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Liberalism and Religion: A Comment on Jeff Spinner-Halev

A Comment on: "Liberalism and Religion: Against Congruence" by Jeff Spinner-Halev.

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I.

In his article on liberalism and religion, Jeff Spinner-Halev argues, among other things, that the liberal debate over public reason — whether it is legitimate for religious citizens to be motivated by their religious commitments when they vote or argue for legislation — does not capture the central tension between liberalism and religious groups. According to Spinner-Halev, Rawls's focus on the debate over public reason is grounded in his understanding of religion as a comprehensive doctrine, and he characterizes the tension between liberalism and religious groups as the desire of members of these groups to impose their views on others.¹

While some groups may indeed aspire to impose their views on others, Spinner-Halev convincingly suggests that most religious groups "generally do not aspire to impose their comprehensive way of life on others. In some places, some religious people do want to impose their beliefs on others, but in the West, the setting for Rawls, the percentage of people who want to do so are relatively few."² The real worry for liberalism, according to Spinner-Halev, is misrepresented by the Rawlsian characterization. The challenge that religious groups pose for liberal states has little to do with the concern that they will impose their way of life on others, and much more to do with the fact that religions are communities of practice, not merely belief.

What many religious people want, however, is not only the freedom to believe as they wish in liberal democracies, but the social space to follow particular practices. They may want their marriages (and divorces) regulated by religious law; they want to eat kosher food

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¹ Jeff Spinner-Halev, *Liberalism and Religion: Against Congruence*, 9 THEORETICAL INQUIRIES L. 553, 553-556 (2008).

² *Id.* at 556.

or halal meat; they want their members to dress modestly, which often causes trouble in public schools; they frequently want to pray communally, and not just weekly.³

This understanding of religions, as concerned with freedom of practice, is, according to Spinner-Halev, largely overlooked by Rawls. "Conservative religious practices are nearly invisible to Rawls partly because he conceptualizes religion as a matter of belief."⁴ In fact, Spinner-Halev worries, "a more accurate concern is that of liberalism imposing its way of life on religious conservatives."⁵ And he worries about the danger of intrusion into, and a liberal tyranny towards, conservative religions.

Modern feminists who, unlike Rawls, have taken on this issue of religious practice, have, in Spinner-Halev's view, also advocated too much, rather than too little, state intervention in religion, arguing (as Rawls did about justice) that justice or equality must reign seamlessly throughout social and political life. Spinner-Halev argues against this view along with the Rawlsian one. The question that Spinner-Halev proposes to address is "when can liberal democracies allow members of religions to live by their own practices?", a question which "is only briefly flagged by Rawls."⁶

II.

Spinner-Halev's concern that liberalism, rather than minority religions, is more likely to unjustifiably intrude on alternative ways of life is highlighted by his own phrasing of the issue. The very way Spinner-Halev phrases his question may open up his argument to a more radical critique of religious toleration, which would question why secularists get to be called liberal or tolerant if they ask themselves this kind of question, while people who ask themselves when Islamic states can allow Jews or Christians or atheists to live by their own practices do not get to be called liberal or tolerant. Spinner-Halev, however, does not take up this line of argument explicitly.

Instead, Spinner-Halev continues to argue directly with Rawls, attributing the latter's incomplete understanding of religious groups and the tension they pose for liberalism to the Protestant view that religion is merely a matter of personal conscience and faith, rather than practice.

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 553.

⁶ *Id.* at 554.

Conservative religious practices are nearly invisible to Rawls partly because he conceptualizes religion as a matter of belief. And indeed, if this is the case, religion can easily be privatized. If religion is a matter of what sort of God one believes in, or how one prays in church, then there is considerable space for believers to be able to also believe in liberalism. . . . Rawls thinks of religion in mainline Protestant terms — as a matter of belief.⁷

This statement echoes a wider argument of Spinner-Halev's, which he takes up elsewhere, on the Protestant origins of liberal toleration and the disengagement of the liberal state from religion, the latter being designated to the private sphere.⁸

I do not wish to argue against Spinner-Halev's description or critique of Rawls's view in *Political Liberalism* or to comment on the debate over public reason. I do wonder, though, whether the concern that religious groups will impose their sectarian views on others, which Spinner-Halev makes much of in the first pages of his article, is indeed Rawls's sole, or central, worry when he argues in favor of excluding comprehensive doctrines from public debate. In his chapter on "The Idea of Public Reason," Rawls seems to have been more concerned about citizens' ability to grasp each other's reasons and grapple with each other's views, when reasons deriving from any particular comprehensive doctrine are employed in the public arena.⁹

Be that as it may, Spinner-Halev's main point is to shift the debate about religious freedom away from the argument over public reason. He is no doubt correct in arguing that the Protestant foundations of liberalism placed truth and personal belief at the basis of the liberal debate over religious toleration. The essence of Locke's well-known argument for religious toleration is indeed focused on the nature of belief rather than practice. In *A Letter Concerning Toleration* Locke argued that religious belief simply cannot be secured by coercive means implemented by the state.¹⁰

7 *Id.* at 556-57.

