

## Constitutionalism, Law and Religion in Israel a State's Multiple Identities

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### Abstract

In the first chapter the historical relationship of Judaism and Zionism was discussed, while the second discusses the constitutional conflict between Jewish and the democratic character of the State of Israel. The third chapter analyzes the millet system of religious laws (inherited from the Ottoman Empire) for both Jews, as the religious majority, and for different minorities. The main question is, whether or not this pluralist legal system can be considered as liberal, providing equal rights, and what other alternatives are feasible in Israel today. The more general constitutional question behind the legal one is, whether or not the Jewish and the democratic character of the State of Israel based on Zionism can be consolidated.

**Keywords:** Judaism; Zionism; Jewishness of the state of Israel

### Introduction

This paper is planned to be part of a larger project in progress [1]. The larger project deals with the practice of religious freedom in countries representing distinct constitutional models of state-church relations from both a normative/theoretical and also an empirical perspective. The normative part of the project will examine the characteristics of liberal versus illiberal constitutionalism, with a special focus on different models of state-religion relationships, while the empirical part will compare different national constitutional regulations on religious rights to identify how much religious freedom is provided in the different countries belonging to distinct models of state-church relationship. To highlight the theoretical challenges through concrete cases three countries: Egypt (a country that between 2011 and 2013 started to build up a democratic system with and illiberal theocratic constitutionalism); Hungary (which became a liberal democracy after 1989-90, but since 2010 has been backsliding into an illiberal constitutional system, while still having a liberal separationist approach in its constitution); and Israel (a liberal democracy without a constitution, with a very special accommodations model). In the cases presented it will be clear that the political aspirations for more illiberal constitutionalism appear to be the decisive element in finding similarly restrictive measures for freedom of religion. The project will conclude that the different constitutional models of state-religion relationships alone do not indicate the very status of religious rights in a polity.

In this paper the question of how the State of Israel deals with legal pluralism of different religious groups regarding status rights was addressed. Law and religion are two competing cultural systems that constitute individual and collective identities, as well as social interaction [2]. In the history of Israel, a religiously as well as ethnically deeply divided society, various individual and collective religious and national identities have developed. These issues are reflected in the constitutional regulations, as well as in the different legal systems of the country, existing parallel to each other [3].

The normative starting point of Judaism has been a collective conception of subjectivity, in opposition to Western Christianity's emphasis on individual choice and belief. The Jewish Enlightenment (Haskalah) of the last two decades of the 18<sup>th</sup> century and in the 19<sup>th</sup> century encouraged adoption of secular European culture, and has started a 'Kulturkampf' between secular and religious Jews. Haskalah challenged the rabbinical leadership, opposed the limitation of Judaism to the dimensions of Halakhic religion, and aspired to improve the

lives of Jews by striving for their integration into Western culture [4]. Zionism, as a national movement of the Jews, claimed that Jews represent a common and single people, and that the only way to establish a nation, which could live freely as Jews was to dwell in a Jewish state. Contrary to the European and Jewish proponents of emancipation in the 19<sup>th</sup> century, who treated their case as a religious issue, to request freedom of religion for a religious minority, Zionism was a new, national approach of the Jewish question. Besides responding to the distressing condition of the Jewish existence in Eastern and Central Europe Zionists also reacted to this 'schism' with divided approaches: Ahad Ha-Am aimed at transforming Jewish religion into a national culture; liberal Zionists, like Theodor Herzl and Ze'ev (Vladimir) Jabotinsky opted for the European culture; religious Zionists preferred a Halakhic approach, and Micha Yosef Berdyczewski a Hebrew cultural approach. Parallel with this development, the legal system during the British Mandate (1918-1948) underwent an intensive process of Anglicization and liberalization due to the extensive borrowing from English law.

The establishment of the State of Israel as a nation-state in 1948 required the revision and renewal of Judaism generally and of Jewish legal and moral discourse (Halakha) in particular [5]. Judaism in the late 19<sup>th</sup> century, when Zionism was born, was a religion in exile, and an insistence on waiting for the Messiah. Hence a yearning for return to the long-lost homeland, as well as the rabbinic ban on 'forcing the end' support the political culture of passivity played an important role in Judaism. And since Zionism's centrally important goal was negation of the exile and passivity, Zionists were hostile to Judaism, and they did not accept rabbinical authority [6]. This overwhelmingly secular character of the Zionist project, which never denied however that Jews became a nation through their religion, was also the reason, why Judaism has never been proclaimed the official religion of the state,

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**Received** January 04, 2016; **Accepted** January 20, 2016; **Published** January 27, 2016

**Citation:** Halmi G (2016) Constitutionalism, Law and Religion in Israel a State's Multiple Identities. J Civil Legal Sci 5: 169. doi:10.4172/2169-0170.1000169

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and Jewish law has never been proclaimed the applicable legal system, except in certain matters of the personal status of Jews. Herzl made it clear in many of his writings that the Jewish state won't be a theocracy, even though church and state won't be separated institutionally from each other either [7]. Religious freedom and pluralism is reflected in the 1948 Declaration on the "Establishment of a Jewish State in Eretz-Israel, to be known as the State of Israel": "[The State] will guarantee freedom of religion, conscience, language, education and culture; it will safeguard the Holy Places of all religions." These provisions are provided by the legislative text enacted in 1922 at the time of the British Mandate, which is still in force in the State of Israel: „full liberty of conscience, and the free exercise of their forms of worship subject only to the maintenance of public order and morals” for „all persons in Palestine [8]”.

Since later the two Basic Laws with quasi constitutional status failed to explicitly mention freedom of religion, the Israeli Supreme Court read freedom of religion into the term 'dignity' which is protected by Basic Law: Human Dignity and Liberty [9]. Although the exact content of freedom of religion is unclear, most agree that it has a negative and a positive aspect: freedom of religion (a version of the free exercise clause), and freedom from religion (a version of the disestablishment clause, without having a general prohibition on establishing religion) [10]. In the case *Shavit v. the Chevra Kadisha (Burial Society) of Rishon Le Zion*, the Court overruled the decision of a local rabbi in charge of the cemetery. He refused a family request to have the deceased's name inscribed on the tombstone in both Hebrew and Latin characters, Chief Justice Aharon Barak argued: "...the value (and liberty) of freedom of religion...is in my view, simply an aspect of Human Dignity...to my mind, freedom from religion equally constitutes an aspect of Human Dignity...it is not possible to conclude that in a clash between freedom of religion and freedom from religion, one or the other always has the upper hand [11].”

