

LIBERAL PERSPECTIVE: COMMENTARY

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DO WE NEED SECULARISM TO EXPERIENCE FREEDOM OF CONSCIENCE? YES, WE DO: A LIBERAL APPROACH

Professor Bican řahin



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INTRODUCTION

In this essay I will discuss the need for a secular legal and political realm if individuals will experience their freedom of religion and conscience. To this aim, I will first discuss the concept of liberty/freedom and provide Isaiah Berlin's distinction between the negative and positive forms of it. Secondly, I will present freedom of conscience and religion as a kind of negative liberty. It will be argued that this freedom can be enjoyed in the best possible way only in a secular legal/political framework. Thirdly, I will discuss whether it is possible to have freedom of conscience in a theocratic system. Finally, I will present a liberal secular utopia where all different conscientious beliefs coexist with one another on the basis of mutual toleration.



LIBERTY

Isaiah Berlin (1969), one of the most well-known British philosophers of the 20th century, distinguishes between two concepts of liberty: negative and positive. While negative liberty refers to the absence of coercion and constraints towards individual, positive liberty refers to the ability and power of an individual to carry out his or her life plans. In the negative sense, in order to qualify as a free person, it is enough for someone not to be forced by other individuals. It is being left alone, so to speak. To the extent that it is understood as being free from coercion, it is designated as “freedom from”. Positive freedom, on the other hand, begins with dividing self into higher and lower selves. The higher part is the rational part of the self and lower part is related with irrational desires. The historical precedent of this view can be traced back to ancient Greek philosophy, particularly to the writings of Plato and Aristotle. For those who subscribe to this distinction within human self or soul, one finds freedom or happiness when higher self dominates and rules over the lower self. Thus Plato and Aristotle believed that one can achieve happiness only when he or she lives according to virtue discovered by the rational part of the soul. In this sense, positive freedom is sometimes referred to as “freedom to” do the right thing.

While negative freedom is very modest and does not require individual to live in a certain way, positive freedom sets the bar very high and is willing to sacrifice individual's negative liberty for the sake of achieving the higher ideal.

Another example of positive freedom from the history of political thought is provided by the French philosopher Jean-Jacques Rousseau. In his Social Contract Rousseau claimed that there are two sorts of wills: general and private. While general will (*volonté générale*) corresponds to the will of the whole people, private will corresponds to the will of individual in isolation from the society. Whereas the general will represents the common interest of the people, the private will represents the private/personal interest of the individual. For Rousseau these two wills are in conflict with one another. When a person pursues his or her private will, this comes at the expense of the general will and common interest. When general will is lost, the public realm gets undermined; and when the public realm is ruined private realm and interests will also be ruined. Thus, Rousseau thinks that real freedom is the ability to follow first and foremost the general will. If a person follows his private will without any respect to general will and common interest, he or she acts like a slave. In order to avoid the collapse of the public realm, according to Rousseau, the private realm can be sacrificed. Individuals should be made to follow the general will, in his words, “they must be forced to be free”.

As the discussion above makes it clear, negative and positive freedoms are potentially in conflict with one another. While negative freedom is very modest and does not require individual to live in a certain way, positive freedom sets the bar very high and is willing to sacrifice individual's negative liberty for the sake of achieving the higher ideal. Thus, liberals are concerned about the promotion of positive freedom at the expense of negative liberty. At the minimum, individual liberty in the negative sense must be secured. The state or society should not "force individuals to be free". It must be up to individuals to pursue "positive freedom".

FREEDOM OF CONSCIENCE

According to Chandran Kukathas (2003), one of the leading contemporary liberals, the fundamental interest of individuals is the ability to lead a life according to conscience. Referring to David Hume, Kukathas argues that there are three factors that shape our behaviour. These are interest, affection and principle. An individual in the market place may be acting on the basis of interest when he or she makes exchanges with others with a view to profit. The same person may be acting on the basis of affection when he or she gives his or her produce to a friend for free. Finally, he or she may be acting on the basis of principle when he or she tells the customers the truth about the quality of his or her goods. Kukathas takes "principle" in Hume's formulation to be conscience. Kukathas thinks that one does not always act on the basis of principle or conscience. Sometimes one violates his or her principles/conscience for the sake of affection or interest. However, this does not change our assumption that principle/conscience should always come first. When one lives according to the dictates of his or her conscience, one feels good about himself or herself. On the contrary, one feels remorse when he or she fails to follow his or her conscience. People are willing to endure great costs to be able to follow their conscience. The history of religious wars is a testimony to this. Individuals sacrificed their lives at the stake rather than giving up on their beliefs. So, leading a life on the basis of conscience is the fundamental human interest.

