Rabbi, and the protocols thereof;
- * The division of responsibilities between the two Chief Rabbis.

The law also deals with modifications to the earlier laws governing rabbinic judges and religion-oriented services provided to Jews.



The Kashrut (Prohibition of Deceit) Law, 1983: This law prohibits deception with regards to kashrut issues. The owner of a restaurant, the producer of a manufactured food product, and the seller of food products to the public, may not represent their goods as Kosher without a certification of kashrut. Further, one who has been issued a kashrut certification for his goods may not offer or sell any non-kosher good. The law also defines who is qualified to issue kashrut certification.

Basic Law: The Knesset, emended 1985: This amendment establishes that a political party may be prevented from running in Knesset elections if its acts or goals include “a denial of the existence of the State of Israel as the state of the Jewish people, a denial of the democratic nature of the state, or incitement to racism.” (To date, this law has only been used against the Kach party for its alleged racism, but has not been used to disqualify the many parties that fundamentally deny the Jewishness of the state.)

The Festival of Matzot (Prohibition of Leaven) Law, 1986: This law prohibits merchants from publicly displaying leavened food products for sale or distribution for the duration of the Festival of Passover in an area in which there is a significant Jewish population.

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D. The Jewish character of the state is expressed in its institutions and other bodies.

The Jewish characteristics of the State of Israel receive their expression from the institutions and other bodies that have been established therein. For example, the ministries whose Jewish characters are obvious, like the Ministry of Religious Affairs or the Ministry of Immigrant Absorption, or the Jewish Agency and the Jewish National Fund. Even more so, the state has Jewish **religious** institutions: the Chief Rabbinate, the rabbinical courts, and the religious councils. We will now detail their various roles and jurisdictions.

1. The Religious Institutions that Express the Jewish Character of the State

The Chief Rabbinate

The Chief Rabbinate is the supreme rabbinic institution of the State of Israel. Founded in 1921, during the period of the mandate, as an act of the majority of the Jewish population in Eretz Yisrael. The Chief Rabbinate of Israel Law, 1980, establishes that the Council of the Chief Rabbinate of Israel, should consist of 16 rabbis:

* **Two Chief Rabbis:** the law does not necessarily call for one to be of Ashkenazi descent and one to be of Sephardi descent, but in practice it has usually been the case that one has been Ashkenazi and one has been Sephardi.

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* **Four Chief Rabbis of the largest cities:** Jerusalem, Tel Aviv, Haifa, and Be'er Sheva.

* **Ten elected rabbis,** half of whom of Ashkenazi descent and half of whom of Sephardi descent.

The Council of the Chief Rabbinate is also the Supreme Rabbinic Court. The rabbinic members of the council serve five-year terms, and the Chief Rabbis serve ten-year terms. The chief rabbinate is funded by the state budget, and is subject to state audits.

What body elects the the Chief Rabbis and the members of the Council of the Chief Rabbinate?

The electorate consists of 150 members, 80 of them rabbis, and 70 of them other public representatives. All of the electors are Jewish citizens and residents of the state.

Who is eligible for a place on the Council of the Chief Rabbinate?

A resident and citizen of Israel, at least 30 years of age on the day of the elections, who serves or has served as rabbi of a city or as a rabbinic judge, or one qualified for such positions, or one recognized by the council as a great Torah scholar.

Who is eligible for the position of chief rabbi?

One who is between the ages of 40 and 70 on the day of the elections, who serves or has served as rabbi of a city or who is qualified to serve as such, or one recognized by the council as a great torah scholar.



The elections utilize a **secret ballot**. Each elector chooses 3-5 Sephardi candidates for the Council of the Chief Rabbinate, and an equal number of Ashkenazim for the council.

The jobs of the Council of the Chief Rabbinate are:

- * to answer questions from the public on matters of Jewish law.
- * to issue kashrut certification.
- * to train rabbinic judges.
- * to train city rabbis.

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The two Chief Rabbis serve in two capacities:

One serves as the President of the Supreme Rabbinic Court, and the other serves as the President of the Council of the Chief Rabbinate.

