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Multiculturalism, Non-Jewish Religious Courts, and the Jewish State

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Some fifteen years ago, Michael Karayani made an important contribution to the study of the relations between state and religion in Israel by drawing attention to the fact that, in both the public and the academic discourse on the topic, the "religion" referred to in this context is exclusively the Jewish religion.[1] He showed that this discourse had been blind to the fact that questions regarding the role of religion in Israel were relevant to the non-Jewish citizens as well. Karayani's awareness of this blind spot has led him to publish important work in the field, culminating in the impressive book that is the locus of this symposium. As will become clear, although I disagree with many of Karayani's ideas, I believe his attempt to offer an extensive study of the relations between state and religion in regard to the Palestinian citizens of Israel is both timely and praiseworthy.

Karayani's main thesis is that Israel's religious courts for Arab citizens are oppressive, and that the attempt to justify the exclusive jurisdiction granted to them in terms of multiculturalism is groundless. In his view, the autonomy granted to Muslim, Christian, and Druze courts is simply "not multiculturalism" (p. 215),[2] but merely "a façade" (p. 240). This is a rather surprising claim given that the granting of such jurisdictional authority is standard in the list of multicultural accommodations. Here's one recent illustration from a 2020 entry in the *Stanford Encyclopedia of Philosophy*:

> Examples of cultural accommodations or "group-differentiated rights" include exemptions from generally applicable law (e.g. religious exemptions), assistance to do things that members of the majority culture are already enabled to do (e.g. multilingual ballots, funding for minority language schools and ethnic associations, affirmative action), representation of minorities in government bodies (e.g. ethnic quotas for party lists or legislative seats, minority-majority Congressional districts), recognition of traditional

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[1] *See* Michael Karayani, *Living in a Group of One's Own: Normative Implications Related to the Private Nature of the Religious Accommodations for the Palestinian-Arab Minority in Israel*, 6 UCLA J. Islamic Near East. Law 3 (2006–2007).

[2] Unless said otherwise, all page numbers refer to *Multicultural Entrapment*.

legal codes by the dominant legal system (*e.g. granting jurisdiction over family law to religious courts*), or limited self-government rights.[3]

Why, then, does Karayani refuse to see the right of Israeli Palestinians for religious self-governance as multicultural? One can find three answers to this question in the book, though distinguishing between them is not always easy. The first is that this self-governance is oppressive (mainly vis-à-vis Arab women and children), hence cannot qualify as a case of liberal multiculturalism. The second is that Israel's motivation in institutionalizing and supporting it is of the wrong kind. In adopting this multicultural accommodation, Israel is not motivated by goodwill toward its Palestinian citizens, but by the interests of its Jewish majority. I assume that for Karayani this ill-motivation applies to other seemingly multicultural accommodations as well, such as Israel's support for public schools that teach in Arabic, its granting a "special status to Arabic,"[4] its acknowledgement of Muslim and Christian days of rest, the mandatory representation of Arabs in the public service, and so on. According to Karayani, these measures are insufficient to define Israel as a multicultural state because, as noted, he believes that the motivation underlying them is of the wrong type.

The third answer is that the point of multiculturalism is to protect minorities from the danger of assimilation within the majority culture. However, in the case of Israel, the "existing system is already geared at keeping Israeli citizens of different religions apart," hence, "in terms of multiculturalism, the jurisdictional authority as granted to the Palestinian-Arab religious communities really makes no sense" (p. 210), and this logic probably applies to other multicultural accommodations of the kind mentioned above.

In my view, however, none of these considerations justifies withdrawing the title "multiculturalist" from the policies at hand, including that of granting jurisdiction to non-Jewish religious courts. The fact that multiculturalism puts individuals within minority cultures at risk of being oppressed and discriminated against is a standard criticism against multiculturalism,[5] but those raising it never regard it as showing that the policy criticized is not genuinely multicultural. When Susan Okin famously argued that multiculturalism was bad for women,[6] she did not go on to infer that therefore *it wasn't really multiculturalism*, or that it was just a façade. Her point was that multiculturalism—characterized by accommodations of the kind mentioned above—is *bad* (at least for women) and should, therefore,

[3] Sarah Song, *Multiculturalism*, *in* The Stanford Encyclopedia of Philosophy (Edward N. Zalta ed., Fall ed. 2020), <https://plato.stanford.edu/archives/fall2020/entries/multiculturalism/> (emphasis added).

