

The Secretary General of the World Centre of Mizrachi-Hapoel Hamizrachi, who here answers the charges and allegations of Prof. Lebowitz in the preceding article, is a noted journalist, author, and thinker. He has served as Director General of the Ministry of Interior of the State of Israel, and was formerly city editor of *Ha-Tzofeh*, the daily Religious Zionist newspaper. The present article is adapted from Mr. Gan-Zvi's response to Prof. Lebowitz which appeared in *Be-Terem* of Nov.-Dec., 1959. Rabbi Israel Wohlgelemler assisted in the translation and adaptation.

AGAINST "SEPARATION" IN ISRAEL

Prof. Yeshayahu Lebowitz concludes that, for religious reasons, it is desirable to separate Religion from State, and that both will benefit therefrom. What does he mean by "Religion?"—"the religion of which we speak is Traditional Judaism, which is embodied in Torah and *mitzvot* and which demands sovereignty over the life of the individual and that of the community."

IN THE PAST

Jewish history knows only of Religion with State or Religion without State, (i.e. where Religion substitutes for State—that "moveable homeland" as Heine called it). We have never known of State without Religion. Even in the reigns of Jerobaam, Ahab, and Manasseh in the First Commonwealth, and also in the reign of Herod in the Second, we had no such thing as a State without Religion. I say this not only because of the seven thousand people who refused to kneel to the Baal in the days of Ahab, and not only because of the repentance of Manasseh himself (II Chronicles 33:13), but because Religion, through its representatives, the Prophets, demanded sovereignty over the State, its leaders, and its citizens. The final lesson of the Second Commonwealth, whose inner history revolved about the very question of the struggle between Religion

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and State, is: there can be no State without Religion in Israel. This is the meaning of the bitter strife between the Hasmoneans (Religion) and the Hellenists and their Seleucid sponsors (State), followed by that between the Pharisees and the later Hasmonean-Saducees until Herod. After his merciless massacre of the Sages of Israel, Herod—representing the secular "State"—finally sought an understanding with "Religion," with those very Pharisees and early Tannaim whose ranks he decimated. Baba ben Buta, the only survivor of the massacre, advised him: build a Sanctuary. By this he meant: if you want to establish proper relations between "Religion" and "State," begin by making available the State treasuries for the rebuilding of the ravaged Temple. This is the gist of their famous conversation recorded by the Talmud (*B.B.* 4a), as a result of which the Temple of Herod was constructed. History does not record the presence, in that generation, of a Prof. Lebowitz who would reproach Baba ben Buta with scathing scorn about a "dependent Temple" (dependent on Herod!) that is "one of the most degrading institutions in the history of the Jewish people," as does Prof. Lebowitz today when he inveighs against the rabbinate, which receives its salary from State funds, calling it a "dependent rabbinate" and "one of the most degrading institutions in the history of the Jewish people."

What we learn from this is that Jewish history, although it has not experienced the long and bitter wars between Religion and State that form part of the history of other peoples, has nevertheless not known of the separation of Religion from the framework of the State.

SEPARATION AND THE SPIRIT OF TORAH

There are two problems:

First, can a Jew who observes Torah and *mitzvot* support the idea of Separation without at the same time proving false to some of the basic principles of this same Torah and nullifying them completely?

Second, how practicable is the proposal of Separation as a solution to the problems of Religion and State in Israel of 5720?

Theoretically, Separation means that the Jewish communal unit known as the "State" must be divested of any relationship or obli-

gation to religious norms. The "State," such as it is, has no business with whatever falls in the category of purely religious relationships, as distinguished from social matters. No one knows how many Israelis are prepared to subscribe to this proclamation with its frightful historical implications. Certainly not the 85% of the adult population who voted for the non-religious parties. The number must be much smaller than that. Proof of this is the oft-repeated boast—partly justified—by secularist leaders that their parties contain more religious members than are enrolled in all the religious parties. Further proof is the religious school system which, all Trends combined, serves more than 38% of Israeli children. Still further proof is in the untold thousands of citizens of the State of Israel who throng to the synagogues on Yom Kippur. When the census was taken, there was a referendum about a similar problem, non-political in nature. The question was: do you eat kosher food and prefer import of kosher food only, or do you eat non-kosher food and desire the import of non-kosher meats? 93% of Israel's population answered: kosher. Perhaps there are, in reality, more citizens who do not observe the dietary laws than the 7% who openly declared so. But we do learn from this that there are people who may privately eat non-kosher food but who are not prepared to state so in writing, to declare before all the world that "we have no share and portion in the 'pure table' of Israel." Are we exaggerating, then, when we suggest that if the Separation proposal were submitted to the people that the results would be the same as those on the referendum of *kashrut*?