Over the course of a ten-year term, each Chief Rabbi serves in each post for a five-year period.

The institution of the Chief Rabbinate is the supreme rabbinic body recognized by state law. It operates a wide-ranging administrative system, and its funding and budget are provided by the state and subject to state auditing, just like any other governmental institution, yet, as a religious and halachic institution, it enjoys a degree of autonomy with regards to its decisions and activities.

The majority of the religious community in Israel accepts the Chief Rabbinate as the supreme authority on Jewish law. Sometimes the activities and positions of the Chief Rabbinate garner disagreement from the community, especially when rabbis speak out

on public issues. The community also has varied opinions about how strictly the Chief Rabbinate chooses to interpret *halacha*.

Segments of the Ultra-Orthodox community do not accept the authority of the Chief Rabbinate: among the Sephardi Ultra-Orthodox there exists a "Council of Torah Sages", which they view as having supreme halachic authority, and among the Ashkenazi Ultra-Orthodox, there exist a "Council of Torah Sages" under the auspices



of the Agudat Yisrael party, another similarly-named council under the auspices of the Degel Hatorah party, and a “Court of Justice of the Ultra-Orthodox Community” under the auspices of the Edah Hahareidit. (Agudat Yisrael mainly represents various hasidic sects, whereas Degel Hatorah represents Ashkenazi Jews who owe their allegiance to the heads of the traditional “lithuanian” yeshivas. Agudat Yisrael and Degel Hatorah are both non-Zionist entities that take a neutral stance toward the state, whereas the Edah Hahareidit is historically anti-Zionist and does not recognize the state. It represents various Hungarian hasidic and quasi-hasidic sects.)

The Rabbinical Courts

Israeli law allows for other religions to run their own authorized religious courts. Every major religion in Israel has its own court system. There are rabbinic courts for Jews, there are sharia courts for Muslims, there are Christian courts for Christians, and there are Druze courts for the Druze community.

The rabbinic court system has two levels:

1. Regional courts

The judges who serve in regional courts are chosen by a special board of trustees. The President of Israel officially appoints the judges chosen by the board of trustees, and has them swear allegiance to the state(, but not to its laws, as opposed to secular judges who do swear allegiance to the state’s laws). This elective process is similar to that of the judges on both secular and other religious courts.

The rabbinic courts deal with matters related to marriage, divorce, child-support payments, *halitza*, marital problems, inheritances, wills, child custody, and conversion. All proceedings are done according to *halacha*.

The authority of the rabbinic courts was established by the Rabbinical Courts Jurisdiction (Marriage and Divorce) Law of 1953, which grants the rabbinic courts sole jurisdiction over matters pertaining to marriage and divorce between Jewish citizens and residents of the state. The rabbinical courts do not have sole jurisdiction over other matrimonial issues, and citizens may turn to other courts for these issues. For



example, with regards to financial support, inheritance law, and custody of children, petitioners may choose a local secular court. Conversely, if both parties are willing to adjudicate in front of a rabbinic court over any matter, for example, a monetary dispute, and receive a decision based on *halacha*, they may.

Even though the rabbinic courts uphold *halacha*, its authority (but not its protocols) is subject to supreme-court oversight, and if a rabbinic court rules that a party should be imprisoned, then it needs approval from a district court. It needs similar approval for restraining orders, seizures of property, and delays.

2. The Supreme Rabbinic Court

The Supreme Rabbinic Court is composed of the two Chief Rabbis and eight other justices. The chief justice is the Chief Rabbi of Israel (the two Chief Rabbis serve alternate five-year terms as the chief justice) and by law there must be at least three other justices, for an odd total number of justices. It sits in Jerusalem, and hears appeals of lower rabbinic court decisions.

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The Religious Councils

The religious councils are institutes that operate within local government districts, and they provide religion-oriented services to Jewish citizens. For example, maintaining synagogues, registering marriages, supervising kosher slaughter, maintaining ritualaria, preparing young men for bar mitzvah, providing burial services as administered by the local *hevra kadisha*, paying the salaries of local rabbis, and providing religious guidance.

