

## MINORITY RELIGIONS IN ISRAEL

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*This is a revised version of a paper that was originally published in Hebrew in volume 28 of Bar-Ilan Law Studies at page 185.*

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### ABSTRACT

The article discusses the question of how Israel ought to treat its minority religions and whether its actual policies towards them accord with her moral and constitutional obligations. The first part of the paper offers three arguments purporting to show that Israel is justified in granting privileged status to the Jewish religion over other religions, and rejects each of them in turn. In particular, it rejects the view that Israel is allowed to privilege Judaism over other religions as far as the funding of religious services and needs is concerned. Nonetheless, the possibility that, on the symbolic level, weak privileging of Judaism may be permissible is left open. The second part of the paper questions whether the State of Israel guarantees equal treatment to all religions, and the answer is in the negative. Finally, the paper discusses the religious freedom of non-Jews in Israel and the way it has been interpreted by the courts. It is contended that both in terms of the freedom of religion and in terms of the freedom from religion, the protection of non-Jews is somewhat weaker than that granted to Jews, a state of affairs that ought to be remedied.

**KEYWORDS:** Israel, minority religion, holy places, religious freedom, religious feelings

### INTRODUCTION

In Israeli discourse, the expression “religion-state relations” almost always refers to relations between the *Jewish* religion and the state. Almost no attention is paid to the existence of other religions in the country, and indeed there is an overwhelming tendency to disregard the relevance of any philosophical-legal discussion on their status. A good example of this attitude is to be found in the index to a leading Israeli constitutional law text,<sup>1</sup> in which the entry “Religion and Law” refers the reader to the entry on “The Jewish State.” There is no justification for such an insular attitude, one that derives from a widespread tendency to perceive Israeli reality from a solely Jewish perspective, ignoring the fact that some 20 percent of the country’s population is composed of non-Jews. The aim of this article is to make up for this conceptual deficiency.

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1 AMMON RUBINSTEIN & BARAK MEDINA, *THE CONSTITUTIONAL LAW OF THE STATE OF ISRAEL* 533 (2005) [Hebrew]. This example is taken from an article by Michael M. Karayanni, *Living in a Group of One’s Own: Normative Implications Related to the Private Nature of the Religious Accommodations for the Palestinian-Arab Minority in Israel*, 6 *UCLA JOURNAL OF ISLAMIC & NEAR EASTERN LAW* 1, 3 (2007). The article contains some further convincing examples of the tendency to restrict the state-religion discourse in Israel to the internal-Jewish context alone.

This article contains many Hebrew language sources, such as the Rubinstein and Medina book cited above. In most cases, the titles have been translated into English for the convenience of the reader. Unless otherwise noted, translations are those of the authors.

The article is organized into three parts. In the first, we clarify what, in our opinion, the proper attitude of the state towards minority religions should be. We examine three possible rationales that seem to support the view that Israel is justified in granting preferential status to the Jewish religion: the belief that the Jewish religion is the true one; the fact that Israel is the national state of the Jewish people; and the fear that some of the minority religions in Israel threaten the public order. We claim that of the three arguments, only the second has some merit, but we argue that while this argument can justify a symbolic preference for the Jewish religion, it cannot condone preference in state funding. In the second section of the article, we examine whether the State of Israel grants equal status to all religions and we are forced to answer in the negative. In many ways, minority religions suffer from long-standing discrimination, and the area of state funding for their religious needs is but one of many examples. The last section discusses the religious freedom of non-Jews in Israel and the way it has been interpreted by the courts. It is contended that in terms of both freedom of religion and freedom from religion, the protection of non-Jews is somewhat weaker than that granted to Jews. These forms of discrimination against minority religions have no justification and should be remedied.

#### SUPPORT FOR NON-JEWISH RELIGIONS WITHIN A JEWISH STATE

The question of whether Israel should grant preferential treatment to Judaism over other religions presupposes that the very support of religion by the state (its “Establishment,” in American terms) is legitimate. For readers who find the idea of such support incredible, it might help to mention that the American model of separation between state and religion is actually an exception in liberal-democratic countries, where one can find a variety of financial and symbolic ways in which religions get support from the state.<sup>2</sup> This is not to mention the fact that in some democracies there is explicit acknowledgement of a specific religion as the official religion of the state (as, for instance, in the United Kingdom, Denmark, Ireland, and Norway).<sup>3</sup> However, even if states are allowed to fund religious services, there is a strong presumption in favor of doing so *equally*. Such equal treatment seems a natural corollary of the state’s fundamental obligation to treat all its citizens with equal concern and respect. How could anybody think that a decent state may grant preferential treatment to one religion—the majority religion—over other religions (or some of them)?

One answer that comes to mind relies on a perfectionist view of political morality, according to which the state is allowed, even required, to promote what it regards as the true conception of the good. With this assumption in the background, if a state holds that some religion expresses the best conception of the good, it is allowed to grant it special status. Thus, *if* one accepts a perfectionist approach in political philosophy and also believes that the Israeli state apparatus regards Judaism as incorporating within its tenets the best (or, at any rate, an excellent) conception of the good, there seems no reason not to grant Judaism a privileged status in comparison to other religions.

We are aware that most liberals nowadays reject perfectionism, but for reasons we need not go into here, we find their objection unpersuasive. Rather, we join such philosophers as Thomas Hurka and George Sher, who have defended perfectionism against the arguments raised against it.<sup>4</sup> The

2 Compare the research conducted by Jonathan Fox, according to which 75 percent of the Christian democracies studied gave preference to a specific religion over other religions. Fox, *Separation of Religion and State in Stable Christian Democracies: Fact or Myth?*, 1 JOURNAL OF LAW, RELIGION AND STATE, 60, 74 (2012). See also the extensive data that Fox has collected at <http://www.religionandstate.org>.

3 On the differences between the status of religion in Europe and in the United States, see, for example PETER BERGER, GRACE DAVIE & EFFIE FOKAS, RELIGIOUS AMERICA, SECULAR EUROPE? A THEME AND VARIATIONS (2008).

4 See THOMAS HURKA, PERFECTIONISM (1993); GEORGE SHER, BEYOND NEUTRALITY (1997).

interesting point is that even if the dictates of perfectionism are accepted, it does not ground the right of Israel to grant special treatment to the Jewish religion over other religions. Let us explain.