8 Jeff Spinner-Halev, *Hinduism, Christianity, and Liberal Religious Toleration*, 33 *POL. THEORY* 28 (2005) (especially at 32).

9 JOHN RAWLS, *POLITICAL LIBERALISM* 212-54 (1993). Jeremy Waldron argues against Rawls's view in Jeremy Waldron, *Public Reason and "Justification" in the Courtroom*, *J.L. PHIL. & CULTURE* (forthcoming) (manuscript at 4-5, on file with author), and, essentially (though he doesn't discuss public reason or Rawls's *Political Liberalism* there explicitly), in Jeremy Waldron, *What Can Christian Teaching Add to the Debate about Torture*, 63 *THEOLOGY TODAY* 330 (2006).

10 JOHN LOCKE, *A LETTER CONCERNING TOLERATION* (James Tully ed., Hackett Publ'g Co. 1983) (1689). I am far less convinced of what Spinner-Halev describes elsewhere as the second argument for toleration, the argument from skepticism, which he

Since the issue at hand is liberalism and religion, I mainly want to address, rather than criticize or argue with, what I take to be the most fundamental argument of Spinner-Halev's article: that by conceiving of religion as essentially a matter of belief, Rawls overlooks, or downplays, much of the real tension between liberalism and religion, which is at the level of practice. This may well be true of Rawls, and as such it is a valid point. However, this is not entirely true of all classic works in liberal political philosophy, some of which could actually be enlisted to support Spinner-Halev's basic point about the significance of religious practice, as well as many of his views on the matter. In particular, I believe there is room to reflect on the attention that John Stuart Mill focused, especially in *On Liberty*, on the very important issues raised by Spinner-Halev in his article, and to consider their relevance to this very timely debate. Much can be found in *On Liberty* to reinforce Spinner-Halev's argument about the importance of noticing the tension between religious practice and the liberal state, as well as to support some of Spinner-Halev's conclusions.

III.

I shall begin with Locke. Spinner-Halev assumes, quite plausibly, that the origins of Rawls's neglect of religious practice are to be found in the works of Protestant liberal philosophers who conceived of religion as primarily a

attributes specifically to Locke in Spinner-Halev, *supra* note 8, at 32. Jeremy Waldron argues to the contrary that religious toleration, particularly its Lockean version, is not in any sense a product of doubt or skepticism. JEREMY WALDRON, *Locke, Toleration and the Rationality of Persecution*, in LIBERAL RIGHTS 88, 98 (1993) (hereinafter Waldron, *Locke, Toleration, and Persecution*). Locke, as is evident from much of his writing, was quite confident about the objective truth in religious matters, and was convinced as well that there is only one, discernable road to salvation. If there is any skepticism to be found in Locke it is, Waldron argues convincingly, "skepticism about the religious discernment of Princes, not skepticism about religion as such." *Id.* As Waldron explains, "Locke was concerned that if a magistrate were to require certain religious beliefs or practices of us, there would be no guarantee that the religion he favored would be correct." *Id.* at 97. Spinner-Halev also ignores the fact that some of Locke's arguments for toleration, perhaps his central arguments in the later letters, were based on specifically Christian foundations. See JEREMY WALDRON, GOD, LOCKE AND EQUALITY: CHRISTIAN FOUNDATIONS IN JOHN LOCKE'S POLITICAL THOUGHT 208-11 (2002). There is no skepticism about religion to be found here, neither as a basis for religious toleration nor otherwise. But I do not want to delve into this debate either.

matter of personal conscience and faith rather than practice. It is true that in *A Letter Concerning Toleration*, Locke argued that religion is essentially a matter of personal belief and therefore ought to be tolerated, as it poses no threat to society:

The magistrate ought not to forbid the preaching or professing of any speculative opinion in any church because they have no manner of relations to the Civil Rights of the subjects. If a Roman Catholic believe that to be really the body of Christ, which another man calls bread, he does no injury thereby to his neighbor If a Jew do not believe the New Testament to be the word of God, he does not thereby alter anything in men's civil rights¹¹