If our assumption is correct, then a question arises as to proper democratic procedure: may a small minority impose its will upon the entire people and declare, in the name of the entire community, that "we have no share and portion" in the traditions of Judaism? According to the referendum which took place, such a declaration could not even boast of support by the most suspect extremist left wing centered about Mapam, Achdut Avodah, and the Communists. The question of proper democratic procedure applies equally to the religious and non-religious citizen. But the religionist must, in addition, examine his *religious* conscience.

In truth, however, the problem is not merely one of numbers. Granted that the majority of the country is ready to reject God outright, there still remains this question for the religious advocate

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of Separation: who empowered him to dissociate any *community* in Israel, even the smallest, from its relationship to God? For in effect what the religious advocate of Separation says is this: from the day of Separation and thereafter, the State, and any subsidiary communal body unassociated with voluntary religious organizations, will be free of any responsibility towards Jewish religious norms! Where in all the Torah, from Genesis to the latest decisors, did Prof. Lebowitz ever find support for such a position? The Torah not only never renounces its claim on a community in Israel, but does not relinquish its claim on even the most insignificant individual. Even the wife of a heretic must, according to the Halakhah, receive a *get* from her husband, should they decide to separate; he is regarded as Jewish despite his protestations.

The truth of the matter is that, religiously speaking, not only can no support be found in Torah for Separation, but this doctrine negates and extirpates the whole of Judaism. The Covenant "between the pieces" was made by God with the Jewish *nation* concerning "this land" (Gen. 15:18). A state of Jews in "this land" which rejects any connection with Torah declares thereby its revocation of the Covenant. Here are the words of Deuteronomy: "But if thy heart turn away . . . and worship other gods . . . I declare unto you this day . . . ye shall not prolong your days upon the land whither thou passest over the Jordan to go in to possess it." (Dt. 30:17, 18). These and the many similar Scriptural verses do not refer solely to pagan idolatry, to bowing to icons. Sifri (on Dt. 11), refers to I Sam. 26:19 where David is quoted as saying "for they have driven me out this day that I should not cleave unto the inheritance of the Lord, saying: Go, serve other gods." Upon this Sifri comments: "It is conceivable that David, King of Israel, would serve an idol? This indicates, then, that once a man departs from the words of the Torah it is as if he went and cleaved unto idolatry."

And what does "a King of Israel who departs from Torah" mean, translated into our contemporary idiom, if not the Separation of Religion from the State? All the writings of the Prophets revolve about the same theme: this judge or that king submitted to the divine discipline and guided the people in that way—and so times were good for the people and the land; this judge or that king strayed from the proper path and caused the people to sin with him—and so the anger of God was kindled against people and land.

Even if a Jewish State were established in Uganda or Birobidjan on the basis of divorce from Torah, on the basis of Separation, it would be a violation of the Covenant; certainly so a Jewish State in the Holy Land. Is it, then, permissible for a religious person to encourage the State of Israel to declare a complete and absolute policy of non-recognition of the Torah? The State of Israel has not expressed full recognition, but in effect its activities in religious education, etc., amount to partial recognition. Certainly it has never declared "non-recognition." What Prof. Lebowitz strives for is precisely that unequivocal statement of "non-recognition." How can he, as a religious person, maintain such a position?

The fact is that the Spirit of Israel is not that exclusivist that it should seek, by means of Separation, to withdraw from the State of Israel and to dwell solely with the pious who are organized for that purpose. It recognizes far better than does Prof. Lebowitz the weaknesses of the flesh and blood. It dwells "with them, even in the midst of their uncleanness" (Lev. 16:16). The Mishnah in Tractate *Megillah* teaches us: "Whoever says 'may the good ones bless Thee' (i.e. he excludes sinners from the congregation)—this is the way of heresy." And Rashi explains, "for he does not include evil-doers in the praise of God."

RELIGIOUS EDUCATION

Are Prof. Lebowitz's practical proposals on more solid ground than his theories?