To justify a seemingly discriminatory policy on the basis of perfectionism, it must be shown that the state acts sincerely in order to improve the ethical level of its citizens (in the wide sense of the notion ethical), which means: (a) the main motivation of the state in adopting this policy is to contribute to this improvement, namely, to influence those who do not hold the correct conception of the good—to convert their beliefs, as it were; and (b) there is, in fact, a reasonable chance that they can do so by leaving the option of conversion genuinely open to all. If these conditions are not met, then any attempt to justify discrimination on the basis of perfectionist ideals is a sham. Whether these conditions are met in other countries is a question we shall bracket for the sake of the present discussion. What is quite clear, however, is that they are not satisfied in the case of Israel. Since Israel has no intention of proselytizing adherents of other religions, she cannot honestly claim that the preferential treatment of Judaism is aimed at spreading the message of the true religion among all her citizens. Moreover, whatever the intentions of the state, conversion to Judaism is not a realistic option for most non-Jews in Israel. Therefore, preference for the Jewish religion in Israel cannot be interpreted as expressing a genuine desire for the non-Jews in the country to convert to the true conception of the good; instead, it serves rather to promote the narrow interests of the Jewish population.

This perception leads to a second possible justification for granting privileged status to Judaism, which derives not from the right of the state to promote a specific conception of the good but rather from its right to promote the majority culture. Since Israel is the national home of the Jewish people,<sup>5</sup> and since in Judaism there is a strong link between nationality and religion, promoting the Jewish nature of the state (i.e. over other national or ethnic groups) necessarily includes the promotion of the Jewish religion (over other religions).

Before we turn to examine the kinds of preference that might be justified under this heading, we should clarify what exactly could be meant by *preference* in the Israeli context. Assuming that roughly 80 percent of Israel's population are Jews, 15 percent Muslims, 2.5 percent Druze, and 2.5 percent Christians,<sup>6</sup> the proportion of the state budget allotted to the Jews for religious activities will obviously be greater than that allotted to the Muslims, in the same way that the budget granted to Muslims is greater than that allotted to the Christian and Druze sectors. However, this numerical inequality does not express a preference for Jews over Muslims or Christians since the religious needs of a group encompassing 80 percent of the population are greater than those in a group numbering only 15 percent of the population. *Preference* for the Jewish religion would exist only if, for example, the proportion allotted to synagogues out of the total budget intended for the

5 The Jewish identity of the state of Israel was determined by the United Nations Partition Plan, *UN General Assembly Resolution 181 (Partition Plan)*, November 29, 1947, KNESSET (OCT. 5, 2014), [http://www.knesset.gov.il/process/docs/un181\\_eng.htm](http://www.knesset.gov.il/process/docs/un181_eng.htm), as well as by the Declaration of the Establishment of the State of Israel, 1 LSI 3, 4 (1948), and by two Basic Laws dealing with human rights, Section 1A of *Hok Yesod: Kevod Ha-Adam Ve-Heruto* [Basic Law: Human Dignity and Liberty], 5752-1992, SH No. 150; Section 2 of *Hok Yesod: Hofesh Ha-Issuk* [Basic Law: Freedom of Occupation], 5752-1992, SH No. 114. For an English translation of Israel's Basic Laws see [http://www.knesset.gov.il/description/eng/eng\\_mimshal\\_yesod1.htm](http://www.knesset.gov.il/description/eng/eng_mimshal_yesod1.htm) (last visited Oct. 5, 2014).

6 The precise numbers differ somewhat. According to the Statistical Abstract for 2011, the population of Israel at the end of 2010 totaled 7,695,100 residents. Of these, 5,802,000 were Jews, constituting 75.4 percent of the population; 1,321,000 Muslims, constituting 17.1 percent; 153,000 Christians (including Arab Christians), constituting almost 2 percent; and about 127,600 Druze, constituting 1.6 percent. Central Bureau of Statistics, *Statistical Abstract of Israel 2011* (2011), available at [http://www.cbs.gov.il/reader/shnatonenew\\_site.htm](http://www.cbs.gov.il/reader/shnatonenew_site.htm) (under previous abstracts, choose 2011 (year) and population (topic)).

construction and upkeep of houses of worship was *greater* than 80 percent. Similarly, one could speak of a preference for the Druze sector over the Christian population only if the relative portion of the relevant budgetary items allotted to the Druze community would be higher than that allotted to the Christian.

But it is hard to see how such preferential treatment can be morally justified. If the state recognizes the religious needs of Jews and pays for the construction and maintenance of synagogues and ritual bathhouses, and for funding separate educational frameworks,<sup>7</sup> justice demands that it should provide similar support to the non-Jewish communities too, *in accordance with their relative size*. In response, one might argue that without the financial preference for Judaism, Israel would not be able to preserve its national character, the very *raison d'être* of its existence. However, the preservation of this character is guaranteed by the simple fact that Jews constitute a majority in the country which grants them dominance in all fields of public life including politics, culture, and the media.<sup>8</sup> The ability of the Jews to preserve and develop their culture in the State of Israel would not be harmed by a budgetary allotment for the upkeep of mosques and churches which accorded with the relative size of the Muslim and Christian sectors, or a situation in which both Jewish and non-Jewish children were granted the same per capita funding for education.

This brings us to another argument against budgetary preference, deriving from the field of multicultural politics. In recent decades we have been witness to a gradual retreat from the “melting-pot” approach in favor of an outlook that respects the right of minority groups to maintain their language, culture, and religion. This being the case, the perception that the State of Israel is a Jewish country cannot justify preference for Judaism over non-Jewish groups. On the contrary, the concept of multiculturalism favors granting preference to precisely these groups.

Within the scope of this article we cannot go into the various arguments that support special rights for minority groups.<sup>9</sup> We focus, instead, on one argument that is especially relevant in the Israeli context—the argument of corrective justice. That the Arab minority in Israel has suffered decades of discrimination in numerous fields is an undisputed fact.<sup>10</sup> Therefore, not only should the Arabs not receive less support in the area of religion than the Jews, but they should be given *more* support, in proportion to their relative size.

This argument has a particularly Jewish aspect to it as well. In their long years of exile, the Jewish people suffered unbearable oppression and discrimination. They were made repeatedly aware that their status was inferior to that of other citizens, and that their very existence was allowed only as an act of grace and not by right. Having finally attained sovereignty in its historical homeland, the Jewish people bears a special obligation not to impose on others what it suffered during its long years of exile. It has a duty to put into practice the highest level of just conduct in its relations with the minority groups in its midst, including the obligation to convey to them the message that they are equal citizens and not some kind of temporary guests, dependent, as it were, on the goodwill of their hosts.

7 For a description of the various services (provided by the government) that attend to Jewish religious needs, see Barak Medina, *Enhancing Freedom of Religion through Public Provision of Religious Services: The Israeli Experience*, 39 ISRAEL LAW REVIEW 127 (2006).