However, Locke does not leave things at that, and he specifically acknowledges and addresses the very point that Spinner-Halev makes about the more practical aspects of religion as well as some points at which religious practices may indeed conflict with the interests of society, or the state. Thus, towards the end of this first *Letter Concerning Toleration*, Locke considers various practices that heathen sects might engage in. He takes up the case of animal sacrifices, arguing that so long as the law does not forbid the slaughter and burning of calves at home, in private, it has no right to forbid precisely the same action when it is imbued with religious content. However, if the state were to have a secular reason to prohibit the killing and burning of a particular animal, say in order to increase the stock of cattle, then while that would affect the religious practice it would nonetheless be legitimate as an instance in which religious practice conflicts with legitimate state legislation — legitimate, because it concerns state economy rather than religion as such.¹² So Locke at least, unlike Rawls, did focus some attention on religious practice and arrived at conclusions that don't seem entirely dissimilar to Spinner-Halev's own views, advocating toleration of sectarian religious practice, not only freedom of belief, while recognizing that conflict might arise between what some religious minorities wish to do as part of their religious rituals and legitimate interests of the state enacted in positive law. Locke reasoned that we cannot extend religious toleration to the latter case, i.e., when it would conflict with the non-religiously-motivated law of the land.

This is not a point of criticism directed at Spinner-Halev; it is a point about congruence. Spinner-Halev does not deny any reference to religious

¹¹ LOCKE, *supra* note 10, at 46.

¹² *Id.* See Waldron, *Locke, Toleration, and Persecution*, *supra* note 10, at 104-05.

practice within the Protestant liberal argument for toleration. His argument is primarily with Rawls. In fact, I think that Locke's reasoning is not entirely dissimilar to that which leads Spinner-Halev to argue that: "The state should not tell a religion what dietary rules it should follow (*as long as these rules do not violate general state laws*), nor what rituals it should perform."¹³ Spinner-Halev need not agree with Locke in all such instances, but it is helpful, I think, to note Locke's notice of such conflict, and perhaps also that his intuitions are not entirely alien to our own.

IV.

Mainly, as I said, I'd like to consider Mill, as an example of an early modern liberal philosopher who, unlike Rawls, did have something to say about religious practice; perhaps even in the way that Spinner-Halev wants us to think about these issues. Now, as a matter of personal faith, Mill is said to have been an atheist or an agnostic, and maybe he was what one might call a philosophical radical of his time. Perhaps this is why Spinner-Halev does not focus on Mill in his critique of the Protestant foundations of the liberal understanding of religion, and the consequent neglect of the issue of practice within liberal political thought, particularly by Rawls.

Mill (perhaps due to his Indian connection) was fully aware of, and specifically focused his attention on, the very conflict between liberalism and the practices of religious groups of which Spinner-Halev speaks. First, there is Mill's discussion of the Mormon practice of polygamy in chapter 4 of *On Liberty*.¹⁴ Here Mill not only specifically addresses the conflict between religious practice and liberty, but he does so with reference to an issue that specifically concerns female equality. While he disapproved of this practice, he was not in favor of intervention; at least so long as no request for intervention came from the women themselves. Part of this had to do with the fact that the Mormons were territorially distant from mainstream liberal society.¹⁵ So there is no cause here to criticize Spinner-Halev for not attempting to derive any policy conclusions regarding religious toleration

13 Spinner-Halev, *supra* note 1, at 567 (emphasis added).

14 JOHN STUART MILL, *ON LIBERTY* (1859), *reprinted in* UTILITARIANISM, *ON LIBERTY*, *CONSIDERATIONS ON REPRESENTATIVE GOVERNMENT* 69, 160-62 (Geraint Williams ed., Everyman 1996) (all references throughout to Mill's *On Liberty* refer to this edition).

15 *Id.* at 162. See also Jeremy Waldron, *Mill and Multiculturalism*, in MILL'S "ON LIBERTY": A CRITICAL GUIDE (C.L. Ten ed., forthcoming 2007).

from this example. However, it is worth noting at least that Mill did not ignore the challenge posed to liberalism by religious practice. He may even have leaned towards conclusions not too dissimilar from those that Spinner-Halev espouses later in his article, favoring religious freedom alongside concern for the protection of women and children.

Perhaps less well known, but equally important, are Mill's views on the liberal education of children. Once again, far from downplaying the tension between liberal states and religious practice, Mill specifically places this at the forefront of his discussion of education in *On Liberty*, chapter 5. Mill explicitly argues for the rights of parents in religiously diverse societies to educate their children within their own faith, while at the same time, fully aware of the type of inequality and lack of opportunity that might result, he requires the liberal state to take a fallback position in ensuring that every child is guaranteed an adequate liberal education which will enable him (or her) to make free choices in life.

