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**Should Ultra-Orthodox Schools in Israel
be Required to Teach the Core Curriculum?**

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**SHOULD ULTRA-ORTHODOX SCHOOLS IN ISRAEL
BE REQUIRED TO TEACH THE CORE CURRICULUM?**

By Gila Stopler*

Abstract

The ultra-Orthodox Jewish community in Israel has its own separate education system which is funded by the state and in which boys are given an exclusively religious education with almost no exposure to secular subjects or to civic education. Proponents of this arrangement claim that it is required by the community members' religious freedom and their right to multicultural accommodation. This article examines this claim from theoretical and comparative perspectives and argues that this arrangement is neither required theoretically nor comparable to the situation in the other countries examined. It further argues that the exemption of UO boys from the core curriculum is especially problematic in light of Israel's state religion relations and the unique position of the UO community in the Israeli polity.

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I. Introduction

The Israeli education system is a pluralist system that caters to the diverse communities existing in Israeli society. This is especially true with respect to the large Jewish religious communities, which in addition to a public religious education system enjoy private education systems, the largest of which is an ultra-Orthodox (hence – UO) education system, which despite being private, is heavily funded by the state.

The right of parents, and of the communities in which they live, to educate their children according to their own beliefs is a fundamental one, and educational pluralism is an essential aspect of respect liberal democratic states must show to their diverse citizenry. Nevertheless, while respect for parents' and communities' decisions with regard to the form and content of their children's education should be the rule, there are instances in which the liberal democratic state is allowed and indeed required to assert its authority in educational matters in order to protect the rights and interests of others as well as the public's interests.

The Israeli Supreme Court has heard two important cases within the last few years which involved the UO education system, and which brought to the fore the conflict between religious educational autonomy and the authority of the liberal democratic state. These cases (hence – the *Core Curriculum* cases) have highlighted the worrying fact that the UO education system for boys refuses to teach the core curriculum, which includes, in addition to basic skills such as math and English, lessons in citizenship and core democratic values such as tolerance and equality.

Controversies over religious education are, of course, not unique to Israel. All liberal democratic states face the dilemma of reconciling between freedom of religious parents and religious communities to educate their children according to their religious precepts, and the need to protect against discrimination, promote liberal values, as well as preserve the rights of the children, the rights of people outside the community, and the interests of the democratic state.

However, it would seem that the Israeli case is unique in several respects:

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First, while in most countries the size of the community that might reject the core curriculum and civic values is relatively small, in Israel the UO community, which is most adamant in its refusal to accept them is a large community, approximately 10% of the Israeli population. Moreover, it has a rapidly growing population: One out of every four Jewish students in the Israeli primary school system is educated in an UO school. The size of the UO community is especially pertinent because albeit their secluded way of life, the leaders of the community are deeply involved in national politics and wield significant political power. Hence, arguably, unlike the Amish in the U.S. for example, the UO community cannot be considered *partial citizens* who can opt out of certain obligations of citizenship.¹

Second, the UO education system, while private, is heavily funded by the state. This may mean that the state has a stronger justification to enforce the core curriculum and civic values in the UO education system or at the very least to cut funding to schools that refuse to abide by state requirements.

Third, Israel is a deeply divided society fraught with ethnic and religious tensions and faced with serious external threats; therefore it is in greater need of shared civic values as a stabilizing force. Although religion can itself serve as a stabilizing force in society, recent events have shown that this is not the case in Israel today. In December 2010 more than 50 national orthodox and ultra-Orthodox rabbis issued a religious ruling forbidding the sale and rental of homes to gentiles, particularly to Arabs.² A few weeks later, this ruling was followed by a letter issued by 27 wives of rabbis calling on Jewish girls not to date Arabs, not to work with Arabs and not to perform national service where Arabs work.³ Further, the 2010 Israeli Democracy Index recently published by the Israeli Institute for Democracy found that the greater the level of religious observance, the stronger the objection to equality of rights between Jews and Arabs. Thus, one of the issues that the survey examined was to what extent the notion that citizenship is a legal status conferring equal rights has been internalized by the Israeli public. According

¹ On partial citizenship see JEFF SPINNER, THE BOUNDARIES OF CITIZENSHIP 95-99 (1994).

² Kobi Nahshoni, 50 municipal rabbis: Don't rent flats to Arabs (Ynet 12.7.2010) <http://www.ynetnews.com/articles/0,7340,L-3995724,00.html>

³ Yair Altman, Rabbis' Wives: Don't Date Arabs, (Ynet, 28.12.2010) <http://www.ynetnews.com/articles/0,7340,L-4005896,00.html>

to the findings in the survey, while 51% of the general public support full equality of rights between Jews and Arabs, a breakdown of the Jewish public by religiosity shows that only 33.5% of secular Jews are opposed to such equal rights, in contrast to 51% of traditional Jews, 65% of religious Jews, and 72% of ultra-Orthodox Jews who are opposed to equal rights⁴ These findings correspond to similar findings in earlier surveys.

In part II of the paper I will describe the UO community, its education system and the Supreme Court *core curriculum* cases. As will be described below, the end result of the *core curriculum* cases was that the Israeli legislature, the Knesset, passed a law exempting UO high schools for boys from teaching the core curriculum, while still granting them funding which is equivalent to 60 percent of the funding granted to public schools per student.⁵ The proponents of the law claimed that allowing this form of autonomy in education to the UO is required normatively, from the perspective of liberal multicultural theory, and is appropriate in a democratic society. In part III of the paper I will first examine the views of five theorists with regard to the contours of the autonomy that should be granted to religious education. I will then perform a comparative legal analysis of the autonomy granted to religious communities in the area of education in five countries. I will discuss the education of Muslims in the Netherlands and Britain, private religious education in the US, the Imam Hattip religious schools in Turkey, and Muslim private education in Malaysia. These theoretical and legal analyses will lead me to conclude that the form of educational autonomy granted to the UO is neither required normatively nor is it comparable to the autonomy granted to the education systems of religious groups in the countries discussed. Moreover, in part IV of the paper I will conduct a detailed analysis of the position of the UO community in the Israeli polity, based among other things on the unique structure of state religion relations that exists in Israel, and claim that the position of the UO community in Israel is quite different than the position of the other religious minorities discussed in the paper, and that therefore the educational autonomy given to the UO in Israel is all the more unwarranted and problematic. I will conclude with suggestions as to the measures

⁴ Auditing Israeli Democracy – 2010 Democratic Values in Practice, Asher Arian et al., The Israel Democracy Institute 2010, English abstract, pg. 8, http://www.idi.org.il/PublicationsCatalog/Documents/Book_7114/madad_2010_eng_abstract.pdf

⁵ Unique Cultural Educational Institutions Act, 2008, sec. 5

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that Israel should take in order to thwart the threat to its democratic structure that the current situation poses, and claim that, among other things, the state should cut the funding to any school that does not teach the core curriculum.