[4] Article 4 of The Basic Law—Israel the Nation State of the Jewish People states: "The Arabic language has a special status in the State," and then adds "nothing in that article shall affect the status given to the Arabic language before this law came into force."

[5] *See* especially Susan Moller Okin, *Is Multiculturalism Bad for Women?*, *in* Is Multiculturalism Bad for Women? 7–27 (Joshua Cohen, Matthew Howard & Martha Craven Nussbaum eds., Princeton University Press 1999), and Brian Barry, Culture & Equality: An Egalitarian Critique of Multiculturalism (Polity Press 2001).

[6] Okin, *supra* note 5.

be rejected. Regarding the point about ill-motivation, Karayani seems to believe that a policy qualifies as multicultural only if it stems from respect for the minority cultures and if it expresses genuine care for their autonomy and identity. In granting jurisdictional authority to Palestinian religious courts, he contends, Israel's objective was different; it was "to maintain their [the Palestinians'] boxed-in identities, and ultimately to better control them and preserve Jewish identity" (p. 194).[7]

However, this condition seems implausible. To see why, think of the following analogy. Assume that Israel fully respected the right to free press of the Israeli Palestinians by allowing them to run as many and as diverse newspapers, radio channels etc. as they liked, and that it never interfered in their content. Assume further that this policy brought about further alienation of the Palestinians in Israel from their Jewish fellow-citizens. Finally, assume that the achievement of this alienation was what underlay Israel's policy in the first place. Nonetheless, it would seem odd to withhold the title "free press" when describing the policy at hand. In the scenario just described, the Arabs clearly *had* free press even though it resulted in adverse effects for them.

The same applies to other state policies, including multiculturalism. A policy that helps minority cultures to survive and flourish by granting them language rights, autonomous schools, religious and other self-governing bodies, a share in the state symbols, and so on is multicultural, regardless of the motivation underlying it. I should add that philosophers prominent in the multicultural tradition, such as Kymlicka and Taylor, accept the appropriateness of justifications for multiculturalism that do not focus on the interests of the minority members but on those of the majority, which assumingly can benefit from the existence of cultural diversity.[8] Thus, in order to describe some policy as multicultural, we do not need to make assumptions about the intentions of the state, assumptions that are pretty hard to establish in any case (see more on this below), and, in particular, we do not need to ascribe to the state, or to its officials, some lofty moral aspiration like the realization of justice or the protection of rights.

This brings me to Karayani's third argument for withdrawing the title "multicultural" from Israel (at least concerning Israel's attitude and policy vis-à-vis her Arab citizens). *Contra* Karayani, the purpose of a multicultural policy is not merely to protect minority groups from assimilation, but to enable them to live a more autonomous, more authentic and more flourishing life, all of which, according to multiculturalism, require being embedded in a rich, all-encompassing culture. This means that if, on the one hand, minority members

[7] Note that this is not just an historical claim about the intentions of those Israeli-Jews who decided to grant (or not to take away) the jurisdictional authority of the religious courts in the first years of the state, but a claim about the logic of the Zionist project. See especially chapter 2. In Karayani's view, "the status of Judaism as Israel's official state religion is above all exclusive, relegating, by definition, Palestinian-Arab religions to Israel's private sphere" (p. 80), a relegation that in his view bears directly on the status of Muslim, Christian, and Druze courts.

[8] *See* Will Kymlicka, Multicultural Citizenship 121–23 (Oxford University Press 1995), and Charles Taylor, *The Politics of Recognition*, *in* Multiculturalism 66 (Amy Gutmann ed., Princeton University Press 1994).

cannot assimilate within the majority while, on the other, their own culture—its religion, language, music, community institutions, etc.—is ignored and neglected by the state, they are in danger of getting hammered from both sides, ending up with no culture in which they feel at home. In such cases, multiculturalism makes all the sense in the world, promoting a list of accommodations that might help the minority members to live in a flourishing and vibrant culture. This is exactly the case with Israeli Palestinians who have no real option of assimilation into the Jewish majority and whose claims for multicultural accommodations are, therefore, even more fitting than in the case of other minorities in Israel (like the Ultra-Orthodox) or of minorities in other countries.