Freedom of conscience involves freedom of religion. A person who enjoys freedom of conscience has a right to believe or not to believe in a religion. Those who believe in a religion has freedom to do the rituals of that religion. The only criterion to limit religious practice is public order and security. The religious practices that do not harm individual liberties of

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others should be tolerated. This is also the stance taken by John Locke in his A Letter Concerning Toleration (1689). For Locke, the Prince must have tolerated the different religious practices of his subjects insofar as they do not disturb the public order.

Freedom of conscience and religion can be curtailed by either other individuals and groups or by the state. In the former case, an individual's parents, relatives and friends may interfere with the freedom of conscience of the person. Although costly, an individual may be able to resist this interference. Sometimes by leaving home, moving to another city, cutting off the relations with friends and family one can avoid oppression coming from other individuals. However, the cost of avoiding oppression is much more costly when it comes from the state. This may happen in two different ways: First, it happens when the state bases its legal and political system on a particular religion. In this case, individuals who do not believe in any religion as well as individuals who believe in different religions are directly persecuted. Furthermore, all religions are open to interpretation and there may be many different interpretations of a religion at particular time. When state imposes a religion it inevitably imposes a particular interpretation of it. This would correspond to negative discrimination for those who subscribe to different interpretations than the imposed one. The second form of persecution by the state can happen when the state imposes a secular way of life onto the citizens. Religious people would be persecuted in such a state. In a world of nation-states, it is very difficult to leave one's country and take refuge in another to escape from oppression. Only a small fraction of those who are under oppression are able to do that.

Thus, it seems that the best practical solution to these problems is to separate the political/legal framework of the country from the moral/religious frameworks of the citizens. The legal/political framework of the state must be based on secular grounds. As Kukathas (1999: 35) points out,

[I]n a world in which different gods are worshipped, but in which adherents of different faiths interact in a global arena, anything but a secular public realm could be a disaster. Social intercourse with those who differ from us in profound ways requires that we prescind from our deepest commitments. Otherwise the most likely outcome is conflict.

It must be stressed that this is not the imposition of a secular way of life on citizens. This is the recognition of the freedom of conscience and re-

ligion of individuals. Individuals are free to believe any religion they like and practice its rituals in person or in groups. The only limit is that these religious practices should not violate the basic freedoms of other citizens. In such a framework, individuals will have the real freedom to experience their beliefs as long as they respect the basic liberties of other individuals, the most fundamental of which is freedom of conscience.

CAN THERE BE FREEDOM OF CONSCIENCE IN A THEOCRATIC SYSTEM?

Some may argue that a theocratic state where legal and political system was based on a particular religion does not necessarily impose religion on those who believe in other religions. The Islamic “system of dhimma” is given as an example to this.^{*} Historically, Muslims organized their states on the basis of Islam. Islamic principles were binding for Muslims and they were subject to the sharia law. However, for non-Muslims, Islamic system provided freedom of religion. The followers of Judaism and Christianity were provided autonomy with respect to their religious and civil affairs. Thus, they did not have to follow Islamic principles with respect to these affairs. They were also exempt from military service. In response to this autonomy, non-Muslims had to pay jizya, a poll tax. This was seen as a payment for the protection provided to non-Muslims. Thanks to this system, non-Muslims enjoyed freedom of religion. Overall, this was a relatively tolerant system.

On the negative side, in this system, one can note the non-existence of the right of dissociation from religious groups and the inferior position of non-Muslims with respect to Muslims. The first part of the problem can be solved by introducing the right to exit from the religious group one belongs to. This is especially important for those who belong to Muslim community because the punishment for leaving the religion has traditionally been death. However, this is a controversial issue. There have been liberal interpretations of Islamic sources according to which individuals are free to exit from Islamic community without the fear of punishment in this World (See Akyol 2011). Yet, this does not solve the predicament of the non-believers. Those who do not believe in God may not be tolerated in any theocracy. Secondly, we still face the inferior status of minorities. Non-Muslim believers

^{*} For a discussion of “the system of dhimma” from a liberal perspective see (Şahin et. al., 2014).



will see themselves as guests rather than the hosts of the house. It seems that the relegation of minority religions to the periphery is unavoidable as long as one of the religions is brought to the center.