With the establishment of a new Jewish State secular modern nationalism with Western liberal values gained precedence over traditional religion in Judaism. Ben-Gurion, Israel's first prime minister, distanced himself from the theological underpinnings of the Jewish tradition, and saw Zionism as giving birth to a newer and improved Judaism. This Judaism was cultural and not religious, modern and not traditional, and it was built upon a secularized return to the Bible and rejection of the rabbinic tradition. As Ben-Gurion himself put it: "I am not religious, nor were the majority of the early builders of modern Israel were believers. Yet their passion for this land stemmed from the Book of Books... though I reject theology, the single most important book in my life is the Bible [12].” When Ben-Gurion agreed to allow the religious establishment in mandate Palestine to continue to have jurisdiction over matters of personal law (including marriage, burial, and conversion) he did so in order to enhance the legitimacy of the Jewish nation-state in the eyes of its Jewish citizens and of diaspora Jews, and also to preserve Jewish unity. For this he needed the support of Orthodox religious factions, mainly that of the National Religious Party [13]. In making what is known as the 'status quo' agreement, he assumed that Jewish religiosity would dwindle after the founding of the state [14]. In the long run he was an advocate of the separation of state and religion, and that, in the meanwhile, the state would be able to control religion.

Indeed, the 1940s and 1950s were seen by many as a transition from Hebrew to Jewish culture, and religiosity was seen as an anachronistic remnant. In the beginning of this period the dominant labor movement could be characterized as close to Socialism and collective values, over

time the party has changed, favoring a neoliberal belief in capitalism and endorsing individualism [15]. Religion ceased to be the primary measure of Jewish identity; as religious separatism and practice began retreat, a secular version of Zionism was actively promoted, and now, seculars have been ruling the country for decades. In addition, antireligious sentiment had become widespread in left-leaning Israeli circles of the 1960s [16].

At the same time with the 1977 election victory of the Likud a radical change was occurring in the collective identity of the State. Michael Walzer calls this development the 'paradox' of secular liberation movements being taken over by religious forces [6]. The crisis of Jewish secularity, modernity and liberalism of the previous three decades caused the rise of religious fundamentalism within religious Zionist groups, but especially within ultra-Orthodoxy. Religious Zionists do not claim that the secular Zionists are wrong to see Israel as a Jewish State. They are in agreement that the establishment of a Jewish State created a new and different reality for Jews and Judaism. Conversely, since for the ultra-Orthodox Jews the notion that Israel is a Jewish State violates the basic religious tenets of the Jewish tradition, they reject the claim that Israel can be a Jewish state at all. While the religious Zionists treated religion as the exclusive source of normative authority, the Ashkenazi ultra-Orthodox group stood up against both modernism and Zionism, the Sephardic Shas party pursued the return to Judaism and introducing a Halakhic theocratic state, and the National Religious Party stated that one of the party's goal is "to promote original legislation, based on Torah law and Jewish tradition [17]”.

During these radical changes in party politics, the Supreme Court of the country started a very activist jurisprudence in order to defend the secular liberal values of the pre-1977 period. Due to this activism of the Court, especially in its capacity as High Court of Israel dealing with citizens' petitions without concrete personal interest against administrative authorities, Jewish law has been little felt in Israeli secular liberal law.

The Foundations of the Law Act, 1980 was enacted in order to disconnect the reliance upon English common law in cases of lacuna within the Israeli legislation. It was instrumental for the jurisprudence of the court. According to the act: "Where the court, faced with a legal question requiring decision, finds no answer to it in statutory law or case law or by analogy, it shall decide the issue in light of principles of freedom, justice, equity and peace of the Jewish heritage [18].” The purpose of this law, as Justice Elon wrote in the case of *Jereczewski v. Prime Minister*, is "cultural and nationalistic. Its aims are to create a link between the law of the Jewish State and the legal heritage of the Jewish people, throughout its generations and diasporas, and to implement the principles of justice, equity, freedom and peace that Jews have fostered throughout the generations and that have been expressed in the rich literature of the Jewish heritage in every generation [19].”

Even the most symbolic expression of the state's new identity, the two Basic Laws of 1992 on Human Dignity and Liberty and on Freedom of Occupation respectively declaring the State of Israel as a 'Jewish and democratic state', has got alternative interpretations. Courts and scholars are divided over whether the term 'Jewish' should be read as referring to Judaism as a religion, to Jewish nationality, or to Jewish morality. Although the majority of views are that this 'constitutional' provision does not mandate the state to become a theocracy, because it is certainly excluded by the democratic character, but rather mandates to 'integrate' or 'harmonize' the two poles. This phrase leaves ample room for competing interpretations [20].

Aharon Barak, the Court's Chief Justice for twelve years, and the person most closely identified with the Court's liberal jurisprudence proposed two concepts as defining the 'Jewish state': a) a 'national concept' of the State of Israel as a 'national home to the Jewish people', and b) as values derived from the Halakha (which in Barak's interpretation intends to prevent the direct application of the Halakha as part of Israeli law). In other words, Barak suggested that a national, secular concept, should dominate a strictly religious one. In opposition to Barak's approach, Justice Elon included Jewish religion in the term 'Jewish', and argued that following the enactment of the Basic Laws, applying Jewish law became a legal duty incumbent on every judge in the country [21]. Elon also claimed that, since the term 'Jewish state' is mentioned first in the phrase, this is superior to that of developing the country's law as democratic law [22]. In Barak's view the 'Jewish state' and 'democratic state' concept should be approached on equal terms at peace with each other without raising any contradictions: "An appropriate analysis does not have to intensify these contradictions. On the contrary, in a purposeful analysis, based on constitutional unity and normativity, harmony, aspires to find that which is unifying and common, while preventing contradictions and reducing points of friction. We must strive to find the common denominator and synthesis between the values of Israel as a Jewish state and the values of Israel as a democratic state [23]." Barak also emphasizes the fact that most of the population of Israel is secular and that some of its citizens are not Jewish. Regarding the democratic character of the state Barak indicates that it establishes provisions for both majority rule and the preservation of human rights: "The values of the state of Israel are the same values that are being reflected on a given time the premise of modern democracy. This democracy is based mainly on two foundations: the first is the government of the people. A democratic regime is one where the people determine their destiny. The people choose their representatives and the latter determine the result on a majority vote. The second foundation is human rights. A democratic regime is one that holds and develops human rights. Only the combination of both tiers can lead to a true democracy [24]." Once one of these tiers is removed from the equation, it is analogous to losing its essence [25].