II. UO Education in Israel - Background

The UO education system is the largest private education system in Israel and the one that gets the most generous state funding and the least supervision. Before discussing the Israeli education system and the recent *core curriculum* cases which demonstrate the problematic nature of the UO education system, it is important to give a short overview of the UO community in Israel.

The UO community

The UO Jewish community in Israel consists of around 800,000 people who comprise about 10 percent of the Israeli population.⁶ The UO community, or in its Hebrew name – the Haredi community, or the Haredim - gets its name from the proverb in Isaiah 66:5 “Hear the word of the Lord, you who tremble (haredim) at His word”.⁷ The UO are a radical segment within Orthodox Judaism, and while there are many subgroups within the UO community they all distinguish themselves from other Jews by their dress, attitudes, world view and the character of their religious lives.⁸ The three main subgroups in the UO community are the Lithuanians, the Hasidim and the Sephardi UO’s, but these subgroups are themselves divided into many different sub communities.⁹ According to Heilman and Friedman the UO can be considered fundamentalists in that they believe in the fundamental truths of their religion, which they assume, are unchanging from the time of Abraham, and they look to the past as “the great teacher”.¹⁰ Furthermore, a crucial feature of their existence is “a refusal to

⁶ It is very hard to produce accurate estimates of the size of the ultra-orthodox community, and the estimates vary according to the measuring methods used. See Fridman et al., *Measurement and Estimates of the Population of Ultra-orthodox Jews*, The Israeli Central Bureau for Statistics, March 2011[Hebrew].

⁷ Samuel Heilman & Menachem Friedman, *Religious Fundamentalism and Religious Jews: The Case of the Haredim*, in *FUNDAMENTALISMS OBSERVED* (Marty & Appleby eds.) 197, 198 (1994)

⁸ *Id.* at 197, 199

⁹ EHUD (UDI) SPIEGEL, TALMUD TORAH IS EQUIVALENT TO ALL” THE ULTRA-ORTHODOX (HAREDI) EDUCATION SYSTEM FOR BOYS IN JERUSALEM, 29 (2011)

¹⁰ Heilman & Friedman *supra* note 7 at 197

endorse or legitimate contemporary Western culture” and their entire lives are dedicated to “fortifying their own way of traditional Judaism” in opposition to modernity.¹¹ Thus, while UO fundamentalism is built on a commitment to an idealized past, this past has in fact never existed and is constructed and reconstructed by UO sages in opposition to developments in modern culture and society.¹² The UO community has objected to the establishment of the state of Israel and still retains an anti-Zionist ideology to this very day.¹³ Furthermore, the UO consider themselves, and are often perceived by others as, a secluded enclave community. Nevertheless, UO representatives have served in the Israeli Knesset and been involved in Israeli politics since the establishment of the state and their political power, as well as their power in Israel’s religious establishment, has grown considerably over the years.¹⁴

The UO community is the fastest growing community in Israel. The average fertility rate of UO women stands at almost 7.7 children per woman, as opposed to 2.6 children per woman for the Jewish population in general.¹⁵ Only about 37% of UO men work while almost half of UO men study religious studies in Yeshivot and Kolelim and receive stipends from the government in return.¹⁶ More than 50% of the UO women work, but most of them work only part time, due to their domestic duties.¹⁷ Because of the combination of very high fertility rates with very low workforce participation the UO community is the poorest community in Israel and its mode of existence is heavily dependent on state funding and on donations.¹⁸ It should be noted that the UO community at the time of the establishment of the state of Israel was quite different, with UO women’s fertility rate similar to that of other Jewish women and with UO men quitting their religious studies and finding a job upon their marriage.¹⁹ Experts have related the radical change in the structure of the community to the combination of

¹¹ *Id.* at 198

¹² *Id.* at 257

¹³ MENACHEM FRIEDMAN, *THE HAREDI (ULTRA-ORTHODOX) SOCIETY – SOURCES, TRENDS AND PROCESSES*, 19-20 (1991)

¹⁴ *Id.* at 52-54, 188-191

¹⁵ As of 2001. Hagai Levin, *The Haredi Sector in Israel: Empowerment through Workforce Integration*, *The National Economic Council*, 10 (2009) [Hebrew]

¹⁶ *Id.* at 13

¹⁷ *Id.* at 14-16

¹⁸ *Id.* at 41-43

¹⁹ GERSHOM GORENBERG, *THE UNMAKING OF ISRAEL*, 165-166 (2011)

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generous financial support by the state and the changing religious and social norms within the community as it continued to grow and to gain a more powerful position in Israeli society.²⁰

The continuous study of Tora (Talmud Tora) has always been a central ideal in Jewish tradition and is considered the equivalent of all other religious commandments.²¹ While throughout history this ideal, which is practically impracticable due to the need to earn a living, has been fully realized only by a few select sages, in contemporary UO society in Israel the full realization of this ideal has become the sole goal of the UO education system.²² Consequently, the UO education system centers on teaching all boys rigorous religious studies throughout their school years with almost no secular subjects.²³ This paves the way for boys in the UO community, after finishing Yeshivot Ketanot (the UO equivalent to high school), to continue their full time religious studies in Yeshivot Gdolot (until their marriage) and later in Kolelim.²⁴ As already mentioned, currently almost half of UO men devote all their time to religious studies in these institutions and their only income is stipends they receive from the state.²⁵

The Israeli Education System and UO Education

The Israeli education system consists of three types of schools – public schools, private schools that must go through a process of recognition by the state (hence – recognized schools), and private schools that have been exempted from the need to go through a process of recognition (hence – exempt schools).²⁶ According to Israeli law in order to achieve recognition a school must teach at least 75% of the core curriculum as set by the Ministry of Education. A recognized school that teaches the core curriculum is eligible to

²⁰ Norma Gurovich & Eilat Cohen-Kastro, *Ultra Orthodox Jews—Geographic Distribution and Demographic Social and Economic Characteristics of the Ultra-Orthodox Jewish Population in Israel...* Working Paper No. 5 Central

Bureau of Statistics—Demography Sector 53-54 (July 2004) [in Hebrew], available at http://www1.cbs.gov.il/reader/paper_work/pw_e.html; Eli Berman, *Subsidized Sacrifice, State Support of Religion In Israel*,¹² (The Pinhas Sapir Center for Development Tel Aviv University, Discussion Paper No. 2-99, December 1998), available at <http://sapir.tau.ac.il/papers/sapir-wp/2-99.pdf>