Let us now take a closer look at the premise of the second argument discussed above, namely, the alleged problematic motivation that Karayani ascribes to Israel in its institution and maintenance of autonomous (non-Jewish) religious courts. In Karayani's view,

> A group defines itself not only by stressing its past, its culture, and its aspirations, but also by stressing the divides that separate it from other groups. These divides become clearer if other groups are also pushed into preserving their own identity. The decision to preserve the *millet* system for the Palestinian-Arab minority was also guided by the hegemonic will of the Jewish majority in Israel to preserve its distinctiveness and identity. (p. 157)

To unpack this argument, let me start by noting the well-known philosophical challenges facing such claims about the intentions or will of collective entities like nations, states, religious/ethnic groups, companies and so on. Such claims face first of all the ontological question of whether such entities can be coherently ascribed intentions or desires; can a state be literally said to want X, or is that just a way of saying that its president, for instance, wants X, or that seven cabinet members who supported her want X, or maybe that a long list of defined individuals want X? The problem, of course, is that collectives of the sort just described seem like entities to whom intentions cannot be ascribed.[9] The second challenge is epistemic. Even if states or groups can be said to have a will, how can we know it? Identifying somebody's intentions is pretty hard even on the individual level, all the more so on the collective level.[10] Since there is no way to look into people's minds and identify their intentions, and since they usually leave no clear and reliable record of their true intentions, the only way to ascertain their intentions is by making assumptions about what most probably motivated them in doing, or in refraining from doing X.

At this point, it would pay to recall the nature of this X in the present context. The decision that Israel had to make after its establishment was not whether or

[9] *See*, *e.g.*, Margaret Gilbert, *Shared Intention and Personal Intentions*, 144 Philos. Stud. 167–87 (2009), and Christian List & Philip Pettit, Group Agency: The Possibility, Design, and Status of Corporate Agents (Oxford University Press 2011).

[10] *See*, for instance, Larry Simon, *Racially Prejudiced Governmental Actions: A Motivation Theory of the Constitutional Ban Against Racial Discrimination*, 15 San Diego Law Rev. 1065–1127 (1978).

not to institutionalize a system of autonomous religious courts for Christians, Muslims, and Druze from scratch because such courts *already existed*. The different religious groups in Palestine—Jewish and Arab—had already enjoyed jurisdictional autonomy under the British Mandate, particularly in matters concerning marriage and divorce. So the best way to interpret Karayani's claim is along the following lines: In the first years of Israel, "the Jews" or "the state" thought it might be a good idea to *change* this legal situation and either completely get rid of these religious courts or at least limit their authority, but then it was decided not to do so because of concerns about the Jewishness of the state; "the hegemonic will of the Jewish majority in Israel to preserve its distinctiveness and identity" (*id.*). But there is no evidence, no *direct* evidence at any rate, that "the Jewish majority" (i) seriously considered dismantling the Arab religious courts and (ii) refrained from doing so on the basis of the motivation proposed by Karayani. So what Karayani suggests is an indirect way of establishing Jewish "hegemonic will" regarding non-Jewish religious courts, by pointing to what would have been the most logical way for Jews (or the Jewish state) to think about the issue at hand given their general agendas and commitments. Given Israel's desire to preserve its Jewish identity and given that the maintenance of non-Jewish religious courts assumingly served this identity, the hypothesis put forward sounds tempting, namely, that Israel's support for the continued existence of these courts was guided by her wish to solidify her Jewish identity.

