RELiGIOUS LIBERTY IN THE STATE OF ISRAEL

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INTRODUCTION

The frontiers of religious liberty in the State of Israel are often hard to demarcate. Equally difficult to conceptualize is how regulation of religious liberty in Israel fits into the country’s generally accepted framework of religion-state relations. Israel is not a theocratic state; it does not have a formally established religion. Nor has it adopted a system of separation of religion and state or granted full equality to the religion of the majority of the population and the beliefs of others. In a report to the United Nations Human Rights Committee, Israel referred to the “labyrinthine” relationship between religion and state as “a patchwork of laws and practices that are not easily susceptible to generalization.” This patchwork comes as the result of “[h]istory, political expediency, party politics, the lack of a constitution . . . and the broad power of the Knesset (the Parliament).” Furthermore, party politics have frequently prevented the Knesset from using its “broad power,” thus creating a situation in which the judiciary plays a major role in the protection of basic religious freedoms.

The aim of this Article is to summarize, without exhausting the subject, the state of religious liberty in Israel. Part I recounts briefly the constitutional and political history of Israel, with particular attention to the meaning of its being a Jewish state. Part II provides an overview of a few of the more contested

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1 See Declaration of the Establishment of the State of Israel, 5708-1948, 1 LSI 3, 4 (1948) (Isr.).


3 Id. ¶ 532.

4 Id.

5 Id.
religious liberty issues, many of which divided the country along religious and political lines, often involving intervention by the Israeli Knesset and Supreme Court. The Summary and Conclusions section reflects briefly on how the record of religious liberty in modern Israel squares with the 1981 U.N. Declaration on the Elimination of all Forms of Intolerance and Discrimination Based on Religion or Belief ("1981 U.N. Declaration" or "Declaration").

I. FOUNDATIONS: THE RELIGIOUS, POLITICAL, AND CONSTITUTIONAL HISTORY OF ISRAEL

Israel is the youngest of the states discussed in this symposium. But the legal position of religion in Israel cannot be understood by referring to the state as a young political entity loosely connected with the Commonwealth through the influence of the British Mandate in Palestine. Following the 1947 U.N. resolution on partition of the territory under the Mandate, Israel was established as a sovereign "Jewish and democratic state" on May 14, 1948, fulfilling the program of the Zionist movement. Still, purely in terms of history, the new political entity saw itself as successor to the Jewish state that had existed two millennia earlier, in more or less the same location. As such, Israel considered itself the national state of a globally-scattered community, called the Jewish people, which include the Jews of Israel and the Jews of the Diaspora. The following paragraphs of the 1948 Declaration of Independence are enlightening:

Eretz-Israel (in Hebrew, the Land of Israel) was the birthplace of the Jewish people. Here, their spiritual, religious and political identity was shaped . . . .

On the 29th November, 1947, the United Nations General Assembly passed a resolution calling for the establishment of a Jewish State in Eretz-Israel . . . . This recognition by the United Nations of the right of the Jewish people to establish their State is irrevocable.

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8 For a discussion of Zionism and the Zionist movement, see generally WALTER LAQUEUR, A HISTORY OF ZIONISM (1972).

9 See Declaration of the Establishment of the State of Israel, 1 LSI at 5.
This right is the natural right of the Jewish people to be masters of their own fate, like all other nations, in their own sovereign State . . . .

. . .

The State of Israel . . . will foster the development of the country for the benefit of all its inhabitants; it will be based on freedom, justice and peace as envisaged by the prophets of Israel; it will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex; it will guarantee freedom of religion, conscience, language, education and culture; it will safeguard the Holy Places of all religions . . . .

. . .

We appeal to the Jewish people throughout the Diaspora to rally round the Jews of Eretz-Israel in the tasks of immigration and upbuilding and to stand by them in the great struggle for the realization of the age-old dream—the redemption of Israel. 10

The long history of the Jewish people, which now includes the predominantly Jewish population of the sovereign State of Israel and the members of dozens of minority communities in different states all over the world, is closely related to the role of the Jewish religion. Not every Jew, either in Israel or elsewhere, is necessarily an observant, religious individual. But, in collective terms, religion has always been an essential ingredient in the existence and behavior of the Jews, at least for the great majority of them. A person that describes himself or herself as a Jew, even if not religious, will seldom show a complete lack of interest in the expressions of Jewish traditions or symbols.

R.J. Zwi Werblowsky put it this way at a colloquium on “Religion, Peoplehood, Nation and Land in the History of Religions” that took place in Jerusalem: 11

Judaism occupies an interesting half-way position between the primitive, particularistic (tribal or national) religions and the universal type of religion. In fact, Judaism conceived of itself not as a denomination but as the religious dimension of the life of a people. Hence peoplehood is a religious fact in the Jewish universe of discourse. In its traditional self-understanding, Israel is related not to other denominations but to the “nations of the world.” Israel’s existence has, in its traditional articulation, a religious ground and a religious raison d’être. But its body is the body politic of a nation,

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10 Id. at 3–5.
and it relates to others as one in a "family of nations" (to use the
Psalmtist's phrase). Hence Judaism has an instinctive affinity with,
and understanding of national aspirations with their both political and
cultural dimensions.\textsuperscript{12}

According to the most recent Statistical Abstract of Israel, in 2005, Israel’s
total population was about 6,990,700:\textsuperscript{13} 5,313,800 (about seventy-five percent)
were Jews, 1,140,600 were Muslims, 146,400 were Christians of different
denominations, 115,200 were Druze, and 272,200 were described as "not
classified by religion."\textsuperscript{14} In 2000–2004 the same office conducted a study of
the attitudes of the population concerning religion.\textsuperscript{15} It concluded that 44% of
Jews above the age of 20 described themselves as "secular" or not practicing,
27% as "traditional," 12% as "traditional-religious," 9% as "religious," and 8% as
\textsuperscript{haredi} (ultra-orthodox). Eighty-one percent of the population identified
themselves as Jews, 12% as Muslims, 3.5% as Christians (Arab or other), 1.5%
as Druze, 1.5% as atheist, and 0.5% as belonging to other groups. In any case,
statistics alone cannot adequately reflect the multiplicity of stances and
attitudes regarding religion that exist in Israel.

It is against this historic and demographic background—the impact of
centuries of Ottoman domination, decades of the British Mandate over
Palestine, and a half century of pre-state Zionism—that the subject of religious
liberty in Israel must be considered. Additionally, religious liberty in Israel
must be measured against human rights laws and principles of religious liberty
that prevail elsewhere in the world. In this respect, the 1981 U.N.
Declaration\textsuperscript{16} presents an adequate frame of reference. The Declaration is the
most advanced and detailed international instrument in this area, expanding the
principles contained in Article 18 of the 1948 Universal Declaration of Human
Rights\textsuperscript{17} and Article 18 of the 1966 International Covenant on Civil and

\textsuperscript{12} Id. at 17.
\textsuperscript{13} CENTRAL BUREAU OF STATISTICS, STATISTICAL ABSTRACT OF ISRAEL 2006 No. 57, at 85–86, tbl.2.1
\textsuperscript{14} Id.
\textsuperscript{17} Universal Declaration of Human Rights, G.A. Res. 217A, art. 18, U.N. GAOR, 3d Sess., 1st plen.
mtg., U.N. Doc. A/810 (Dec. 10, 1948). "Everyone has the right to freedom of thought, conscience and
religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community
with others and in public or private, to manifest his religion or belief in teaching, practice, worship and
observance." Id.
Political Rights. While this Article does not deal with the Declaration’s reach and applicability to Israel—nor with the feasibility of, and need for, a mandatory treaty regulating freedom of religion and belief in general—I will attempt to describe generally the law and practice concerning freedom of religion in Israel against the wider background of the democratic world’s view of that freedom, as reflected in the 1981 U.N. Declaration.

A. A Jewish State

Are the words “Jewish State” similar in meaning to “Christian State,” “Muslim State” or “Atheist State”? Is the term “Jewish” a mere adjective to describe the alleged religious character of the State of Israel, or does the term instead possess a sociological, anthropological, or demographic meaning intended to describe members of the population of the state, and how they associate with Israeli society, culture, idiosyncrasy, folklore, and way of life? Does “Jewish State” have a similar meaning as “French State,” “Canadian State,” or “Brazilian State”? These are difficult and seminal questions that cannot be answered in a short, descriptive essay such as this one. Still, I shall try to use these questions to quantify the character of the state.