²¹ Spiegel *supra* note 9 at 32

²² *Id.* at 33

²³ *Id.*

²⁴ Yaacov Lupu, *Haredi Opposition to Haredi High-School Yeshivas*, The Floersheimer Institute for Policy Studies, 30 (2007)

²⁵ Levin *supra* note 15 at 13

²⁶ Mandatory Study act, 1949. S.H. 26, pg. 287

state funding which is equivalent to 75% of the funding given to public schools.²⁷ An exception to this rule are the two largest networks of UO schools, whose schools are recognized schools, and which comprise more than half of the UO education system. These schools receive 100% of the funding that public schools receive, despite being private.²⁸ The UO education system is the largest private school system in Israel and it consists of both recognized and exempt schools. One out of every 4 students in the Jewish education system attends an UO school. Although the law stipulates that only recognized schools that teach the core curriculum can be funded by the state, both recognized and exempt UO schools are funded by the state, while the UO schools for boys do not teach the core curriculum or teach only small parts of it. In order to circumvent the enforcement of the core curriculum in UO schools, over the years consecutive Ministers of Education have abstained from officially defining the core curriculum, despite the fact that the Public Education Act requires them to do so.²⁹ Only after a petition against the Ministry of Education was filed to the Supreme Court requesting an order against the ministry requiring it to publish an official core curriculum and enforce it on all schools, was an official core curriculum established for elementary schools.³⁰

The Core Curriculum cases

In 2002 the organization of high school teachers, which represents high school teachers in public schools, petitioned the Supreme Court, asking it to declare that the practice of the Ministry of Education to fund UO schools despite the fact that these schools do not teach any part of the core curriculum and teach exclusively religious teachings is illegal and discriminatory. According to petitioners, because the state was providing extensive funding to private UO schools, that do not abide by the law, the public education system had to suffer drastic budget cuts which caused the firing of thousands of teachers and

²⁷ Public Education (Recognized Institutions) Regulations, 1953

²⁸ Sec. 3A of the Basic Budget Law, 1985

²⁹ Public Education Act, 1953 sec. 11, 34(3); Lotem Peri Hazan, *The Regulation of Ultra Orthodox Education in Israel – Politics, Law and In Between*, in REGULATION OF EDUCATION (Yossi Yona ed., 2012), 5 (Hebrew)

³⁰ H.C.2751/99 Paritski v. The Minister of Education (2000)

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the loss of thousands of teaching hours in the law abiding public education schools.³¹ In its response to the petition the Ministry of Education admitted that OU high schools for boys (Yeshivot Ketanot) do not teach the core curriculum and yet get state funding, but claimed that it was working on a plan, in cooperation with representatives of the UO education, that when implemented would institute the teaching of the core curriculum in those schools, and would make it a pre-condition for state funding. The Ministry asked the court to grant it a period of three years to implement the plan. According to the Ministry this period was needed due to the complexity of the plan and the need to implement it gradually and with cultural sensitivity³²

The Supreme Court explained in its ruling that the purpose of the core curriculum is to enable the students to acquire basic knowledge, skills and values that are essential to allow each student to function independently in a pluralistic society, and it is based on shared universal humanistic values and on the character of Israel as a Jewish and a Democratic state³³. An additional purpose of the core curriculum is to give every child in Israel the basic skills to create a life for itself and to fulfill its right to have an equal opportunity to develop her personality and herself, both as a child and as a grownup. The core curriculum includes the study of Judaism, citizenship, geography, Hebrew, English, math and sciences and physical education.³⁴ The court accepted the respondents request, ruling that requiring the implementation of the core curriculum in UO schools, while granting the state three years to accomplish this goal in cooperation with the UO community, strikes the proper balance between respect for the educational autonomy of the UO community and the need to ensure that all the children in Israel receive the kind of education that is needed to prepare them to the collective life in a pluralistic society.³⁵ Thus, the court issued an order which stipulated that the funding

³¹ H.C. 10296/02 The Organization of High School Teachers v. Minister of Education et.al. (15.12.04), Section 1 to judgment of Justice Levy

³² H.C. 10296/02 sections 2-5 to judgment of Justice Levy

³³ H.C. 4805/07 at section 31 to judgment of Justice Procaccia

³⁴ *Id.* In Arab school the core curriculum includes Arabic in addition to Hebrew and Arab heritage instead of Judaism

³⁵ *Id.* section 19 to judgment of Justice Levy

for UO schools that do not teach the core curriculum must be terminated, but decided that the order will enter into force only after three years.³⁶

When, after three years petitioners realized that the state and the UO educational authorities have done nothing to implement the law and to introduce the teaching of the core curriculum in UO boys' schools, while at the same time the funding for these schools continued unabated, they petitioned the court again requesting another court order against respondents. This time the Ministry of Education notified the court that it has concluded that at this time it is unwise to enforce the introduction of the core curriculum in UO high schools for boys, and asked the court to permit it to continue its attempts to reach an agreement with the UO community as to the implementation of the core curriculum. The ministry could not say if, when and how such an agreement would be reached. In the meantime the Ministry suggested that UO schools that do not want to teach the core curriculum should have an option to change their status and become exempt schools thereby being exempt from teaching the core curriculum while still being funded at 55% of the funding given to public schools.³⁷ The ministry acknowledged that having tens of thousands of students each year exempted from the teaching of the core curriculum jeopardizes important state interests, but opined that under the circumstances this was the right thing to do.³⁸

The court categorically rejected the position of the Ministry of Education. In addition to the fact that the ministry has simply decided to ignore the order of the court in the previous case in contravention of the basic obligation of all government bodies to abide by court orders, the failure to implement the core curriculum in UO boys schools was viewed by the court as a serious violation of the rights of UO school children to education and to equal opportunities, and of important state interests. While the court acknowledged the importance of the autonomy of parents to decide on the education of their children, it also stated that the importance of a common core curriculum is especially high in a country such as Israel where the divisions in society are so deep and

³⁶ *Id.* section 20 to judgment of Justice Levy

³⁷ H.C. 4805/07 at section 15-16 to judgment of Justice Procaccia.

³⁸ *Id.* section 17 to judgment of Justice Procaccia. The UO educational authorities objected to the suggestion to reduce their funding to 55% and insisted that it be kept at 75% and that they be exempt from the duty to teach the core curriculum.