A religious council is appointed by the Minister of Religion, and its composition is dictated by the Ministry of Religious Affairs, the district government, and the local



rabbinate. The funding for the religious councils is provided by both the state and local municipal governments.

Sometimes there are controversies concerning representation on the religious councils, Specifically, how many representatives there are for the various differing streams in a locality.

2. Other institutions that Express the Jewish Character of the State

The Ministry of Immigrant Absorption is the organization in charge of exercising state policy in the realm of immigrant absorption. The ministry helps immigrants obtain housing and employment, and also provides social services. During his first three years in the country, an immigrant is entitled to aid in easing the burden of adjusting to the new country and dealing with state bureaucracy. Other departments within the Ministry of Immigrant Absorption provide services to student immigrants and scientists, while others network with other government ministries in order to help immigrants.

The establishment of a unique government ministry for absorbing immigrants teaches a lot about the importance that the government and people of Israel ascribe to immigration. The Jewish character of the state is thus reflected by the state view of itself as the state of the Jewish people and as the fulfillment of the yearning for the ingathering of the exiles. The authority over immigration matters was originally in the hands of the Jewish Agency for Eretz Yisrael until 1988, when it was transferred to the government and the Ministry of Immigrant Absorption.

The Jewish Agency for Israel is the executive body in Israel that represents the interests of the World Zionist Organization and other global Jewish organizations. The Jewish Agency was founded in 1929 in order to work toward building a Jewish National Home in Israel, and to represent the Jewish people in the British Mandatory Government. Its representatives were involved in In Israel's

declaration of independence, and since then, has helped the state in the field of immigration. In 1952, the Knesset passed the World Zionist Organization - Jewish Agency for Israel Status Law. The law establishes that these organizations operate to further immigration to Israel and absorption of immigrants, and settlement of the land through cooperation with the government. In 1979, the Jewish Agency and the government reached an agreement that stipulates that the functions of the Jewish Agency will be:

- * to organize immigration of diaspora jews, and to bring the immigrants and their possessions to Israel.
- * to assist with housing the new immigrants and their adjustment to the new country.
- * to assist the agricultural settlements of populated by immigrants.
- * to deal with youth immigration and training.
- * to support cultural, athletic, scientific, educational, research, and higher-education institutions.
- * to help socially awkward immigrants.

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Over the years, the Jewish Agency has contributed greatly to Jewish immigration, especially from troubled countries. The Jewish Agency has dealt with such far-ranging issues as education, public health, welfare, housing, and employment. In 1988, the responsibilities of the Jewish Agency were transferred to the government and the ministry of immigrant absorption.

The very existence and activity of the Jewish Agency is a glaring expression of the Jewish identity of the State of Israel. The Jewish Agency expresses the tight bonds between the State of Israel and diaspora jewry, and the role of the state in the ingathering of the exiles and immigrant.

The Jewish National Fund

The Jewish National Fund (JNF) is one of the arms of the World Zionist Organisation. Its functions are **preparing state land for reforestation, improving scenic views, mustering resources for the development of state lands, preserving the land as a possession of the Jewish nation, and instilling a love of the land in the nation's youth.**

The Jewish National Fund was first established by the Fifth Zionist Congress in 1901, as a national fund for the acquisition of lands for Jewish settlement in Eretz Yisrael. The funds were collected from Jews, and the lands were purchased on behalf of the Jewish people. The guiding principle of the Jewish National Fund was that lands only be given over for share cropping and eventual Jewish settlement. Before World War I, lands were purchased in Ben Shemen, Hulda, and the Jordan and Jezreel valleys. The valley lands, for example, were used for establishing Kvutzat Degania, Merhavia, and the Kinneret educational farms. In the 1930's, the Jewish National Fund purchased land in Emek Hefer, and established thereon more than 50 settlements, (the "tower and stockade" settlements). In the 1940's, the Jewish National Fund founded various settlements in the Negev, among which were the settlements known as the "Eleven Points." By the the time of the establishment of the state, the Jewish National Fund had acquired about one million dunam of land, upon which it established more than 200 settlements.