It seems reasonable to interpret the reference to Israel as “a Jewish and democratic state” as coinciding with, in political or historical more than legal terms, the state of the Jewish people, a worldwide community of clear religious origin. While today this Jewish community is still scattered all over the world, nearly 50 percent of the Jewish people are now concentrated in the territory of the State of Israel established in 1948. The word “Jewish” is used in all the political and legal texts related to the establishment of the State, and it certainly cannot have a primary religious meaning in those texts. The 1917 Balfour Declaration issued by the British Government, the Mandate over Palestine granted to Great Britain by the League of Nations in 1922, the United Nations Special Committee on Palestine (UNSCOP) partition proposal

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18 International Covenant on Civil and Political Rights art. 18, Dec. 16, 1966, S. EXEC. DOC. E, 95-2 (1978), 999 U.N.T.S. 171. Article 18, section 1 provides: “Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.” Id. art. 18(1).


of 1947,\textsuperscript{21} and the United Nations General Assembly Resolution 181(II) of November 29, 1947\textsuperscript{22} all refer to the idea of a Jewish state. In all these texts, the term “Jewish” means pertaining to “Jews” or the Jewish people; it does not mean the body of religious convictions regulated by the Halakha, the Jewish religious law developed over centuries.\textsuperscript{23} As the late Justice Haim Cohn wrote:

[It would be unthinkable to enact Jewish law in Israel qua divine law; Israel is a secular state, and its democratically elected legislature must always be free to repeal any law it has enacted or to bring such changes therein as it may from time to time think fit, regardless of any claims or dogmata of divine origins or divine prerogatives.\textsuperscript{24}]

The meaning of “Jewish and democratic” in the Declaration of Independence of Israel and Israeli law is less clear, and the lack of a written and integrated Constitution certainly does not clarify the phrase. The laws of Israel dealing with Jews and Jewish issues, as well as their judicial interpretation, all point to a secular, not religious, use of the term in legal texts.\textsuperscript{25} In the draft Constitution proposed by the Law and Constitution Commission of the Knesset in 2006, the words “a Jewish and Democratic State” seem to mean the State in which the Jewish people implement their right to self-determination.\textsuperscript{26}

But “[t]he precise meaning of Israel’s self-definition as a Jewish State has never been clearly delineated and is a matter of controversy among both Israelis and Diaspora Jews” with views varying “from minimalist descriptive notions—which regard the Jewish majority as the only element that makes Israel the ‘State of the Jews’—to Messianic visions of the State as an instrument in ushering in the millennium.”\textsuperscript{27} In their classic work, The Constitutional Law of the State of Israel, Professors Rubinstein and Medina

\textsuperscript{22} See Partition Resolution, supra note 7.
\textsuperscript{23} For exposition on the Halakha, see generally AARON KIRSCHENBAUM, AN INTRODUCTION TO JEWISH LAW (2005).
\textsuperscript{24} HAIM COHN, HUMAN RIGHTS IN JEWISH LAW 17 (1984).
\textsuperscript{25} See generally INTRODUCTION TO THE LAW OF ISRAEL (Amos Shapira & Keren C. DeWitt-Arar eds., 1995) (providing a comprehensive overview of Israeli law).
\textsuperscript{27} See David Kretzmer, Constitutional Law, in INTRODUCTION TO THE LAW OF ISRAEL, supra note 25, at 39, 40–45 (discussing statutory manifestations and constitutional ramifications).
wrote that “Israel is a Jewish State (or the State of the Jews or the State of the Jewish people) in the sense that it is the political framework in which the right of the Jewish people to self-determination materializes.”

Professor Michael Brecher stresses that the “dominant prism” of the foreign policy system of Israel is Jewishness, a primordial and pre-eminent aspect of the political culture of Israel’s society that “pervades thought, feeling, belief and behaviour in the political realm.” He adds that almost all Israelis, except Arab and Druze, identify themselves as Jews, regardless of their specific religious practice. Professor Brecher quotes Prime Minister David Ben Gurion as saying the following:

[W]e were Jews without a definition for the last 3,000 years and we will remain so. There are several definitions . . . . [J]ews are a religious community . . . . [J]ews are a nation . . . . There are Jews without any definition. They are just Jews. I am one of them. I don’t need any definition. I am what I am.

The complicated character of the state-religion relationship in Israel is well described in the Combined Initial and First Periodic Report Concerning the Implementation of the International Covenant on Civil and Political Rights, an official report submitted by Israel to the U.N. Human Rights Committee. It stated candidly:

The full fabric of the relationship between religion and state in Israel is quite labyrinthine. History, political expediency, party politics, the lack of a constitution which specifically deals with freedom of religion, and the broad power of the Knesset to legislate in religious matters have resulted in a patchwork of laws and practices that are not easily susceptible to generalization.

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28 Amnon Rubinsein & Barak Medina, Mishpat HaKonestytuyon Shel Medinat Yisrael [The Constitutional Law of the State of Israel] 318–19 (5th ed. 2005). A Basic Law provides that groups denying that Israel is “the state of the Jewish People” will not have the right to take part in elections to the Knesset. Basic Law: The Knesset (Amendment No. 9), 1985, S.H. 196 (Isr.).


30 Id.

31 Id. at 230.

32 Id.


34 Israel HRC Report, supra note 2, ¶ 532. A decision adopted by the Israeli Supreme Court sitting as High Court of Justice on November 21, 2006 reasserts that the legislature has the decisive role in determining
Despite the references to a "Jewish state" and "a Jewish and democratic state" in basic legal instruments:

[T]here is no established religion in Israel, properly so-called. Nor, however, does Israel maintain the principle of separation between matters of religion and the institutions of Government. Rather, the law and practice in Israel regarding religious freedom may best be understood as a sort of hybrid between non-intervention in religious affairs, on the one hand, and on the other hand the interpenetration of religion and Government in several forms, most notably by legislation establishing the jurisdiction of religious courts of the different faiths in specified matters of "personal status"; by government funding of authorities which provide religious services to several of the religious communities; and by a series of legal institutions and practices which apply Jewish religious norms to the Jewish population. While it may be said that Israel has been quite successful in guaranteeing the freedom of religious practice and the use of sites holy to the three monotheistic faiths, particularly for the non-Jewish communities, it is more difficult to claim that "freedom from religion" is fully protected, particularly for the Jewish population.35

The description of Israel as a Jewish state has had legislative consequences. The most important piece of legislation is the Law of Return, 1950, as modified, which will be discussed further infra. Other relevant legislation includes the Flag and Emblem Law, 1949,36 adopting traditional Jewish symbols, such as the prayer shawl (talith), the seven-branched candelabrum (menorah), and the Hatikva, the national anthem, and the Days of Rest Ordinance, 1948,37 which designates the Jewish Sabbath and Jewish holidays as official days of rest, although non-Jews may observe their own festivals. A

35 Israel HRC Report, supra note 2, ¶ 532. Still, in Segev v. Rabbinical Court, Justice Sussman stated: "There can be no freedom of religion if the citizen is not free not to belong to any religion." HCJ 130/66 Segev v. Rabbinical Court [1967] IsrSC 21(2) 505 (Isr.); see also HCJ 3872/93 Mitterel Ltd. v. Prime Minister [1993] IsrSC 47(5) 485 (Isr.) (stressing the coexistence of freedom of conscience with freedom of religion). Professor Asher Maoz describes Israel as "a multi-religious state, where various religions are recognized, yet none enjoys the status of official state religion." Asher Maoz, Religious Human Rights in the State of Israel, in RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE: LEGAL PERSPECTIVES 349, 359 (Johan D. van der Vyver & John Witte, Jr. eds., 1996). Professor Maoz considers the Israeli approach to religious human rights as "inherently eclectic." Id. at 349.

36 Flag and Emblem Law, 5709-1949, 3 LSI 26 (1949) (Isr.).

37 Days of Rest Ordinance, 5708-1948, 1 LSI 18 (1948) (Isr.).
special law, the Martyrs’ and Heroes’ Remembrance Day Law, enacted in 1959, established the date in which the Holocaust, the Jewish tragedy during World War II, and the acts of Jewish heroism and resistance against the Nazis should be remembered. In 1952, the legislature enacted the World Zionist Organization—Jewish Agency (Status) Law, which authorizes and grants special status to certain organizations to perform development, settlement, and absorption work.

This legislation has no religious character but rather reflects the Jewish historical continuity. Concerning the impact of Jewish law, the complicated issue of Israel’s personal status and family law will be dealt with separately because it is “the one area... where Jewish law has legal standing and societal potency in Israel.” Moreover, according to the Legal Foundations Act, the “principles of liberty, justice, equity and peace of the Jewish heritage” should guide the courts when “faced with a legal question requiring determination for which no answer is to be found in any enactment, judicial decision, or by way of analogy...”

B. The Law of Return and “Who is a Jew”

The Jewish character of the state is closely related to the Law of Return, the Amendment to the Law of Return, and the Law of Return’s influence on the Nationality Law. It is also related to the fascinating question of “Who is a Jew?”—namely what is the legal definition of a “Jew,” which required pronouncements of the courts followed by legislation intended to circumvent them and impose “a religious test of Jewishness.”

The Law of Return proclaimed the right of every Jew to immigrate to Israel, but it did not define who is to be regarded as a “Jew.” A proposal submitted by an ultra-Orthodox party to define Jewishness according to Halakha, Jewish religious law, was rejected by a large majority. The issue

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38 Martyrs’ and Heroes’ Remembrance Day Law, 5719-1959, 13 LSI 120 (1958–59) (Isr.).
40 KIRCHENBAUM, supra note 23, at 133.
41 Legal Foundations Act, 1980, S.H. 163 (Isr.).
42 Law of Return, 5710-1950, 4 LSI 114 (1949–50) (Isr.).
44 Nationality Law, 5712-1952, 6 LSI 50 (1951–52) (Isr.).
46 Law of Return, 5710-1950, 4 LSI 114 (1949–50) (Isr.).
47 See NEGBI, supra note 45, at I.
reached the Supreme Court in a case brought by a Jewish navy officer, Benjamin Shalit, who desired to register his children as Jews despite the fact that his wife, their mother, was not Jewish.\textsuperscript{48} Both the officer and his wife described themselves as atheists.\textsuperscript{49} Shalit’s claim was based on two reasons: 1) the Registration Office had no authority to alter his notification; 2) the children were entitled to be registered as being of Jewish “nationality” (\textit{le’om}) because that concept was founded on a social and cultural attachment, and although not of the Jewish faith, they possessed a pure Israeli-Jewish attachment and had been brought up in that spirit.\textsuperscript{50} A 5-4 majority of the Supreme Court granted Shalit’s petition.\textsuperscript{51} Both the majority and minority opinions dealt with the difficulties involved in determining national identity of Israelis as Jews, the concept of ‘Jew,’ and the question of whether a person can belong to the Jewish people without also being a member of the Jewish religion.\textsuperscript{52}