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widespread.³⁹ It is precisely under such circumstances, opined the court, that the need to establish a common denominator was especially urgent. Similarly, the right of parents to autonomy in choosing their children's education cannot supersede the right of the child to have a basic education that supplies him with the skills which allow him to fulfill his personality and his capabilities.⁴⁰ Furthermore, funding UO schools while exempting them from the core curriculum, when all other schools are mandated to teach the core curriculum in order to get funding, is discriminatory.⁴¹ The court agreed that deep cultural differences might justify a more gradual enforcement of the core curriculum on certain cultural groups, but stressed that the need for gradual implementation of equal enforcement cannot be used to dispense with equal enforcement altogether as the ministry of education was attempting to do in the case at hand.⁴²

Nevertheless, though the court was set to give an order mandating the enforcement of the core curriculum for the coming school year and terminating the funding of all schools that refuse to implement the core curriculum, it did not do so.⁴³ A few days before the judgment was due to be published, and after it was already written, the Knesset passed the Unique Cultural Educational Institutions Act, which exempts UO boys high schools from the duty to teach the core curriculum, while continuing to grant them state funding.⁴⁴ This Act was an initiative of the UO Knesset members aimed at circumventing the coming decision of the court and was passed with the support of secular Knesset members.⁴⁵ Because the new act changed the legal situation pertinent to the case while the court proceedings were still in progress, the court refrained from issuing any orders, but published the detailed written opinion it had already prepared.

³⁹ *Id.* section 58 to judgment of Justice Procaccia

⁴⁰ *Id.* section 55 to judgment of Justice Procaccia

⁴¹ *Id.* sections 71-74 to judgment of Justice Procaccia

⁴² *Id.* sections 76-79 to judgment of Justice Procaccia

⁴³ *Id.* section 83 to judgment of Justice Procaccia

⁴⁴ The Unique Cultural Educational Institutions Act, 2008

⁴⁵ Tami Harel Ben Shachar, *Educational Autonomy, The Core Curriculum, and Public Funding of Education – The Special Cultural Educational Institutions Act, 2008*, 12 MISHPAT U'MIMSHAL, 281, f.n. 48-49 and accompanying text.

To conclude, the UO education in Israel is a private religious education system that is heavily funded by the state but at the same time the state has very little control over it. One could argue, as the supporters of the Unique Cultural Educational Institutions Act have argued, that giving religious parents and communities a free hand to determine the education of their children and helping them to fund this education is required as a matter of multicultural justice and of freedom of religion. In order to evaluate this claim, in the next section I will review the positions of different theorists on this issue and describe the way in which five different countries deal with the education systems of religious groups.

III. Theoretical and Comparative Perspectives on Educational Autonomy for Religious Communities

Theoretical Perspectives

Education plays a crucial role in shaping world views and the identities of children and of young adults. As philosopher Elizabeth Minnich argues "education is of critical importance. It is in and through education that a culture, and polity, not only tries to perpetuate but enacts the kinds of thinking it welcomes, and discards and/or discredits the kinds it fears."⁴⁶ For this reason educational autonomy is highly important for religious minorities. Nevertheless, for the same reason partial state control over private education seems necessary to ensure that important interests of the liberal democratic state are not jeopardized.

When assessing autonomy in religious education the rights and interests of three actors should be taken into account.⁴⁷ First, the interest of the parents, whose right to decide the education of their child is part of their religious freedom.⁴⁸ Most often the parents belong to a religious community and aspire to inculcate in the child the community's religious values and way of life, an interest which they share with the community.⁴⁹ The second actor is the child, whose right to an enabling education and to equal

⁴⁶ ELIZABETH MINNICH, *TRANSFORMING KNOWLEDGE* 53 (1990)

⁴⁷ ROB REICH, *BRIDGING LIBERALISM AND MULTICULTURALISM IN AMERICAN EDUCATION*, 148-157 (2002)

⁴⁸ Galston refers to this right as their right to expressive liberty, see, *e.g.*, WILLIAM GALSTON, *THE PRACTICE OF LIBERAL PLURALISM* (2005).

⁴⁹ The right to instill their values and lifestyle to their children is also part of the parents' right to culture.

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opportunities can be jeopardized by her parents' educational choices for her.⁵⁰ Finally, the third actor is the state; as we will see, many theorists argue that the continued existence of the state as a functioning democracy depends on its citizens' ability to participate in the life of a modern democratic state, an ability that can only be acquired through education. The interests of the state are threefold. First, ensuring that the citizens' education provides them with the necessary skills, such as basic math and English, to become integrated in the modern economy; Second, the state has an interest in ensuring that all citizens acquire an education that gives them at least a rudimentary knowledge of democracy and of democratic institutions, in order to enable them to participate in the democratic governance of the state; Third, the state has an interest in ensuring that the education its citizens receive enables their tolerance, acceptance of difference and respect for the basic rights of others.

Liberal thinkers disagree on how the balance should be struck between these different sets of interests, and consequently about the extent to which the state should allow the existence of private religious education, the extent to which it should finance such education, and the extent to which it should intervene in private religious education in order to ensure that these schools maintain an adequate level of civic education. This disagreement roughly matches the distinction between the autonomy-based conception of liberalism and the diversity-based conception of liberalism.⁵¹ In what follows I will describe the positions of five theorists. I will start with Brian Barry who holds an autonomy based conception of liberalism and who is perhaps the most avid supporter of state control over education, and end with Chandran Kukathas whose strong diversity-based conception of liberalism leads him to eschew any state control over private education. In between I will discuss the more nuanced approaches of Eamonn Callan, Jeff Spinner-Halev, and William Galston. Another relevant distinction which is worth noting between these theorists is between those who support government funding for private schools if it is accompanied by close regulation by the state, and those who object to government regulation of private religious schools but at the same time also object to government funding for such schools. When discussing country case studies we

⁵⁰ As will be discussed below different theorists have different perspectives as to what an enabling education entails

⁵¹ William Galston, *Two Concepts of Liberalism*, 105 *ETHICS*, 516-34 (Apr., 1995).

will see that a similar distinction emerges in the practice of liberal states with respect to private religious schools.