This speculation, however, seems to me ill-founded. First, it is unclear how the existence of non-Jewish religious courts with which many Israeli Jews were not (and still are not) even familiar could help to preserve their Jewish-religious identity. Second, if to define itself as Jewish, Israel had to stress what separated her from other groups, this should have applied first and foremost to the Palestinian *national* minority in Israel, which was and still is the main "other" in the eyes of Israeli Jews. But Israel was never guided in its legislation by a desire to encourage the Palestinian citizens of Israel to preserve and develop their national culture. Third, one must remember that the overwhelming majority of Palestinians in Israel are Muslim, with the Christians and the Druze constituting much smaller fractions. This is important for the present discussion because the strongest opposition to Israel and the greatest reluctance to integrate into it come from Muslim circles. Extremism, which is sometimes associated with violence and terror, is also more prevalent among devout Muslims than among devout Christians or Druze. What this means is that it should have been in Israel's interest to weaken, rather than to preserve, Muslim identity, among other ways by undermining the autonomy of Muslim courts and diluting the authority granted to Imams and other religious leaders. The proposal that what motivated Israel in the establishment of non-Jewish religious courts was Jewish interests therefore fails on its own terms because cultivation of these interests would have led Israel to introduce precisely the opposite policy.

There is, therefore, no good reason to think that the Knesset (or "the hegemonic will of the Jewish majority") considered taking away the jurisdiction granted to Muslim and Christian courts by the British mandate and refrained from doing so because of its belief in the contribution of such courts to the preservation of Jewish identity. This points to an alternative narrative along the following lines: As mentioned earlier, before the state was established, the different religious groups in Palestine had already enjoyed jurisdictional autonomy in some legal areas, especially those concerning marriage and divorce. The continued existence of such courts seemed natural, a perception which intensified after the legislation of the law on Rabbinical courts in 1953. If Jews were put under the jurisdiction of Rabbinical courts in matters of marriage and divorce, it seemed natural to leave non-Jewish citizens under the jurisdiction of *their* religious courts. The fact that almost all the law existing in Palestine prior to the establishment of the state was imported as is into the legal system of Israel meant that the non-religious religious courts retained their jurisdiction, which could have been voided only by explicit legislation. The Knesset saw no reason to enact such legislation.

Karayani mentions another Israeli interest that underlies her support for the religious jurisdiction of the Palestinian–Arab minority, namely, the wish to appear liberal in the eyes of the international community (pp. 46, 194). But this community is deeply ambivalent about the merits of multiculturalism, with many arguing that it is "dead."[11] Against this background, it is not at all clear that, in terms of PR, granting autonomy to religious courts, esp. to *shari'a* ones, is better for Israel than subscribing to an uncompromising liberal-individualist approach that frees individuals from any mandatory tie to the religious institutions of their cultural group.

Putting aside the question of whether Israel should be described as multicultural or not, let me turn to the book's claim that the authority granted by Israel to Muslim, Druze, and Christian courts is a form of oppression. Karayani is aware of the general tension between multiculturalism and the rights of individuals, particularly women, and he goes to great pains to show that, in the case of Israel, the tension is *especially* disturbing. He believes that Israeli Palestinians are more oppressed than minority members in other countries, that they are victims of severe oppression, imprisonment, and entrapment.

This belief, however, faces an obvious objection, of which Karayani, again, is aware. If the Palestinians in Israel are victims of such severe oppression, how come they are almost completely silent about it? In particular, how come their political leaders talk so little about it?

Karayani's main response is that although many Palestinian Israelis—especially secular ones—oppose the legal regime of autonomous religious courts, or at least

[11] For discussions of this claim, *see*, for instance, Will Kymlicka, *Multiculturalism: European and Canadian Experiences*, Global Vantages, April 2012, and Christian Joppke, Is Multiculturalism Dead? Crisis and Persistence in the Constitutional State (Wiley 2017).

the way it functions, they refrain from voicing this opposition out of fear that doing so would undermine Palestinian unity. Since such unity is critical to the Palestinian struggle for recognition and equality, those opposing the religious courts agree to sacrifice the interests of the oppressed—mainly women and children—for the sake of the Palestinian national interest. As Karayani puts it, "internal politics thus become focused on generating solidarity and unity, even if it is attained by entrenching patriarchy and repressing gender equality" (p. 174).