The refusal of the Supreme Court, by a small majority, to follow the rabbinical understanding of the word “Jew” prompted the Knesset to adopt an amendment to the Law of Return.\textsuperscript{53} A Jew was now defined as “a person who was born of a Jewish mother or has been converted to Judaism and who is not a member of another religion,” namely according to \textit{Halakha}.\textsuperscript{54} Still, the amendment did not require that a conversion to Judaism be performed by an Orthodox authority, satisfying itself with a certificate from any Jewish community. Children and grandchildren of a Jew, the spouse of a Jew, the spouse of the child of a Jew, and a grandchild of a Jew were granted the same immigration and citizenship rights as Jews.\textsuperscript{55}

In this connection, it is necessary to mention the famous \textit{Rufeisen v. Minister of Interior} case of 1962.\textsuperscript{56} Oswald Rufeisen (otherwise known as Brother Daniel) was born in Poland in 1922, the child of Jewish parents.\textsuperscript{57} He had been active in the Zionist movement and had been persecuted by the Nazis.\textsuperscript{58} In 1942, he converted to Christianity and became a Carmelite priest.\textsuperscript{59}

\begin{itemize}
\item[48] HCJ 58/68 Shalit v. Minister of Interior [1969] IsrSC 23(2) 477 (Isr.).
\item[49] Id.
\item[50] Id.
\item[51] Id.
\item[52] Id.
\item[53] Id.; see also Law of Return (Amendment No. 2), 5730-1970, 24 LSI 28 (1969–1970) (Isr.).
\item[54] Law of Return (Amendment No. 2), 24 LSI at 28.
\item[55] Id.
\item[56] HCJ 72/62 Rufeisen v. Minister of Interior [1962] IsrSC 16(1) 2428 (Isr.).
\item[57] Id.
\item[58] Id.
\item[59] Id.
\end{itemize}
In 1958, he settled in Haifa and applied for citizenship under the Law of Return. Not only did the Ministry of Interior reject his application, but also the Supreme Court denied his appeal, by four votes to one. The Court stressed that a Jew who had converted to another religion was not considered Jewish by the ordinary person on the street.

These two cases differ substantially. In Shalit, the issue was registration of the father’s notification and the application of a purely secular test to determine who is a Jew. In Rufeisen, the matter was the meaning of “Jew” for the purpose of citizenship based on the Law of Return and the weight of conversion in the perception of who is a Jew by Jewish society as a whole. In the decades that have elapsed since these Supreme Court decisions, the crucial issues involved have continued to divide Israelis and Jews. These issues continue to influence the relationship between the State and religion, including the question of the place of religion in the Israeli legal system.

C. The Constitutional Issue

Although Israel is a functioning democracy whose state institutions respond to international standards, more than half a century after its establishment on May 14, 1948, the country has still not been able to enact a written, coherent constitution. The reasons for this anomaly are to be found in history, internal politics, the pressure of the external conflict, and in the composition of the Israeli population and the tensions that divide it. It seems beyond doubt that one of the major obstacles, if not the major one, that prevented Israelis from reaching an agreement that would have permitted them to adopt a fundamental text is precisely the subject of this Article, namely the relationship between religion and the state.

The Declaration of Independence foreshadowed the swift adoption of a constitution, and a constituent assembly was elected. However, the assembly rapidly declared itself the legislative body of the State, namely the Knesset. Instead of creating a separate and distinct constitution, the Knesset charged its Constitutional, Legislative, and Judicial Committee with the task of preparing a draft constitution to be composed of separate chapters, and each chapter

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60 Id.
61 Id.
62 Id. Later, Rufeisen received Israeli citizenship but under the general provisions on naturalization. See Abraham Rabinovich, A Master of Deception and Seeker of Truth, JERUSALEM POST, Aug. 7, 1998, at 17.
63 Declaration of Independence of the State of Israel, 5708-1948, 1 LSI 3, 4 (1948) (Isr.).
would constitute a basic law. The sum of these chapters would form the constitution.\textsuperscript{64} Eleven basic laws have been adopted until now,\textsuperscript{65} and they require a special majority to be repealed or amended.\textsuperscript{66}

Since the establishment of Israel, there have been several proposals and drafts of a constitution. The first of them was elaborated in 1948 by Yehuda Pinhas Cohen, with the aim of implementing the instruction given by the 1947 Partition Resolution concerning freedom of religion, religious sites, and religious practices.\textsuperscript{67} Other draft constitutions were proposed in later years, and they contained provisions ensuring the observance of religious rights.\textsuperscript{68} Recently, a draft prepared by the Law and Constitution Committee of the outgoing Knesset has triggered renewed debate about a constitution.\textsuperscript{69} The draft was criticized as not responding to the present needs of the country with regard to religious issues. The drafters themselves acknowledged the shortcomings of the text, which does not deal with major defects of the status quo.\textsuperscript{70} In the explanatory remarks concerning part 2, chapter 12, on freedom of conscience and chapter 13, on freedom of religion and beliefs, the Committee stressed that it is not reasonable that persons who are unable to marry according to their religious law cannot marry in Israel at all.\textsuperscript{71} Couples who belong to different religions, who belong to no recognized religious

\textsuperscript{64} This approach is the result of the Harari Resolution, named after its author, Yizhar Harari, M.K.

\textsuperscript{65} They deal with the Knesset, the Land, the President, the Government, the State economy, the Army, Jerusalem, Capital of Israel, the Judiciary, the State Comptroller, Freedom of Occupation and Human Dignity and Freedom. There are other, very important laws, as, for instance, the Law of Return or the Citizenship Law, that do not have the character of basic laws, despite their obvious constitutional nature. On the other hand, not all the basic laws conform to the language and content of a constitutional document. \textit{See} Asher Maoz, \textit{The Institutional Organization of the Israeli Legal System}, in \textit{INTRODUCTION TO THE LAW OF ISRAEL}, \textit{supra} note 25, at 11, 11–15.

\textsuperscript{66} \textit{Id.} at 12.

\textsuperscript{67} Yehoshua Freudenheim, Government in Israel 8–9 (1967).

\textsuperscript{68} For an updated Background Paper on the subject of freedom of religion and from religion in the constitutional drafts that have been elaborated since the creation of the state, see \textit{Hillel Sommer \textit{et. al.}, INTERDISCIPLINARY CTR., HERZLIYA, BACKGROUND PAPER ON THE SUBJECT OF FREEDOM OF RELIGION AND FROM RELIGION} (2005) (in Hebrew) (on file with author).

\textsuperscript{69} \textit{See PROPOSALS FOR A CONSTITUTION}, \textit{supra} note 26.

\textsuperscript{70} The reference to the system that regulates the place of religion in Israel based on accommodation as a "status quo" seems to have its origin in an agreement reached before the creation of the state between the Jewish Agency and one of the major religious groups, Agudath Israel. \textit{See} Amnon Rubinstein, \textit{State and Religion in Israel}, \textit{J. CONTEMP. HIST.}, Oct. 1967, at 107, 113. A letter by the Agency, dated June 19, 1947, promised the religious parties that the Zionist leadership would endeavor to ensure that religious law would apply to matters of personal status, observance of the Shabbat as the Jewish day of rest, and keeping of \textit{kashrut} in State institutions. \textit{Id.} The status quo was frequently unstable. \textit{Id.} at 114.

\textsuperscript{71} \textit{See generally} Constitution for Isr., Religion and State—April 5, http://www.cjisrael.org/a630.html?rsID=0 (last visited June 20, 2007).
communities, or who belong to a religious community that declares them unfit to marry per their internal religious standards, should still be permitted to marry in accordance with the general law of a modern state. The report of the Committee said in this respect, that “[t]he problem confronting us was not if the law has to be changed but if the arrangements concerning this issue have to be grounded in the Constitution itself . . . . There seems to be a wide consensus that questions of personal status as such do not belong to the Constitution.”

While it is doubtful that such a broad consensus in fact exists, this approach to the relationship between serious issues in the area of religion or belief and the constitutional debate expresses the difficulties involved. The crucial question is whether, in the light of modern trends and the specific situation in Israel, it is reasonable to adopt a constitution that ignores these difficulties and leaves to legislation highly controversial issues of principle. Such an approach may satisfy considerations of convenience, or even more urgent or demanding considerations, but the fact that religion plays such a significant role in Israel is certainly a strong reason to regulate its role at the constitutional level.