But besides the interpretations of Barak and Elon, emphasizing the national, Zionist character and the Halakha-values on the one hand, and Judaism based on the Halakhic commandments on the other, there are other possible interpretations of the 'Jewish state' concept. One of them excludes the Arab, the other the mostly overlapping Muslim, part of the population. In other words, the 'Jewishness' of the State means that while the Jewish people are entitled to use the state as a means of exercising their right to national self-determination, the Arabs are entitled to their rights on an individual basis only, i.e., as citizens of the state, but not in any way as a collective entity. This is generally true today, even though the Arab citizens currently enjoy some rights that are of collective nature: a) Under Article 82 of the Palestine Order-in-Council, 1922, which is part of Israeli law, Arabic is an 'official language', b) the Arabs run a separate educational system, c) Israel preserves the millet system, which allows its Arab citizens (as well as its Jewish citizens) autonomy in the sphere of family law, which means that under Israeli law it is religious law that governs the family sphere, and religious courts have jurisdiction [26], d) in certain areas there exist an affirmative action doctrine in favor of Arab citizens, e) under Israeli law the Arabs are entitled to maintain their religious sabbaticals and holidays. But more importantly, Israeli law prohibits Israel's Arab citizens from taking action aimed at changing Israel's current identity as the Jewish people's nation-state. For instance Section 7a(a)(1) of

the Basic Law provides that no party will be allowed to participate in elections to the Knesset if its platform or actions amount to the 'denial of Israel's existence as a Jewish and democratic state'. Also Section 5 of the Parties Law of 1992 provides that no party will be registered if its goals and actions amount to the 'denial of Israel's existence as a Jewish and democratic state'. Section 134(c) of the Knesset Bylaws provides that the Knesset speaker will not approve the submission of any draft legislation, which 'denies the existence of the State of Israel as the Jewish people's state'.

This concept of limited collective rights for Palestinian Arabs is based on Jabotinsky's policy regarding the Arab question: to erect an 'iron wall' of Jewish military force. For the leader of Revisionist Zionism the iron wall was a means to the end of breaking Arab resistance after 1936 to help the onward march of Zionism. Once Arab resistance had been broken there would be time to offer the Palestinians civil and certain collective rights. This was the very reason that Albert Einstein in the early days, before Israel existed, was opposed to the idea of the Jewish state. He thought that "the first and most important necessity is the creation of a modus vivendi with the Arab people". After the State of Israel was established, Einstein gave his full support, but he said that a peaceful and permanent presence of Jews in Palestine could only be possible if they worked side by side with Arabs under the conditions of social and political equality [27]. Actually there were some moments of hopes for this equality. David Ben-Gurion speaking in late 1947, after the United Nation's vote for partition, to a meeting of Mapai said the followings: "In our state there will be non-Jews as well, and all of them will be equal citizens... we are obliged to do... full and real equality, de jure and de facto, of all the state's citizens, gradual equalization of the economic, social, and cultural standards of living of the Arab community with the Jewish community, recognition of the Arab language as the language of the Arab citizens in the administration, courts of justice, and above all, in schools; municipal autonomy in villages and cities, and so on [28]." But later, in a private conversation with Arab intellectual, Ibrahim Shabath he also emphasized that "you must know that Israel is the country of the Jews and only of the Jews. Every Arab who lives here has the same rights as any minority citizen in any country of the world, but he must admit the fact that he lives in a Jewish country [29]."

In other words, as Avi Shlaim convincingly proves in his book, it was the Labor Zionists, led by the same David Ben-Gurion, who gradually came around to Jabotinsky's point of view that Jewish military power was the key factor in the struggle for a state, none of the government over which Ben-Gurion presided lived up to the commitments he described [30], and have turned more than ever nationalistic [31]. Michael Walzer argues that the crucial reason for this was the invasion of the new state in 1948 by five Arab armies [6]. But as we also know that in April 1948 Israeli terrorist bands attacked the Arab village of Deir Yassin, which was not a military objective in the fighting, and killed most of its inhabitants, 240 men, women and children, and in July that same year the Israeli army attacked the Palestinian village of Lydda killing more than 200 residents, and deporting the survivors upon Ben-Gurion's instruction. Altogether 750,000 Palestinians were expelled from their homes, and several thousand of them were shot and killed when they tried to sneak back home [32]. This ethnic 'cleansing' was an integral part of the Zionist mission to create a state with the largest possible Jewish majority [33]. In a later book, Avi Shlaim calls the aftermath of the 1967 War when Israel occupied the West Bank, the Gaza Strip, the Sinai Peninsula and the Golan Heights, Zionism's transformation from a legitimate movement of national self-determination to an ideology tightly entwined with a colonial occupation, in which the equality Ben-

Gurion promised has never been realized [34].

## Constitutionalism and State-Religion Relationship

In trying to place Israel within the models of state-religion relationship in liberal democracies all around the world, we can use Ran Hirschl's book, in which he differentiates extant models of state and religion relations. He puts Israel into the category, where the general law is secular, but a degree of jurisdictional autonomy is granted to religious communities, primarily in matters of personal status and education, religious jurisdictional enclaves [35]. Israel's government involvement in religion is low for the Middle East/North Africa (MENA) region, but is relatively high in world context [36]. As Hirschl argues, the state in such setting has embedded interest in preserving or promoting a viable 'state religion' to the extent that this religion provides meaning to the national metanarratives that constitutes the nation as such.

The State of Israel was originally a nationalist state for the Jewish people. However, there are authors who claim that the Israeli state sponsors a particular communitarianism founded on a particular kind of vision for Jewish statehood. That statehood's mission would promote Jewish culture embodied in the norms governing symbols and language, the Law of Return benefitting diaspora Jews, vesting some state functions in religious courts, and the absence of civil marriage. While the Israeli polity protects individual rights such as religious freedom, it also subordinates those rights to Jewish unity. This legitimates restrictions on Anti-Jewish speech or action, and therefore, communitarian priorities may 'suppress the liberal inclinations of its citizens [37]'. The original 1950 Law of Return, stated that "Every Jew has the right to come to this country as an *oleh*" without defining who counted as a Jew. Ben-Gurion's government maintained that Jewish status was a matter of self-determination. But after more and more immigrants to Israel (especially from Poland and Russia) were deemed not Jewish by birth, the Law of return was amended in 1970 to define who was a Jew: "anyone born of a Jewish mother or who converted" [38]. Currently there are also demands to make citizenship for the Arab minority less inclusive, and even to amend the Law of Return so as to give Orthodox rabbis the authority to determine whom the state of Israel recognizes as a Jew.

