

The Different among Us:

Law and Political Boundaries of Religious Fundamentalism

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The article deals with the deficiencies of liberal multiculturalism, as a theory of human rights and as a political tradition that aims to be an exclusive criterion for political order. I particularly analyze the inability and unwillingness of liberal multiculturalism, as promoted by various liberal trends, to protect religious fundamentalism and to include it as a vibrant part of the democratic fabric. The meaning of democratic multiculturalism has not been investigated in depth, in contemporary comparative and theoretical literature and in studies about law, politics, and society in Israel, heretofore. The central dilemma that this article addresses is how it is possible to protect and maintain the ability of non-liberal communities to participate and form state ideology, law, and practices in their own way. The legal field is the battlefield in which the state, its ideology, and institutions are trying to intervene in the cultural boundaries of the minority when, simultaneously, the minority is embarking on preserving and generating non-liberal practices in a democracy.

That neglected, but crucial, perspective of the relationship among democracy, multiculturalism, and religious fundamentalism is the central subject of this article. The first chapter explicates the theoretical deficiencies of liberalism, and, then, it explores why an alternative theory is required to generate multiplicity of legal orders and diversity of concepts about human rights and collective good. Through a critical

review of the literature, I offer a critical communitarian approach to the protection and generation of human rights of non-ruling minorities. I argue that such an alternative theoretical perspective may foster preservation of political traditions that are marginalized in contemporary democracies.

The main case study that exemplifies my arguments is taken from the legal culture of ultra-Orthodox oriental Jews in Israel. In that context, I explore a legal conflict that erupted in 1998 in the municipal elections, during which the Central Elections Committee decided to prevent the oriental ultra-Orthodox political party of Shas to disseminate oil bottles that are part of a traditional oriental religious belief. The Committee was of the opinion that the use of these bottles for the purpose of electoral propaganda was illegal, because such use was irrational in its effect on the voters' minds. I expound upon the liberal mood that had influenced this decision; analyze it within the scope of the literature in political science, law and society; and primarily point to the deficiencies in liberal approaches as to what is rationality and modernity. The article claims that democracy, liberalism, and rationality are not identical terms and that a correct version of democracy should include liberalism as a political tradition, but not as an exclusive political tradition.

The last section of the article refers to the post-September 11, 2001, events and the severe international conflict between religious fundamentalism and liberalism that intensified thereafter. It invites the readers to share an alternative hermeneutics that distinguish between fundamentalism and extremism. Fundamentalism is different from extremism and terrorism and should be addressed as a democratic phenomenon that should be included in democracy.