Brian Barry is a strong believer in the right and duty of the state to have a say in the way parents and communities educate their children, in order to safeguard both the interests of the state and the rights and interests of the child.⁵² As far as the interests of the state are concerned Barry argues that all citizens have an interest in the future of their society, and that the future of society “including its economic prosperity, its social stability and even its continued existence as a distinctive entity, depends on the way in which those who are now children turn out.”⁵³ In terms of the interests of the children Barry argues that there are three aims that a proper education should fulfill. The first aim of education, which Barry terms functional education, is to equip the child with the competences required to function successfully in the society into which it is going to grow up.⁵⁴ The second aim of education, which Barry calls Education for living, is to equip the child with knowledge that exceeds the functional knowledge needed to obtain a job and which allows the child to better understand the world around her, to develop an aesthetic appreciation and a critical capacity.⁵⁵ The third aim of education according to Barry should be to develop in the child a capacity for autonomy.⁵⁶ Barry supports a multicultural education insofar as it means that the curriculum is inclusive and pays attention to the various groups that exist in society.⁵⁷ Nevertheless, he insists that all schools must have a common curriculum. He is concerned that the proliferation of separatist schools which admit only students of certain ethnicities and religions and refuse to teach the common curriculum will lead to the disintegration of society. According to him “there is, quite simply, little chance for a society to operate in a way that serves the long run interests of any of its members if it is divided up into mutually exclusive groups who have not only gone to different schools but have followed different

⁵² BRIAN BARRY, CULTURE AND EQUALITY 209 (2001). According to Barry there is no group right to the education of children, only the right of the parents (207) nevertheless, the group to which the parents belong has a crucial influence on the education that the children receive.

⁵³ *Id.*

⁵⁴ *Id.* at 212-220

⁵⁵ *Id.* at 221-224

⁵⁶ *Id.* at 224-225

⁵⁷ *Id.* at 238

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curricula in them.”⁵⁸ Barry’s emphasis on a common curriculum and on tight state regulation of both public and private schools can explain why he does not object to state funding of private schools and sees it as a question of only minor significance. While he is willing to allow state funding for suitable private religious schools,⁵⁹ he insists that private religious schools such as the Christian fundamentalist schools in the US, which teach only creationism and whose biology textbook explains that evolutionary theory is a creation of Satan that is used effectively against Christians, must be shut down.⁶⁰

Eamonn Callan maintains that states should fund private religious education out of respect to parents’ right to educate their children according to their beliefs. Nevertheless, he holds that states are entitled to give preference to public common education in order to promote the important state interest in civic education. According to Callan, in their educational policies states should accord recognition to the religious groups with which individuals identify in order “to give equal respect to individual human beings whose very identity is constituted by different religious commitments.”⁶¹ Nevertheless, his approach gives prominence to the ends of civic education. He posits that while religious education is important for the perpetuation of the religious identities of citizens, civic education is essential for the shared interest of all citizens in the continued existence of a liberal democratic state. Consequently, if the partiality of the state to common, secular public schools, serves the interests of civic education, then it is justified and should not be considered arbitrary.⁶²

Callan argues that the most important function of common schools is to enable children to engage in inclusive deliberation. He posits that in a pluralist society everybody has to be educated to give respect to others by making what Bernard Williams calls “the effort

⁵⁸ *Id.* at 237

⁵⁹ *Id.* at 204-205

⁶⁰ *Id.* at 249

⁶¹ Eamonn Callan, *Discrimination and Religious Schooling*, in CITIZENSHIP IN DIVERSE SOCIETIES, (Kymlicka, Will; Norman, Wayne eds.), pp. 45-68, 50 (2000)

⁶² *Id.* at 54-55. Callan takes for granted that the state has an interest in maintaining its liberal democratic character, but in Israel this is the bone of contention. If there is no agreement that the state needs to continue to be a liberal democracy then the need for civic education can no longer justify either preference to public schools or impositions on private religious schools. Here again it seems that the essence of the problem lies in Israel’s definition as a Jewish state – the UO can say our education is certainly compatible with promoting the Jewishness of Israel and there is no agreement on its liberal democratic nature. For too long the state assumed that it is enough that the UO promote the Jewish component of the state.

at identification". Thus, in order to show respect to another one must ensure that the other person "should not be regarded as the surface to which a certain label can be applied, but one should try to see the world (including the label) from his point of view."⁶³ This is a duty that all of us owe each other, regardless of our religious beliefs. This effort of identification does not necessarily lead to affirmation of the others' point of view, and it can lead to mutual criticism, as well as to self-criticism. Common schools have a unique contribution to civic education because they can serve as a forum for inclusive deliberation in which children are exposed to those who are different than themselves and engage with them. In common schools children can participate in open discussions in which diverse opinions are voiced, debated and evaluated, and through which they can evaluate the norms by which their communities live.⁶⁴ According to Callan, while religious schools can encourage other aspects of civic education, they cannot serve as arenas for inclusive deliberation, which is a vital component of civic education. Consequently, he believes that in order to strike the proper balance between the important state interest in promoting civic education and the right of religious communities to religious education funded by the state, the state should fund private religious education for younger children (while carefully regulating it), but should refrain from funding religious schools in the later years of education in order to encourage more parents to send their children to common public schools.⁶⁵

Although, like the two preceding theorists, **Jeff Spinner-Halev** believes that autonomy is centrally important for liberal theory and society, he nevertheless believes that as long as the secular mainstream society supports autonomy and gives people a range of options to choose from, not every religious minority group has to support autonomy as well. In his opinion, minority communities need not inculcate autonomy, because as long as their members are not being coerced and are not denied a decent education, their ability to see the different ways of life surrounding them suffices to make them able to choose.⁶⁶ Thus, Spinner-Halev rejects arguments for cultural

⁶³ *Id.* at 60

⁶⁴ *Id.* at 63-64

⁶⁵ *Id.* at 66

⁶⁶ JEFF SPINNER-HALEV, SURVIVING DIVERSITY : RELIGION AND DEMOCRATIC CITIZENSHIP, 50-51 (2000)

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pluralism that are based on autonomy as arguments that wrongly undermine and restrict pluralism.⁶⁷

Spinner-Halev defends the right of parents to send their children to a private religious school in order to situate them in a community and enable minority communities to retain their identities.⁶⁸ Furthermore, he argues that it is important for children to be raised with specific values and have a strong base in a particular way of life, in order to be able to later on make a meaningful choice whether to change them.⁶⁹ Thus, liberals should not worry about children who are raised into relatively closed communities with strong values, as long as at some point they are exposed to other ways of life. More worrisome to him is the situation of children who are raised with no values, because such children will not know how to choose any values.⁷⁰

Nevertheless, despite, or perhaps because, of his insistence that religious communities within liberal societies do not have to foster their members' autonomy, Spinner-Halev is critical about private religious schools and emphasizes the importance of public schools. He argues that an important problem with many religious schools is that they are not diverse and do not expose their students to a diversity of ideas or of ways of life.⁷¹ The exposure of students to diverse ideas and practices encourages them to think creatively, critically and autonomously.⁷² Consequently, public schools are important since they get children from different backgrounds together and enable them to learn about one another and to learn how to work together. Such experience prepares them better for citizenship in a complex, diverse, modern world.⁷³