D. A Burden of the Past: The Recognized Religious Communities

To understand the system that developed in Israel, it is necessary to examine the regime established during the Ottoman period (1517–1917) and under the British Mandate (1918–1948). Under Ottoman rule, the dominant Muslim society permitted non-Muslim communities to enjoy autonomy in the conduct of their communal affairs, including religion. Millets, non-Muslim communities based on religion, were established under the authority of religious leaders. In general, the Mejelle, the Islamic civil law, applied to all issues of personal status concerning Muslims, such as marriage, divorce, succession, and other aspects of family law. The recognized non-Muslim communities had their own courts in the area of personal status, although the extent of their jurisdiction varied according to the rights granted to each community. Their jurisdiction normally covered marriage, divorce,
maintenance, succession, education, and charitable institutions.\textsuperscript{77} Foreigners were not subject to Ottoman law as they were under consular jurisdiction.\textsuperscript{78}

Professor Yoram Schachar points out that "most of the Ottoman heritage is of no direct practical importance today."\textsuperscript{79} "However, it is crucially important to recognize two of the long term influences of Ottoman legal culture on law and politics in Israel. As in all areas where communities clash for domination, two matters assume supreme importance, namely land and family, and both have been marked by the choices initially made by the Ottomans."\textsuperscript{80} Professor Schachar stresses that the Ottomans always accorded extensive autonomy to religious minorities in most family matters. As a consequence of this system, Israel became "the only modern State in the world lacking a territorial law of marriage and divorce."\textsuperscript{81}

The British Mandate established by the League of Nations over Palestine did not introduce changes in the system. Under the 1922 Palestine Order in Council,\textsuperscript{82} ten communities were recognized: the Eastern Orthodox, Latin Catholic, Gregorian Armenian, Armenian Catholic, Syrian Catholic, Chaldean Uniate, Greek Catholic Melkite, Maronite, Syrian Orthodox, and Jewish, known as \textit{Knesset Israel}.\textsuperscript{83} As under the Ottoman rule, Muslims were not considered a "recognized community," although the Muslim courts were in charge of matters of personal status and also had jurisdiction over foreign nationals subjected to Muslim religious jurisdiction.\textsuperscript{84} All other foreign nationals were under the jurisdiction of secular District Courts, except in the cases when the foreign national expressed preference for a religious court.\textsuperscript{85}

In 1939, the British authorities adopted a provision concerning the marriage of persons who were neither Muslims nor members of a religious community, but this provision was never implemented under the Mandate.\textsuperscript{86} Its application could have solved the problem of individuals not belonging to any religious

\textsuperscript{77} \textit{Id.}
\textsuperscript{78} \textit{Id.} at 385.
\textsuperscript{79} Schachar, \textit{supra} note 73, at 3.
\textsuperscript{80} \textit{Id.}
\textsuperscript{81} \textit{Id.} at 3–4.
\textsuperscript{82} The Palestine Order in Council (1922–1947) art. 83, \textit{in 3 The Laws of Palestine 2569} (Robert Harry Drayton ed., 1936) [hereinafter 1922 Palestine Order in Council], available at \url{http://domino.un.org/UNISPAL.NSF/9a798adb322aff38525617b006d88d7fc7aae196f41aa055052565f50054e656fOpenDocument}.
\textsuperscript{83} Rubinstein, \textit{supra} note 74, at 385 n.20.
\textsuperscript{84} \textit{Id.} at 385–86.
\textsuperscript{85} \textit{Id.}
\textsuperscript{86} \textit{Id.} at 386; see \textit{Israel HRC Report, supra} note 2, ¶ 535.
community or of individuals who opted out of religious communities or who were members of a religion not formally recognized in the country. These persons were consequently unable to marry, unless they joined a recognized religious community.

The State of Israel preserved the status quo, seen as a need to avoid conflicts between the secular political parties and the religious ones. Still, such conflicts erupted from time to time and prevented progress in the constitutional sphere. Religious law is the rule in matters related to personal status, and the recognized religious communities have retained their jurisdiction.

The most important change enacted by the State of Israel concerns the Jewish population. Jewish communal religious institutions are official state bodies, exercising authority over all Jews of the country, irrespective of their personal religious or non-religious views. Agnostic or atheistic Jews who wish to marry may find it difficult to avoid having a religious ceremony conducted by an Orthodox religious authority. A couple can be married by civilian authorities abroad, but while such a marriage will be recognized by the Israeli civil courts and taken notice of by the Population Registry, it may be ignored by the rabbinical authorities of Israel. A couple can also sign a marriage contract which has legal effect, but that document will also not be recognized by the religious authorities. Because of this system, many Israelis prefer to have religious marriages, not in accordance with their own convictions, but rather for their children, to ensure recognition by the Orthodox establishment.

Attempts to establish an alternative system for those who cannot or do not wish to undergo a religious marriage have been unsuccessful. The Minister of Interior proposed to recognize and register marriages performed at foreign

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87 Rubinstein, supra note 74, at 386–87.
88 See generally id. at 387.
89 Rubinstein, supra note 70, at 117.
90 Id.
91 See generally id. at 118.
92 It is impossible to determine precisely who the Jews are that consider themselves totally non-observant. Many who declare to be so do, however, observe some religious precepts, mainly circumcision, bar mitzvah celebrations, and religious weddings, although they would claim that their motivation is not religious. See Bernard Lazerwitz & Ephraim Tabory, National Religious Context and Familial Religiosity in a Jewish Framework, 44 Rev. Religious Res. 22, 28, 32 (2002). Of course, the historic overlapping of the Jewish religion and the Jewish nation has to be seen as the explanation for this apparent contradiction or confusion between self-identification and practice.
consulates by persons who are described as without religion or who belong to non-recognized communities. Such a procedure existed in the past but was discontinued in August 1995 at the request of the Ministry of Foreign Affairs. In April 2005, the High Court of Justice asked the Prime Minister to declare whether he authorizes the renewal of the procedure. For the first time, the State has recently recognized a consular divorce proceeding which took place at the Russian Embassy. This creates particular disabilities for Jewish women whose husbands deny them a divorce or are absent or are prevented because of illness from divorcing them, as well as for Muslim women, ruled by the Shari’a.

Three additional religious communities have been recognized by the State: the Druze in 1957 and 1995; the Evangelical Episcopal Church in 1970; and the Baha’i in 1971. Muslim and Druze religious courts were established. Other religious communities, such as the Lutherans, Baptists, Quakers, and others, also operate in Israel but are not recognized formally. Despite the decrease in the proportion of Christians in the country, there are several dozen churches and denominations in Israel, between which violence and conflicts occasionally arise regarding jurisdiction and sacred sites.

The non-recognized communities do enjoy full religious freedom and rights, including the right to establish institutions, but they do not have courts with jurisdiction over their members. Although they receive certain tax benefits, they do not receive government funding—unlike Jewish religious

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94 Id.
98 Lapidoth, supra note 79, at 462.
100 Such conflicts reached the Courts. On the Christian communities and churches, see generally SAUL A. COLBI, CHRISTIANITY IN THE HOLY LAND passim (1969), and THE JERUSALEM QUESTION AND ITS RESOLUTION: SELECTED DOCUMENTS passim (Ruth Lapidoth & Moshe Hirsch eds., 1994).
101 See Mazo, supra note 35, at 364 (discussing the implications of the legal status conferred on Jewish institutions).
102 See id. at 354 (discussing recognition as a predicate to tribunal jurisdiction).
institutions and recognized non-Jewish communities, which receive financial support for their religious services and sites.\textsuperscript{103} Steps were taken to arrange funding for some of the communities, but the results were not satisfactory. Some of the non-Jewish communities also enjoy tax exemptions, although there is no legal basis for them and they are the result of special arrangements.\textsuperscript{104} The 1993 Fundamental Agreement with the Holy See contains provisions concerning fiscal matters.\textsuperscript{105} With the abolition of the Ministry of Religious Affairs and the distribution of its services among various ministries, the situation may change—if party politics do not stand in the way.

There are plans to create an overall Christian body that would represent the total Christian community in Israel vis-à-vis the State. On April 13, 2005, a conference of the Evangelist churches took place in Shfar-am to discuss this subject and to establish a body encompassing the four Evangelical communities.\textsuperscript{106} It aspires to overcome the practical difficulties that Evangelicals confront on issues such as tax exemption, visas for priests, and related issues. A spokesman pointed out that the Evangelicals suffer from the absence of norms regulating family relations and from a lack of a religious court of their own.\textsuperscript{107}

It is appropriate to mention again the 1993 Agreement between the Holy See and Israel that led to diplomatic relations between the parties.\textsuperscript{108} The Agreement, and negotiations still being conducted, aim, among other things, at ensuring the rights of the Catholic Church, including its sacred places and institutions. The pending negotiations also concern Catholic legal personality in Israeli law.

When listing the religious communities in Israel, recognized and not recognized, it is necessary to refer to the situation of the non-Orthodox branches of the Jewish religion as well—the Conservative, Reconstructionist, and Reformed Jewish communities. They are not recognized as separate communities and, while their members are free to practice Judaism in conformity with their own conceptions and traditions, their institutions do not

\textsuperscript{103} See id. at 366–68.
\textsuperscript{104} See id. at 372 (pointing out that these exemptions lack a systematic legal basis).
\textsuperscript{105} Fundamental Agreement Between the Holy See and the State of Israel, Holy See-Isr., arts. 6–10, Dec. 30, 1993, 33 I.L.M. 153 [hereinafter Fundamental Agreement].
\textsuperscript{106} See Jackie Khoury, A New Federative Body for the Evangelists in Israel, HÀARETZ, Apr. 17, 2005, at 15.
\textsuperscript{107} See id.
\textsuperscript{108} Fundamental Agreement, supra note 105, art. 14.
enjoy official status and their rabbis cannot officiate at marriages or act as marriage registrars.\textsuperscript{109} Like all Jews in Israel—even those who declare themselves to be non-believers—their individual members are subjected to Orthodox rabbincal jurisdiction in matters of personal status.\textsuperscript{110} These religious trends within Judaism have little political influence since these groups are a minority, despite their numerical preponderance in the major Jewish communities in the Diaspora. This dichotomy affects some aspects of family law in Israel.

II. FUNDAMENTALS: CONSTITUTIONAL ISSUES OF RELIGIOUS LIBERTY IN ISRAEL

The 1981 U.N. Declaration highlights a number of the important religious liberty questions that have confronted Nation States around the world, including the six other countries featured in this Symposium. A number of these common questions have also confronted the legislatures and courts of Israel. But, given its unique character as “the Holy Land” and “a Jewish state,” Israel has also faced a number of unique religious liberty questions that have often been deeply divisive, and occasionally violent. The Israeli Supreme Court, in particular, has sought to address these questions in a manner both sensitive to Israel’s international obligations and consistent with Israel’s unique religious and political history.

