Does the Absence of Constitution Lead to Conflict between Governance and Identity?

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Abstract

The issue investigated here is whether religion and politics can co-exist in a social environment where there is no separation between State and religion. The research explores the intricate relationship between religion, governance, and societal dynamics in Israel's political landscape – which serves as a model of a society that was established and remains bounded its religious context and history. It examines the influence of religious ideology on the dynamics of politics, particularly wielded by religious political parties to maintain power as a means to advance religious agenda. One of the most critical consequences of this volatile environment is the lack of a formal constitution. The religious-political conflict has resulted in a framework of Basic Laws and historical agreements, accommodating religious practices within its legal system. However, this structure leads to tensions between secular and religious interpretations of the law and to constant political instability. One of the main compromises is the multi-party system which is based on proportional representation and amplified ideological attachments shape voter behavior and policy formation. Coalition-building essential for governance is implemented through alliances with religious parties and granting them significant influence over policies, notably on contentious issues such as military conscription exemptions and funding for religious education. Since Orthodox Judaism holds considerable sway in matters of personal status, society is deeply divided along secular and religious lines, leading to conflicts over state funding for religious institutions and the role of religious authorities in public life, including limitations on the rights of non-Orthodox denominations. The absence of a formal constitution challenges governance, law, and societal cohesion, resulting in political instability and uncertainty, jeopardizing minority rights, and exacerbating social tensions. The paper argues that establishing a constitution could provide stability, protect rights and freedoms, and promote social cohesion, although achieving consensus on a constitution requires navigating complex political dynamics and engaging stakeholders collaboratively.

Keywords: Israel; Politics; Religion; Governance; Identity

Introduction

The study scrutinizes the intricate relationship between politics and religion, focusing on Israel's dual concept as a Jewish and democratic state, whose political landscape is a dynamic reflection of its deep-rooted religious principles. The ideology and

governance emanating from these principles shapes the nation's path, driving it towards a future anchored in its rich heritage and values. This study uses Israel as a crucial case study to examine the interaction between religion and politics. It highlights the intricacies and difficulties involved in managing religious diversity within democratic nations and underscores the complexities of ideological discussions and political dynamics within Israel. The study further explores how religious ideology influences political behavior and how religious beliefs shape political ideologies and behaviors. It examines the significance of ideologies within religious affiliations and the complexities of religious pluralism, all within the unique social and political environment influenced and dominated by religious ideology.

This complex social and political environment, where the impact of ideological parties determines the fragmented multi-party system, significantly influences the political system's stability. As advocated by the research, although the prime interest of a society is to foster solidarity on shred ideological beliefs, ideological politics exacerbates societal tensions and challenges consensus-building. It must be explained that the unique political structure of Israel, in which the proportional representation political system necessities to form a political coalition, amplifies the influence of smaller parties, notably ideological religious factions, in coalition politics. Despite their relatively small size, these parties wield significant power, shaping government policies and legislation related to spiritual affairs, underscoring the gravity of their influence.

This research concentrates on the conflict between religious ideology and governance, maintaining that Israel's political landscape is deeply intertwined with religious ideology, influencing policy formation, coalition-building, and management. One of the most interesting issue is why secular Israelis, which seek to limit the influence of religion in public affairs, cannot advocate for a more secular and pluralistic society where individuals are free to practice their own beliefs without interference from religious authorities – despite being a majority of the population. The research attempts to analyze this anomaly as a social lesson to examine the rule of minorities over majorities in a modern society.

Methodology

Politics has historically been intertwined with religion. Scholars argue for a profound connection between politics and religion, implemented through identity politics. According to Urbinati and Zampagione (2016), ideologies often thrive within religious affiliations due to their comprehensive nature. Olson (2011) notes that scholars from various disciplines have extensively discussed the crucial role of culture in understanding the relationship between religion and politics. The political influence of religious parties, particularly the more extreme faction of the ultra-Orthodox, highlights the delicate balance between religious demands and democratic principles within the legal framework. The absence of a formal constitution is unique to the Western world, although Israel operates without a formal constitution, relying instead on a combination of Basic Laws and historical agreements. This unique arrangement has facilitated

compromise and governance stability over time, although it has also sparked debates over the balance between Jewish nationalism and democratic values. Examining Israel's political landscape, Maoz and Henderson (2020) elaborate that political elites frequently manipulate religion to further their primary goal of political survival. They suggest that when religious and political institutions align closely, they can generate symbols that provoke contention among different segments of society.