8 See Avishai Margalit & Moshe Halbertal, *Liberalism and the Right to Culture*, 71 SOCIAL RESEARCH 529 (2004).

9 For comprehensive discussions on this subject, see WILL KYMLICKA, *MULTICULTURAL CITIZENSHIP* (1995); Charles Taylor, *The Politics of Recognition*, in *MULTICULTURALISM* 25 (Amy Gutmann ed., 1994).

10 See also Ilan Saban, *The Collective Rights of the Arab-Palestinian Minority: Do They or Do They Not Exist and the Extent of the Taboo*, 26 TEL-AVIV UNIVERSITY LAW REVIEW 241 (2002) [Hebrew]; Saban, *Minority Rights in Deeply Divided Societies: A Framework for Analysis and the Case of the Arab-Palestinian Minority in Israel*, 36 NYU JOURNAL OF INTERNATIONAL LAW AND POLITICS 885 (2004).

It may be that one of the main reasons that many Jewish Israelis find it difficult to accept these conclusions is that they regard the Muslim Arabs—and also the Christian Arabs—first and foremost as Arabs and only secondly as members of other religions. They have difficulty in separating the *religious* identity of the non-Jews—whether Muslim or Christian—from their *national* identity as Arabs. In other words, the religious identity of the non-Jewish citizens of Israel is considered problematic principally because it is always connected with the historical conflict between the Jews and the Palestinians. If this hypothesis is correct, one would expect a much more moderate and more tolerant attitude towards the Christian citizens of Israel who are not of Arab extraction, and indeed this attitude generally prevails. An instructive example of this phenomenon is the readiness of the Israeli Defense Forces to distribute copies of the New Testament to Christian soldiers during the swearing-in ceremonies held at the conclusion of basic training courses.<sup>11</sup> Although homogeneity is central to Israeli military training, and especially so in a ceremony expressing national solidarity, the army is prepared to surrender some of its homogeneity in order to grant recognition to the religious beliefs of the non-Jewish soldiers. Our interpretation of this practice is that the non-Jewish soldiers who serve in the army are perceived as loyal to the state in the fullest degree, and hence there is a strong readiness to be considerate of their religious beliefs—unlike the manner in which most Arab citizens, be they Christian or Muslim, are perceived.

The cross on some of the flags of European countries indicates the close connection between the majority culture and the Christian tradition. The flags of these countries do not have additional symbols to represent other religions which are practiced within their borders. Similarly, the symbols in the Israeli flag are completely Jewish in content, in no way representing the other religious or national groups who live in Israel. In all these cases, even though the majority group does not comprise 100 percent of the citizens of the state, it controls, as it were, 100 percent of the flag. In Israel (as well as in many other countries) this holds true for the other symbols of the state as well, such as the seven-branched menorah and the national anthem.<sup>12</sup> Indeed it is hard to see how it would be possible to allow every minority group to be represented (in accordance with its relative size) in the symbols of the state. Moreover, if the idea that it is legitimate for a country to identify itself with a specific national group is accepted, then the state symbols seem to be the most fitting context to demonstrate this identity. A nation-state constitutes the vehicle for members of a specific national group to maintain and develop their culture, and it is therefore legitimate for the state to express this aspiration through its national symbols, including the religious symbols of the majority group.

Thus, even though justice obligates the state to finance non-Jewish religions, at least in accordance to their relative size, justice may also, with regard to symbols, permit the state to grant special preference to Jewish symbols just as other democracies do regarding the symbols of their own majority religions. We do not rule this out, but we also offer the following thoughts:

1. Since most symbolic goods are not amenable to division, perhaps states should seek symbolic ways to compensate their minorities for the complete dominance of the majority over the symbolic space.
2. Even though some symbols, like the flag, cannot be split up proportionately, this is not true of other symbols. A good example is the calendar of official state holidays. Usually, this calendar is in exclusive accord with the tradition of the majority religion and does not include holidays from work on the religious festivals

11 For the debate in the Knesset Education and Culture Committee on this matter, see Protocol no. 9 of the Education and Culture Committee, the 16th Knesset (March 6, 2003), [www.knesset.gov.il/protocols/data/html/chinuch/2003-06-03.html](http://www.knesset.gov.il/protocols/data/html/chinuch/2003-06-03.html) (last visited Oct. 5, 2014).

12 On the “symbolic exclusivity” of the Jewish national community, see Saban, *Collective Rights of the Arab-Palestinian Minority*, *supra* note 10, at 293–95.

of minority groups. A non-Christian citizen in Europe or in America will, at best, receive permission to be absent from his workplace or from his place of study on his religious holidays, but in no case will these days be included in the list of national holidays. Similarly, in Israel, the official list of holidays is entirely Jewish, and if a Muslim student absents herself from university on the Festival of Sacrifice, she has to make up any missed material. Jews, who make up 80 percent of the population, control 100 percent of the official annual holiday calendar. We see no reason why democracies should not include some national holidays to coincide with the religious festivals of minorities, especially if the relevant minority is sizeable.<sup>13</sup> Assuming that the Jews in Israel are 80 percent of the population, the Muslims 15 percent, and the Christians 5 percent, it would not be unreasonable to propose that from a total of (let us say) 20 statutory holidays, 16 should be Jewish, 3 Muslim, and 1 Christian.

The conclusion so far is that, in terms of financial support, Israel should treat members of non-Jewish religions no worse (again, in accordance to their relative size)—perhaps even better—than it treats members of the Jewish religion. Insofar as symbolic representation is concerned, we left open the possibility of Jewish dominance over the national symbols but suggested that Israel should seek ways to compensate non-Jews for this dominance or to find creative ways in which non-Jewish symbols could also appear in the public sphere.

In passing we should note that this conclusion goes against the message of a proposed new basic law: “Israel as the nation state of the Jewish people.”<sup>14</sup> Section 8 of the proposed law declares that the state shall act in order to develop the cultural and historical legacy of the Jewish people, in Israel and abroad. By contrast, section 9 of the proposed law declares that the state shall *enable* all citizens to develop their own culture, legacy, language, and so on. In our view, the difference between these two sections expresses unfair discrimination against minorities. States that treat their citizens equally will act in order to help all of them develop their culture, not just members of the majority culture.

Against this conclusion, it might be argued that we have ignored the fact that in its current form, Islam, which constitutes the major non-Jewish religion in Israel, is antithetical to liberal values and hostile to the state of Israel, hence there is good reason to deviate from the default policy of equality mentioned at the outset of this section. There are two different arguments here against state support of Islamic institutions. According to the first, Islam in its contemporary form is a violent and fanatical religion, hence it would be a mistake on the part of a liberal state—*any* liberal state—to support it by funding Muslim mosques and schools or by paying the salaries of *imams* and *qadis*. The second argument against such support is that most of the Palestinian-Muslims in Israel are hostile to the state and believe that its very existence is illegitimate. According to these arguments, support of Muslim institutions would be a self-destructive act on the part of the state.