"Removing religious education from control by the secular state and government, and transferring it into the hands of the religious community—with or without financial support by the government—will not only not weaken it, but will actually open up new horizons for its growth and for winning adherents among the people." In this one sentence, and particularly in the incidental remark "with or without support," is reflected the confusion that befogs the whole problem.

Education is the major source of controversy between the secular and religious camps in the country. It is the political battlefield, the area which in general gives rise to the whole question of Separation in the minds of many Israelis. All other issues, even that of civil marriage, are of secondary and tertiary importance in com-

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parison, for they are not the lines on which the daily political battles are drawn in the country. This struggle has two aspects: 1) a battle for the spiritual gestalt of the coming generation, and 2) a battle for the hearts of the present adult generation—for in every community in which the religious forces successfully establish a religious school for children, religion itself gains greater acceptance amongst the parents.

In so far as "the essence of democracy is debate," in the words of Thomas Masaryk, this struggle, in its second aspect, bears the signs of and is an exercise in Israeli democracy. What, however, of the first aspect? This could easily be ended were the government and the secularists to grant parents true freedom of choice. Were that actual freedom granted, there would be no need for a religious party as the only organized communal support available for the parent who desires to educate his child religiously. But the secularist forces are not too anxious to relinquish their oppressive economic and administrative devices, for they know that without these pressures most parents would decide for religious education. This is precisely what occurred the one time that completely unfettered freedom of choice was given, in 1951. When enrolling his child in school, a parent "voted" on spiritual and religious matters in a manner that revealed his religious inclinations much more directly and clearly than voting for the Knesset, where economic and political considerations are involved. But this never was allowed to happen again; and the shame of the secularist camp is that it has never protested this ignominious pressure. Its shame is that, of all its thinkers, only one has come forth publicly to voice his indignation at this injustice: Eliezer Livneh.

Now what does Prof. Lebowitz suggest?—that we give up the struggle for the soul of the coming generation! For a basic, fundamental condition for the very possibility of competition between secularists and religionists in education is the presentation to the parent of two *equal* alternatives from which to choose: one secular, the other religious. For such Jews who, in the words of Prof. Lebowitz, "were wont to put massive effort into giving their children an education, and always brought sacrifices for this purpose," there is no, or almost no, question of a struggle. The secularists have yielded on them. The real battle is for the large number of parents who, unfortunately, lack such conviction and fortitude, but who,

if presented with a religious alternative which is as easily accessible to them as the non-religious one, will opt for the religious. But if the religious school is a bit more distant than the secular one, or is not housed in as attractive a building as is its secularist competitor, or is not as well appointed—in short, where the conditions of competition are unequal—many parents are unable to resist the temptation, and hand over their children to the secularist educators.

There is no doubt, then, that immediately after Separation, when the State will offer secular education free of cost, in comfortable and attractive surroundings, while parents will have to pay from their own funds for religious education, the struggle for the gestalt of the next generation will have been resolved. Religious education will remain available only to those families who: 1) are economically capable of carrying the financial burden of educating their children, and 2) are spiritually prepared to undertake this task. Whoever has only one of the above two qualifications will not give his child a religious education. Simple calculation will show the unfortunate results. The state and local governments spend today about 40 million I£ annually for religious education. Can any sensible person really expect that the religious community will be able to raise, voluntarily and without government assistance, even a quarter of this amount? If we assume that with effort 4 million I£ could be raised—and this is a maximum—then of the over 100,000 pupils today receiving instruction in *Shema Yisrael* and *Torah tzivah lanu Mosheh*, only 10,000 children would continue to receive such education after Separation. The secularist camp would not begrudge the religious this number, and the struggle would abate.

But according to Prof. Lebowitz, “with or without support” the result will be the same: religious education can only grow and be triumphant. Seemingly, according to his opinion, religious education is not subject to the laws of arithmetic.