Israeli politics serves as a notable example of the conflict between ideology and politics rooted in religion, characterized by the dominance of religious groups and the absence of a constitution separating religion and state. This conflict arises from differing interpretations of religious doctrine, competing visions for the role of religion in public life, and divergent policy preferences among religious and secular groups. According to Shugart (2020), the electoral system is an extreme example of proportional representation because it uses a single nationwide district. This structure allows religious parties to advocate for policies that reflect Orthodox Jewish values and traditions, such as controlling state funding for religious institutions and enforcing restrictions on public transportation on the Sabbath (the Jewish holiday) and on personal status matters like marriage and divorce.

The main argument made in this research is that the intricate interplay between religious ideology, governance, and societal dynamics marks Israel's political landscape, thus making it a unique social and cultural mix of identities with no separation of religion from state institutions. However, although these wide variety of identities is based on religion, namely the Judaism with its rich and complex heritage, the different types of religious beliefs create ongoing tensions and debates surrounding the role of religion in public life.

Multi-Party Electoral System

Based on proportional representation, the multi-party system is a crucial feature of its political landscape (Belder, 2021). The multi-party parliamentary democracy allows for proportional representation and inclusion of its minority stakeholders (Wermenbol, 2016). The situation is more complex than in other countries since Israel defines itself as a Jewish state that has to offer democratic rights to its Jewish, Muslim, and Christian citizens (Kimmerling, 2001). Israel's political history is dominated by Orthodox parties to uphold their political dominance. This symbiotic relationship between politics and religion is multifaceted, primarily due to the nation's unique dual identity as both Jewish and democratic. Israel operates without a formal constitution but under a hybrid framework of Basic Laws and historical agreements that reflects the complex nature of an overall Israeli identity and management, and the accommodation of religious practices creates tensions between secular and spiritual interpretations of the law. Friedman Wilson (2015) explains that since the country's birth, its electoral system has been criticized for favoring small parties over large ones and granting disproportionate power to minority and ideological groups. The need to include tiny and more extreme parties gives these forces what Rahat and Hazan (2015) define as blackmail powers.

The failure to reform the electoral system due to the need for the support of minor parties to form a government turned the Israeli political system into a politics of conflict, which different parties use to gain influence among voters and endure political power. Haklai and Norwich (2016) explain that attempts to build a coalition government whose survival depends on support from ethnic minority parties have resulted in widespread public disapproval and political turmoil.

This system significantly amplifies the influence of ideological attachments, shaping voter behavior, coalition building, and policy formation (Ben-Porat, 2013). While ideological divisions can foster solidarity and cooperation, they can exacerbate societal tensions and impede governance. Israeli politics depends on coalition-building, resulting in alliances with religious parties to secure governing majorities. This grants religious factions substantial sway in shaping policies, particularly regarding contentious issues like military conscription exemptions for ultra-Orthodox Jews and funding for religious education (Shalev, 2019). Fisher (2016) explains that fundamentalist movements participating in secular political systems can gain prominent political positions that allow them to impose their extreme ideology on society. However, the role played by identity politics allows significantly higher political representation that can be attributed to high voter turnout among the ultra-Orthodox population and low voter turnout among the general population in local elections (Malach, 2018).