Under this system, the rising generation . . . would be brought up either churchmen or dissenters, as they now are, the state merely taking care that they should be instructed churchmen, or instructed dissenters. There would be nothing to hinder them from being taught religion, if their parents chose, at the same schools where they were taught other things.¹⁶

Mill not only devotes several central pages in chapter 5 of *On Liberty* to this tension, making several practical proposals as to how to balance parental rights to educate with the rights of the liberal state as well as those of the children themselves, but also, once again, ends up with conclusions that sound very similar to those that Spinner-Halev leans towards. Spinner-Halev notes: "crucially, [devout people who want to live by traditional rules] may want to ensure that their children receive the kind of education that will make it likely for their children to remain within their faith."¹⁷ Later he argues that "[a]ll children should receive a decent education," i.e., "an education that will allow [them] to make a reasonable living outside the community if they so choose."¹⁸ Spinner-Halev could certainly use Mill here to back up his view.

In fact, *On Liberty* is full of references to religious practices and the challenge they pose. Even before the Mormon example, which concludes chapter 4, Mill discusses religious freedom with many explicit references

¹⁶ MILL, *supra* note 14, at 176-77.

¹⁷ Spinner-Halev, *supra* note 1, at 556.

¹⁸ *Id.* at 568.

to religious practices. He discusses the Muslim prohibition on alcohol and the prohibition and aversion to pork as an "unclean beast."¹⁹ Mill seems well aware of Spinner-Halev's point that religion is not merely a matter of personal belief; that "[w]hat many religious people want, however, is not only the freedom to believe as they wish in liberal democracies, but the social space to follow particular practices . . . they want to eat kosher food or Halal meat,"²⁰ and that "[t]heir practices may lead them to shun certain foods and embrace others, which may lead to social divisions between group members and others."²¹ Mill noted this point throughout *On Liberty*, that mere religious belief is not the crux of the issue for liberalism.

I think it almost redundant to point out that Mill paid special attention to the status of women and issues of equality, both with reference to religious groups and otherwise, in a way which might be relevant to Spinner-Halev's discussion of women's rights and feminism in the second half of his article. The discussion of Mormon polygamy is a case in point, as is the preamble to his discussion of parental rights to educate, where he states clearly that an end must be sought to the near despotic authority of men over their wives and that wives ought to be accorded equal rights to those of all other persons.²² In his chapter "Of Individuality" (chapter 3) Mill also spoke explicitly of women,²³ as he did of course in the entire work he devoted later to the *Subjection of Women* (1869).²⁴ Again, Spinner-Halev himself refers to Mill, the only time he does so throughout the article, on the issue of gender equality.²⁵

¹⁹ MILL, *supra* note 14, at 154.

²⁰ Spinner-Halev, *supra* note 1, at 556.

²¹ *Id.*

²² MILL, *supra* note 14, at 174.

²³ *Id.* at 127. Where he speaks of the importance of nurturing individuality in human beings, Mill speaks explicitly of women as well as men. Later in the same chapter, *id.* at 136, he comments that societies demand that people conform to social norms, to what everybody does, and this applies with even greater force to women than to men.

²⁴ JOHN STUART MILL, *THE SUBJECTION OF WOMEN* (Hackett Publ'g Co. 1988) (1869).

²⁵ Spinner-Halev, *supra* note 1, at 559 ("Rawls explicitly borrows the idea from John Stuart Mill: if inequality and patriarchy are taught and practiced at home, it hardly seems possible to think that patriarchy will not dominate in public as well, which means that society will not be just.").

V.

As for solutions to the tension between liberalism and some illiberal, or non-egalitarian, religious practices, Spinner-Halev argues — largely in response to feminist theory, and specifically to Ayelet Shachar's suggestions — that the state should not interfere in internal religious rules, particularly those which define membership, but rather ensure that disgruntled members should be able to leave the group and form or join another.²⁶ As Spinner-Halev himself puts it, "[t]his is such a canonical liberal principle that it needs little defense."²⁷ Despite this statement, the last few pages of Spinner-Halev's article are nonetheless quite appropriately devoted to "Pluralism, Education and Exit," in a commendable attempt to clarify what this option entails in terms of opportunity and education. Spinner-Halev's words of warning against the dangers of an all too powerful state are apt and worthy. As he puts it: "That the state 'allows' a group to exist is for the most part beside the point. A liberal state needs to be a restrained state; limited government is a hallmark of liberalism in order to prevent tyranny."²⁸ Much of the debate, as Spinner-Halev himself implies, is over what constitutes, and how to guarantee, the right of exit. If, as Spinner-Halev suggests, this is to include the state's right to interfere in education, this is a huge issue, which needs to be addressed separately. Nowhere, to my mind, are the dangers of tyranny on the part of the powerful modern (allegedly liberal) state as noticeable and objectionable as in the case of widespread coerced public education.²⁹ And I strongly suspect J.S. Mill would agree with me on this point.