However, the question of “with or without support” is extremely important with regard to the Separation problem, and deserves further clarification. Once we accept the principle that a “separated” State is obligated to support religious education, we have recognized the right of religious citizens to educate their children as they wish, and at government expense. What right, then, does the State have to curtail the rights of its religious citizens by giving

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their school system only partial assistance, while it defrays the complete cost of the secularist schools? If this assistance to the religious schools will be 100%, in effect full support, in which case religious and secular education can again compete under conditions of equality—then what is the purpose of Separation in the first place? True, there are countries in Western Europe which support religious education fully even though theoretically Religion and State are separated. In those countries such a situation is understandable, for there Separation is not an actual, living issue. It is only a relic of the past. But in the State of Israel, where the struggle between Religion and State has only begun, and for which Separation has been advanced as a possible solution, Separation can only mean following the American pattern—and in America not only may the federal government not spend a single cent on religious education, but local governments are not even permitted to offer a discount on the use of city buses by religious-school pupils, this being regarded as using public funds for indirect aid to religious education.

Prof. Lebowitz must first make up his own mind as to what it is he wants. If he seeks an effective, conclusive Separation that will put an abrupt end to the conflict between Religion and State on its most active front, education, then let him have the courage to propose an American-style Separation, and let him say openly: the principle of Separation is so exalted, so precious, that it is worthwhile even if, as a result, 90% of the student body of the religious schools will be forced into the secular schools. But if he seeks a Separation on the pattern of the German Weimar Republic or Holland, he must know that this will be empty of all real content, and hence totally ineffective. Religious education will continue to compete with its secular antagonist under equal conditions, with the same consequences that are issuing from the present rivalry. "With or without support" is a statement that reveals neither a true understanding of the problem nor a realistic solution. Let not Prof. Lebowitz becloud the issue in a maze of statistics on Catholic education in the United States. First of all, only one third of American Catholic children receive a religious education. Second, Prof. Lebowitz ought to know the difference between the economic strength of wealthy Catholic organizations in America and that of pious Jewish immigrants in the *maabrot* of Zarnoga, Hiriah, and

Tiberias. Third, the comparison should have been made not with American Catholics, but with American Jews. Despite the fact that American Jews are wealthier than the *maabara* of Zarnoga, only ten per cent of their children receive a Jewish education because they do not want, or perhaps some cannot afford, to pay for it when at the same time, public schools are available to them gratis. And fourth, he should have included in his proposal for "separate" religious education a written promise that from the moment of Separation and thereafter, he will no longer disparage the "schnorr" (the fund-raising activity which is a butt of his ire). If his proposals should be accepted, there will arise about religious education a "schnorr" of unprecedented and historic proportions!

There is yet another serious aspect to this matter of separate religious education. In all Western countries, especially America, Separation came about in the first place because the State did not want to choose among the various religious denominations struggling for supremacy within the Christian populace. Instead, the State said: I will make peace among you and give your children a neutral education, favoring neither the Catholics nor the various Protestant sects. In this way neither the Protestants nor the Catholics felt themselves discriminated against. No one side triumphed over the other; the common State gave all of them an education not opposed to any one of them. With us, however, the situation is different. The entire struggle, in education as in other matters, is *between a secular state and a religious conception of state*. Indeed so, for we religious Jews consider our religion in terms of *the state*. Moreover, according to our conscience and faith we regard the Torah as superior to secularism. Now comes Prof. Lebowitz and, by virtue of a religious mandate he has arrogated to himself, decides: the secular state takes precedence. Henceforth let all public tax monies, including that of religious Jews, be channeled into the secularist school system alone. And if religious Jews desire an educational system in accord with their conception of a religious state, let them engage in "schnorr" and raise funds as best they can. This means reducing citizens who conceive of a religious state to secondary status. For the children of each of the two types of citizens will continue to study, each in his own class, the very same portion of the *Chumash*. The difference will be this, that the teacher who will deny all mean-

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ing to the verse "And the Lord spoke to Moses saying," who will twist it and distort it until only a caricature remains, will receive his salary from the government, and his students will benefit from the full financial and administrative force of the State. At the same time, the teacher who will explain the same verse in its full literal sense, in its pristine purity and sanctity, will be asked to make his living from hand-outs, and his students will have to pay personally for the privilege of studying a scriptural verse without distortion. And on that day, Prof. Lebowitz assures us, the honor of religious Jewry will rise to heaven itself . . .

Such a thing has never come to pass in a "separated" Christian State. Once separated, the State no longer teaches any religious subject in its schools. With us, however, were Separation to take place, the State would continue to impose upon students—even religious students—religious subjects in a secular frame! We can never make peace with that kind of humiliation—and humiliation it will be whether Separation will prohibit any subsidy to religious education, or even if the State, in its benevolence, will grant us partial assistance. The strife that lies in store for such a "separated" State will be incomparably more severe than the present controversy over education.