In addition to the nationalistic, communitarian, and therefore illiberal character of the state there were growing demands for it to be a religious state as well. This is especially true over the last three decades, when there has been a continuous decline in the political power and representation of Israel's historically hegemonic and largely secular Ashkenazi constituencies. At the same time, political forces representing Orthodox religious Mizrahi residents have grown stronger. As Hanna Lerner argues the paradigm of liberal constitutionalism is not a relevant framework for such religiously divided societies, such as Israel. She claims that under conditions of disagreement over the state's religious character, the drafters of constitutional design in different countries have adopted either a permissive or a restrictive constitutional approach to address their intense internal religious conflicts. The permissive constitutional approach of Israel uses strategies of constitutional ambiguity, ambivalence, and vagueness to allow the political system greater flexibility in future decision-making regarding controversial religious issues. By contrast, a restrictive constitutional approach, such as the one chosen in Turkey, uses specific constitutional constraints, designed to limit the range of possibilities available to future decision makers, when addressing religion-state relations. Permissive constitutions, she argues, for the most part allowed for greater freedom

of religion, especially guaranteeing the survival of minority religious groups, than did restrictive constitutions. By contrast, freedom from religion, namely the right of individuals to opt out of a religious affiliation, is limited under permissive constitutional arrangements, such as Israel, compared with the restrictive constitutions of other states [39]. Religious groups enjoy complete autonomy under Israeli law, while in Turkey respect for religious expression in the public sphere is limited. For example, Muslim women are prohibited from wearing headscarves in public institutions, including universities and public schools. By contrast, in Israel, religious marriage and divorce are the only options for all citizens, including nonbelievers and atheists. This means that the right to marry is violated for hundreds of thousands of citizens, including interreligious couples or the four percent of the population who are not affiliated with any religion.

The Jewish state came into being on 14 May, by way of the 1948 Declaration of Independence. It is mainly a political document, which tried to distinguish between legislative and constitutive powers by creating a Provisional State Council and a Constituent Assembly. There were and are still several arguments against the enactment of a written Constitution [40]. One of the fiercest opponents of the project of drafting a constitution was David Ben-Gurion, Israel's first Prime Minister. One of the major obstructions in adopting a Constitution comes from orthodox and secularist circles taking a decisive position on the unresolved questions of the relationship between religion and state, and the national and cultural or religious nature of the declared Jewishness of the state. In other words, the main reason of uncertainty was the profound ideological rift in Israeli society between the secular and the religious vision of the state. But there were other reasons as well: Ben-Gurion wanted the least restrictions on his power; most of Jews were abroad and it seemed unfair to entrench a constitution by a minority; the British experience was also an argument against adopting a constitution, and religious people objected because for them there was already a constitution—the Bible. The American founders of the American constitution needed a written document to affirm their existence as a nation, while founders of the new State of Israel were still struggling over the very definition of nationhood [41]. In this context some political-legal issues have arisen, such as the question 'who is a Jew?', which is particularly relevant in matters of marriage and divorce. Further problems have arisen under the Law of Return and the rights to automatic citizenship for Jewish immigrants, which does not permit Arabs to reunite with their families who live in the West Bank, the Gaza Strip or elsewhere. These problems are also related to the fundamental characteristic of the Jewish law that there is no distinction between law and equity, between legal and ethical norms [42]. The position of the religious representatives was that a Jewish state should have Jewish laws. For instance, the Orthodox Agudat Israel Party demanded that the legal system be based on the Halackha (Jewish religious law), and opposed the constitution with the following argument: „There is no place in Israel for any constitution created by man. If it contradicts the Torah – it is inadmissible, and if it is concurrent with the Torah – it is redundant.” Ben-Gurion, and his governing Labor (Mapai) Party vehemently objected to the aspiration for establishing a 'theocratic state', holding that the success of the Zionist project required fostering a new Jewish identity – Israeli. Conversely, orthodox representatives feared that a constitution would entrench secular principles, leading to a Kulturkampf.

Since both the secular and the religious parties opposed the constitution for different reasons, and despite the large majority of the secular camp (only sixteen out of the 120 members represented the religious parties), in June 1950 the Knesset decided not to draft a

constitution in a single document. Following a heated debate on the religious and secular vision of Israel as a Jewish state, a compromised resolution was passed, named after its sponsor, Haim Harrari, the chair of the Knesset Committee: Basic Laws, as chapters together, will form the state constitution [43].

In the absence of a written constitution as a single document, the competing religious and secular claims have been dealt with through a series of informal convocational arrangements [44], known as 'the religious status quo' which over time became entrenched in the political landscape. These arrangements, as a compromise between religious and secular leaders, still effectively determine the non-separation between religion and state in certain areas. Various aspects were formally defined through legislation: the recognition of the Sabbath as the day of rest [45], the prohibition of public transportation on the Sabbath [46], traffic and road control during the Sabbath [47], the flag and emblems expressing Jewish tradition, kosher food in state institutions, and in the army, and most importantly, the institutionalization of a pluralist personal law system (following the millet system): an independent Orthodox educational system with the autonomy for religious schools, the transfer of state money to religious schools (Jewish, Christian, and Muslim), exemptions from military service for ultra-Orthodox (Haredi) yeshiva students [48] and religious women, and state appointed and funded clergy and religious services. But the most infamous example of Israeli enmeshing of religion and state is the exclusive Orthodox jurisdiction over Jewish marriage and divorce, in other words the lack of civil marriage and divorce. In contrast to the relative ease with which the first nine Basic Laws that were passed after 1958, mainly dealing with institutional considerations, and were (in essence the legal formalization of the existing structure of government), the religious parties objected to the draft of the Basic Law on Human and Civil Rights, proposed in 1989, because they claimed it would undermine the religious status quo. The religious laws are one of the reasons why the Basic Law on Human Dignity contains an explicit provision (Article 10), which protects the validity of laws which were enacted before it coming into force. Indeed, the new Basic Laws of the early 1990s, which changed the previous constitutional culture of legislative sovereignty following the British constitutional tradition [49], made it possible to challenge in court some basic tenets of the status quo expressed in legislation. The activist stand of the Supreme Court of Israel made the status quo in many religious-related issues impossible, but the growing involvement of the Supreme Court in status-quo related issues should be assessed within the context of the intensifying activities of the Likud-led legislature and government in shifting the balance of the status quo in responding to demands of the religious parties [50-58]. For instance, an amendment to the State Education Law that secures public funding for religious schools, even if they do not meet the standard of basic curriculum as stated by the original State Education Law of 1953. This amendment of 2007 created a new phenomenon of autonomous education not meeting state standards being subsidized by the government. This happened despite the fact that even the original status quo document from 1947 stated, with regards to the independence of the religious Ultra-Orthodox education, that: "The state, of course, will determine the minimum of compulsory studies... history, science, etc., and will supervise the fulfilment of this minimum [50]."