The first argument is familiar from the writings of the “new atheists,” who claim that religion promotes fanaticism and intolerance, that it encourages prejudice and hostility against various

13 For further discussion, see Ruth Gavison & Nahshon Perez, *Days of Rest in Multicultural Societies: Private, Public, Separate?*, in *LAW AND RELIGION IN THEORETICAL AND HISTORICAL CONTEXT* (Peter Cane, Carolyn Evans & Zoe Robinson eds., 2008), 186 (emphasizing the significance of choosing days of rest in multicultural societies).

14 The full text of the proposed bill is available at *Basic Law: Israel as the Nation-State of the Jewish People*, ISRAELI MINISTRY OF JUSTICE, [http://index.justice.gov.il/StatelIdentity/InformationInEnglish/Documents/Basic%20Law%20110911%20\(1\).pdf](http://index.justice.gov.il/StatelIdentity/InformationInEnglish/Documents/Basic%20Law%20110911%20(1).pdf) (last visited Oct. 5, 2014). For the debate about it, see Amir Fuchs & Mordechai Kremnitzer, *Basic Law: Israel as the Nation State of the Jewish People—A Danger to the Zionist Enterprise*, MAKOR RISHON, MAY 12, 2014, *reprinted and translated* at THE ISRAELI DEMOCRACY INSTITUTE, <http://en.idi.org.il/analysis/articles/basic-law-israel-as-the-nation-state-of-the-jewish-people>; Aviad Bakshi, *Basic Law Proposal: Israel as the Nation State of the Jewish People—Legal Justification*, THE INSTITUTE OF ZIONIST STRATEGIES, [http://www.izs.org.il/eng/?father\\_id=205&catid=448](http://www.izs.org.il/eng/?father_id=205&catid=448) (last visited Oct. 5, 2014).

groups (heretics, women, and homosexuals), and that it constitutes a permanent source of social tension and violence.<sup>15</sup> Elsewhere we have rejected these claims on the basis of three premises:<sup>16</sup> (1) critics have a tendency to exaggerate when describing the negative and troubling aspects of religion; (2) they tend to ignore or to deprecate the positive aspects of religion; and (3) they fail to realize that even if religion causes more harm than benefit to society, it may be tactically preferable for the state not to completely “separate” itself from religion, but rather to give it some support, and in the process to strengthen the positive and weaken the negative characteristics of the relevant religious tenets. These assertions apply to the Muslim minority in Israel, too. It is true that some Muslim circles in Israel incorporate views and practices that discriminate against women and homosexuals and that some Muslim groups even support violence against innocent civilians within the context of the Israeli-Palestinian conflict, but the contribution of the Muslim religion to Israeli society is not restricted to these negative aspects. Although the mosques sometimes transmit messages of a problematic nature, they also encourage acts of charity and benevolence, and they guide their adherents towards the living of meaningful lives. Withholding support from Islam would perhaps lessen its dangers, but it would also adversely affect the positive results that can ensue from religious activity. Moreover, a generous and even-handed policy towards the Muslims might encourage the Muslim religious leadership to become more open to liberal values, even if this process would be gradual and restrained. Therefore, there is good reason to implement a multifaceted policy towards Islam that would not only incorporate state support for the Muslim population on a level proportionally equivalent to that granted to the Jewish sector but would also include efforts to reinforce the positive aspects of Muslim beliefs by attempting to neutralize or weaken their problematic elements.

Moreover, in terms of the assumed dangers of religion, it is hard to see a marked difference between Judaism and Islam which would justify a policy of supporting rabbis and *yeshivas* (seminaries for the study of Talmud), while withholding similar support from *qadis* and *madrasas* (Muslim religious schools). Practices that discriminate against women and exclude them are also prevalent among religious Jews, an issue that aroused extensive public protest in Israel at the end of 2011.<sup>17</sup> Jewish religious doctrine also incorporates a negative attitude toward homosexuals.<sup>18</sup> Moreover, many religious Jews adopt a discriminatory and even racist attitude towards Palestinians or Muslims, and there are some religious extremists who, in the context of the Arab-Israeli conflict, support acts against them that are both immoral and illegal.<sup>19</sup> If, in spite of these facts, the state thinks that it is entitled to support Jewish religious institutions and rabbis, it is difficult to oppose the granting of similar support to Islamic religious institutions and functionaries.

15 See CHRISTOPHER HITCHENS, *GOD IS NOT GREAT: HOW RELIGION POISONS EVERYTHING* (2007); SAM HARRIS, *THE END OF FAITH: RELIGION, TERROR, AND THE FUTURE OF REASON* (2004); RICHARD DAWKINS, *THE GOD DELUSION* (2006).

16 GIDEON SAPIR & DANIEL STATMAN, *Chapter 3*, in *RELIGION AND STATE – LEGAL AND PHILOSOPHICAL INQUIRY* 53 (2014) [Hebrew].

17 See also Omri Efraim, *Jerusalem March against Exclusion of Women: “Not Modesty—Humiliation,”* YEDIOT AHRONOT (Dec. 23, 2011), [www.ynet.co.il/articles/0,7340,L-4165890,00.html](http://www.ynet.co.il/articles/0,7340,L-4165890,00.html) [Hebrew].

18 See *Leviticus* 20:13, “If a man lies with a male as with a woman, the two of them have done an abominable thing; they shall be put to death—their blood is upon them.”

19 For a detailed analysis of the problematic approach of most contemporary Zionist rabbis in relation to the Jewish-Arab conflict, see Ronen Lubitz, *The Israeli-Arab Confrontation in the Theological Literature of the Religious Zionist Movement* (2012) (unpublished dissertation, Haifa University) (on file with Haifa University Library) [Hebrew].

We turn to the second argument against support of non-Jewish religions. Since the Muslim religion constitutes a principal component in the identity of most members of the Arab minority in Israel, this argument maintains that state support of Islam will tend to strengthen this group, thereby reinforcing trends of disloyalty and isolationism and even leading, in extreme cases, to actual warlike acts against the state. As Sammy Smootha has shown, a high proportion of Israeli Arabs does not feel a sense of identity with the state and does not recognize its legitimacy. A report based on extensive survey results, published in 2012, revealed that only 58 percent of Israeli Arabs are convinced that Israel has a right to exist as an independent state, and only 58.6 percent agree that the Jews constitute a nation which has an inherent right to a state.<sup>20</sup> Based on these data, this argument concludes, it is justified for the state to grant Judaism preference over Islam on both the budgetary and the symbolic levels.