A. Holy Places

The small territory of the State of Israel contains a disproportionate number of areas, sites, buildings, and antiquities that are sacred to one or more religions. It may be enough to mention the Western Wall (a Jewish holy site), the Temple Mount (a source of friction between Muslims and Jews), and the Holy Sepulchre (one of the most sacred places for Christianity), to understand to what extent the State has to accommodate diverse and opposed interests and find compromises in such an emotionally charged environment. The situation is particularly complicated with regard to Christianity. Hundreds of churches and other sites exist in Jerusalem, Bethlehem, and other areas. Under all

\textsuperscript{109} See Kretchmer, supra note 26, at 48.

\textsuperscript{110} Id.; see also S. ZALMAN ABRAMOV, PERPETUAL DILEMMA: JEWISH RELIGION IN THE JEWISH STATE (1976); ISR. RELIGIOUS ACTION CTR., THE ISRAEL MOVEMENT FOR PROGRESSIVE JUDAISM, STATE AND RELIGION IN ISRAEL (1996); SECULAR JEWISH CULTURE, NEW JEWISH THOUGHT IN ISRAEL (Yakov Malkin ed., 2006).
regimes—the Crusaders, the Ottoman Empire, the British Mandate and, finally, the State of Israel—intramural conflicts erupted and special agreements were concluded in relation to those places.

As retired Justice Itzhak Englard wrote: “Israel’s blessing with Holy Places is not of pure joy. It comes with a multitude of troublesome questions of long historical standing. Even if the State of Israel did not create the problems, its establishment as a Jewish State has significantly magnified the surrounding difficulties.” Englard concluded that because “of the political and religious complexities of the problem, great importance is attached to maintaining in principle the idea of the status quo.” Of course, it is difficult to define precisely what legal rights derive from the status quo, and this solution does not satisfy the different religious communities, causes discrimination among communities, and impedes freedom of worship.

Under the British Mandate, a special committee was established to clarify the rights and duties of the interested communities. This committee produced the Cust Report, which aimed at establishing order in this sensitive area. Between 1948 and 1967, Jordan had control of East Jerusalem and the West Bank and enacted legislation restricting Christian freedom of action, particularly with regard to property rights. Jewish holy places suffered during this period, and Jews had no access to them.

The 1967 Six Days War changed this state of affairs. Jerusalem was unified, legislation was adopted guaranteeing free access to all holy sites, and practical measures were taken to ensure public order and peaceful coexistence among the different sects. Penal legislation, intended to ensure freedom of worship and access to holy places, was also adopted. The Penal Law, 5737-1977 punishes desecration of places of worship or burial, disruption of funerals, or publication and uttering of material intended to outrage the religious feelings or beliefs of any person.

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112 Englard, supra note 111, at VII.
113 Id. at V.
116 See id.
Law, 5727-1967 protects holy places from desecration or other violations.\textsuperscript{118} The Basic Law: Jerusalem, Capital City of Israel of 1980 contains analogous provisions.\textsuperscript{119} The Antiquities Law, 5738-1978 has similar provisions.\textsuperscript{120} The State avoided intervening in disputes between different denominations concerning holy places, but in some cases has had to do it on the basis of mandatory law.

One of the sites that created great difficulties and controversy is the Temple Mount, holy to Jews and Muslims and administered by the Muslim \textit{Wakf}.\textsuperscript{121} On Fridays, tens of thousands of Muslims pray on the Mount, although on some occasions restrictions have been imposed. Access of Jews to the Mount is forbidden under the \textit{Halakha}, with some exceptions. The Supreme Court dealt with the issue and a sort of \textit{modus vivendi} was achieved, permitting universal access but prohibiting public prayers by Jews. In 1990, a Commission of Investigation into the events that took place on the Mount on October 8 submitted a report highlighting the special sensitivity of this issue.\textsuperscript{122}

Another very important Jewish holy place is the Western Wall. Here, the right to conduct services not strictly following Orthodox law and customs has given rise to sharp conflicts. The requests of a group of Israeli Jewish women to pray as a group at the Wall, wearing prayer shawls and reading from a Torah scroll, were rejected. They were only permitted to do so at a nearby site, also considered part of the Wall.

In Hebron, violence between Jews and Muslims has erupted frequently, although not necessarily on religious grounds. A tragic massacre of Arab worshippers—by a fanatic Jewish doctor serving in the Army—took place in 1994.\textsuperscript{123} As a result, the military authorities felt the need to impose severe restrictions in the area.

The Peace Treaty between Israel and Jordan (1994) contains provisions aimed at ensuring freedom of access to places of religious interest and

\textsuperscript{118} Protection of Holy Places Law, 5727-1967, 21 LSI 76 (1967) (Isr.).


\textsuperscript{121} Englard, \textit{supra} note 115, at 596–97.

\textsuperscript{122} For text in English, see \textit{The Jerusalem Question and Its Resolution: Selected Documents}, \textit{supra} note 100, at 455.

recognizing a "special role" for Jordan in the Muslim holy sites.\textsuperscript{124} Of particular relevance to the issue is the already mentioned "Fundamental Agreement" signed in 1993 between the Holy See and the State of Israel.\textsuperscript{125} Article 4 of this Agreement addresses the issue of holy places.\textsuperscript{126} Both sides affirm their commitment to respect the status quo concerning Christian holy sites.\textsuperscript{127}

One of the major disputes, which started centuries ago, involves the Copts and the Ethiopians.\textsuperscript{128} It refers to the Dier el Sultan Monastery, and this holy site has required judicial intervention more than once.\textsuperscript{129} A few years ago, Nazareth was the scene of disturbances because of attempts to establish a Muslim mosque next to the Church of the Annunciation.\textsuperscript{130}

The special character of the Holy Places and the interest that the major religions have in them created a problem that, in the words of former Director-General of the United Nations Educational, Scientific and Cultural Organization (UNESCO), Federico Mayor, "has pitted the most powerful empires of their respective times against each other in wars that never end and always recommence, and has drawn the best minds of irreconcilable camps into the task of justifying their positions and actions."\textsuperscript{131} In an introduction to a document, Mayor elaborated on a proposal of a legal system for the Holy Places based on the idea that those places belong to the common heritage of mankind, as defined by UNESCO.\textsuperscript{132} This proposal would receive Security Council endorsement and would not affect the rights of territorial sovereignty or present territorial claims.\textsuperscript{133}

\textsuperscript{124} Treaty of Peace, Isr.-Jordan, art. 9, 34 I.L.M. 43 (1993) (Isr.).
\textsuperscript{125} See Fundamental Agreement, supra note 105.
\textsuperscript{126} Id. art. 4.
\textsuperscript{127} Id. For an updated Catholic comment on the Agreement, see Paper Submitted by Professor David M. Jaeger to a Conference on Jewish Law, Church Law, and Israeli Law (October 17–18, 2006) (on file with author).
\textsuperscript{128} England, supra note 115, at 598–99.
\textsuperscript{129} Id.
\textsuperscript{131} FEDERICO MAYOR, FOUND. FOR A CULTURE OF PEACE, PROPOSED LEGAL SYSTEM FOR THE HOLY PLACES, COMMON HERITAGE OF MANKIND 3 (2003) (provisional document on file with author).
\textsuperscript{132} Id.
\textsuperscript{133} Id. at 10–12.
B. Observance of Religious Rights and Freedom

Religious rights and freedoms, especially independent from the Jewish faith, are continuously at issue in a state born from a secular Zionist movement. Israel is neither a theological state nor an entirely secular political entity. It is neither free from the influence of Halakha nor does religious law play a predominant role in the legal system of the country, except in the area of personal status. The Rabbinical courts have jurisdiction over all Jewish inhabitants in matters of marriage and divorce, and settle these matters on the basis of Halakha. The Chief Rabbinate is a state institution, as are the local level Religious Councils. Before its abolishment, the Ministry of Religious Affairs held the power to regulate and fund the religious needs of Jewish and other religious communities.

Legislation concerning religious freedom and its exercise show the impact of party politics. Under the activist leadership of the now retired Justice Aaron Barak, legislative shortcomings induced the judiciary to play a major and constructive role in this sphere through broad interpretation of basic human rights laws. Because this policy was largely opposed, the Knesset undid certain jurisprudential results, as happened in the case of the Law of Return.

The starting point of Israeli legislation concerning state and religion is a provision adopted under the British Mandate, Article 83 of the Palestine Order in Council, 1922. It refers to the whole territory under Mandate, including present day Israel, Jordan, and the disputed territories, and reads:  

All persons in Palestine shall enjoy full liberty of conscience, and the free exercise of their forms of worship subject only to the maintenance of public order and morals. Each religious community recognised by the Government shall enjoy autonomy for the internal affairs of the community subject to the provisions of any Ordinance or Order issued by the High Commissioner.  

Other provisions of the Order in Council nullified limitations on freedom of religion and worship and prohibited discrimination on grounds of religion.  