The Supreme Court favored secular positions and Western liberal values, while some circles that are totally opposed to a Constitution (such as the Haredi parties, together with some advocates of a Constitution [51] support a separate Constitutional Court [20]. The highly activist doctrine of the Israeli Supreme Court adopted in the 1980s was a consequence of the decline of the political, social

and cultural hegemony of the Labor movement and the renewal of religious fundamentalism in the second half of the 1970s, and the Likud victory in the 1997 elections. The group of former governing forces – identified with Western, secular liberal values – lost much power in Israeli politics and culture and found itself facing an alternative cultural option for the country, premised on the Halakha and traditional Jewish heritage. These liberals shifted much of their political action to the Supreme Court, which collaborated with them. Justice Aharon Barak, the Court's Chief Justice for twelve years, and the person most closely identified with the Court's activism, represented the view that any court of law should have competence to legally review any legal norm that regulated human conducts. Barak, who called the enactment of the two Basic Laws on human rights as a 'constitutional revolution', provided the following interpretation of section 2 of the Basic Law on Freedom of Occupation on 'Israel as Jewish and democratic state': „The meaning of the Jewish nature of the state is not in the religious-Halachic sense, and hence the values of the State of Israel as a Jewish State should not be identified with the Jewish Law" [52]. This led to mass demonstrations in Israel against Barak and his Court. In a decision from February 2002 the Court, for the first time, granted formal recognition to Reform and Conservative conversions performed in Israel, which reignited the debate over the issue of 'Who Is a Jew?' [53] Critics consider this as a sort of legal fundamentalism and over-legalization, which has made the High Court of Justice in the eyes of religious groups a partisan institution [54].

The debate over the meaning and interpretation of what many consider a self-contradictory definition continues to divide Israeli society. In recent years the Israeli Palestinian minority demanded the transformation of the state from its definition as 'Jewish and democratic' to a 'liberal democratic' state in which the Palestinians would be recognized as a national minority. Until 1966 Israeli Arabs were under military rule, since the abolition of this they have enjoyed formal civic and political rights, but they were consistently excluded from Israeli nationhood, which had always been understood in terms of Jewish identity, and therefore their citizenship was always constrained. (The Law of Return grants only Jews the right to immigrate to Israel and settle there.) The Arab population is excluded from military service, which is obligatory for all Jewish citizens.

By contrast there are constant efforts by Jewish nationalists to propose a new Basic Law, which would define Israel as the nation-state of the Jewish people. In 2011 Avi Dichter, member of the Kadima party, together with another 39 Knesset members submitted such a bill. They did this in order to prevent Israel from becoming a binational state. The bill said that the right to self-determination would be unique to the Jewish people, that the Hebrew language would be considered the only official language, that the Hebrew calendar would become the official calendar of the state of Israel, and that Hebrew law would serve as an inspiration to Israeli legislators [55]. After Kadima chair women and Justice Minister Tzipi Livni publicly announced her opposition to the bill, Dichter withdrew the draft, and in its place proposed a more moderate one, which still defined Israel as the state of the Jewish nation, described Arabic as 'a language of the state' rather than an official language. Since the opposition Labor Party and members of the governing coalition came out against the draft, it has not passed a preliminary reading.

Then, in the Spring of 2014, two right-wing Knesset members submitted the newest version of the bill, which although has been stripped of some of its controversial clauses, still establishes Israel's status as 'the nation-state of the Jewish people', declares that the Jewish

people have the exclusive right to national self-determination, and calls the 'land of Israel' the historic homeland of Jewish nation and none other. This time Prime Minister Benjamin Netanyahu, following a Palestinian refusal in peace talks to recognize the status of Israel, endorsed the draft with the argument that the state of Israel as the nation state of the Jewish people is not sufficiently expressed in the basic laws. Justice Minister Livni has expressed her opposition, again, to 'any law that gives superiority' to the Jewish nature of the state over the country's democratic values. In the Fall of 2014 Prime Minister Netanyahu announced support for an even more extreme version of a Jewish Nation State bill sponsored by coalition whip Zeev Elkin (Likud). This was done to protest the lack of progress by a panel established by Netanyahu and Livni for the purpose of hammering out a compromise version of the bill. The new draft specifies that Jewish law is to be a source and 'inspiration' for new legislation and judicial rulings. The bill also states that holy places must be protected from „anything that could harm the freedom of access by religions to the places that are sacred to them or to their sentiments towards those places” (which could support claims that Jewish people should be allowed to pray on the Temple Mount). Justice Minister Tzipi Livni refused to bring the bill to vote in the Ministerial Committee for Legislation. She read a quote from Likud ideological forebear Ze'ev Jabotinsky to remind the Likud what he stood for: "I do not think that a state's constitution should include special articles explicitly ensuring the national character. A sign of a good constitution is if few such articles are found in it." As a response, Foreign Minister Avigdor Liberman said that „Jewish values come before democratic values if and when there is a clash between them." Another coalition partner of Likud, Economy Minister Naftali Bennett, warned with a potential break of the coalition, argued that if there is no law 'establishing Israel as a Jewish state, the High Court will try to apply the Law on Return to non-Jews and act like it there was never a law stating otherwise." As a result, on November 23rd the Cabinet of Israel approved the draft legislation with 14 votes to 6, and could now proceed to the Israeli parliament for a first reading. On December 2, 2014 Prime Minister Netanyahu fired Justice Minister Livni and Finance Minister Lapid, and called for new elections.

Critics argue that the proposal is not intended to reflect the status quo, but to alter it in a fundamental way curtailing the democratic character of the state and to reduce Israeli democracy to a 'democratic regime' [56]. The proposal does not promise full and equal rights to the minorities in Israel, as individuals and as collective, this is especially worrisome because the existing constitutional basis for the protection of individual and collective rights is weak, and some basic rights are not explicitly mentioned, including equality, freedom of expression, and freedom of religion.

As demonstrated, the State of Israel, self-defined either as Jewish and democratic or only as Jewish, does not treat all its citizens equally. This stems largely from the fact that religion is an inseparable part of its Jewish identity. The proposed changes would remove the sovereignty from the citizens, and shift it to all Jews, many of whom are not citizens of Israel (citizenship would become empty of meaning because it becomes exclusive to one ethnic group, and would give a privilege that is not part of the democratic way. In a seminal decision of the Israeli Supreme Court from 1970, regarding how to register children of a mother who was not Jewish, one of the justices, though in the minority, wrote: „Jewish nationalism cannot be detached from its religious foundations." Jewish identity seems to defeat 'Israeliness' as a collective identity, and Judaism appears more and more to serve as extremely strong 'social glue' in Israel today. The process in which there is a strengthening of religious elements in society is called

'religionization' [57]. That Jewish Israelis' changed attitudes toward religion is proved by public opinion surveys, which show, not only that religious groups are increasing in number, while the secular groups are shrinking, and the secular sector is no longer a majority, but a strong correlation between Israeli-Jewish self-definition along the religiosity continuum and the respondents' perception of the relative importance of Halakha compared to democratic principles [58]. 44 percent of them see a contradiction between them, which means that Israeli democracy is highly likely to be in the position of losing its foothold [59].