We agree that the attitude of some Arab citizens of Israel towards the state is problematic, especially among the political and intellectual leadership.<sup>21</sup> Yet the above conclusion does not follow from the facts. Smootha's surveys actually demonstrate that the degree of identification of the Arabs with the state depends to a great extent on the attitude of the state towards them. The more the Arab minority experiences exclusion and discrimination, the less it identifies with the state and its institutions. The way to correct this situation is not, therefore, to *increase* discrimination and exclusion but rather to *reduce* them and thereby to encourage a stronger sense of identification.<sup>22</sup> It is telling in this context to compare the Israeli Arab population to the Jewish ultra-Orthodox sector: Although the latter sector does not identify with the state (for instance, it does not fly the national flag or celebrate Independence Day; its young men do not serve in the army; and economically and socially it segregates itself from the rest of the Israeli public), it enjoys *overwhelming* support from the state. It is inconsistent to support the Jewish ultra-Orthodox community while simultaneously opposing the granting of a similar degree of support to the Arab public.

## RELIGIOUS FREEDOM

Are members of the minority religions in Israel entitled to the same protection under the rubric of religious freedom as members of the majority religion, i.e. Jews? Are they entitled to *more* protection? We explore these questions by reference to the two bases of religious freedom, namely, freedom of conscience and the right to culture.<sup>23</sup>

Regarding respect for conscience and the exemptions it entails, there seems to be no reason to distinguish between Jews, Christians, and Muslims. If the state enacted laws that required believers to transgress their religious precepts, the believers affected would have the right to seek protection from those laws under the freedom of religion. And if the state were to compel a secular couple from a Christian family to participate in a religious ceremony, such as marriage in a church (an

20 SAMMY SMOOHA, *STILL PLAYING BY THE RULES: INDEX OF ARAB-JEWISH RELATIONS IN ISRAEL 2012*, at 17 (2012).

21 See the recent detailed analysis by DAN SHIFTAN, *PALESTINIANS IN ISRAEL: THE STRUGGLE OF THE ARAB MINORITY IN THE JEWISH STATE* (2011) [Hebrew].

22 This assumption is reinforced by the fact that in a parallel survey by Smootha conducted in 2003 among Israeli Arabs a much higher proportion identified with the state—81.1 percent felt that Israel has a right to exist as an independent state, while 75.5 percent agreed that the Jews constitute a nation that has a right to a state. See SMOOHA, *supra* note 20, at 17.

23 Daniel Statman & Gideon Saper, *Why Freedom of Religion Does Not Include Freedom from Religion*, 24 *LAW AND PHILOSOPHY* 467 (2005).



issue we explore below), the couple could seek protection under their right to freedom from religion.

Things are different with regard to the right to culture, which is a right held only by minorities.<sup>24</sup> The majority does not need preferential status in order to develop its culture and to transmit it to the next generation. Hence, insofar as the right to religious freedom is anchored in the right to culture, the minority religions in Israel have a stronger claim for protection under it than do Jews.

In line with the conclusion developed above, regarding the right of non-Jewish religion to the same public support as Judaism, it is worth mentioning an appeal to the Supreme Court against the funding of *yeshivot* while no analogous institutes in the Muslim society are funded.<sup>25</sup> In his ruling, Justice Tirkel stressed “the unique and special significance of Torah study for the Jewish people, the important role of the yeshivas, and the high esteem in which the nation held its sages throughout the generations.”<sup>26</sup>

His statement continues as follows:

To adopt a non-preferential attitude to these spiritually creative institutions (of which such a large number were obliterated in the Holocaust), to regard them as if they were no different from other run-of-the-mill academic educational institutions, and to—so to speak—“objectively” disregard their unique and special place among the Jewish people, constitutes an expression of indifference to the nation’s past and to its heritage and an estrangement from the values which the Jewish people safeguarded and cherished with all its soul and its might.<sup>27</sup>

We might have expected these statements on the central role of Torah study in the Jewish world to lead the Supreme Court to base its decision regarding budgetary allotments to yeshiva students on the Jewish nature of the state, yet this was not the route taken by the court. Instead, Justice Tirkel, along with the other judges who sat on the case, rejected the possibility that the issue was relevant to Jews alone and argued that each and every citizen who devotes himself to religious studies, no matter what his or her religion, should be eligible for a similar allotment.

Yet such equal distribution does not reflect the more common reality. As Ilan Saban has shown, in Israel we find “profound and ongoing discrimination in the budgeting of the religious needs of the Muslim and the Christian communities in comparison to those of Orthodox Jewry.”<sup>28</sup> This discrimination has not escaped the eye of the Supreme Court, which ruled in 1998: “The Arab communities constitute some 20 percent of the population of the state, but the Ministry of Religious Affairs allots for their religious needs no more than 2 percent of its budget. We limit ourselves to saying that this gap speaks for itself.”<sup>29</sup> This unequivocal statement by the Supreme Court describes a situation that is clearly not legitimate and that patently demands remedy.

A glaring example of this type of inequality, which came to the attention of the High Court of Justice, centered on the invidious discrimination to which Muslim and Christian cemeteries are subjected as compared with Jewish cemeteries. After reviewing the relevant documents, the court came to the following decision:

24 See Margalit & Halbertal, *supra* note 8.

25 See HCJ 200/83 Wataid v. Minister of Finance 38(3) IsrSC 113 (1984) [Hebrew].

26 *Id.* at 122.

27 *Id.* at 123.

28 Saban, *Collective Rights of the Arab-Palestinian Minority*, *supra* note 10, at 272.

29 HCJ 240/98 Adalah – The Legal Center for Arab Minority Rights in Israel v. Minister of Religious Affairs 52(5) IsrSC 167, para. 17 at 178 [1998] (Heshin, J.) [Hebrew].

The petitioner has shown that inequity exists in the monies allotted by the Ministry of Religious Affairs for funding Jewish cemeteries as compared the funding of Arab cemeteries (with the exception of Druze cemeteries). The petitioner has shown this in two aspects: first, by quoting data from the Budget Law, and second, by appending to the petition descriptions and photographs demonstrating the dire situation in the Arab cemeteries . . . from the petition one obtains a picture of great neglect in Arab cemeteries, including those that are not abandoned, even if this is the case in only some of them. This situation honors neither the dead nor the living.<sup>30</sup>

If, even in regard to the upkeep of cemeteries, the state consistently and continuously discriminates between Jews and non-Jews, it should come as no surprise that such discrimination exists in many other aspects of religious life in the non-Jewish communities, such as support for their religious institutions, their religious holidays, and so forth.