Spinner-Halev further qualifies his defense of religious schools stating that it applies only to schools that are not all encompassing, that belong to moderate religious communities, and that do not stifle autonomy, but combine it with community. According to him "A community that tries to prevent its children from having any

⁶⁷ *Id.* at 55

⁶⁸ *Id.* at 73

⁶⁹ *Id.* at 76

⁷⁰ *Id.*

⁷¹ Jeff Spinner-Halev, *Extending Diversity: Religion in Public and Private Education*, in CITIZENSHIP IN DIVERSE SOCIETIES, pp. 68-97, (Kymlicka, Will; Norman, Wayne eds.), 70

⁷² *Id.* at 71

⁷³ *Id.*

contact with outsiders, even as they become teenagers, is not combining autonomy and community. It is using the community to stifle autonomy.”⁷⁴ Furthermore, although he supports the existence of moderate religious schools he believes that religious schools should not be funded by the state for two reasons: First, some of the religious schools are not moderate and do not encourage liberal citizenship and direct funding to such schools “would harm the important cause of creating and sustaining a common citizenship.”⁷⁵ Second, in order to encourage parents to send their children to public schools, which are inclusive and promote diversity, the state should refrain from financing private religious schools.⁷⁶ However, he believes that in order to encourage religious parents to send their children to public schools the schools should be willing to make some accommodations and to grant some exemptions from the standard curriculum for religious students upon their parents’ request.⁷⁷ Thus, he believes that the *Mozert* case in which the court denied the request of fundamentalist parents to require a public school to exempt their children from various parts of the curriculum, including from texts which teach that girls are equal to boys or that teach evolution, was wrongly decided. ⁷⁸ In his opinion the goal of exposing as many children as possible to the most liberal education possible is better achieved by giving partial exemptions to religious children that enable them to continue in the public school system than by denying such exemptions, thereby causing their parents to move them to a religious fundamentalist school or to home schooling.⁷⁹

Unlike Barry and Callan, **William Galston** is situated firmly within the camp of diversity liberals who reject autonomy as the liberal point of departure and instead offer “an account of liberalism that gives diversity its due.”⁸⁰ Galston argues that taking diversity seriously in the educational context means that while any educational policy should balance between the rights and interests of parents, children and the state, the rebuttable presumption should be that the choices of parents with regard to the rearing

⁷⁴ *Id.* at 77

⁷⁵ *Id.* at 79

⁷⁶ *Id.* at 81

⁷⁷ *Id.* at 94

⁷⁸ *Id.* at 91

⁷⁹ *Id.* at 93-94

⁸⁰ *Two Concepts of Liberalism*, *supra* note 51 at 523-524

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of their children are immune from state interference.⁸¹ He posits that because parenting is one of the central meaning giving tasks of our lives, and because every parent hopes to create relations of intimacy with his children, the ability of parents to raise their children in a manner consistent with their deepest commitments is an essential element of their liberty that should be respected by the state.⁸² Educational diversity is important not only out of respect to the rights of parents but also because it is essential for the development of children's individuality.⁸³

Nevertheless, while parents and communities have the right to educate children according to their beliefs and ways of life, and even to isolate them to some extent from outside influences, Galston maintains that there are important limits to this right. First, the education that parents provide for their children must ensure that children have more than a merely formal right of exit. Thus, communities and parents cannot educate children "in ways that disempower individuals—intellectually, emotionally, or practically—from living successfully outside their bounds."⁸⁴ States are allowed to insist that education develop what Galston calls "social rationality", which is the kind of understanding needed to participate in the society, economy and polity, and they are allowed to intervene against forms of education "that are systematically disabling when judged against the norm."⁸⁵ . Furthermore, according to Galston, in societies characterized by deep diversity of moral and religious views, educational freedom should be respected only "to the maximum extent consistent with the maintenance of civic unity and stability".⁸⁶ The state has the right to ensure that all children are taught that other citizens have the right to live according to understandings of the good life which they themselves reject, and internalize norms of self-restraint and a principled refusal to use coercion in order to enforce their own way of life.⁸⁷ Thus, according to Galston "the liberal state has a legitimate and compelling interest in ensuring that the

⁸¹ William Galston, *Parents, Government, and Children: Authority over Education in a Pluralist Liberal Democracy*, 5(2) LAW & ETHICS OF HUMAN RIGHTS, 284, 288 (2011)

⁸² *Id.* at 295

⁸³ *Id.* at 299

⁸⁴ *Id.* at 301

⁸⁵ *Two Concepts of Liberalism*, *supra* note 51 at 525

⁸⁶ *Parents, Government, and Children* *supra* note 81 at 305

⁸⁷ *Id.* at 295

convictions, competencies, and virtues required for liberal citizenship are widely shared.”⁸⁸

At the extreme end of the diversity camp **Chandran Kukathas** posits that the good society should downplay the role of the state in the education of subjects. He argues that since two core principles of liberalism are toleration of diversity and limited government, it cannot be part of the purpose of the liberal state to educate its citizens or to shape their thinking.⁸⁹ The state should allow communities to educate their children according to their own beliefs, although it need not subsidize such education.⁹⁰ Furthermore, the state should even allow communities such as the gypsies, that do not value schooling and that believe that they can educate their children satisfactorily through informal instruction in the ways of their culture, not to send their children to school at all.⁹¹ Kukathas objects to any form of civic education: “the liberal state is one that is held to a very exacting standard. It must tolerate in its midst those who would work towards its destruction, and it must resist the temptation to turn its fiercest critics into compliant believers in the liberal creed. The last thing a liberal state should offer its subjects is education, even if that should be a liberal education.”⁹² He criticizes the position which insists that a liberal polity must educate citizens to participate in a shared political framework and to affirm shared political principles, such as the obligation to respect the rights of fellow citizens regardless of their religious convictions.⁹³ To the contrary, he argues, “what characterizes a liberal political order is not shared political commitments but institutions which enable people whose moral, religious, cultural and political commitments differ.”⁹⁴ According to Kukathas, it is hard to see how the same political order which allows people to hold illiberal, and even anti liberal views and allows them to proselytize those views, and even run for office on their

⁸⁸ *Two Concepts of Liberalism*, *supra* note 51 at 529

⁸⁹ Chandran Kukathas, *Education and citizenship in diverse societies*, 35 INTERNATIONAL JOURNAL OF EDUCATIONAL RESEARCH 319, 321-322 (2001)

⁹⁰ CHANDRAN KUKATHAS, *THE LIBERAL ARCHIPELAGO: A THEORY OF DIVERSITY AND FREEDOM*, 162 (2003).