The Order in Council does not prevail over the laws of the Knesset. In the 1972 decision, Rogozinsky v. State of Israel, the Court established that the

\[134\] 1922 Palestine Order in Council, supra note 82, art. 83.
\[135\] Id.
\[136\] Id.
Knappet legislation takes precedence over all Mandate legislation.\textsuperscript{137} The case dealt with two Israeli couples claiming to have held private wedding ceremonies because they had no religious beliefs.\textsuperscript{138} They asked the courts to declare their private marriages legitimate, but their requests were rejected by the District Court and the Supreme Court. The Supreme Court determined that Article 83 of the Order in Council subjects the individual’s freedom of conscience to the needs of public order and morals.\textsuperscript{139} The Supreme Court turned the matter over to the Rabbinical Courts, which rule over questions of marriage and divorce of Jews in Israel. The laws derived from the Rabbinical Courts are given preference over the principle of freedom of conscience proclaimed in Article 83.\textsuperscript{140} The term “Jew” for the purpose of that jurisdiction means a Jew according to the Jewish religious law.\textsuperscript{141}

Upon the establishment of the State, the seminal Declaration of Independence of May 14, 1948 guaranteed freedom of religion and conscience. Although not originally an obligatory text, the Declaration was given legal weight in 1994 to provide that fundamental rights shall be safeguarded in line with “the spirit of the principles of the Declaration of Independence.”\textsuperscript{142} The Basic Law: Freedom of Occupation did not mention religious freedom specifically and the Knestset did not adopt any fundamental legislation guaranteeing freedom of and from religion.\textsuperscript{143}

The political system in Israel, marred by tense and violent security issues, was unable to reach a consensus regarding the place of religion, especially the Jewish faith, in the State. Still, Israeli penal laws contain many provisions intended to guarantee religious liberties. Courts play a major role in ensuring respect for those freedoms, particularly by broadly interpreting basic human rights laws. Controversial situations still exist at the expense of other Jewish trends and secularism, including issues such as the Sabbath (Saturday), Jewish holidays, dietary laws, autopsies, Orthodox monopoly in the Army, non-Jewish chaplains, conversion, state funding, burial, and Orthodox exclusivity or monopoly in many areas.

\textsuperscript{137} CA 450/70 Rogozinsky v. State of Israel (1971) IsrSC 26(I) 129 (Isr.).
\textsuperscript{138} Id.
\textsuperscript{139} Id.
\textsuperscript{140} Id.
\textsuperscript{141} Id.
\textsuperscript{142} Basic Law: Freedom of Occupation, 1994, S.H. 90 (Isr.).
\textsuperscript{143} Id.
C. The Sabbath and Weekly Day of Rest

The Sabbath remains a vital issue due to its nature and social impact. The Law and Administration Ordinance, 5708-1948, provides that the Sabbath and Jewish festivals "shall be the established days of rest in the State of Israel. Non-Jews shall have the right to observe days of rest on their Sabbath and holidays."\(^{144}\) The Hours of Work and Rest Law, 5711-1951, states that weekly rest will include for Jews the Sabbath.\(^{145}\) Non-Jews may choose the day on which they take their weekly rest—Friday, Saturday, or Sunday—as established in each case.\(^{146}\) Employers cannot refuse to hire a person who notifies the employer that he or she will not work on the weekly day of rest for religious reasons. Furthermore, an employer may not oblige an employee to work on his or her religious day of rest as a condition of employment. There are exceptions to religious days of rest on grounds of security, public health, or certain special services, for which the Minister of Labor and Social Affairs issues permits for Sabbath work, and the Government may issue special permits to categories of enterprises.

The obligatory closing of activities, businesses, and services on the Jewish Sabbath has created conflicts in the past. In 1987, the Jerusalem Magistrate's Court decided that a municipal regulation forbidding the work of cinemas on the Sabbath was ultra vires, since it was not explicitly authorized by the Knesset.\(^{147}\) Regarding this issue, Judge Procaccia, a present member of the Supreme Court, stated:

Against the religious view based on the sanctity of the Sabbath and its "halakhic" commandments, the secular public demands to fulfill the Sabbath with its own values in a manner that gives expression to its ideas and way of life. Freedom of religion and beliefs is among the fundamental human liberties. The freedom to adhere to a religious conviction implies also the freedom not to believe, the freedom to structure the contents of life and the qualities of life in accordance with the individual conscience, but only if this does not hurt the other's right to behave in a similar way. Sometimes, and in order to ensure a sound social life and cooperation among the components of the population, it is necessary to restrict this fundamental right of man. In a constitutional regime, it is a basic principle that limitations of this human right—concerning issues of

\(^{144}\) Law and Administration Ordinance, 5708-1948, 1 LSI 7 (1948) (Isr.).
\(^{145}\) Hours of Work and Rest Law, 5711-1951, 5 LSI 125 (1950-51) (Isr.).
\(^{146}\) Id.
\(^{147}\) CrimA (Jer) 3471/87 State of Israel v. Kaplan et al., [1988] IsrDC 5748(2) 206.
religion and conscience—should be decided by the principal legislator and only seldom by secondary legislators, if authorized to that effect in a clear-cut manner. The prohibition of the opening of places of entertainment denies coercively to part of the population in Jerusalem the right to spend its day of rest in its own way and taste. This implies an interference with the fundamental freedom of man and a violation of his right to conduct his life according his convictions.148

Following this decision, the Knesset amended the Municipalities Ordinance providing them explicit authority to take into consideration the religious tradition when ordering to open or close a business on the Sabbath.149

In April 2005, the Sabbath issue came up again before the Supreme Court.150 A furniture factory argued that the Hours of Work and Rest Law clashed with the Basic Law concerning Freedom of Occupation of 1992.151 The Court, composed of three Justices, agreed that the prohibition of work is not consistent with the fundamental right to freedom of occupation.152 Justice Barak, President of the Court, noted that this inconsistency does not imply illegality of the law because it serves a meritorious purpose consistent with the values of Israel. He stated that “[i]f the law would permit every worker to choose his day of rest, in many cases the effective choice would be in the hands of the employer and not the worker.”153 On the same occasion, Justice Procaccia called for providing more public transportation and services on the day of rest to allow the population to enjoy cultural life.154 Generally on the Sabbath, no public buses operate in most Israeli cities. Furthermore, while private taxis, lines, and the Ben-Gurion International Airport do operate, the Israel Railways do not. Religious needs are taken into consideration with regard to the closing of streets and roads in some places on the days of rest, with due respect for the freedom of movement of the non-religious public.155

As of this writing, there is a renewed attempt to alter the rules regarding observance of the Sabbath. The Knesset may propose banning commerce on

148 Id.
149 Municipalities Ordinance (Amendment no. 40), 1990, S.H. 34 (Isr.).
151 Id.; see also Basic Law: Freedom of Occupation, 1992, S.H. 114 (Isr.).
152 Id.
153 Id.
154 Id.
155 HCJ 5016/96 Horev v. Minister of Transportation [1997] IsrSC 51(4) 53 (Isr.).
the Sabbath while allowing cultural and entertainment activities. Ilan Shahar commented upon the draft of this proposal in Haaretz. A deal allowing entertainment in exchange for banning commerce derived from a series of proposals for compromise between the secular and religious communities. The first such proposal was initiated fifteen years ago and included mutual concessions in an effort to reach an agreement. Fifteen years ago, the secular community was beginning to push for both entertainment and commercial activity on the Sabbath; that agreement would have represented concessions from both sides. Shahar is unsure if a similar compromise would be fair today:

The religious community, which saw the country increasingly being open on [Sabbath], would have accepted the lesser evil from its point of view—movie theaters and restaurants—in order to check the phenomenon of the Sabbath turning into a shopping day. Today, when the country operates 24/7, this is a one-sided deal. The secular community is being asked to give up half of what it has already attained, so that the religious community will accept the second half.

In the early days of the state, Israel had a social covenant—called the status quo—which institutionalized a compromise in religious-secular relations. The secular community agreed to be restricted in areas such as [Sabbath], marriage and kashrut, and the religious community agreed to live in a secular state. This covenant has totally disintegrated. When there is a dispute, the secular Jews run to the High Court of Justice and the ultra-Orthodox threaten a coalition crisis.

Pointing out that the promotion of the proposal was made in a subversive manner, without almost any public discussion, with the secular community barely aware of the existence or provisions of the proposed text, Shahar asks, "whether it is really reasonable to try and reassemble only one part of the social covenant. We can assume that the secular community would find it much easier to give up shopping on [Sabbath] if in exchange it was to receive the so-called 'Couples Law,' in other words, some version of civil marriage. That would be a much fairer compromise."

157 Id.
158 Id.
159 Id.
160 Id.
161 Id.
I have quoted extensively from the above summarized article because it reflects quite accurately the character of the controversy around legislation on religious matters. As in the case of the discussion on the proposed Constitution submitted by the Law Committee of the Knesset,\(^{162}\) there is no effort to elevate the discussion on state and religion in Israel to the level of a major matter of principle. Nonetheless, this should be the case for such a debate in a country that claims, rightly, to be the political successor of a world-scattered people. These people played a, if not the, major role in the formation of the world’s faith communities.

As to the proposed Constitution now before the Knesset,\(^{163}\) it may be useful to reproduce the concise text of proposed Article 8. It reads: "(A) The established days of rest in the State of Israel are the Sabbath and the Jewish festivals. Non-Jews may rest on their holidays. (B) On days of rest no one shall be employed, and there shall be no commerce or production, except under conditions to be specified by law."\(^{164}\)

Whatever the fate of the proposed Sabbath law, its legislative history is, up to the present, additional proof of a wide gap between two positions. On one hand, there is the historical role of Judaism as a coherent philosophy of religion with enormous impact upon religious thought all over the world. On the other hand, there is the little stimulating picture concerning state and religion in the present stage of nation-building in Israel. This may, of course, be very subjective, but it reflects a state of mind in the country that cannot be ignored.

D. Other Controversial Issues

There are many other controversial issues concerning the “frontiers of religious liberty” in the State of Israel. A major balancing element is the fact that all actions of state institutions are subject to review by the High Court of Justice, even in matters related to religious law.\(^{165}\) The secular law is binding

\(^{162}\) See discussion supra Part I.A.

\(^{163}\) See PROPOSALS FOR A CONSTITUTION, supra note 26.

\(^{164}\) Id.

