

Legislating Love: Love of Neighbor as the Essence of the Israeli Legal System

The renewal of Jewish sovereignty in 1948 presented Jewish tradition with both grave historical challenges and unprecedented opportunities. Having lacked an independent polity for so long, it became abundantly clear in the early days of the Zionist victory that Jewish law had never fully developed its own laws of state. And so, in 1948, when the Israeli Declaration of Independence affirmed that the State and its laws would, “be based on freedom, justice and peace as envisaged by the prophets of Israel,” there was room to wonder what exactly that lofty ideal would mean when translated into practice.

As a matter of legal theory, it is reasonable to expect that the quest to find and revive a corpus of “traditional” Jewish national values should begin with an attempted retreat to safer hallowed grounds. This paper argues that the correct move for Israel to make was to bring forth the ideal of Jewish legal spirit if not minute Jewish law, to simply extend and translate Judaism’s highly developed moral and ethical code for the individual love of neighbor onto a national and international scale. It also argues that in reality and upon examination, Israel has already done this, in the process answering the 65-year-old question of how a state can be both democratic and Jewish at the same time.

In the words of David Ben-Gurion, first Prime Minister of Israel, and reader and first signatory on the Declaration; **“By these will the State be judged**, by the moral character it imparts to its citizens, by the human values determining its inner and outward relations, and **by its fidelity**, in thought and act, to the supreme behest: **“and thou shalt love thy neighbor as thyself.”** Here is crystallized the eternal law of Judaism, and all the written ethics in the world can say no more. The State will be worthy of its name only if its systems, social and economic, political and legal, are based upon these imperishable words. They are more than a formal precept which can be construed as passive or negative: not to deprive, not to rob, not to oppress, not to hurt.”

All of Jewish law is, at its core, a study in the balance of competing values that often exist in dialectic tension. One value, however, always remains constant, whether the question involves a friend, a neighbor, or an enemy. That is the value of loving the other, even when it is difficult, and even where it might incur loss. The ‘love of neighbor’ doctrine, as a value in Jewish law, is helpful in terms of establishing a conceptual framework for dealing with some of the questions regarding what it means to enshrine Jewish values in a democratic State. The requirement to be a good neighbor in Jewish law involves balancing the actions we take to satisfy ‘our’ needs and wants with the oft-conflicting obligation to take into consideration the wellbeing of ‘others,’ whomever they may be, in a way that maximizes the welfare of society at large. Far from being just a theoretical notion of what the Fathers of the country might have meant, when we look at the law of ‘love thy neighbor’ what we are really seeing is the essence, backbone, and balancing equation of what we now think of as Israeli law. Historically, the love of neighbor doctrine as a foundational principle of Israeli legislation has expressed itself primarily in three impressive ways: internally, in Israeli national law; externally, in how Israel deals with and incorporates international law; and finally militarily, in how Israel deals with its enemies. This paper will explore the practical development of the doctrine of love in these three areas, answering the question of what it looks like in reality when we organize law around the value of Jewish love.

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