THE RABBINATE

All that has been said above in defense of the right of religious Jewry to receive its full share of state funds for education holds true in equal measure for the rabbinate. Here too we do not recognize the secularity of the State any more than we do in regard to education. And we have little confidence in Prof. Lebowitz's assurances that the dignity and honor of the rabbinate will be exalted the moment the State is freed from supporting it. A rabbinate without government authority—and budgetary support—is not a utopian ideal that awaits realization in some distant future. It exists today in Israel, in Meah Shearim and somewhat in Agudath Israel. And it exists in the Diaspora, in the system of "congregations." If the ideal dignity of the Jewish rabbinate is to be found in such an arrangement whereby rabbis are salaried by their congregations,

TRADITION: *A Journal of Orthodox Jewish Thought*

we shall allow Prof. Lebowitz to yearn for it. We ordinary religious Jews shall continue to be satisfied with our present situation, with the "disgrace" of a government-empowered rabbinate.

THE SABBATH

"The ban upon public transportation on the Sabbath, which is enforced in various places by the secular authorities, is no more than a bribe given to Orthodoxy to serve as a blindfold." The proof? —Haifa. Since religious Jewry of that city receives a political bribe, it participates in the operation of buses on the Sabbath. But since it receives no such bribe for the subways, it protests their operation on the Sabbath. Thus far Prof. Lebowitz.

The real situation of the Sabbath in the State of Israel is presently as follows. Religious Jewry is battling for public recognition and observance of the Sabbath. The active secularists are battling for its abolition in public. In this lengthy struggle, each side has come to acknowledge the strength of the other, and both have reached a viable, though not desirable, solution. This practical solution is known as the "status quo agreement" in religious matters. It is not an ideal situation. But this is the best religious Jewry was able to attain on the basis of its strength in this protracted debate. At the same time, religious Jewry is entitled to view this arrangement as a recognition by the secular state of the right of the religionists to determine the public character of the Sabbath in the State common to both of them.

With Separation, this recognition will be automatically nullified. "There is no reason to fear," Prof. Lebowitz decides, "that the State, after its divorce from Religion, will change anything in the existing Sabbath law, which establishes the right of all workers to rest on the Sabbath and requires the closing of stores, workshops, etc. on the Sabbath." Whoever can arrive at conclusions about past and present without proving them, certainly is entitled to prophecy the future without offering guarantees for his accuracy. We, however, must insist upon plain logic. We therefore conclude with complete certainty that the "separated" State will destroy every vestige of the observance of the holy Sabbath in public, whether gradually or in one stroke. Why Separation in the first place if not to ensure that, in public, the Sabbath be no different from weekday, and be empty of all

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religious content? Why Separation in the first place if not to give all cities and towns of our Land, especially Jerusalem, the "privilege" of enjoying a Haifan Sabbath? The plain meaning of Separation is that thousands upon thousands of Jews will now be added to the roster of those who now negate and violate the Sabbath. Of these, not a few will be coerced into Sabbath desecration because of their inability to resist economic pressure. In addition to those enterprises already inaccessible to the Sabbath observer, especially heavy industry, oil, potash, etc., there will crop up a host of others which heretofore were open to the *Shomer Shabbat*. We are dealing here with modern industry, where one large area of operations affects many other subsidiary branches.

We do have at present, in practice if not in principle, a miniature "separated State." This "state" stretches over the whole area of new development in the Negev, from Beersheba southward. The "religious exploiters of graft and bribery" have not yet achieved organized power there. Consequently Sabbath observance does not exist in that area at the present time—and will not until the growth of organizational strength by the "bribe-seekers" of "official" religious Jewry. Oil wells, mines, pipe-laying . . . in effect, all branches of business operate seven days a week. The major characteristic of this program of development in the "separated state" of the Negev is not only the banishment of the Sabbath from public life, but from private life as well. Many observant Jews in the Negev have been confronted with the tragic alternative of either working on *Shabbat* or going hungry. Many indeed have not been able to stand up under the pressure and are working on the Sabbath, for there the "separated state" is the only or chief employer. It stands to reason that if organized religious Jewry were strong enough to win the Ministry of Development, "Separation" would be abolished in the Negev. We have not attained such strength—but at least we have seen enough of Separation to know, from hard experience and not from theories and conjectures, that Prof. Lebowitz's assurances that "we have nothing to fear" are utterly unfounded.