The political background behind this phenomena is certainly the decay of the political left and the rise of the nationalist right, which have created a comfortable setting in which religious power can flourish. This meant the collapse of secular, liberal Zionist hegemony, and a rise of an Orthodox Jewish approach. Another interpretation of the same development is that we are witnessing the birth of a new, religious form of Zionism. Certainly Zionism has moved a long way from the ideology of its 'founding fathers', and it has pressed territorial claims, religious exclusivity, and political extremism [60]. This clearly due in part to the failure of political leaders to reach a two-state territorial solution to the Israeli-Palestinian conflict. That failure has led to a post-territorial nationalism, basing itself in a collective Israeli identity firmly rooted in religion [61]. In other words, religion plays a legitimating role in efforts by the current political leadership of Israel, to keep the status quo of a one-state solution on the basis of one nation [62].

### Non-liberal Pluralist Legal System

Two additional developments in the legal system have taken place since the 1990s: a) religious Zionist jurists have established a system of arbitration tribunals aimed at resolving civil disputes according to the Halakha, in competition with the state's secular court system; and b) there have been calls for officially granting the Rabbinical Courts, which apply the Halakha, the power to serve as arbitrators in civil disputes [54]. These efforts were rejected by the decision of the High Court of Justice (HCJ) in the Sima Amir case, in May 2006. The majority of the HCJ decreed that the official (or 'State') rabbinical court must not litigate in areas that do not concern marriage and divorce, and therefore has no authority to engage in arbitration at all, and that whenever it engages in arbitration it oversteps its authority. This means that the Halakhic status of the official rabbinical court is greatly affected by its status under Israeli law [63].

In certain areas of the legal system there is no uniform law, but various judicial enclaves exist dealing with divisive issues: a) each religious group applies its own religious law of marriage and divorce; b) there is also no uniform law to govern the observance of the Jewish Sabbath and other religious holidays; c) the growing of pigs and the sale of pork is subject to different norms in different settlements [64]; and d) there are different regulations for religious and secular cemeteries. In some cases decentralization is an appropriate means to solve religious, cultural disagreements, but in others, like in the case of matrimonial laws, probably not when it prevents mixed marriages between Jews and non-Jews serves religiously and ethnically discriminative interests of the state [65]. When introducing the Rabbinical Courts Jurisdiction (Marriage and Divorce) Law in 1953 the Deputy Minister for Religious Affairs explained that one of the purposes of granting legal recognition exclusively to religious marriages was to exclude the possibility of mixed marriages that might result in the conversion of Jews to other faiths [66]. Similarly, when it became known that the Muslim Shari'a Courts in Israel were willing to marry Muslim men to Jewish women, the Ministry of Religious Affairs has instructed the Shari'a

Courts to refrain from conducting such marriages [67]. Non-religious Jews resent the exclusive authority of the religious institutions and consider it a case of religious coercion. Non-believers and members of an unrecognized religious group are disadvantaged in matters of personal status, since there are no lay officials authorized to celebrate and register marriages, there is no secular law on marriages, and civil courts have no jurisdiction in matters of marriage and divorce [68]. Gila Stopler argues that these restrictive Israeli rules of marriage and divorce serve two functions: a) the unity function unites the Jews of Israel under a unitary national identity, and b) the gatekeeping function demarcates the boundaries of the Jewish nation along religious lines [66]. This 'thick establishment' of the Jewish religion in Israel violates the freedom of conscience and belief of all those who do not wish to marry in Jewish Orthodox religious ceremony, including non-religious Jews and religious Jews following a different stream of Judaism, (for example Reform and Conservative Judaism). It also violates the rights to equal treatment of all non-Jews, who wish to marry Jews.

### Halakhic marriage and divorce law

As mentioned, marriage and divorce law in Israel is subject to the authority of religious courts and Halakhic law in a way that prevents many Israelis from exercising their right to marry and divorce. Since civil marriage and civil divorce do not exist, persons who desire to marry or divorce are obliged to do so in a religious ceremony supported by the prevailing state law, even if they hold no religious beliefs [69]. According to the legal situation only Orthodox rabbis of the local rabbinate of the Jewish couple's place(s) of residence or that of their wedding are allowed to conduct such ceremonies. This clearly violates religious pluralism even of the Jews of other denominations, such as the Conservative and Reform.

The control of Orthodox Judaism over marriages of Jews in Israel is also preventing marriages of other Jews a vast majority of those hundreds of thousands of immigrants of Jewish descent the state has brought from the former Soviet Union to Israel under the Israeli Law of Return for the explicit purpose of strengthening the Jewish majority in the country. Due to the discrepancy between the definition of a Jew under the Law of Return and the definition of a Jew under Orthodox religious law these marriages are prevented within the borders of Israel [70].

In October, 2013, the Knesset enacted an amendment to the Marriage and Divorce Registration Ordinance, which provided that the couple may register for marriage with any rabbi authorized to register marriage in Israel, "regardless of the [couple's] place of residence or the location of their marriage". Ori Aronson, whose description of the amendment I rely on here calls the new system as mimetic pluralism, a design of a public institution that respect, and reflects existing variations in belief systems, which as a bottom-up project of institutional design is thought of as a passive-responsive political strategy [71]. The formal justification for the amendment focused on the fact of young person's geographic mobility in contemporary Israel, which renders the requirement of local registration needlessly burdensome. In fact, representatives of secular constituents unable to muster the political force to enact a comprehensive civil marriage reform, instead recurrently opted for a second-best solution, having in mind that a local rabbinate might not be as strict as the one they might have been bound to under the previous place-of-residence-based option. As Aronson claims, a modern-Orthodox registrar might treat couples differently than his ultra-Orthodox counterpart, and a rabbi in an urban setting might have different understandings of family and community than a rabbi in a small town or rural context. In other

words the amendment allowed couples to 'shop' for a more hospitable rabbi-registrar from among those available in the existing distribution of local rabinates throughout Israel [72].

But despite this rather cosmetic change, especially those who are not permitted to marry under Halakha (such as couples of different religions; persons having no recognized religious affiliation; persons ineligible to marry, for instance a 'cohen' a member of the priestly class; and same-sex couples) are still facing serious challenges. These couples according to the Israeli legal system, have no 'official' possibility of marrying each other. Furthermore, the Halakhic laws (as well as the shari'a) are gender based and hierarchical [73]. The Jewish wedding ceremony places the man in the active role of endower and buyer, and the woman in the passive role of receiver and the one being bought [74]. When a married woman has sexual relations with a man other than her husband, Jewish law considers it a serious violation, which has grave economic consequences and a child born out of wedlock to a woman who is still married to another man carries the mark of a 'mamzer' (bastards). By contrast, Halakhic sanctions against a man, who set up a new family without being divorced, are much more moderate. His children out of wedlock are not considered 'mamzerim'. The grounds for divorce are not the same for men and women. While a woman's infidelity is considered absolute grounds for divorce, a man's infidelity is not generally recognized as grounds for divorce. The divorce law restricts the freedom of exit from the spousal relationship, particularly for the so-called 'chained' women, who fail to prove their husband's faults, and who also fail to obtain the husband's consent, the 'get' (also spelled as 'gett', agenot), and therefore cannot remarry and remain chained. Although the rabbinical courts have the authority to achieve a religious 'get', in practice they very rarely do that [75]. Conversely in some cases, the Halakha grants a man, whose wife has refused him a divorce, permission to marry another woman.