Absence of a Constitution

The absence of a formal constitution has significant implications for governance, law, and societal cohesion. It impacts the legal framework, rights protection, management and political stability, judicial independence, and societal cohesion (Sapir, 2010). The constitution should establish the structure and powers of government and the mechanisms for decision-making and dispute resolution in the political landscape. Israel's governance may need a constitution to establish clear rules and procedures. This can lead to uncertainty, inefficiency in decision-making, and tensions between competing political factions. With a constitution to provide a framework for governance, Israel may experience political stability and challenges to the rule of law (Cohen, 2022).

Regarding the legal aspect, Israel relies on a patchwork of basic laws enacted by the Knesset over time, which serve as the country's foundational legal framework. While these Basic Laws outline fundamental governance principles and citizens' rights, they need a unified constitution's comprehensive scope and coherence (Rozani and Cohen, 2023). As a result, judicial independence is under constant threat. Israel's judiciary may need a constitution to assert its independence and authority. While the judiciary plays a crucial role in interpreting and upholding the Basic Laws, the need for a constitution can limit the judiciary's ability to check executive and legislative power (Etinger and Leon, 2018). This can undermine the rule of law and the protection of individual rights and erode public trust in the judicial system. This can lead to ambiguity and gaps in

legal interpretation, as well as challenges in addressing emerging legal issues or changes in societal norms.

Constitutions typically establish an independent judiciary with the authority to interpret and uphold the law, including the Constitution. Without a constitution, the judiciary may face challenges asserting its independence and authority. While the judiciary plays a crucial role in interpreting and upholding the Basic Laws, the absence of a constitution can limit the judiciary's ability to check executive and legislative power. This can undermine the rule of law and the protection of individual rights, eroding public trust in the judicial system (Smooha, 2021). However, without a constitution, Israel lacks a clear and codified set of constitutional rights and protections for its citizens. While the Basic Laws provide some guarantees of individual rights and freedoms, the absence of a constitution leaves these rights vulnerable to legislative changes or judicial interpretations. This can undermine the protection of minority rights and civil liberties, particularly during political upheaval or societal tension.

In the political aspect, governance and political instability have identified Israel since its independence (Rosenthal, 2018). The absence of a formal constitution can contribute to governance challenges and political instability. Israel's coalition-based parliamentary system relies on consensus-building among diverse political parties, and the lack of a constitution can hinder efforts to establish clear rules and procedures for governance. This can lead to uncertainty, inefficiency in decision-making, and tensions between competing political factions (Rozani, 2023). Another crucial result is minority rights. Israel's lack of a constitution can impact the rights and status of minority groups. Without explicit constitutional protections, minority communities may face discrimination or marginalization in areas such as language rights, religious freedoms, and cultural autonomy. This can exacerbate existing social tensions and contribute to feelings of exclusion or alienation among minority populations. The absence of a formal constitution has significant implications for governance, law, and societal cohesion (Yadgar, 2020). A constitution serves as the supreme law of the land, providing a clear and comprehensive framework for management and lawmaking. With a constitution, Israel relies on a patchwork of fundamental laws and other legislation enacted by the Knesset, which may need more coherence and consistency in a unified constitutional document. This can lead to ambiguity in legal interpretation and challenges in addressing complex legal issues or emerging societal norms.

Social Implications

The social implications of no constitution are crucial. Constitutions typically include a bill of rights that guarantees fundamental rights and freedoms for citizens. Without a constitution, Israel lacks a clear and codified set of constitutional rights and protections. While the Basic Laws provide some guarantees of individual rights, the absence of a constitution leaves these rights vulnerable to legislative changes or judicial interpretations. This can undermine the protection of minority rights, civil liberties, and other fundamental freedoms, contributing to social tensions and inequalities.

Rozani and Cohen (2023) explain the imminent need for a constitution by pointing out that Israel is undergoing a severe constitutional crisis. Neuberger (2022) argues that due to the lack of a constitution, Israeli society has gradually declined amid anti-democratic legislation and the spread of antidemocratic incitement, polarization, and authoritarian challenges to the political system. However, as explained by Galnoor (2023), debate continues concerning the status of the Basic Laws, constitutional areas not covered by them, such as human rights and religious affairs, and the constitutional status of the Supreme Court. Rozani (2023) argues that the debate is about how constitutional reform should be assessed since judicial power and independence changes must be according to the democratic principles of the Declaration of Independence. Alexander (2024) explains that social actors justified their antagonism toward the Constitution in cases where judicial intervention for human rights encountered exceptional public opposition and political backlash.