Spinner-Halev's final words on the notion of autonomy are worthy. To be sure, autonomy does not require children, or adults for that matter, to sample all ways of life, or for all conceivable alternative ways of life to be readily available to them. It probably has more to do with independent thinking and the connection between thinking and autonomy.³⁰ Additionally, some liberal theorists probably exaggerate the extent to which secular state-run education exposes children to alternative ways of life.³¹ Spinner-Halev is also right that

26 *Id.* at 566-67.

27 *Id.* at 566.

28 *Id.* at 567.

29 See Tamar Meisels, *Home Schooling: The Right to Choose*, 10 ISR. AFF. 110 (2004).

30 Spinner-Halev, *supra* note 1, at 570-71.

31 I have in mind Tamir, Gutmann and Levinson's arguments in favor of coerced state education as a means of exposing children to a plurality of ways of life in order to enhance their capacity for autonomy. See Yael Tamir, *Whose Education Is It Anyway?*, 24 J. PHIL. EDUC. 161, 168 (1990); AMY GUTMANN, *DEMOCRATIC*

the prospect of exit must include the knowledge of alternatives, e.g., women's knowledge that career options are open to them, guaranteed for example by anti-discrimination laws and, arguably, sometimes even affirmative action.³² But as Spinner-Halev himself admits, "[i]t is certainly the case that it is nearly impossible for most people living within the Western democracies today to not know that there are alternative ways of life to the traditional household."³³

Spinner-Halev suggests that liberal states must also guarantee that members of minority groups feel they are able to make these choices, not merely know of their existence, and here he suggests better education and employment opportunities. This is a good general point, but this sensible stance need not apply specifically to religious communities and their practices, but rather to the members of all disadvantaged and marginalized groups, specifically the poor immigrant or inner-city communities, which Spinner-Halev mentions.³⁴ The need for such opportunity will have little to do with religious groups and their practices specifically, though it may well apply to some of them too. The need for better education and greater employment opportunities is true for example of Jewish Israelis in remote development towns. It has to do with more than religious toleration, or lack thereof, which is where Spinner-Halev's article began, asking, as one may recall, "When can liberal democracies allow members of religions to live by their own practices?"³⁵

VI.

Throughout his article, Spinner-Halev raises valuable points of criticism against Rawls, as well as others, and argues, admirably to my mind, against too much state interference (advocated by feminists and others) in the practices of religious groups in the name of freedom, equality, or justice. He reminds us that liberalism was intended as a safeguard against tyranny, largely against religious intolerance, and that we must guard against its becoming a tyrannical ideology of its own, placed in the hands of powerful modern states. Spinner-Halev reminds us that liberalism was intended

EDUCATION 33 (1987); MEIRA LEVINSON, *THE DEMANDS OF LIBERAL EDUCATION* 57-63 (1999). See also my critique of these arguments in Meisels, *supra* note 28, at 129-30.

³² Spinner-Halev, *supra* note 1, at 569.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at 554.

to restrain government, not to enhance it; that "limited government is a hallmark of liberalism." But he also reminds us that liberalism has other commitments towards individuals, aside from minimal government, and he does well to call our attention to the conflicts that arise for the liberal state when confronted with highly illiberal or non-egalitarian religious groups. And he does so by emphasizing the significance of religious practice, not merely belief.

This comment is offered more in the way of a tribute rather than critique. It suggests that the arguments advanced by Spinner-Halev fit well with, and are reinforced by, the views propounded by classic liberals, particularly John Locke and John Stuart Mill. If, as Spinner-Halev argues, Rawls and his followers downplay the challenge posed by illiberal religious practices, this error cannot, at least not entirely, be attributed to liberalism's progenitors. While Rawls may indeed have overlooked, or misidentified, the main problem that confronts liberalism and religion, as Spinner-Halev accuses him of doing, Locke and Mill most certainly did not. Unlike Rawls, Locke and Mill did not neglect the challenge posed by illiberal religious practices, and may in fact have succeeded in supplying better answers to these tensions than they are often given credit for. For Mill, these certainly include those tensions concerning gender equality and childrearing. Moreover, on the whole, placing Spinner-Halev's argument in the context of classic liberal arguments for religious toleration lends it even further credence and support.