As a replacement for civil marriage and divorce, Israeli secular law has developed some secular alternatives; the two most important of them being living together without marriage, and civil marriage abroad [76]. The institution for couples who maintain a marriage-like relationship but are not considered married by law is called cohabitation. These couples must prove in detail that their way of life suits the requirements of the law. On the other hand the dissolution of a cohabitation relationship does not require an official process, which weakens the legal defense enjoyed by such a relationship. Hence this institution does not provide an adequate substitute for their inability to marry in a civil ceremony. According to recent case law the registration official must record as married the persons who were married in a civil marriage abroad, based on the marriage certificate presented by persons who cannot marry in Israel, such as same-sex partners, mixed couples. But since Israeli law has not given final and official recognition to the validity of civil marriage outside of Israel, despite its registration in the population registry, the option of a civil marriage abroad cannot be a satisfactory substitute to the civil marriage either. The Civil Union for Persons of no Religion Act passed by the Knesset in 2010 represents the third alternative to religious marriage, but this option enables only couples who do not belong to any recognized religion to establish a marital relationship, hence this law did not solve the problems of others who are prohibited from marrying under Jewish law, such as couples of different faith, same sex couples, women without the 'get' of their husband, or 'cohanim' [77].

Therefore in the last decade or so several proposals have been raised replacing the current exclusively religious marriage approach as an extreme one-track solution and establishing civil marriage and divorce for all who wish to marry [78].

One of the proposals is another one-track approach, namely an exclusively civil marriage uniform for the entire population [79]. This proposal did not intend to prohibit religious marriage, but the civil validity of it would be contingent upon its civil registration by the state, in other words, it would not have independent validity. Also, the marriage in this approach could be dissolved only in a civil procedure, according to civil rules, regardless of the manner in which the marriage was conducted. The proposal intends to end the state sponsorship for rabbinical courts.

Proposals had already been made in the mid-1990s to introduce civil marriage as a parallel track to religious marriage [80]. According to this proposal, it would be possible to choose a civil track in which marriage, adjudication, and divorce are entirely secular, but those choosing religious marriage would be subject to the existing Halakhic law and not allowed to seek a civil divorce.

A mixed system proposal, with the emphasis of the civil marriage track, separates marriage and divorce. Marriage would be civilian, but rabbis would also receive a license to perform civil marriages, and all civil marriages would be subject to divorce in a religious court [81]. In the spirit of the parallel, but not equal tracks model the Israel Institute for Democracy proposed a civil union bill, according to which religious marriage would remain the official marriage, and those who chose it would be subject to the religious laws of divorce. But it would also be possible to choose the option of civil marriage, which contrary to the current legal situation, would be open to anyone who cannot or does not want to enter into a religious marriage. Those choosing civil marriage would sign a declaration stating that the person is not considered to be married according to the Halakha, and therefore will be able to divorce following a civil procedure [82].

Several years after the proposal of the Israel Institute for Democracy, its author, Shahar Lifshitz suggested a slightly revised compromise solution, which also emphasizes the importance of Halakhic as official marriage. In other words this approach preserves the existing situation, in which state law recognizes exclusively religious marriage, but introduces a new legal institution, referred to as civil union open to all who wish to use it. The state registration of the civil union would grant couples all the legal rights and obligations that civil laws in Israel provide to married couples. But, according to the proposal, instead of the religious divorce laws a newly established civil procedure would be applied to civil union registrants under civil court supervision. Lifshitz argues that politically the civil union proposal has the greatest chances of being enacted in the current Israeli situation.

### **Palestinian-Arab millet system**

Accommodating religious minorities on a group level, even to the extent of granting them full autonomy over family law matters, is generally considered to be liberal and tolerant in nature. Moreover, the beneficiary of liberalism and toleration in this context is the religious group rather than the individual. The model example for this was the 'millet system' of the Ottoman Empire, maintained by the British, where Muslims, Christians and Jews were all recognized as self-governing units (or 'millets') within the Empire [83]. But while the Ottomans accepted the principle of tolerance, they did not accept the quite separate principle of individual freedom of conscience, not tolerating individual dissent within the constituent communities. Therefore this was a distinct, non-liberal kind of toleration of group rights, which rather unites than separates church and state [84].

Discussing Israel's Palestinian-Arab millet system, Michael

Karayanni argues that, especially once a state such as Israel takes on a certain collective religious identity, making the entire state apparatus biased in favor of the majority religion, a sense of justice calls for this bias to be balanced by conceding some authority to the religious minority. In his view the notion that the accommodation granted to a religious minority is a balancing act is essentially what makes it seem liberal and tolerant. Karayanni goes to say that if, in Western democracies, a liberal stance holds a default position against the accommodation of religious groups, unless there is sufficient justification suggesting otherwise, the default position of liberalism and toleration in a religiously identified state is exactly the opposite: it favors the accommodation of minority religions unless strong justifications suggest not doing so. Studying the judicial autonomy granted to the Palestinian-Arab religious communities in Israel, Karayanni concludes that it is far from being an act of toleration and liberalism [85]. The major reason that influenced Israel's policy of maintaining the Palestinian-Arab millets after 1948 was its quest to gain international legitimacy, but since then they created a natural barrier to inter-marriage, thereby helping preserve Jewish identity.

### **Conclusions**

Israel as a religiously deeply divided society in recent years turns to religion to justify its claim to statehood. In response to persistent delegitimation, from within and without, the current government seems to support non-secular Zionism's efforts to expand the role of religion in its political legitimation. This 'religionization' of Israeli Jewish society together with an ethnic division within the framework of a single territorial entity (due to the failure of the political leadership to reach a two-state territorial solution) leads to a Jewish nationalism, based in a collective identity rooted in religious foundations, which might well defeat 'Israeliness' as identity, as well the importance of democratic principles, including the rights of national and religious minorities [86]. The State of Israel from the beginning of its establishment embodied an equivocal mix of constitutive principles that cannot be resolved in favor of either liberal or illiberal elements [87], but the political aspirations of the Israeli government for more illiberal constitutionalism seems to be the decisive element to find similarly restrictive measures for freedom of religion.