The opposition to establish a formal constitution is primarily due to the objection of the Religious Parties because it could limit the influence of religious law and institutions. This allows to undermine what Fallon (2005) considers the legitimacy of constitutional debates. He explains that without legal and sociological consensus, judgments about many purportedly legal questions, including questions of legitimacy, frequently reflect assumptions about the moral legitimacy of official action. According to Sheleg (2007), this conclusion is relevant to the central role of religion in Jewish culture and, consequently, in national identity since the religious parties prefer the status quo, where religious laws, particularly about personal status matters like marriage and divorce, are governed by Orthodox interpretations. Therefore, although a constitution could introduce new mechanisms for governance, redistribution of power, and protections for minority rights, such legislation may not align with the religious and ideological interests of the ultra-Orthodox community, preventing broad-based support for the constitutional text.

Conclusion

Israel's political landscape is a complex tapestry woven with threads of religious ideology, governance structures, and societal dynamics. At its core lies the intricate relationship between politics and religion, deeply influenced by Israel's identity as both a Jewish and democratic state. This duality and the absence of a formal constitution shape the country's governance, law, and societal cohesion.

Religious ideology plays a significant role in Israeli politics, with Orthodox parties leveraging it to maintain political power. The absence of a formal constitution has led to a reliance on Basic Laws and historical agreements, creating a unique framework that accommodates religious practices within the legal system. However, this accommodation often creates tensions between secular and spiritual interpretations of the law. Strengthening the separation of religion and state is crucial to prevent religious institutions from exerting undue influence on government policies and decision-making. It is paramount to recognize and respect the diverse religious identities and

practices of Israeli citizens, including non-Orthodox Jewish denominations, Christian communities, Muslim Arabs, Druze, and other religious minorities.

Since Israel is a fragmented society, the constitution should reflect a nation's values, principles, and aspirations, symbolizing unity and identity. Without a constitution, Israel may lack a unifying framework that promotes societal cohesion and shared values among its diverse population. The absence of a constitution can exacerbate social divisions and tensions, particularly among minority groups who may feel marginalized or excluded from the political process. This can undermine trust in government institutions and contribute to social unrest and instability.

Achieving political consensus is crucial for the adoption of a constitution. Political parties and representatives would need to negotiate and compromise on contentious issues to reach an agreement on the final text of the Constitution. This may require intensive dialogue and mediation facilitated by neutral parties or mediators. While the process may be challenging, a well-crafted constitution could provide a stable and enduring framework for governance, protect fundamental rights and freedoms, and promote social cohesion and democracy. The difficulty lies in the political landscape since establishing a constitution would require a deliberate and comprehensive process involving various stakeholders, and the specific steps depend on the political context and legal framework. The government should convene a constitutional convention or establish a special committee to draft the constitution. This body would typically consist of legal experts, scholars, representatives from political parties, and civil society organizations. Public pressure is essential for a constitution to be legitimate and reflective of the people's reflections. The drafting process would involve crafting provisions on critical issues such as the structure of government, separation of powers, fundamental rights and freedoms, minority rights, and the role of religion in the state.

Promoting dialogue and cooperation fosters mutual understanding, tolerance, and respect among religious communities. Education about religious pluralism, diversity, and tolerance should be integrated into school curricula and public discourse to promote awareness and understanding of religious traditions. Civil society initiatives play a vital role in advocating for the rights of religious minorities and challenging discriminatory practices. Political leadership and commitment are crucial in advocating for legislative reforms, supporting interfaith initiatives, and speaking out against religious intolerance and discrimination. International engagement allows Israel to learn from the experiences of other countries and leverage international partnerships to advance efforts toward achieving genuine religious pluralism.

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