The obligation to allot budgets for religious needs equitably (according to the relative size of the group) must apply even when the funds are intended to finance a practice in the Jewish sector that has no obvious counterpart in the other religions. An example would be the custom of *kimcha d'Pischa*, the religious precept to provide the needy with money or food products before the Passover festival. Although a similar custom does not exist for any specific Muslim holiday, the Supreme Court ruled that the Ministry of Labor and Social Affairs had acted in a discriminatory manner by allotting money for the purpose of supporting the Jewish needy prior to Passover while refraining from making a similar allotment for the Arab needy on the occasion of their holidays. In response, the Ministry of Labor and Social Affairs took note of its duty to act in an equitable manner in this matter and amended the criteria for extending support to needy families at the time of religious holidays so that they would also apply to members of other religions.<sup>31</sup>

Providing funds for religious needs is only one of the ways in which state support for the minority religions is implemented. There are two other routes through which the state establishes religion: by granting it official status and by conferring governmental powers on it. The best illustration of these modes of establishment is the monopoly granted by the state of Israel to the non-Jewish religious communities empowering them to adjudicate in all aspects of personal law, a monopoly that is identical to that vested in the rabbinate regarding all aspects of marriage and divorce in the Jewish community.<sup>32</sup> This arrangement is reflected in the following three ways:

1. *Status*: Like the Rabbinical Court, the courts of the Muslim community and of the Druze community enjoy official status and are part of the legal system of the State of Israel.<sup>33</sup> The courts of the Christian

30 HCJ 1113/99 Adalah – The Legal Center for Arab Minority Rights in Israel v. Minister of Religious Affairs 54(2) IsrSC 164, para. 14 at 180 [2000] (Zamir, J.) [Hebrew].

31 See HCJ 2422/98 Adalah – The Legal Center for Arab Minority Rights in Israel v. Minister of Labor and Social Affairs 98(2) Tak-El 531 [1998] [Hebrew]. Recently, a similar petition was submitted to the High Court of Justice against the “Afikoman” program sponsored by the Ministry of Culture and Sport, whereby the state undertook to fund children’s tickets to plays and performances during the Passover period. Yet, not one Arab location was included among the 110 locations specified in the program. See HCJ 2728/12 Adalah – The Legal Center for Arab Minority Rights in Israel v. Ministry of Culture and Sport, available at: <http://elyon1.court.gov.il/files/12/280/027/002/12027280.002.pdf> (last visited Nov. 2, 2014) [Hebrew]. The petition is available at: [http://adalah.org/upfiles/petition\(1\).pdf](http://adalah.org/upfiles/petition(1).pdf) (last visited Nov. 2, 2014) [Hebrew].

32 See RUTH HALPERIN-KADDARI, *WOMEN IN ISRAEL: A STATE OF THEIR OWN* (2004) (A comprehensive description of the legal situation in Israel in regard to family law.).

33 For the arrangement pertaining to the Muslim community, see Sharia Courts Law (Approval of Appointments), 5714-1953, 8 LSI 43 (1953-1954); Qadis (Moslem Religious Judges) Law, 5721-1961, 15 LSI 123 (1960-1961); Yitzhak Reiter, *Judge Reform: Facilitating Divorce by Sharia Courts in Israel*, 11 JOURNAL OF ISLAMIC

communities are not part of the official legal system of the state, but their judicial authority is grounded in law, their rulings have validity identical to that of the official courts of the other communities and a series of laws known as the “Religious Courts Laws” place them on an equal footing with the other religious courts.<sup>34</sup>

2. *Authority*: Articles 51–54 of the Palestine Order in Council, which became part of Section 9 of the Law and Administration Ordinance, stipulated that matters of marriage and divorce as well as other issues of personal status were to be subject to the religious law pertaining to each individual’s religion. It also stipulated that the authority to adjudicate these personal issues would be in the hands of the religious court of the relevant religious community.<sup>35</sup> Nonetheless, in a process similar to that which evolved in regard to the Jewish religion and the rabbinical courts, in the course of time, the legislative branch and the Supreme Court started to be involved in a number of issues dealing with the laws of personal status in the various communities, even going so far as to intervene in the implementation of these laws in the religious courts. Concurrently, the scope of the special jurisdiction of these courts has been reduced, the most significant reduction being made in relation to the Sharia courts.<sup>36</sup> Even after this change, however, the Sharia courts still exercise more authority than do the courts of all the other religious groups.<sup>37</sup>

3. *Budgeting*: The state pays the salaries of the judges in the religious courts.<sup>38</sup>

The arrangement described here for dealing with matters of personal status is a legacy from Ottoman law, which granted the various religions in the Ottoman Empire a monopoly in this sphere (the *millet* system). The original intent of this system was to prevent unnecessary friction wherever possible, but, with the founding of the State of Israel, the monopoly system took on a somewhat different role, namely, it concerned itself with issues of respect for the rights of its minorities in line with multicultural policy. Although, as noted above, the state has somewhat eroded the autonomy of the minorities on matters of personal status—just as it has done regarding the Jewish sector—the religious courts continue to control issues of personal status, and indeed an Arab Israeli cannot marry (within Israel) except by applying to the relevant religious body.

The fact that marriage is exclusively under the authority of religious law is an unjustified restriction on liberty. It imposes on some citizens norms and practices that are distasteful to them and it violates the right to freedom from religion and the right of women to equality.<sup>39</sup> Although Israelis can obtain a civil marriage abroad, this is an unsatisfactory solution as it encourages common-law

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LAW AND CULTURE 13 (2009) (describing the manner in which the Sharia courts conduct their affairs, as an expression of the way a Muslim community copes with its being a minority in a non-Muslim country). For the Druze community arrangement, see Druze Religious Courts Law, 5723-1962, 17 LSI 27 (1962-1963).

34 For example, the Religious Courts Law (Enforcement of Compliance and Procedural Methods), 5716-1956, 10 LSI 40 (1955-1956) sets out the procedures to be adopted by the various religious courts, including the courts of the Christian community.

35 Palestine Order in Council articles 51–54, League of Nations (August 10, 1922), available at <http://unispal.un.org/UNISPAL.NSF/0/C7AAE196F41AA055052565F50054E656>. Para. 53 of Law and Administration Ordinance, 5708-1948, 2 LSI 1 (1947-1948), which dealt with the Jewish community, was annulled for the most part and the issue found legislative expression in the Rabbinical Courts Jurisdiction (Marriage and Divorce) Law, 5713-1953, 7 LSI 139 (1952-1953).