After the establishment of the state, the Jewish National Fund focused on developing acquired lands, like the draining of the Hula valley and converting it into fertile farmland. In 1960, the Jewish National Fund and the state signed an agreement whereby Jewish National Fund lands were to be administered by the Israel Land Administration. The Jewish National Fund is considered today to be the authority in charge of real estate development, preparing farm lands, and creating the infrastructure necessary for Jewish settlement, and for reforestation throughout the state.

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Religion and State in Israel: A Jewish and Democratic State.

Religious Legislation, Religious institutions, and Democracy

In states with liberal and democratic constitutions, the state guarantees freedom of religion, including the right of every individual to choose his religion. Belief is a private matter, and every one has the freedom to observe or ignore what ever tenets of whatever faith he chooses.

The issues has two sides:

1. **Freedom of religion:** the freedom to choose a religious belief system, and freedom to worship and observe religious ritual.

2. **Freedom from religion:** the right of every individual to choose not to observe or practice.

Under a liberal democratic constitution, the state does not get involved in matters of faith, religious or otherwise, and does not take a citizen's choice of religion or community into any consideration.

Freedom of religion is also one of the rights guaranteed in the Declaration of Independence. There are those who claim that religion-oriented legislation stands in contradiction to this guarantee, and impinges on the basic rights of the individual as guaranteed by the de facto constitution. So, for the example, being that the state requires its Jewish citizens to marry according to Torah law, many claim that the expected rights of non-believers to avoid Torah law are ignored. Another example: marriages conducted by Reform and Conservative rabbis are not recognized in Israel, and this represents an infringement of the guarantee of equal rights before the law. There are other claims that general legislation is too restrictive of individual rights, like

the laws against the raising of pigs and the display of leavened food during Passover, which are both based on religious law.

Religion, Nationality, and State in the State of Israel

The tension between religion and state in Israel is much greater than that in other countries. In Judaism, the (ideal) state and religion are intertwined. The Jews are a nation of one religion, Judaism, and the Jewish religion is the national religion. Such is the belief of the majority of the Jews in Israel and those that view their Jewish nationality as connected with the tenets of the Jewish religion. Religion was the deciding factor in the preservation of the Jewish people in the diaspora, and strengthens the national identification of the Jews of Israel.

The vast majority of the Jewish citizens of Israel also consider the state to be Jewish, but there are disputes regarding the state's Jewish character as it is, and the state's Jewish character as it was intended.

The State of Israel as a Jewish State: Different Approaches among the Jewish Community in Israel

Among the citizens of the state, there are various viewpoints concerning the definition of the state, and its desired appearance. The majority view the state as a Jewish and

democratic state, that is, the state of the Jewish nation, that is obligated by democratic principles and guided by freedom and equality for its citizens.

And then there are those who beg to differ.

Practically speaking, there are two main disputes:

A. Is the emphasis on the Jewish component of the state, or on the democratic nature of the state?

As we said, the vast majority of the Jewish citizens of Israel consider the state to be Jewish and democratic, yet two factions among the population hold extremist views on this matter; the Ultra-Orthodox community hopes for a halachic state whose laws are based on Torah law (and one that will eventually ignore Knesset or constitutional law). Another group sees Israel as a democratic state "of all its citizens." This group does not see Israel as the state of the Jews.

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B. Is a "Jewish State" a religious term or a cultural term?

What is a Jewish state, and what should it be? Is Jewish identity expressed through a connection to Jewish religious values or a connection to Jewish culture? The two sides of this issue are often mistakenly cast as a dispute between the "religious" and

“secular,” but in reality, among both believers and non-believers there are differences of opinion.

Before we gauge the opinion of the Jewish citizens of the state with regards to these issues, it is important to draw a few distinctions between those who emphasize “religiosity” in their defining their Jewishness, and those who emphasize a “secular nationality.”