A SECULAR LIBERAL UTOPIA

How could this less-than-ideal situation be brought closer to the ideal where all believers and non-believers will be treated with equal respect? It seems that only a liberal legal and political system can provide ground for such an ideal state of affairs. The liberal political legal/political system itself must be secular. The fundamental task of legal/political system is to keep the peace in society. To this aim, it provides the internal security, external defense and justice. However, it can provide great autonomy to different groups to accommodate the needs of cultural and religious pluralism. In this approach, liberal political/legal system does not impose any particular way of life and remains at an equal distance to all groups. The groups can have authority over their members insofar as they recognize their members's right to exit from the group. The authority of the groups may involve the adjudication of civil affairs among the members and education of the youth. The groups must tolerate one another. Thus, in such a society, there will be room for both secular and unsecular, liberal and illiberal ways of lives which do not prioritize such liberal ways of living as "autonomous life".

There may be some criticisms against such a model. One such criticism might claim that, over time, one of the illiberal groups can outgrow all other groups and impose its illiberal ways on the rest of the society. How can this be prevented? Another criticism might argue that this system will cause the ghettoization of society with each cultural and religious group withdrawing into itself. This will not be a society with a strong understanding of common good. Finally, one may claim that the right to exit, as a negative liberty, does not mean much in the absence of some positive support to individual in the groups. If an individual does not develop his or her autonomy how can he or she leave the group in which he or she has been brought up?

First of all, it must be emphasized that this model assumes the existence of a consensus among groups on such a liberal legal/political system. There may exist a liberal cultural group that is majority as well. This is especially true for western societies. Although not very likely, it is theoretically possi-

It seems that the relegation of minority religions to the periphery is unavoidable as long as one of the religions is brought to the center.

ble for an illiberal group to dominate such a system in the long run. Sometimes the existence of an illiberal or culturally-different group may give birth to its opposite, other reactionary illiberal group. The rise of populist, white supremacist, neo-Nazi groups in the West is a case in point. There can be neither institutionally nor culturally-definitive measures to prevent the rise of such illiberal groups. It may be similar to the external invasion of a liberal culture by a non-liberal, fascist culture. The best defense for a liberal person against such a threat is to cease cooperation and to leave that society. The potential of non-cooperation and exit by the oppressed group may deter the illiberal group from trying to capture the whole system.

Secondly, it may be true that in such a system there may not be a strong understanding of common good. There may be little common cultural practices and little interaction. Kukathas describes this state of affairs with the metaphor of archipelago. Different cultural groups are like separate islands in a sea of mutual toleration. The most important common good among the groups in such a polity is mutual toleration based on freedom of conscience. The end-result of such toleration is peace. This may seem a very weak understanding of common good. Yet, the history of conflicts shows vividly how important a phenomenon peace is. The strong understandings of common good come, most of the time, at the expense of individual liberty. The communitarian and republican emphasis on common good sacrifices individual choice. Rousseau's concept of "general will" (*volonté générale*) is a case in point.

Finally, it may be the case that individuals who were not exposed to different life-styles as they were growing up may not know what the available alternatives are. Thus, they may not be able to use their right of exit effectively. Furthermore, there may be a heavy pressure of public opinion which is what John Stuart Mill called "tyranny of majority". Because of the heavy price of ostracism, individuals may be afraid of questioning the status quo. How should the liberal polity that we sketched here respond to this criticism? Should it provide public education to all citizens when they were young where they would be presented different World views? Would it not be imposing too much on different cultural groups? Where should the line between individual autonomy and freedom of conscience of groups be drawn? Should we follow Kukathas and leave all matters in the hands of the groups or should we follow Brian Barry and expect all groups to follow liberal principles or endure the consequences? Perhaps there can

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be a middle ground. The liberal polity may require all groups to educate their youth in liberal arts and sciences in addition to their own cultural and religious principles. All citizens would have a common education through which they can function in a contemporary society. In addition, each citizen would receive their particular cultural and religious education.

CONCLUSION

It has been argued in this paper that freedom of conscience and religion is a form of negative liberty and it can be experienced in the best possible way in a secular liberal legal/political order. Such an order does not impose a liberal or secular way of life on the citizens. It acts as a guarantor of individual freedom and peace in the larger society. The fundamental freedom that liberal polity guarantees is individual right of dissociation. By exercising their right of dissociation, individuals can exit from the groups whose way of life they can accept. The groups cannot force individuals to remain. Thanks to such an arrangement, individuals enjoy freedom of conscience. This also allows groups with different inclinations to exist in the society. The hallmark of this society is mutual toleration.

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