36 For more on the trend towards restriction of the scope of the jurisdiction of the Sharia courts, see a review in HCJ 2621/11 Plonit v. Sharia Court of Appeals, Jerusalem (4)11 Tak-El 4061, para. 13 [2011] (Joubran, J.) [Hebrew]. For a restrictive interpretation concerning the jurisdiction of the Druze courts, see HCJ 9611/00 Bader (Mer'i) v. Mer'i 58(4) IsrSC 256, 259 (2004) (Dorner, J.) [Hebrew].

37 For a survey of the extensive scope of the special jurisdictional authority of the Sharia Courts, see MENASHE SHAVA, PERSONAL LAW IN ISRAEL 69–73 (4th enlarged edition, 2001) [Hebrew].

38 On the Druze community (the Qadi-Madhab), see Druze Religious Courts Law, 5723-1962, 17 LSI 27, 30, para. 20 (1962-1963). On the judges in the Sharia courts (the Qadis), see Qadis (Moslem Religious Judges) Law, 5721-1961, 15 LSI 123.

39 See Daniel Statman & Gideon Sapir, *Religious Marriage in a Liberal State*, 30 CARDOZO LAW REVIEW 2855 (2009).

relationships between spouses.<sup>40</sup> Hence there is need to create a situation that will enable every citizen contemplating marriage, regardless of her religion, to choose between a religious marriage track (incorporating a religious ceremony subject to religious law and under the jurisdiction of the relevant religious court) and a civil marriage track.<sup>41</sup>

The other area in which autonomy is granted to minority religious groups is education. The State of Israel confers a high degree of autonomy on the Jewish ultra-Orthodox educational system as part of the “recognized but not official” path, and it has also established an official state educational system for the benefit of religious Jews who are not ultra-Orthodox.<sup>42</sup> Similar options are not available to Christian or Muslim citizens who wish to provide a religious education for their children. In contrast to the official religious educational system for Jews, the state has not established a non-Jewish religious educational system that would provide religious education for Christians or for Muslims. The only option open to non-Jewish parents who wish to provide religious education for their children is to send them to private schools, and indeed many of them do so, but at significant expense.<sup>43</sup>

Granting autonomy to minority religions in matters such as personal status and education has two potential, opposing dangers: the state may intervene less than necessary in problematic religious practices or more than necessary. In Israel, the claim that the state does not intervene enough in the activities of these groups has been well formulated by Michael Karayanni. In his opinion, the state is less keen to intervene in the affairs of the religious institutions of the minorities than in the affairs of Jewish religious institutions. Karayanni believes that this hesitancy arises out of a fear that a change in the existing arrangements would be interpreted as an attempt to infringe on the collective identity of the Arab population.<sup>44</sup> As an example, Karayanni compares the decision of the Supreme Court in the *Shakdiel* case to its decision in the *Jabareen* case. In both instances, the religious establishment adopted a policy of discrimination against women; in the *Shakdiel* case, a Jewish local religious council refused to allow a woman named Leah Shakdiel to join its ranks solely because of her gender,<sup>45</sup> and in the *Jabareen* case, a Christian school refused to permit a Muslim female student, Mona Jabareen, to come to classes wearing a head covering and also refused to exempt her from the requirement to put on gym clothes for physical education classes.<sup>46</sup> In both instances, the pertinent issue was lack of tolerance for an individual’s religious outlook, which was deemed incompatible with the norms of the relevant religious institution. Yet, while

40 See Shachar Lifshitz, *The External Rights of Cohabiting Couples in Israel*, 37 ISRAEL LAW REVIEW 346 (2003–2004) (describing the current tendency in Israel to narrow the legal gap between common law couples and married couples).

41 For a description and evaluation of various models around the western world, see MARRIAGE AND DIVORCE IN A MULTICULTURAL CONTEXT (Joel A. Nichols ed. 2012).

42 See Asher Maoz, *Religious Education in Israel*, 83 UNIVERSITY OF DETROIT MERCY SCHOOL OF LAW REVIEW 679 (2005–2006) (describing the “chaos” which in the writer’s opinion characterizes the Israeli educational system, especially the religious educational system); Moshe Cohen Elyia and Yoav Hamer, *An Argument from Democracy against School Choice: A Critique of Zelman v. Simmons-Harris*, 49 LOYOLA LAW REVIEW 859–916 (2003) (discussing the ultra-Orthodox educational system in Israel as a basis for a critique of *Zelman*); Gila Stopler, *The Ultra-Orthodox Community in Israel and the Right to an Exclusively Religious Education*, in CONSTITUTIONAL SECULARISM IN AN AGE OF RELIGIOUS REVIVAL (Susanna Mancini, Michel Rosenfeld, and Hélène Ruiz-Fabri eds., 2014).

43 See Saban, *Collective Rights of the Arab-Palestinian Minority*, *supra* note 10, at 278–80.

44 Karayanni, *supra* note 1; see also Izhak Englard, *Law and Religion in Israel*, 35 AMERICAN JOURNAL OF COMPARATIVE LAW 185, 189 (1987).

45 See HCJ 153/87 *Shakdiel v. Minister for Religious Affairs* 42(2) IsrSC 221 [1988] [Hebrew].

46 See HCJ 4298/93 *Jabareen v. Minister of Education* 48(5) IsrSC 199 [1994] [Hebrew].

in the *Shakdiel* case, the court accepted the petition and compelled the Yeruham Local Religious Council to accept Leah Shakdiel as a member of the council, in the *Jabareen* case it rejected the petition by maintaining that, despite the ostensible harm to freedom of conscience and freedom of religion, the decision of the Saint Joseph's Christian School was within the bounds of reasonableness. The critical difference between the two instances derives from the fact that while the Yeruham Local Religious Council is considered a public body subject to administrative law, the Saint Joseph's Christian School is "a private school belonging to a recognized religion that enjoys educational autonomy."<sup>47</sup> But in Karayanni's opinion, this is precisely where the problem lies, because, on account of the Jewish hegemony in Israel, the Jewish religious institutions are official bodies with the status of public institutions, while in the Arab sector most of the religious institutions are private. As a result of this situation, the courts tend to intervene less in order to protect Muslims and Christians, whose rights have been violated by their religious institutions, than they do to protect Jews whose rights have been similarly violated by Jewish religious institutions.<sup>48</sup>