As regards the relationship of religious and state law seen in the example of the use of Halakhic law and Palestinian-Arab millet system regulating marriage and divorce, a liberal demand to establish exclusively civil marriage would most probably not be accepted by the majority of public. Not only religious but also partly secular Jews and Arabs would deny this approach and opt for religious marriage and divorce even if civil marriage were available. It would be difficult to find an overlapping consensus [88] in the matter between the arrangement based on liberal considerations and those based on religious-national ones. In this situation the state has to act positively to provide citizens with the ability to realize their *autonomy* to marry and divorce, but the liberal state also must use its *authority*, if necessary via civil courts to help spouses who cannot perceive themselves as divorced and cannot remarry without a religious 'get' realize their right to marriage and divorce. This approach is consistent with the views of the vast liberal literature developed dealing with the boundaries of autonomy that the liberal state should grant to a non-liberal minority group operating within its realm [89]. The same approach has been chosen by the High Court of Justice in the 'Emanuel case' [90], where an ultra-Orthodox school upon the request of one group of the parents separated the Ashkenazi and the Sephardic students. The High Court of Justice, representing liberal culture, declared the action of the school

on behalf of the illiberal Ashkenazi religious group as segregation and discrimination on ethnic grounds, and ordered that the action be abolished [91].

A parallel civil and religious marriage and divorce track solution would enable and even legitimize marriage between Jews and non-Jews, and in addition to the traditional Jewish elements would support the Western-liberal cultural element of the State's identity, together with 'Israeliness' as a collective identity. The same applies to matters of the historical system of conversion, another part of personal law, which can also be maintained, not at the expense of but in conjunction with uniform civil systems of law [92]. In the case of the already mentioned new immigrants from the former Soviet Union the Special Conversion Courts, established by the state, but staffed by Orthodox Rabbis and following Orthodox practice, have been very slow in approving conversions and in particular have been rejecting many candidates for conversion on the basis of their alleged failure to commit to observing Jewish religious commandments. This strict interpretation of Orthodox Jewish religious rules was contrary to the official stance of the courts as published by the government at its website: a declaration of intent to observe Jewish religious commandments is sufficient. Because the Chief Rabbinate still uses restrictively control over the conversion process, and the current Netanyahu government decided to bury a recent initiative for conversion reforms, prominent rabbis formed an Alternative Conversion Court, which provides conversion to Judaism in a private ceremony.

The same is true about the question of how the mentioned Sabbath work restrictions should be construed, whether they should be perceived and enforced as a day of rest or as a day of leisure. The controversy surrounding this issue, marriage, the conversion, and other issues touched upon above present another microcosm of religious-secular tensions and quest for identity in Israeli society, and another product of a Kulturkampf [93].

Israel, with its traditional values, a strong sense of community, and national interest, cannot be deemed as a liberal state forged entirely in Western mold [94], but it also cannot return to the pre-modern political conditions. Rather it has to move in the direction of 'soft legal pluralism' [95] controlled by the state. Of course, the hard question is: how much, and exactly which tradition, has to be acknowledged and integrated into the culture of the new society. In his recent book, Michael Walzer concludes that, although the total negation of exilic Judaism has failed, the secular Zionist modernizers should have sought a compromise with religion that would not provoke the counter-revolution a generation later. Walzer argues that some elements of this 'traditionalist world views' needed and still need to be negated: the fearfulness and passivity, the dominance of the rabbis, the subordination of women, and the role of the court Jew [6]. But, the secular modernists *did* compromise: by not taking away power over marriage and divorce from the religious authorities. The argument was done that this compromise was necessary, even though the religious fundamentalists never really accepted the supremacy of the secular state in the first place [96]. The view of Marxists critics that secular revolutionaries weren't 'absolutist' enough was not shared [97]. My claim is that their compromise went too far, and contrary to Ben-Gurion's expectations, the State of Israel lost control over its own religious establishment much more than countries with similarly established churches. Examples include Greece, where civil marriage exists, or even Malaysia, where there is civil marriage at least for non-Muslims. Israel almost became a theocratic state for the sake of the religious freedom of (ultra)Orthodox Jews, who, as a political faction,

do not exhibit appropriate respect for the rights of its non-Orthodox religious, non-religious Jewish, and non-Jewish citizens.

In more general terms, Israel, after the repeated failures of the 'peace process' and the two-state solution, faces very limited options. It either remains Jewish but ceases to be a democracy, or else it could become a genuinely multi-ethnic democracy, but would in that case cease to be 'Jewish' [98]. This choice became even more realistic after Likud won the March 17, 2015 elections, as Prime Minister Netanyahu declared that he will never permit a two state-solution between Israelis and Palestinians, adding: "Anyone who is going to establish a Palestinian state, anyone who is going to evacuate territories today, is simply giving a base for attacks to the radical Islam against Israel." Even though two days after the election victory Netanyahu tried to backtrack from his declaration by saying that he only intended to argue that the two-state solution was impossible right now, the pre-election statement questions the commitment to his speech in June 2009 at Bar Ilan University, where he said: "In this small land of ours, two peoples live freely, side by side, in amity and mutual respect. Each will have its own flag, its own national anthem, its own government. Neither will threaten the security or survival of the other. We will be ready in a future peace agreement to reach a solution where a demilitarized Palestinian state exists alongside the Jewish state [99]." But after the elections Netanyahu did not say he was ready to return to negotiations or to present any new plans for achieving peace [100]. One of the very likely consequences of Netanyahu's victory for the near and the mid-term future will be more hypernationalist, anti-democratic legislation, including the new basic law on Israel as the Nation State of the Jewish People [101]. As some argue, with his statement, Netanyahu made explicit the implicit beliefs and attitudes which are the real norms of Zionist, Jewish Israel, or, at the very least, of many of its citizens [102]. In other words, giving up the two-state solution, even if because 'the reality has changed' also ends any immediate hope for now for the position of liberal Zionism, which claims that Jews could have a state of their own, without depriving Palestinians of their legitimate national aspirations [103]. The one-state solution means that Israel will become, in time, either a non-Jewish democracy or Jewish non-democracy. Both of these perspectives are certainly against the will of the founders as well the very interest of the current population of the State of Israel. As regards the founders, Ben-Gurion was interviewed at length on Israeli state television in 1970, three years before his death. He said that order to reach peace Israel should relinquish all the territories conquered in 1967, apart from East Jerusalem and the Golan Heights: "[East] Jerusalem for history's sake and the Golan for security...Peace is more important than real estate [104]." And this is the message of the Israeli writer, and member of the peace movement, Amos Oz regarding the state's current interest. In his essay, Oz argues that the Israeli-Palestinian conflict is neither a 'religious war', nor a 'war of cultures', but a mere 'real estate dispute', which is solvable [105]. Let us hope that both Ben-Gurion and Oz are right

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**Citation:** Halmai G (2016) Constitutionalism, Law and Religion in Israel a State's Multiple Identities. J Civil Legal Sci 5: 169. doi:[10.4172/2169-0170.1000169](https://doi.org/10.4172/2169-0170.1000169)

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