We cannot draw too much satisfaction from the present status of the Sabbath, where in large areas the Queen Sabbath rules more in theory than in practice. Nevertheless, there is no comparison between our present unhappy situation and what would probably come into

being as a result of Separation. Today Sabbath observance is still, in practice as well as in theory, the norm which prevails on Sabbaths and Festivals; violation is the exception rather than the rule. Most important, Sabbath and Festivals today have a claim upon Israel. All this will no longer hold in the event of Separation. Sabbath and Festivals will then be stripped of their historic sanctity, and all official-legal standing they have in the Israeli public will be destroyed. All that will be left will be "days of rest." And how does Prof. Lebowitz know that the weekly day of rest in the separated state will be Saturday? It is reasonable to assume that international practice in commerce, transportation, and telecommunications will force the "separated" state to assimilate to its modes and transfer the weekly day of rest to Sunday. This moving up of the Sabbath to Sunday, following the Christian pattern, is not a novelty in Jewry. Reform rabbis did it many years ago, and some still continue the practice. Why should a secular, separated state be forbidden to do, for sound commercial reasons, what "rabbis" are permitted to do in America?

MARRIAGE AND DIVORCE

Prof. Lebowitz hits his stride in the matter of marriages. He tells us, "the prohibition against adultery . . . is not based upon general moral or social considerations; it is a grave *religious* prohibition exclusively. That is why in widespread circles in the community which reject the binding force of religious law—and this includes many very decent individuals—adultery is not considered reprehensible." This is an untruth—and not an original one. Preceding him in this libel on Jewish womanhood was a Gentile whose name is unprintable in a respectable journal, and one author who recently set a storm abrewing in the Israeli reading public. Outside of this coterie, there remains as strong as ever the presumption of virtue enjoyed by both sexes of every Jewish group, both in theory and in fact. The weakening of this presumption which is reflected in the proceedings of the Rabbinic Courts does not apply to more than one in 5,000 or less. As regards the absence of a moral or social foundation of the interdiction of adultery, without its religious motive, Prof. Lebowitz has forgotten its *universal* moral basis. The moral opprobrium that attaches to adultery is universal. News-

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papers all over the world testify when they tell of adulterers fleeing hurriedly when caught in the act, of the subsequent breakup of homes, of the absconding by adulterer and adulteress to places where they are unknown, and of frequent cases of suicide when they find no way out of the shame. All this holds true even if the partners in sin have had no religious affiliation. Only recently the secular Supreme Court in Jerusalem denied the petition of a man for a declaratory judgment that the child of a certain married woman was his son, rather than the son of the woman's husband. Of the reasons given for the court's denial of the request, one of the most notable was the ethical consideration: the court is not ready to bring grief upon a woman and her child, and destroy a Jewish home, because of the petition of this kind of individual. He was told explicitly that even if what he said were true, he should not ask the court's support for his unethical design.

From these premises—that there is no moral basis for prohibiting adultery and that large numbers of Israelis of both sexes commit adultery without restraint—Prof. Lebowitz draws his appropriate conclusion: to provide civil marriage for these people, since he believes that, from a religious point of view, the woman in this arrangement has only the status of a concubine, a *pilegesh*. Everything, according to this plan, turns out just fine: a man who is married to a woman civilly does not thereby impose upon her any restrictions on consorting with others, for all that is involved is cohabitation with a concubine. (Prof. Lebowitz, does not use the term *pilegesh* or concubine, either out of ignorance or out of a desire to conceal from his readers the full nature of his plan. He writes, "there is no actual marriage involved, but only cohabitation with an *unmarried woman*." But in fact once a woman decides to live with one man in particular, she is no longer considered "single" or "unmarried," but a *pilegesh*—a concubine.) Children born of such a union will be permitted to intermarry with other Jews, unlike illegitimate issue, and when the principals desire to part ways they may do so without a *get* (religious document of divorce) because there was no *kiddushin*, no valid religious marriage in the first place. Although Prof. Lebowitz does not state so explicitly, the conclusion is self-evident—during the entire time that these two live together, each may engage in sexual relations with others to his or her heart's content. Then comes the religious justification of this

blessed arrangement: thus will be corrected the great injustice "of the existing law of marriage and divorce which is in effect nothing but a law for the proliferation of *mamzerim* in Israel." In this manner, the way will be blocked for those who seek to ensnare the public in the sin of adultery (a capital crime) by forcing religious marriage (*kiddushin*) upon those who do not acknowledge it. Thus the public enemies will no longer be able to transgress "gravely" the injunction "Thou shalt place no stumbling block before a blind man." Who are these ensnarers? They are, of course, "the rabbinical bodies which cannot be expected to decide this question objectively because they are themselves interested parties!"