But it is hard to see why Palestinian solidarity would be so badly undermined by fighting for more gender equality in such a way that could justify—in the eyes of Palestinian leaders—giving up this fight. An alternative explanation would be to say that many Palestinians in Israel, including many of their leaders, are simply not that bothered by what Karayani regards as entrapment into severe oppression. Karayani himself provides us with reasons to think that this, indeed, is the case. He concedes that "there is virtually no active secular agenda on behalf of the Palestinian-Arab parties, and certainly no anti-religious establishment activism, be it Muslim, Christian, or Druze" (p. 222). He goes further to suggest that "the Palestinian-Arab minority is still dependent on patriarchy as a social order, at least to some extent" (p. 178), which raises the suspicion that the majority of Palestinians in Israel do not feel the sense of oppression and entrapment that one would expect them to feel if Karayani were right in his analysis.

All this further undermines Karayani's proposal that the autonomy of non-Jewish religious courts results mainly from the attempt of the Jewish majority to preserve its Jewishness plus a desire to improve Israel's reputation in the world. Karayani himself points to a much more plausible explanation: many Israeli Arabs, especially many Muslims, are content with this arrangement,[12] and, at any rate, would oppose any attempt by *Israel* to change it (see below). Israel as a Jewish state has no special interest in maintaining the autonomy of the non-Jewish religious courts, therefore it has made no effort to block the "overflow" of more egalitarian norms, in the last twenty years or so, from the legal treatment of *Jewish* women to Palestinian–Arab religious institutions and norms (p. 261).[13] Similarly, it has not tried to restrict the increased accountability of Arab officials working in religious courts although this accountability has been "a powerful promoter of internal reform movements" (*id.*).

To follow a point just made, I should add that, according to Aharon Layish, many *qadis* in Israel do not oppose the very liberalization of Muslim law as interpreted and practiced in Muslim courts, but only the introduction of such reforms *by the Knesset*:

> The *qadis* of the present generation in the Sharia Court of Appeal strive to introduce reforms inspired by the legislation and judicial practice in the Arab countries.

[12] This holds especially true for the early days of the state because, as Karayani notes, "The Palestinian-Arabs in Israel were more traditional to begin with" (p. 174).

[13] See Chapter 6 on the various ways in which family law among Palestinian-Israelis has been reformed.

> However, contrary to *qadis* of previous generations, who consciously deemed themselves bound by and identified with the Knesset's legislation to the extent of being ready to invite statutory legislation as remedies to occasional problems, the *qadis* of the present generation, though fully aware of the Knesset's legislation and the Supreme Court's judiciary's practice due to the shari' judiciary integration into the general legal system, *are anxious to preserve to the utmost the unique religious character of the shari' judiciary.*[14]

What blocks the release of Muslim women and children from the entrapment to which Karayani refers has, then, more to do with internal factors in Muslim society and religion than with Jewish agendas or policies.[15]

One might still wonder how is it that many Israeli Palestinians accept the unfair state of affairs described by Karayani, in which while the Supreme Court protects Jewish women from the oppression they suffer from the Rabbinical courts, thereby manifesting its *liberal* face, it disregards the interests of Palestinian women who suffer parallel oppression from non-Jewish courts, this time manifesting (the façade of) its *multicultural* face. My answer is that this description is quite far from reality. In an in-depth study of Rabbinical courts, Daphna Hacker has shown that in many respects these courts provide better services to their clients than civil (secular) courts,[16] and in these respects no intervention by the Supreme Court is called for. Similarly, in a forthcoming study, Hleihel, Yefet, and Shahar have shown that regarding alimony claims, the Shari'a courts in Israel are surprisingly more pro-women than the civil courts.[17] In divorce disputes, in contrast, "the rabbinical courts notoriously fight to assert their jurisdiction and strive for autonomous jurisprudence,"[18] and in regard to *these* disputes even the Supreme Court cannot help, for instance, cannot declare a marriage void until the husband agrees to give his wife a *get*. So, in issues other than divorce, Jewish as well as Muslim women are currently relatively well treated by their respective religious courts, not because of some liberal agenda of the Supreme Court but because "the ultra-orthodox judges of the rabbinical courts seem to share the general public opinion that women should not be discriminated against in inheritance,"[19] an opinion generally shared by Muslim judges as well.[20] In contrast, in divorce disputes, Jewish and Palestinian women alike are at the mercy of their religious courts, with the civil courts able to grant very

[14] Aharon Layish, *Adaptation of a Jurists' Law to Modern Times in an Alien Environment: The Case of the Shari'a in Israel*, 46 Die Welt des Islams 213 (2006) (emphasis added). See also Karayani's quotation from Spinner-Halev on p. 171, who makes the same point.