This is an important insight, but the picture is somewhat more complex. First, not all Jewish religious institutions are public nor are all Arab institutions private. Like the rabbinical courts, the non-Jewish religious courts are subject to the provisions of Administrative Law, and the Supreme Court has seen fit to intervene not only in matters concerning the rabbinical courts but also in matters pertaining to the non-Jewish religious courts. Second, and more importantly, what should have been the correct decision in the *Jabareen* case is less clear than Karayanni assumes. Because of the history of long-standing discrimination suffered by the Arab citizens of Israel and the fact that this group has lacked official recognition, the state should arguably adopt a policy of maximum nonintervention in the affairs of the non-Jewish religious communities, since such intervention is liable to be interpreted as an attempt to violate the collective identity of the Arab population.<sup>49</sup> We face here the inherent tension that characterizes any multicultural attitude, emanating from the clash between the desire, on one hand, to respect the customs of the minority culture, and the fear, on the other, that this attitude might harm those individuals who do not identify with these customs. This type of tension is intensified in the context of the special nature of Jewish-Arab relations. A further factor that hampers intervention by the Jewish majority with the aim of protecting individuals whose rights have been violated by the autonomy enjoyed by religious or educational institutions in the Arab sector is the fact that there are not many voices in the Arab sector that unequivocally support such involvement. For a number of reasons, Arab society, particularly its Muslim sector, does not encourage liberalization in personal law or in other legal fields, one of these reasons being the argument that "the call . . . for changing the status quo would endanger the national unity of the Arab minority and weaken its struggle on a national level."<sup>50</sup> This situation diminishes the motivation of the Jewish majority to become involved in the affairs of the minority religions.

In any event, Karayanni is right to argue that the state must make sure that if it refrains from intervening in non-liberal practices in the Arab sector, such non-intervention does not follow from the thought that since the State of Israel is a Jewish state, its prime responsibility is toward

47 *Id.* at 204 (Barak, J.).

48 Karayanni, *supra* note 1, at 15; Karayanni, *The Separate Nature of the Religious Accommodations for the Palestinian-Arab Minority in Israel*, 5 NORTHWESTERN UNIVERSITY JOURNAL OF INTERNATIONAL HUMAN RIGHTS 41 (2006–2007).

49 Englard, *supra* note 44.

50 Karayanni, *supra* note 1, at 1.

its Jewish citizens while with regard to the non-Jews, it should merely allow them to conduct their affairs without interference.

As noted, the other danger in establishing religion is too much state intervention in religious affairs. Examples in the Israeli context include the appointment of the *Waqf* Trustee Committees in various locations without consulting the Muslim community,<sup>51</sup> and also the financing of Muslim officials, the *imams*<sup>52</sup> and the *qadis*, by the state.<sup>53</sup> Such appointments are inconsistent with the declared aim of applying the *millet* system in Israel and with the desire to grant autonomy to members of religious minorities in the conduct of their religious affairs.

We agree that the current supervisory measures are too strict, especially the involvement of the General Security Service in the appointment of minority group religious functionaries. Nevertheless, we feel that supervision should not be eliminated completely for fear that nationalist and fundamentalist elements might utilize the support granted by the state as an instrument for incitement and violence.<sup>54</sup> However, it is important that this type of supervision be implemented to the same degree in appointments of Jewish clergy. In any event, such supervision, whether of Jewish or non-Jewish appointees, should be undertaken as cautiously and as minimally as possible, because this type of intervention not only constitutes a violation of the right to freedom of occupation and an infringement of the autonomy of the religious groups, but it might also encourage the government to use these supervisory mechanisms to grant unjust preference to Jews over Arabs.

## SUMMARY

We have shown that distributive justice demands that the State of Israel finance the religious needs of the non-Jewish groups that live in Israel to the same degree (according to their relative size) as it finances the religious needs of the Jewish majority. Unfortunately this is not the case, and the non-Jewish religions in Israel suffer from ongoing discrimination in allotments by the state for their religious needs. Therefore, a policy of affirmative action towards these religions is required.

We also found that the autonomy granted to the minority religious communities in the area of personal status creates problems that are similar to those that have ensued from the monopoly that the Rabbinate exercises in matters of personal status vis-à-vis the Jewish community. The proposed solution for the non-Jewish groups is the same as that which should be implemented for the Jewish

51 See para. 29(b) of the Absentees' Property Law, 5710-1950, 4 LSI 68 (1949-1950). It is also claimed that the state refuses to reveal to the members of the Muslim community how exactly the properties of the Waqf are managed and where the income from these properties is transferred. See AdminC (TA) 1201-07 Jaffa Association for Human Right v. Custodian of Absentees' Properties 10(2) Tak-Mech 16796 (2010) [Hebrew].

52 The imams in the mosques are chosen by a tender conducted by the Ministry of the Interior, followed by examinations. Thereafter they are interviewed by a Ministry of the Interior committee. In many instances, the General Security Service investigates the candidates' backgrounds. For a description of the selection process for imams, see CA 4695-05-11 Ahmed Abu Ajwa v. State of Israel 11(4) Tak-Ar 896 (2011) [Hebrew].

53 The Qadis (Moslem Religious Judges) Law, 5721-1961, 15 LSI 123 (1960-1961) instituted an Appointments Committee authorized to propose to the President of the State of Israel appropriate candidates to serve as qadis. The decision as to whether a candidate's qualifications meet the criteria for the office and whether he is in fact a suitable candidate is entirely in hands of the Appointments Committee, and the scope of judicial review over its decisions is very limited. See HCJ 7193/97 Abed v. Minister for Religious Affairs and the Chairman of the Appointments Committee for Kadis 52(5) IsrSC 365, 379-80 [1998] [Hebrew].

54 See, for example, CrimC (Nazareth Magistrates Court) 12629-11-10 State of Israel v. Abu Salim (Detainee) 12(3) Tak-Shel 40202, in which an imam from Nazareth named Abu-Salim was convicted of inciting violence and terror and giving support to a terrorist organization.

majority, that is, the institution of a civil track for marriage and divorce that should be available alongside the religious track.

In the area of education, we maintain that multicultural considerations, as well as respect for the right of parents to educate their children according to their own beliefs, strongly favor the establishment of state schools that would serve the various non-Jewish religious communities and would provide religious education for the pupils consonant with the wishes of the parents.

Finally, it seems that the state, including the courts, has a tendency to intervene less in problematic practices of the non-Jewish religious communities than in those of the Jewish communities. This tendency is not necessarily inappropriate, as long as it is based on true respect for the minority communities or derives from the fear that state intervention in their affairs would intensify their sense of exclusion and marginality in relation to the Jewish hegemony. We have to be aware, however, that such non-intervention may derive from a refusal by the state to regard the Arab population as equal citizens for whom the state is fully responsible.