In this opinion, that concubinage will strengthen family life for tens of thousands of Jews, Prof. Lebowitz echoes the advice of the biblical Ahithophel. The only difference is that the original Ahithophel counselled the acquiring of a concubine to only one person (II Sam. 16:21), whereas Prof. Lebowitz offers this advice to thousands of Jews, husbands and adulterers alike. Thus, according to our religious professor, Mosaic religion, at the center of which stands the concept of holiness—"wherever you find separation from immorality there you find holiness" (Rashi on Lev. 19:2), strives to assist the daughters of Israel in indulging in libertinism without technically violating the injunction against adultery.

On the assumption that civil marriage constitutes concubinage, what is the judgment of Torah on this situation? With regard to the male partner we find a difference of opinion among the authorities. Raavad and a number of other authorities maintain that an ordinary Jew (not only a king, as Maimonides holds) may take himself a concubine. Maimonides, R. Asher, and his son (the author of the *Turim*) declare it a biblical prohibition for the male partner (let us call him the "husband," though in fact he is not to be regarded as such) to live with a concubine. Maimonides even decrees flogging in such a case on grounds of *kedeshah* — prostitution. The final halakhic decision today, after the controversy between the medieval authorities, was summed up not too long ago by Rabbi Eliyahu Chazan in his work *Taamulot Lev* (Part III, p. 45): ". . . the majority decide that there is a definite prohibition, if not of biblical origin, then at least stemming from the court of David who decreed a prohibition (on promiscuous relations by) unmarried women

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. . . and the reason seems to be . . . to prevent wide-spread immorality." Thus Prof. Lebowitz proposes, in the name of religion, to establish family life in Israel on the basis of what is clearly forbidden in the first place.

What is the status of the third party, the adulterer, on whose behalf Prof. Lebowitz exerts so much effort? R. Jacob Emden answers this question in his Responsa (Part II, No. 15): "Nevertheless, the concubine is biblically prohibited, on grounds of the law of prostitution (*kedeshah*), from cohabiting with any other man as long as she maintains her relationship with the first man; another reason is: to be able to determine the paternity of the offspring." Incidentally, the same R. Jacob Emden is one of those who *permits* concubinage for the following reason: "The prohibition (against sexual relations) placed upon an unmarried woman applies only to one who lives with more than one man, in order to prevent Jewesses from becoming promiscuous, like harlots; which does not hold for a concubine, who lives exclusively with a single man (and thus cannot be considered promiscuous)." We thus see that even those who permit relations between a concubine and her "husband" do so only because they aver that the prohibition against fornication by an unmarried woman was decreed only in order to prevent promiscuity. Prof. Lebowitz, however, proposes his concubinage arrangement precisely in order to facilitate promiscuity.

There is another facet of this problem in which Prof. Lebowitz has made a basic error. It is not at all certain that a Jewess who marries civilly is regarded, by Torah law, as a *pilegish*. Latter-day halakhic authorities have raised the possibility that a civil wedding performed by a gentile state official, where it is even probable that no Jewish witnesses were present, may in fact constitute a valid religious marriage (*kiddushin*) for the following reasons:

1) ". . . Perhaps with the passage of time they repented and the husband formalized the marriage through cohabitation [one of the three halakhically valid means of validating a marriage], and we would apply the principle that 'one does not consider his marital relations as promiscuous.' Therefore those married by civil authorities [who seek to part from each other] require a *get*." (R. Abraham Karpeles, *Ohel Avraham*, responsa no. 103.)