* **Secular Jews** emphasize a Jewish identity based on ethnicity, history, culture, and shared experiences. They seek to preserve their identification in the framework of a nationalist Jewish state. Their connection to Judaism is not religious in nature, nor is it involved in any obligation to a particular faith or religious practice. According to this understanding, the Jewish state is “the state of the Jews,” a Zionist state, sovereign and possessing a Jewish majority that ensures the state’s dominant culture and personality.

* **Liberal Jews** claim that a modern state should remain secular, and that matters of faith and religion are private and for individuals only, and not any business of the state. Those that espouse this view consist of both non-believing seculars, and believers possessed of a liberal world-view.

Both seculars and liberals seek changes in the complicated relationship between religion and the laws and institutions of the state, yet they still are interested in seeing that the state provide religion-oriented services to the general population, while still opposing forcing religious laws and institutions upon the non-believing citizen.

* **Traditional (*Masorti*) Jews:** Almost half of the Jewish population of Israel defines itself as traditional: believers in a combination of religion and nationalism. They want to bequeath a Jewish-religious character to the state, and are opposed to a separation of religion and state. With regards to certain issues, this group supports religious institutions developing flexibility, for example, respectable solutions for those disqualified for religious marriage, or allowing soccer games on the Sabbath.

* **Religious Zionists:** In their opinion, the Jewish national state is obligated to be religious, because, in their view, the Jewish state and religion are one complete whole. This is also a group that strongly opposes a separation of religion and state, and seeks

to establish a state in Israel that upholds *halacha* in all areas of life. Generally, they accept the authority of the state and its laws, except for instances that appear to them to stand in conflict with their religious-nationalist views. The national-religious camp sees the establishment of the state as the beginning of the redemption, and often joins forces with the non-religious Zionists.

* **The Ultra-orthodox (*Haredim*)** do not see the State of Israel as a Jewish state. This is because the state was established by the general Zionist movement, and was not part of the messianic redemptive process, and because the state's laws are not Halachic laws and the state's conduct is not religious. The Ultra-Orthodox desire a state guided by the laws of the Torah. There are many streams among the Ultra-Orthodox: some participate in the political system, and try to influence it, and others, the minority, do not recognize the state at all.

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State and Religion Reach a Compromise: "Hesder" Agreements and the Status Quo

It is safe to say that Israel maintains a status quo with regards to the relationship between religion and state. The status quo refers to a sort of compromise reached between the conflicting desires of the religious and non-religious, a compromise borne of the will to reach a consensus on many issues and to prevent the outbreak of conflict between the factions.

The basic arrangement, now known as the Status Quo Agreement, or "Hesder" for short, has its origins in a letter David Ben Gurion and other officials of the Jewish Agency sent to the World Agudath Israel Organization in 1947. This letter formulated the Jewish Agency's intended positions with regards to the Sabbath, kashrut, education, and matrimonial law in the new state.

With regards to the Sabbath, they wrote that "it is obvious that the legal day of rest in the Jewish State should be Saturday, although understandably, Christians and



members of other faiths have the right to take off on the day of the week that is holy to them.”

Concerning kashrut they wrote: “to the fullest extent possible, every governmental kitchen responsible for providing food to Jews will provide kosher food.”

With regards to matrimonial laws, the writers described “the seriousness of the problem and the tremendous difficulties”, and added that “... all that is possible will be done to provide for the pressing needs of the faithful, in order to prevent, heaven forbid, the division of the house of Israel into two.”

Concerning education: “... every stream will have autonomy in the realm of education...and the government shall not infringe on the religious sensibilities and expectations of any group in israel...”

The goal of this original status-quo agreement was to prevent a culture war between the religious and secular, and to prevent conflicts that would endanger the cohesiveness of the nation and the stability of the state. Yet it does not deal with many of the religion-state issues that embroil the nation. For example, it does not deal with the question of

“who is a Jew?,” or the issue of abortion. Further, over the course of time, there has been a necessity for adjustments to the status quo.