\(^{165}\) See Israel HRC Report, supra note 2, ¶ 27.
for the whole population.\textsuperscript{166} In practice, however, there have been problems and the tribunals have had to solve them.\textsuperscript{167}

Civil law norms have to be applied by religious courts when deciding property questions in cases of divorce.\textsuperscript{168} In an important case,\textsuperscript{169} this was clearly stated by the High Court of Justice. Justice Barak wrote on that occasion that “religious law which is applied by the rabbinical courts must conform with the principle of equality (laid down in Section 1 of the Woman’s Equal Rights Law). The Rabbinical Court is, hence, not authorized to establish a law of joint ownership—or a law of non-joint ownership—which rests on discrimination against women.”\textsuperscript{170}

The religious communities are in charge of the management of cemeteries.\textsuperscript{171} This created problems for persons who do not belong to any community or who asked that their families not be buried with a religious ceremony.\textsuperscript{172} Since 1996, the matter has been regulated by the Right to Alternative Civil Burial Law, which was intended to ensure the right to be buried according to the will of the deceased or his or her family. To that end, the law states that alternative cemeteries should be established, and some already exist.\textsuperscript{173} The Supreme Court denied the Orthodox Burial Society the right to forbid non-Hebrew inscriptions or the use of Gregorian dates on headstones in Jewish cemeteries.\textsuperscript{174} In 2000, the High Court of Justice ordered the authorities to ensure equality in the allocation of funds for Jewish and Arab cemeteries.\textsuperscript{175}

There are also some difficulties concerning \textit{kashrut} or Jewish dietary norms.\textsuperscript{176} Such norms are observed in public institutions, the army, hospitals, government offices and schools, except in non-Jewish cities or villages.\textsuperscript{177} A

\textsuperscript{166} See id.
\textsuperscript{168} HCJ 1000/92 Bavly v. Great Rabbinical Court of Appeal [1994] IsrSC 48(2) 221 (Isr.).
\textsuperscript{169} Id.
\textsuperscript{170} Id.
\textsuperscript{171} See CA 6024/97 Shavit v. Chevra Kadisha Rishon L’Zion [1999] IsrSC 53/31, 600 (Isr.).
\textsuperscript{172} See id.
\textsuperscript{173} See id.
\textsuperscript{174} Id.
\textsuperscript{175} HCJ 1113/99 Adalah v. Minister of Religious Affairs [2000] IsrSC 54/31(2) 164 (Isr.).
\textsuperscript{176} See Israel HRC Report, supra note 2, ¶ 571-74.
\textsuperscript{177} See id. ¶ 571.
1983 law aimed at preventing fraud in that respect. The sale of pork and the import of non-kosher meat, regulated by a law enacted in 1994, also created problems.\textsuperscript{178} Hotels and restaurants have been refused kashrut certificates for being open on the Sabbath, but the Supreme Court has been willing to intervene in some cases.\textsuperscript{179} The Supreme Court declared that the religious authorities do not have the right to deny such a certificate to a hall where a belly-dancer performed.\textsuperscript{180} A seldom applied law, from 1986, prohibits the selling or displaying of leavened bread or other restricted food during the Passover holiday in Jewish towns or neighborhoods.\textsuperscript{181}

\subsection*{E. Conversion}

Conversion, proselytism, and related issues are a major, sensitive issue in Israel as in other parts of the world. Most difficulties affect Jews who belong to the non-Orthodox branches of the Jewish religion or secular, non-observant Jews.\textsuperscript{182} There is a constant tension in this respect and one of its recent manifestations was the issue of conversion into Judaism or change of community membership.\textsuperscript{183}

Conversion from one religion to another is an essentially personal matter. Freedom of religion and conscience includes the right to leave a religion and adopt another one. The issue of conversion engendered many difficult problems when the United Nations discussed and adopted the 1966 International Covenant on Civil and Political Rights and issued the 1981 U.N. Declaration.\textsuperscript{184} To a large extent, these problems prevented the adoption of a mandatory treaty on freedom of religion.\textsuperscript{185}

In Israel, the right to convert was clearly recognized by the Supreme Court in \textit{Passaro (Goldstein) v. Minister of Interior}.\textsuperscript{186} This case concerned Jews but has a more general significance.\textsuperscript{187} Despite the indisputable right of everyone

\begin{footnotes}
\footnote{178 See id. } \\
\footnote{179 See id. ¶ 574. } \\
\footnote{180 HCJ 465/89 Raskin v. Jerusalem Religious Council [1990] IsrSC 44(2) 673 (Isr.). } \\
\footnote{181 See Israel HRC Report, supra note 2, ¶ 573. } \\
\footnote{182 See id. ¶ 567. } \\
\footnote{183 HCJ 1031/93 Passaro (Goldstein) v. Minister of the Interior [1995] IsrSC 49(4) 661 (Isr.). } \\
\footnote{185 See id. } \\
\footnote{186 Passaro, [1995] IsrSC 49(4) at 661. } \\
\footnote{187 See Israel HRC Report, supra note 2, ¶ 567. } \\
\end{footnotes}
to change his or her religion, in some cases, if the change is likely to produce the acquisition of rights, there may be need for approval by the Ministry of Interior.\textsuperscript{188} The change of religion is then registered in the Population Register, which may order the inscription of the change in the person's identity document.\textsuperscript{189} However, religious authorities may question the correctness of the conversion into Judaism.\textsuperscript{190} The religion and nationality of every resident and citizen is registered in the Population Register.\textsuperscript{191}

While the State may act to ensure, for example, that conversions to Judaism have not been made fictitiously for purely economic reasons, i.e., to receive the economic benefits given to an \textit{oleh} under the Law of Return, the registration as Jews of persons who have converted to Judaism under the auspices of non-Orthodox religious bodies has been and remains a controversial issue, due to the opposition of the Orthodox religious parties to recognizing such conversions.\textsuperscript{192}

In the \textit{Passaro (Goldstein)} case, the majority of the Supreme Court ruled that, for the purposes of recognition of an \textit{oleh} under the Law of Return, the Ministry of Interior had no authority to refuse to recognize non-Orthodox conversions to Judaism performed in Israel.\textsuperscript{193} The Court, nonetheless, did not order the Ministry to register the petitioner as a Jew.\textsuperscript{194} As summarized in Israel's report to the Human Rights Committee in 1998:

Under current law, then, the legitimacy of a non-Orthodox conversion to Judaism may not be denied by State authorities acting under cover of a civil, secular law. On the other hand, the Rabbinical Courts, which apply Jewish religious law in matters of personal status, do not recognize persons converted by a non-Orthodox body as Jews. Thus, a person who was converted to Judaism abroad by a non-Orthodox body, who immigrated to Israel under the Law of Return and who was registered as a Jew in the Population Register will be unable to marry in Israel if the Rabbinate does not recognize the conversion.\textsuperscript{195}

\begin{footnotes}
\item[188] See id.
\item[189] See id.
\item[190] See id.
\item[191] See id.
\item[192] \textit{Id.} \S 567. Please note that the word "\textit{oleh}" means immigrant.
\item[193] \textit{Id.} (citing HCJ 1031/93 Passaro (Goldstein) v. Minister of the Interior [1995] IsrSC 49(4) 661 (Isr.)).
\item[194] \textit{Id.} (citing \textit{Passaro}, [1995] IsrSC 49(4) at 661).
\item[195] \textit{Id.} \S 567.
\end{footnotes}
The controversy in this regard is still very intense. On March 30, 2005, the Supreme Court, in a rare composition of 11 judges, and in a case that had been pending for six years, decided that non-Jews living legally in Israel would be able to convert to Judaism by Reform and Conservative religious courts overseas. The Court further held that their conversion would be properly registered by the State authorities. Orthodox spokesmen expressed outrage at the ruling, while a Reform official said that his movement will now petition the High Court to press a ruling to the effect that non-Orthodox rabbis should be able to convert non-Jews in Israel as well. The next question is whether conversions authorized by Reform and Conservative Rabbis in Israel would be recognized when the converts apply for citizenship under the Law of Return. Even this would not signal the end of the dispute since ultimately the Conservative and Reform struggle for equal status aims at the recognition of marriages conducted by their rabbis, presently an Orthodox monopoly.

F. Religion and Education

There is a close relationship between education and religion in Israel. In 2001, the twentieth anniversary of the 1981 U.N. Declaration, the International Consultative Conference on School Education in relation with Freedom of Religion and Belief, Tolerance and Non-discrimination was held in Madrid. The study that preceded the Conference and its Final Document dealt with a series of issues that typify the impact of religion on educational systems. Some of these issues include questions of separate systems, minority issues, languages, religious symbols in classrooms, funding and other problems. While the influence of religion is not the only factor that determines the nature of education in Israel, it is nevertheless a major element concerning Jews and non-Jews.

The basic legal text defining the role of religion in Israeli schools is the State Education Law of 1953. This law has undergone many changes since

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196 HC 2597/99 Thais-Rodriguez Tushbaim v. Minister of Interior [2005] IsrSC 59(6) (Isr.).
197 See Dan Izenberg, Conversion and the Keys of the State, JERUSALEM POST, Apr. 1, 2005, at 3. Also relevant to the issue of the effect of civil marriage performed outside the land of Israel is a recent November 2006 decision. See HCJ 2232/03 Jane Doe v. Regional Rabbinical Court of Tel Aviv-Jaffa [Nov. 21, 2006] (Barak, C.J.) (Isr.).
199 Id.
200 See LERNER, supra note 19, at 53.
201 State Education Law, 5713-1953, 7 LSI 113 (1952-53) (Isr.).
it was originally passed. The pre-state educational system accommodated the many “trends” that existed in Israel at the time. These “trends” were the individual school networks of the varying camps within the Zionist movement. The State Education Law of 1953 created a more unified educational system, but continued to accommodate a diverse curriculum. Presently, there is a distinction between the general education system and the Arab education system. Within the Jewish majority there are several religious trends: non-religious general public schools with curricula including many elements with religious connotations, particularly Biblical studies; religious public schools under Orthodox control; and ultra-orthodox, non-Zionist establishments.