2) ". . . Consideration must be given to the customary exchange

of wedding rings in civil marriages. Since the couple's intention is marriage it would be a valid fulfillment of the requirement of *kese* [another of the three halakhic modes of marriage—giving to the bride something of monetary value]. Consideration must also be given to the civil marriage contract or a similar form that is signed by the husband, in which case qualified witnesses are not required" [thus constituting a *shetar*, a contract, the third halakhic form of marriage] (R. Mordecai Winkler, *Levushei Mordecai, Even Ha-ever*, responsa no. 10). Regarding civil marriage in Soviet Russia, the Gaon of Rogatchov, R. Joseph Rosen, quotes the opinion of the *Tosafot* that if the husband signs the marriage contract it may be regarded a valid *shetar* and (the dissolution of the marriage) would necessarily require the issuance of a *get*. In a responsum written in 1931 he adds that "if both parties consider themselves as man and wife, an adulterer (a third party) would suffer the death penalty (on the basis of this consideration)" (*Tzafnat Paaneach*, Vol. I, [Warsaw: 1935], resp. nos. 26, 27).

3) The Jerusalem Talmud states that new residents living in a community as man and wife for a period of at least thirty days are considered married without further proof, and an adulterer is punishable by death by virtue of this *chazakah* (presumption). In 1876, Rabbi Isaac Elchanan Spektor of Kaunas, Lithuania, ruled that even without any ceremony in which there is some formal expression of intent to marry, a common-law couple, living as man and wife for thirty days, require a *get* in order to terminate the relationship. (*Ein Kitzchak*, v. I, *Even Ha-ezer*, no. 47). Rabbi Menachem Mendel of Lubavitch concurs in this opinion (*Tzemach Tzedek, Even Ha-ezer*, v. I, no. 138).

Thus, civil marriage in Israel would necessarily entail a possibility of *kiddushin* and, according to some opinions, would be a completely valid religious marriage. This is so because the marriage would always take place in the presence of Jews who may be qualified witnesses, and because the couple would live among Jews who would be considered witnesses to *yichud* (living together as man and wife). Even a "separated" State will require of its citizens some formal procedure or ceremony and, in all probability, a form signed by the husband—which would then serve as valid "contractual" *kiddushin*. The secularists who cherish traditional customs when

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stripped of their religious garb (note the Bikkurim festival and the Passover Seder in the Kibbutzim), almost surely will retain the traditional ring ceremony which is a valid *kiddushin*. It is doubtful that the couple, especially the woman, will be happy in a state of concubinage that is suggested and, therefore, will not relinquish the ring. The minimal result of all this will necessarily be *kiddushei safek* (a possibly valid religious marriage) which no religious authority will dissolve without a *get*.

In short, the permissible promiscuity which Prof. Lebowitz wishes to broach to wide circles will not work. However, an injunction preventing intermarriage with such groups will remain in all its severity. The status of those people will be identical with the Karaites—whose marriages are valid but whose divorces are not—the children thereby being considered as of doubtful legitimacy (*safek mamzer*). By biblical injunction, such a child would not be able to marry into the "Congregation of Israel." Thus the division of the people into two distinct communities would be absolute.

There also is no doubt that even those Torah scholars who agree in theory with the opinion of those who do not see in civil marriage any element of *kiddushin* will, in practice, nevertheless take the severe view of Israeli civil marriage and consider it valid, if only to close the door against promiscuity under the aegis of "the law of the Torah" For in the last analysis, the Sages of Israel are concerned with the moral betterment, not debasement, of the daughters of Israel.

It should be noted that this writer does not arrogate to himself the right to decide questions of Halakhah, especially of so serious a nature, where the smallest factor in each case gravely affects the halakhic decision. Non-experts have always had the prudence to leave such complex matters to the halakhic authorities of the age. Only in our generation has one come forth with a patent formula on how to permit promiscuity via the Torah. There is reason to believe that a crying lack of knowledge is a major ingredient in this prescription for, Prof. Lebowitz says, "so far, the institutions of Torah law have not dealt seriously and directly with the halakhic implications of 'civil marriage,'" when, in fact, halakhic literature of the last hundred and fifty years is replete with such discussion. Of one who "has not yet seen" the deliberations of the Torah authorities we may at least expect knowledge and observ-

TRADITION: *A Journal of Orthodox Jewish Thought*

ance of the statement in the Talmud, "Anyone that is not well acquainted with the nature of *gittin* and *kiddushin* should have no commerce with them."

CONCLUSION

From all that has been said, it is clear that the notion of Separation of Religion from State, both generally and in its specific detail, has not the slightest support in Jewish religious thought.