[15] See also the opposition of both Muslim and Christian leaders to the Law of Inheritance that reduced the authority of the religious courts in this area. Thanks to Amihai Radzyner for referring me to letters in the State Archive that express this opposition. See the Gal File 21283/3 2383/9.

[16] Daphna Hacker, *Religious Tribunals in Democratic States: Lessons from the Israeli Rabbinical Courts*, 27 J. Law Religion 59–81 (2012).

[17] Wejdan Hleihel, Karin Carmit-Yefet & Ido Shahar, *Muslim Wives' Maintenance Between the Shari'a Court and the Family Court: A Story of a Conservative Revolution in Liberal Garb*, Mishpatim (forthcoming) (Hebrew).

[18] Hacker, *supra* note 16, at 70.

[19] *Id.* at 77.

[20] *See also* Layish, *supra* note 14.

limited remedy. In my estimation, then, the difference Karayani sees between the Supreme Court's protection of Jewish women and its neglect of non-Jewish women (see, e.g. 244), which assumedly strengthens the latter's "entrapment," is exaggerated.

This brings me to a more general point about the project. The discrimination against *Jewish* women in Israel, particularly (but not only) in the Rabbinical courts, has been extensively researched by both academics[21] and human rights organizations.[22] Karayani has done us an important service by drawing attention to the fact that this intense concern with women's rights has largely been blind to the fate of *Arab* women, in particular to the ways by which they have been subject to discrimination by their respective religious courts. But acknowledging this blind spot should not push us to the other extreme, so to say. I refer to the view that the fate of Arab women in Israel "is *much harsher* than that faced by Jewish women and children that come under the jurisdiction of rabbinical courts and other Jewish religious institutions" (p. 97). Karayani does not present data that can support this conclusion, and methodologically it would be a rather challenging task to do so (e.g. what populations exactly would we be comparing? In terms of what exactly would we be measuring "harshness"? How would we compare the severity of discrimination between different legal systems? And so on). But trying to figure out who suffers more is not very helpful in any case. What's important is that both Palestinian and Jewish women suffer discrimination from their respective religious courts and that this discrimination should come to an end.

How can an end be put to it in the case of Palestinian women? Since, according to Karayani, the discrimination against them results from the exclusive authority granted to their religious courts, the natural remedy seems to be the ending of this exclusivity. In practice, this would mean offering all citizens the option of a civil marriage and divorce, probably side by side with the possibility of a religious option. Such a reform would fit a demand that has been made for decades by many Israeli Jews to enable Jews to get married outside the Rabbinate. As Sapir and I have argued elsewhere, this demand is fully justified.[23] It is time for a civil system of marriage and divorce open to all citizens of Israel.

Nonetheless, I am skeptical regarding the change that such a reform might bring about for Israeli Arabs, especially for Muslims. With regard to Jews, their alienation from the Rabbinate and their fear of being subjected to rulings of the Rabbinical courts have led them to find other avenues to get married

[21] The literature on the topic is huge. For a brief sample, *see* Ruth Halperin-Kaddari, Women in Israel: A State of Their Own (University of Pennsylvania Press 2004); Orit Kamir, *The Schizophrenic Reality of Israeli Women: A Cinematic Perspective*, *in* Handbook of Israel: Major Debates 437–52 (Eliezer Ben-Rafael, Julius H. Schoeps, Yitzhak Sternberg & Olaf Glöckner eds., Degruyter 2016); and Yofi Tirosh, *Diminishing Constitutional Law: The First Three Decades of Women's Exclusion Adjudication in Israel*, 18 Int. J. Constit. Law 821–46 (2020).

[22] See, for instance, the publications and activities of Center for Women's Justice, The Israel Women's Network, and The Association for Human Rights in Israel.