⁹¹ Chandran Kukathas, *Are There Any Cultural Rights*, 20 POLITICAL THEORY 105, 126 (1992)

⁹² *Education and citizenship in diverse societies*, *supra* note 89 at 323

⁹³ *Id.* at 326-7

⁹⁴ *Id.* at 328. This is of course facetious because the question is how do you guarantee that these institutions go on existing if people are not committed to their pluralist and egalitarian nature. In his conclusion he suggests that perhaps liberalism should not be as sanguine as he seems to suggest that it should be, but for some reason this does not change his conclusions.

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basis, can justify inculcating particular liberal values or virtues in its citizens. As he succinctly puts it “Liberalism does not run re-education camps.”⁹⁵ Kukathas rejects the conviction that liberal citizens do not come into existence naturally, but have to be made. He believes that liberal citizens do emerge “naturally” in all liberal societies and even in societies in which liberal freedoms are only weakly honored, and that liberal societies can survive even when many of the citizens are not committed to liberalism and do not take an interest in politics what so ever.⁹⁶ Kukathas is very clear in his emphasis on toleration and in his critique of the limits placed on communities. Nevertheless, while failing to qualify the swiping toleration he advocates, he is careful to note that such qualifications are due,⁹⁷ and that his theory is probably not feasible for any actual liberal state.⁹⁸

To conclude, we see that among the theorists discussed, those who support government funding for private schools insist that it should be accompanied by close regulation by the state, while those who object to government regulation of private religious schools also object to government funding for such schools. Thus, despite their widely diverging views it seems that neither of the theorists discussed would support the current treatment of UO education in Israel, which is given extensive funding by the state but is given complete freedom to decide the content of the education. Furthermore, with the exception of Kukathas all the theorists discussed believe that children have the right either to receive education for autonomy or at least to receive an education that will enable them to exit the community later on in life if they choose to do so. It seems that the education that boys in the UO community receive, which is focused entirely on religious studies and eschews any civic education, is precisely the type of education that prevents them from having a meaningful right of exit.

⁹⁵ *Id.*

⁹⁶ *Id.* at 329

⁹⁷ *Id.* at 329-330.

⁹⁸ THE LIBERAL ARCHIPELAGO, *supra* note 90 at 267. In this book Kukathas puts forth a liberal theory based on the primacy of toleration, which he calls the liberal archipelago. Nevertheless, in the conclusion of the book he concedes the impracticability of his theory for actual liberal states.

Comparative Perspectives

In what follows I will discuss private religious education in five countries, three of which are liberal democracies – the Netherlands, the UK and the USA, and two non-liberal democracies – Malaysia and Turkey, one of which is avowedly religious while the other is avowedly secular. I chose to look at these particular countries, because in addition to their varied constitutional structures and ideological commitments, in all of them the question of private religious education (especially Muslim education) has been a cause for public debate and concern. The discussion will show that the two patterns of state treatment of private religious education that exist in liberal countries are either state funding accompanied by close regulation (the Netherlands, the UK) or no state funding with very limited regulation (the USA). Despite their markedly different treatment of religion, both non liberal countries exhibit a similar pattern of close regulation with almost no government funding. The comparison that follows between these five countries and Israel highlights both how unique the Israeli structure of extensive funding for UO education with almost no regulation is, and how the problem is exacerbated by Israel's unique state religion relations.

The Netherlands

The education system in the Netherlands is characterized by a dual system of education which allows for the existence of a large number of private schools that are fully funded by the state alongside a system of public schools. This unique system is a result of the process of pillarization which occurred in the Netherlands at the beginning of the 20th century and which led to the segregation of Dutch society into pillars along religious and ideological lines, each pillar containing its own political parties, labor unions, hospitals, media, clubs, schools, etc.⁹⁹ while a process of de-pillarization has occurred in the Netherlands since the 1960s, the educational system has remained divided along denominational lines. Thus, in 2005 only 33% of the primary schools in the Netherlands were public, 30% were Protestant, 30% were Roman Catholic and the rest belonged to

⁹⁹ Geert Driessen, Micheal Merry *Islamic Schools in the Netherlands: Expansion or Marginalization?* INTERCHANGE, Vol. 37/3, 201–223, 2006, 203

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other denominations and ideologies such as Islamic schools and Montessori schools.¹⁰⁰ The freedom of education is guaranteed in article 23 of the Dutch constitution. According to the article all persons shall be free to provide education, but this right is subject to the right of the authorities to supervise the schools, to examine the competence and the moral integrity of the teachers, and to set the standards required of schools through acts of parliament.¹⁰¹ The supervision of private schools must be done with due regard to the freedom to provide education according to religious or other belief.¹⁰² Private schools that satisfy the conditions laid down by acts of parliament are entitled to public funds equal to those received by public schools.¹⁰³

The constitutional right to freedom of education had enabled the Muslim community in the Netherlands to establish Islamic schools and as of 2006 there were 46 Islamic primary schools and 2 Islamic secondary schools in the Netherlands. Nevertheless, because the conditions that have to be met in order to establish a fully funded private school are rather strict, the existing schools do not meet the demand for Islamic schools within the Muslim community and are attended by only about 10% of Muslim primary school children.¹⁰⁴ Strict requirements have to be met not only in order to establish a funded school but also in order to ensure its continued funding.¹⁰⁵ Thus, although private schools have rather extensive autonomy in determining what is taught and how, this autonomy is restricted by qualitative and quantitative standards that they have to meet, including teacher qualifications, curriculum requirements and in secondary schools the examination syllabus and the national examinations.¹⁰⁶ The requirement that schools must employ only teachers that hold certain degrees and qualifications has proven to be quite significant in the context of Islamic schools and has resulted in

¹⁰⁰ *Id.*

¹⁰¹ Article 23 sec. 2, 5 can be found at <http://www.servat.unibe.ch/icl/nl00000.html>

¹⁰² Article 23 sec. 5

¹⁰³ Article 23 sec. 7

¹⁰⁴ Driessen & Merry *supra* note 99 at 204.