Some changes have moved the status quo in the religious direction, for example, legislation restricting autopsies and commercial air traffic on the Sabbath, and others have moved the status quo in the secular direction, for example, legislation allowing restaurants and cinemas in large cities to stay open for business on Friday nights.

Although the status-quo agreements have been far-reaching, there are still many issues between the religious and secular that have yet to be resolved, and that is why the political system sees certain groups, both Ultra-Orthodox and secular, that reject the status quo agreements, groups that accept the status quo for lack of viable alternative (the national-religious and liberals), and groups that accept it as a cromulent compromise.

Subjects of Dispute in Religion-State Matters

1. The “Who is a Jew” Problem

According to the halachic perspective, a Jew is one who “was born to a Jewish mother, or who converted according to Halacha, and thusly entered into the covenant of our forefather Abraham.”

According to the liberal and secular viewpoints, the definition of a “member of the Jewish nation” mainly depends on that person’s conscience and will, and not his ethnicity or genes. This theoretical dispute has practical implications, for example, whether the state should recognize conversions performed under conservative or

reform auspices, or how to separate Jewish religion from Jewish nationalism, or whether certain far-flung immigrant groups, like the Beit Yisrael community from India or the Beta Yisrael groups from Ethiopia, are Jewish.

This debate has been addressed twice by the High Court of Justice and deliberated numerous times in the Knesset. In 1970, the law was updated, and that is the way it has stood since.

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2. Matrimonial Law

The Rabbinical Courts Jurisdiction (Marriage and Divorce) Law, 1953, established that “marriages and divorces of Jews shall be performed in Israel in accordance with Jewish religious law... under the exclusive jurisdiction of rabbinical courts.” in this regard, all of the state’s Jews are subject to the rabbinical courts, whether they like it or not, whether they themselves are religious or secular.

3. The Sabbath Debate

There has never been a general law passed by the Knesset dealing with the Sabbath, although isolated laws do make mention of the Sabbath.

a. The Hours of Work and Rest Law, 1951, establishes that the weekly day of rest be Saturday, the Jewish Sabbath, and that gentiles may choose a different day of rest. Article 12 deals with various exceptions that allow employees to work on the Sabbath: “The Minister of Labour and Social Affairs may permit an employee to be employed during all or any of the hours of weekly rest, if he is satisfied that interruption or work for all or part of the weekly rest is likely to prejudice the defense of the State or the security of persons or property or seriously to prejudice the economy, or a process of work or the supply of services which, in the opinion of the Minister of Labour and Social Affairs, are essential to the public or part thereof.”

The dispute between the secular and religious centers on the protocols used to apply this law. The religious maintain that exceptions to sabbath observance only be granted in cases where there is a threat to life, as expressed by the halacha, while the secular wish to apply a “broader” interpretation to article 12.



b. The “Tasks of Municipalities” provision of 1964 establishes that a municipality should “order the opening or closing of stores and workplaces, cafes, taverns, food

establishments, bodegas, and similar establishments, and of cinemas, theaters, and other areas of public entertainment, and to enforce such arrangements, and to set the specific hours on a specific day for all of these establishments to be closed, and that this law be subject to exception as set down by the Minister...”

In 1990, the Knesset passed an amendment to this law whereby courts were granted more power to prosecute businesses that opened on the day of rest as established by the local municipality.

c. The status quo as it has existed since the establishment of the state is that public transportation (i.e. buses) does not operate on the Sabbath, except in Haifa and Elat, but private vehicular traffic is not restricted. The dispute in this case, aside from the basic dispute over the legality of any vehicular traffic on the Sabbath, is centered mainly on defining what is public transportation. Are taxi cabs also included in public transportation? What about intra-city bus lines, for example, between Tel Aviv and Kiryat Shmona?