[23] Gideon Sapir & Daniel Statman, State and Religion in Israel: A Philosophical-Legal Inquiry 279 (Cambridge University Press 2019).

independently of a legal reform in this domain which unfortunately is not forthcoming. Some couples opt for a civil marriage abroad, mainly in Cyprus, a marriage which is recognized by the Israeli Ministry of Interior. Others opt for the legal status of cohabitation (*yeduim b'tsibur*) which grants the couples almost all the privileges and rights of married couples.[24] Since being officially registered as married (even on the basis of a civil marriage abroad) means that one must go through a religious court in the case of a divorce, the option of cohabitation is becoming the more popular one among Israeli-Jewish couples who want to avoid dealing with the religious authorities. Thus, de facto, the exclusivity granted by law to the Rabbinate to administer marriage and divorce among Jewish citizens and to regulate the establishment of families more generally is seriously undermined. This, by the way, is part of the reason that civil marriage is such a non-issue in contemporary political agendas and debates in Israel, even in liberal circles. Although most Israeli-Jews (65 per cent), and definitely most secular Jews (90 per cent), support civil marriage,[25] they see no burning need to fight for it because the other options just mentioned, especially that of cohabitation, are so easily available.

The point is that these options are available to non-Jews as well. That young Muslim or Christian couples hardly ever take advantage of them has therefore little to do with the exclusivity granted to their respective religious courts. Just like Israeli-Jews (or mixed couples), they too can obtain a civil marriage abroad,[26] or simply unite and start a family under the legal status of cohabitation. That they do not do so is due to internal social, religious, and cultural factors, not to Israel "entrapping" them under the jurisdiction of Muslim or Christian religious courts.

I suspect, then, that the remedy indicated by the book for the oppression carried out by non-Jewish religious courts, namely, putting an end to their exclusivity, will not work. This exclusivity is de facto already undermined, but the oppression goes on. A more radical remedy would be to put an end not to the *exclusivity* of these courts but to their very *existence*. But such a move would manifest disrespect for the beliefs and traditions of many Muslims and Christians in Israel and I trust Karayani too would reject it.

The problem is that once religious courts—Muslim, Druze, Christian, or Jewish—are granted legal power (even non-exclusive), one cannot rule out the possibility of tension between some of their rulings and liberal values, tension that might lead to various forms of discrimination or oppression. There is no simple way of dealing with such tension. The Supreme Court can offer some help in the guise of cautious interventions that reduce illiberal rulings and

[24] *See* Shahar Lifshitz, Cohabitation Law in Israel In Light of a Civil Law Theory of the Family (University of Haifa Press 2005) (Hebrew).

[25] Based on a survey conducted by the Smith Institute in 2021. *See* https://marriage.hiddush.org.il/surveys/2211.

[26] Recently, an option of doing so online has opened up, see https://www.timesofisrael.com/couples-marry-online-via-state-of-utah-to-beat-lack-of-civil-marriages-in-israel/.

policies without undermining the legal power and public status of the religious courts and without conveying a message of disrespect for their respective communities. But the main hope for reform is through long, bottom-up processes brought about by educators, intellectuals, and religious and political leaders, processes that will put pressure on the religious courts to become more liberal and more egalitarian. In other words, when there is change in the communities served by the religious courts, the courts will change as well. If the communities do not change, then taking away the exclusive authority of the religious courts in matters of marriage and divorce will be of little help—*and* will be perceived by many Israeli Palestinians as yet another expression of disrespect towards them.[27]

Finally, and to repeat a point made above, I do not think that Israel seeks to block or slow down such liberal processes among religious circles in Israel, be they Muslim, Christian, or Jewish. If such circles inspire or put pressure on their respective courts to become more liberal and more egalitarian, such moves would be welcomed by the state. Whether and how Israel herself should initiate such processes among its religious citizens and communities is a question that will have to wait for another day.

[27] For an illustration, see the responses of the Muslim members of Knesset to the proposed amendment no. 5 to the Court of Family Affairs Law, which made it possible for non-Jewish parties to turn to The Civil Court For Family Matters (except for matters regarding marriage and divorce) and not only to their religious courts. See especially the strong words of MK Kana'an, complaining that the proposed amendment would be yet another harm "against the Muslim population, the Muslim endowment (*waqf*), cemeteries and mosques" (Protocol of the Knesset meeting, 23 October 2001). Karayani himself mentions this fierce opposition to amendment no. 5 on p. 250.