

Freedom of Religion (with Comments on *Halachic Tolerance*)

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In a recent article in the Toronto Star, a woman who attends an Orthodox synagogue was quoted in regard to the conflict of freedoms and rights that she, as a patriotic Canadian, must continuously confront in her attendance at this synagogue. She supports the value of freedom of religion. She also supports the value of equality for women. The Orthodox synagogue by discriminating between men and women challenges this latter value. She is not sure what to do. In accepting the value of freedom of religion, she feels duty-bound to allow this synagogue to worship as it wishes. In accepting the value of equality for women, she feels duty-bound to initiate some legal proceedings against this synagogue to force it to grant women full equality in the service. What is she to do?

In drafting a response (which was not published) to this letter, I compared the thought processes of this woman – somewhat tongue-in-cheek but with a point – to the mind of Torquemada, the Grand Inquisitor of Spain, as he persuaded King Ferdinand and Queen Isabella to expel the Jews from their country in the late 15th century. Of course this woman cannot honestly be compared to Torquemada and the cruelty and oppression that he instituted yet her characterization of the issue, in my opinion, approaches the mind-set of all those who wish to impose a set of values upon another. I am sure that Torquemada may have also had sympathy for the people he was displacing but what was he to do? – the open expression of a belief that Torquemada could only define as blasphemy must have, to parallel this woman's very words, "clashed openly and directly with values that [Torquemada must have held] deeply as a [Spaniard and a Catholic]."

The very essence of the value of freedom of religion is that it allows individuals to abide by different values than the dominant ones in society. Freedom of religion is not simply the right for an individual to worship as he/she wishes. Freedom of religion is the right to live according to one's theology, understanding of reality and understanding of God. It allows one to live within the value structure that he/she believes God is imposing on him/her, even as these values may be in opposition to the values of the dominant group in society. The very essence of freedom of religion is the right for a sub-group within society to abide by a value structure that is different than the value structure of the dominant group within that society.

It is thus, almost by definition, that whenever the value of freedom of religion is invoked it is done so in a situation of conflict with the value structure of the dominant group in the society. More so, it is done so in conflict with the value structure that is accepted in the general workings of the society. In the case noted above, it is precisely because the practices within an Orthodox synagogue do not coincide with the general Canadian societal understanding of the value of equality for women that the concept of freedom of religion is invoked. Of course this woman felt a tension between another value in Canadian society and the value of freedom of religion. This is precisely the very case where freedom of religion works in order to allow the sub-group to abide by its value decision in conflict with the value structure of the dominant group. Is there a limit upon freedom of religion? Yes, there may be when the dominant group believes that the deviance in values of the sub-group is beyond what it can accept. As such, in an extreme example, freedom of religion will not allow for a religious sub-group to offer human sacrifices. The key, though, is still to understand the very essence of freedom of religion – that it allows a sub-group to abide by a value structure different than the overall value structure of the society.

This idea has important ramifications in our understanding of *halachic* tolerance. To many, when the

concept of *Eilu v'Eilu* is invoked, the distinction between *Sefardi* practice and *Ashkenazi* practice is often presented as the example. One eats rice on *Pesach*, the other does not. One *lains* (reads the Torah) from a scroll housed in an elaborate cover, the other does not. Differences are presented in the realm of form, not in value substance – and this makes tolerance more tolerable. Similarly, in the general world, freedom of religion is tolerated more easily when it is deemed to refer solely to form, not value substance. *Eilu v'Eilu* is a call for tolerance in value substance as much as it is a call for tolerance in form. Is there a limit to this tolerance? Of course there is – the limit of *halachic* parameters. Yet the difficulty that many have with this concept – the same way that this woman had difficulty with the concept of freedom of religion in the greater society – is that this is not, solely, a call to tolerate divergent practice but divergent values. One group upholds the value of the State of Israel; the other does not. One group advances women's participation in the synagogue, the other does not. *Eilu v'Eilu* demands tolerance of divergent value structures.

Freedom of religion, within the secular realm, demands a similar tolerance of divergent value structures. It is not easy to advocate, truly, for tolerance: for it is to advocate for the right of another to abide by a value with which one disagrees. In a certain way, the prejudice of Torquemada can make more sense. If one truly believes in a certain deity, should it not anger this person to confront individuals who challenge this deity and, even, mock his existence? Similarly, within a Torah perspective, does **Rambam, Perush HaMishnayot, Sanhedrin, Introduction to Chapter Chelek** not write that there is a *mitzvah* to hate one who does not believe in the Principles of Faith? Tolerance is neither easy to implement nor easy to justify. If I believe in a value, especially if I believe in a value strongly, how can I allow one to tear down this value?

Throughout the Torah literature, even when *Eilu v'Eilu* cannot be invoked, for a variety of reasons, such as *tinok she'nishba* (“the captured child”), we find a limitation to this expression of hostility by declaring the individual, with this competing theological or value structure, not culpable for his/her mistake. (This is not exactly the same as freedom of religion; however a full investigation of tolerance within Jewish thought is beyond the parameters of this Commentary.) Such concepts, correctly, prevent the development of a Torquemada within the Torah world, even as one maintains commitment to the basic structure of Orthodox Judaism. (Furthermore, such concepts ultimately show the evil in the position of one like Torquemada.) *Eilu v'Eilu*, though, presents a greater demand. It demands one to actively tolerate a value with which one disagrees. Freedom of religion, within the secular realm (albeit different from *Eilu v'Eilu* and more similar to *tinok she'nishba* in many ways) has a similar demand. It is precisely in a context where another value is being challenged by the practice of this religious group that freedom of religion emerges to demand tolerance of this differing value structure. The essence of the value of freedom of religion is, sadly, being more and more overlooked.