The influence of party politics in this area is easy to perceive. In the religious trend schools, teachers and their families are pressured to conduct a religious way of life. There are also non-state recognized establishments that receive public funding. Most of them have a religious character and among them there are church schools. Religious yeshivot, higher education schools, enjoy official support and their students receive exemption from military service, an issue that is constantly a matter of controversy. A feeling of resentment prevails in the population with regard to what many see as a privilege for religious students that is not enjoyed by non-religious students of the same age and socio-economic situation.

Professor Stephen Goldstein compared the Israeli educational system with that of the United States and concluded:

In Israel the courts’ role in educational matters has been limited primarily to issues concerning the conflict between parental liberty to control the education of their children and governmental programs restricting such liberty as part of attempts to achieve greater equality and integration in the educational structure. In such cases, the Israeli Supreme Court has shown greater sensitivity to the interests of parental liberty than have the American courts in analogous cases, but has ultimately tended to support such governmental programs, even in the face of substantial doubts as to whether they have sufficient roots in express Knesset action. Since the writing of this

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203 Id.

204 Id.

205 See id.
paper the tendency of the Israeli Supreme Courts to support governmental programs aimed at increasing school integration at the cost of parental liberty interests has continued and, indeed, increased in strength.²⁰⁶

In the quarter of a century that elapsed since Professor Goldstein wrote these remarks, the integrationist programs have lost intensity, despite being, in the words of another contributor to the above-quoted book, “an organic and crucial component of the general aspiration for the overall socio-national integration of different ethnic communities” and “designed to serve as a means of benefiting disadvantaged social groups and of upgrading the academic performance of low-achieving students drawn from those same underprivileged groups.”²⁰⁷

In any case, integrationist policies in Israel had been inspired by social and cultural considerations but did not attempt to change the prevailing pluralist pattern regarding religion or the major divide between Jewish and Arab educational systems. Here again, party politics strongly interacts with religious fragmentation, particularly within the Jewish majority, and it is in light of this situation that the issues concerning education have to be taken into account.

G. Monitoring and Complaints Regarding Abuses and Discrimination

There are a number of governmental and private organizations in Israel that monitor human rights abuses, acts of discrimination, threats, and other manifestations of religious tension. Non-governmental organizations (NGOs) as well as political parties and the Israeli press frequently criticize official and/or private decisions that are abusive or intolerant.²⁰⁸ In some cases, organizations from abroad perform a similar task.

The International Religious Freedom Report, issued annually by the United States Bureau of Democracy, Human Rights and Labor, periodically reports on the situation in Israel, as it does with respect to all countries. The last report, for 2006, states:

²⁰⁷ Amos Shapira, Educational Liberty and Equality: Some Israeli Constitutional Law Perspectives, in LAW AND EQUALITY IN EDUCATION, supra note 206, at 149, 149.
²⁰⁸ Some examples of these organizations include: 1) the Association for Civil Rights in Israel (ACRI); 2) the Arab Association for Human Rights (AAHR); 3) Adalah, a mainly Arab human rights group; and 4) the Israel Religious Action Center (IRAC), which is related to Progressive Judaism or the Reform Movement.
There was no change in the status of respect for religious freedom during the reporting period, and government policy continued to contribute to the generally free practice of religion; however, problems continued to exist, stemming primarily from the unequal treatment of religious minorities, and from the state’s recognition of only Orthodox Jewish religious authorities in personal and some civil status matters concerning Jews.\textsuperscript{209}

In 1995, the Supreme Court issued a very important decision answering the question of whether the State may allocate land on the basis of religion or nationality.\textsuperscript{210} In \textit{Ka’adan v. Israeli Land Authority}, the petitioners were an Arab couple, citizens of Israel, who wished to build their home in a communal settlement established by the Jewish Agency in collaboration with the local cooperative on state land allocated to it. The cooperative refused to accept the petitioners on the ground that only Jews may belong to it. The five judge panel decided the issue 4–1 in a judgment delivered by Chief Justice Aharon Barak. Among the general principles reflecting the nature of the State as a Jewish and democratic State, the relevant principle is that of equality—stemming from both the Jewish and the democratic character of the State. It is derived from the binding rule of law, as proclaimed by the Declaration of Independence, which requires the State “to act honestly and without discrimination.”\textsuperscript{211}

The principle of equality, enshrined in international documents and conventions, prohibits the State from distinguishing between its citizens on the basis of religion or nationality. The State engages in “unlawful discrimination even if it is ready to allocate State land for the purpose of establishing an exclusively Arab settlement (in addition to an exclusively Jewish settlement).”\textsuperscript{212} The Court cites the U.S. case of \textit{Brown v. Board of Education}\textsuperscript{213} and states that “separation is offensive to a minority and points to its social inferiority,” and was expressly condemned in the Convention against Racial Discrimination.\textsuperscript{214} The “separate but equal”\textsuperscript{215} treatment may be lawful when a minority desires to preserve its culture and lifestyle and prevent compulsive assimilation—for example when land is allocated exclusively to

\begin{itemize}
\item \textsuperscript{210} HCJ 6698/95 Ka’adan v. Israeli Land Authority [1995] IsrSC 54(1) 258 (Isr.).
\item \textsuperscript{211} Id. at 353.
\item \textsuperscript{212} Id. at 354.
\item \textsuperscript{213} 347 U.S. 483 (1954).
\item \textsuperscript{214} Ka’adan, [1995] IsrSC 54(1) 258.
\item \textsuperscript{215} Id.
\end{itemize}
Bedouin tribes. That is not the case of the settlement at issue here. The argument that the Jewish character of the State may justify discrimination is unacceptable: “In Israel, Jews and non-Jews are citizens with equal rights and duties. The State . . . is an enlightened democratic regime, which confers rights to all the citizens, Jews and non-Jews.” 216 The State cannot release itself from the legal obligation to act with equality by means of using a third party which practices a discriminatory policy.

The Ka’adan case did not involve a claim that Arabs are discriminated or abused on grounds of freedom of religion or religious worship. But Arabs constitute an ethnic, cultural, and religious minority, and the Court broadly addressed every form of discrimination involving compulsory segregation not justified by the special character or the wishes of the minority. Discrimination on the basis of religion was alleged in another case in connection with budgetary allocations by the Ministry of Religion. The Court rejected the petition for being “too general.” 217

**SUMMARY & CONCLUSIONS**

The State of Israel is a young political entity that sees itself, in terms of history, as successor to the Jewish state that existed two millennia ago—the national state of a scattered Jewish community whose ethnicity, culture, and religion have always been closely interwoven. The subject of the frontiers of religious liberty in Israel has to be considered against this historic background. However, the influence of centuries of Ottoman domination on Eretz-Israel, two and a half decades of the British Mandate, and half a century of pre-state Zionism also have to be taken into account. Therefore, after almost sixty years of existence, it is no surprise that the State of Israel has become a multi-religious society. Still, the large majority of the population is Jewish with a minority population of only about 20%, mainly Arab Muslims. 218

Israel is described as “a Jewish and democratic state,” with the word “Jewish” interpreted as meaning, in all relevant legal instruments, pertaining to Jews or the Jewish people, and not as reflecting the Halakha, Jewish religious

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216 Id.
218 See STATISTICAL ABSTRACT, supra note 13, at 85–86, tbl.2.1.
law. Still, the influence of Jewish religious law and of the nature of the Jewish people on Israeli legislation cannot be ignored. The Halakha is an essential element concerning Jews and other Israelis in family law and personal status. As a result, the interplay between ethnicity and culture, on the one hand, and religion, on the other hand, which plays such a large part in so many Israelis’ lives, has created legislative difficulties. The most obvious is the failure of the State of Israel to adopt a complete Constitution. The legal system regarding the relations of the State with various religions is therefore hybrid and labyrinthine. It can be described generally as an attempt to maintain an unstable status quo based on compromise and accommodation. The proposed constitution presently under consideration is being criticized specifically because of how it deals with the issue of state and religion.

As a consequence of the lack of clear-cut legislation on the matter of state and religion, the courts have had to fill a corrective and normative role. For this reason, Orthodox and other circles advocate limiting the Court’s power to judicial review of legislation. One of the issues that came frequently before the courts was the question of “Who is a Jew?” This is obviously a very difficult question and has yet to be answered by the Court.

In general, religious rights and freedoms are respected in Israel. The State of Israel is not a theocracy and there have been few complaints in this area. Religious interests of the different religions are, on the whole, safeguarded. Nonetheless, there is no total separation between the State and religion. Freedom from religion is not secured and, at least as far as the Jewish population is concerned, the system does not reflect the present state of human rights concerning religion. Israel ratified the main human rights treaties, but introduced a reservation to the 1966 International Covenant on Civil and Political Rights in the area of personal status and family law.²¹⁹

Points of friction exist within the Jewish majority, in which the Orthodox establishment enjoys a privileged position with regard to personal status and family law. The other Jewish religious factions and the secular sector are struggling to bring about changes and some have been achieved. Similar problems also affect other religious groups. The large Arab minority, predominantly Muslim, complains about de facto discrimination and abuses,

but seldom about limitations of religious liberty, though there have been some incidents based on religious hostility.

Although Israel is undoubtedly a democracy that is respectful of religious liberties, it needs to adjust to make its system fully compatible with basic norms in the area of religious rights and freedoms as recognized by international law. To the extent that the 1981 U.N. Declaration reflects the present standards of the international community, Israel does not fully comply. However, it is not in violation of its essential purpose of ensuring freedom of thought, conscience and religion. The issues of religious liberty facing Israel can be solved. However, it will be necessary to keep in mind the special and complex character of a young State with very old roots.