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IDF Conscription of Yeshiva Students

Many Ultra-Orthodox groups vociferously oppose drafting yeshiva students. According to the Security Services Law, 1959, the Minister of Defense may employ a number of circumstances (educational needs, settlement, national economy, family reasons, and “others”) to postpone conscripting those who would otherwise have an obligation to serve in the army. This directive has usually been used to grant postponements to students who study in yeshiva. In practicality, this postponement usually means an eventually-complete exemption from the obligation to serve in the army, and as such, the number of students who choose this path has grown to the tens of thousands. This phenomenon has troubled many in the secular, traditional, and national-religious communities. It should also be emphasized that the national-religious community generally does join the IDF, and that many of them do this in conjunction with their



studies in yeshiva, through, for example, the “hesder yeshiva” program, and that their understanding of *halacha* opposes the exemption of yeshiva students from the army. In a state that has a fragile security situation, the release of thousands of students from

army service elicits strong opposition and ill will. The Ultra-Orthodox claim that Torah study demands the complete devotion of the student and even contributes to the physical and spiritual security of the state, and therefore it is proper to free yeshiva students from army service. Some claim that the opposition to serving in the IDF is really based on other reasons: agreeing to serve in the IDF grants legitimacy to the “Zionist State” and subjects students to the corrupting lure of secular culture.

The State of Israel and Diaspora Jewry

From the outset, the State of Israel has seen the utmost importance in a relationship with Diaspora Jewry, as expressed in the Declaration of Independence's appeal to the Diaspora to rally behind the Yishuv in Israel, immigrate thereto, and help build the state. Many Jews immigrated to the state in the massive immigration wave that followed the founding of the state, and within three years, the country's population doubled: from 650,000 in 1948 to 1,350,000 in 1951. Since then, hundreds of thousands of more Jews have joined, and in the 1990's there were further waves of mass immigration from the former Soviet Union and Ethiopia. Yet, the majority of world Jewry remains in the Diaspora, and the State of Israel retains close ties with them.

Since the founding of the state, the main approach that the people and governments have taken is that Israel is the center and state of the Jewish people. This approach has had a significant effect on

1. encouraging immigration to Israel, mainly through the educational activity of state emissaries abroad, and assisting the escape of Jews from countries that do not allow Jews to immigrate to Israel.
2. assisting Jews who suffer from persecution, antisemitism, or molestation from their neighbors in the Diaspora.
3. assisting international Jewish communities in the realms of Jewish education and cultural exposure.
4. running Jewish organizations in cooperation with the government of Israel, in order to strengthen Jewish self-identification and connection to the state.

The State of Israel considers itself responsible for assisting and ensuring the safety of diaspora Jewry.

From the point of view of Diaspora Jews, the State of Israel is a source of national identity and pride. The establishment of the state changed the status of diaspora Jewry

from a stateless minority, to one with a state, and this change granted diaspora Jewry a sense of belonging and security. This, in turn, awakened many diaspora Jews to involve themselves in Israeli affairs. They see the state as the center of Jewish culture and nationalism, and therefore grant the state various forms of assistance:

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1. Acts of economic assistance, by way of donations, loans and investments.
2. Political support, and encouraging their own countries' foreign policy toward pro-Israel stances.
3. Participation in Zionist organizations and missions to Israel.
4. Jewish tourism in Israel.
5. Solidarity with Israel, especially during times of war and instability.

Other Diaspora Jews see the Diaspora and the State of Israel as competing centers of Jewry. Many Jews who dwell in the Diaspora prefer where they live over Israel, and feel fine developing their Jewish identities outside of Israel. Many of these Diaspora communities have their own educational systems and cultural networks that rival those of the state, and have served as a model for state-run programs.

This continuing relationship has been of mutual benefit to both sides, now that the state has proven itself viable, and the Diaspora has thrived despite the open opportunity for Jews to join the state. Originally, the Israeli approach to the Diaspora was that it was only temporary, and that all Jews yearned to return to their land. The modern approach accepts the reality that many Jews will willingly remain in the Diaspora. Among diaspora Jews, there are many different opinions about what the relationship to Israel and Israeli Jewry should be. It is still unclear what role Diaspora Jewry should take with regards to security and state/religious affairs in Israel.