¹⁰⁵ There are private schools that do not meet the criteria and are therefore not government funded. Currently, approximately 1% of all primary and secondary schools are not government funded. The Ministry of education visits these schools regularly. It does not evaluate their educational process, but checks are performed by specially trained inspectors to make sure the schools comply with legal obligations, such as the minimum amount of teaching time and attainment targets. See Dutch Ministry of Education website at <http://www.onderwijsinspectie.nl/english>

¹⁰⁶ Ben P. Vermeulen, *Regulating School Choice to Promote Civic Values: Constitutional and Political Issues in the Netherlands*, in *EDUCATING CITIZENS : INTERNATIONAL PERSPECTIVES ON CIVIC VALUES AND SCHOOL CHOICE* (Wolf et al eds., 2004), 46

teachers in these schools being mostly non-Muslims.¹⁰⁷ While religious schools have the right to deviate from government attainment targets, and substitute them with their own targets if they can show that this is necessary from the point of view of their religion, the substitute targets must be equivalent in terms of quality. This means for example that a school will probably not be allowed to replace the teaching of the theory of evolution with the teaching of creationism because the latter will not be regarded the equivalent of the former.¹⁰⁸

Since the late 80s the existence of private Islamic schools has generated public discussions in the Netherlands concerning the desirability of such schools. While opponents feared that such schools will hinder the integration of Muslim immigrants into Dutch society by considerably diminishing the contact of Muslim children with native Dutch children, their proponents argued that these schools will promote the social integration of Muslims while allowing them to maintain their own identity.¹⁰⁹ After the attacks of September 11 2001 against the United States the influence of political Islam on Islamic schools and its consequences for the integration of Muslim children into Dutch society became a central theme of the public debate surrounding these schools.¹¹⁰ Inspections in Islamic schools done by the Ministry of Education concluded that the quality of the religion classes and the religion teachers left much to be desired in many of the schools. This was not surprising since at the time teachers of religious classes were the only teachers who did not have to comply with any legal conditions (diplomas or other qualifications), and the classes lacked curriculum and method.¹¹¹ Consequently, in the beginning of the 2007 academic year, all Dutch Islamic primary schools were provided with an official Islamic teaching curriculum which was developed by the Foundation for Teaching Methods (SLO) and the Board of Islamic Schools Organization (ISBO) – an umbrella organization of forty-two Muslim schools in

¹⁰⁷ *Id.* at 42

¹⁰⁸ *Id.* At 48

¹⁰⁹ Wasif Shadid, Pieter Sjoerd Van Koningsveld, *Islamic Religious Education in the Netherlands* EUROPEAN EDUCATION, vol. 38, no. 2, Summer 2006, pp. 76–88, 84

¹¹⁰ *Id.* at 85

¹¹¹ *Id.* at 86

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the Netherlands.¹¹² At the same time, new legal requirements that require Islamic Studies teachers to have teacher diplomas were put into effect.¹¹³

The Dutch rejection of the state as a moral educator has led to the absence of a separate subject of citizenship education from the national curriculum for many years.¹¹⁴ However, after concerns were raised as to the ability of Islamic schools to further integration and to inculcate pluralist and democratic values, the Primary Education Act and the Secondary Education Act were amended to require schools to offer education that is aimed at developing active citizenship and social integration. As with other curricular subjects, schools are free to shape their own citizenship education curriculum, but must present it to the Ministry of Education, who is charged with monitoring and evaluating it.¹¹⁵

To conclude, the state in the Netherlands gives extensive funding to private religious schools, but at the same time closely monitors them in order to ensure that they meet the state's qualitative standards. The concern for social integration and adherence to democratic values brought about by the relative expansion of Muslim schools has led the state to introduce citizenship education as a mandatory subject in all schools.

England

In England there are approximately 6900 maintained faith schools that make up one-third of all state-maintained schools.¹¹⁶ The overwhelming majority of these schools belong to Christian denominations, such as the Church of England and the Catholic Church. Only around fifty maintained faith schools are non-Christian, 37 of which are Jewish.¹¹⁷ Most of the maintained faith schools are Voluntary Aided, while others are Voluntary Controlled.¹¹⁸ Voluntary Aided schools are funded up to 90% by the state and

¹¹² Lisa Baughn, *Islamic Education in Europe*, Euro-Islam.Info, can be found at <http://www.euro-islam.info/key-issues/education/>

¹¹³ Inga Niehaus, *Emancipation or Disengagement? Islamic Schools in Britain and the Netherlands*, in *ISLAM IN EDUCATION IN EUROPEAN COUNTRIES* (Aurora Alvarez veinguer et. al. eds.), 113, 120 (2009)

¹¹⁴ Vermeulen *supra* note 106 at 48-9

¹¹⁵ *Inclusive education in The Netherlands*, SLO • national institute for curriculum development (2007), p. 44

¹¹⁶ Rob Berkeley, *Right to Divide: Faith Schools and Community Cohesion*, 11 (Runnymede, 2008)

¹¹⁷ *Id.*

¹¹⁸ *Id.*

local authorities while the rest of their budget comes from the religious bodies with which they are affiliated.¹¹⁹ The governing bodies of maintained faith schools have control over school admissions and the teaching of religious education.¹²⁰ Nevertheless, all state maintained schools must fully incorporate the national curriculum.¹²¹ In recent years there has been an extensive public debate in England regarding the role of faith schools in society and the continued, and even increasing, government funding of such schools. Faith schools have been accused of undermining social cohesion and heightening segregation along class, faith and ethnic lines; using unfair admissions policies that favor socio-economically privileged families; and religious indoctrination.¹²² Supporters of faith schools have argued that faith schools further the common good, give children a sense of their own identity and promote choice, diversity, moral values and discipline.¹²³ While the events of 9/11 played a role in the debate, Muslim state-maintained schools were not the focus of the debate, since they are only a miniscule part of the faith maintained schools in England.

There are about half a million Muslim children in British schools, and they comprise between 5 and 6 percent of the total school population.¹²⁴ The vast majority of Muslim children attend public community schools or Church schools, and only around 1 percent of the Muslim children are educated in independent or state maintained Muslim schools.¹²⁵ Britain has the largest number of independent Islamic schools in Europe – 127.¹²⁶ Since Muslim independent schools do not receive any state funding they are usually small and suffer from severe financial limitations.¹²⁷ A number of Islamic independent schools have applied in recent years for state funding, but since the process is extensive and often depends on political power relations, only 11 schools have

¹¹⁹ Damian Breen, *A qualitative Narrative of the Transition from Independent to Voluntary Aided Status, A problem for the concept of the 'Muslim School*, in *ISLAM IN EDUCATION IN EUROPEAN COUNTRIES* (Aurora Alvarez veinguer et. al. eds.), 95, 96 (2009)

¹²⁰ *Id.*

¹²¹ Breen *supra* note 119 at 105

¹²² Berkeley *supra* note 116 at 18

¹²³ *Id.*

¹²⁴ Inga Niehaus, *Emancipation or Disengagement? Islamic Schools in Britain and the Netherlands*, in *ISLAM IN EDUCATION IN EUROPEAN COUNTRIES* (Aurora Alvarez veinguer et. al. eds.), 113, 114 (2009)

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ Breen *supra* note 119 at 101

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managed to gain a Voluntary Aided status.¹²⁸ The structural, legal and political obstacles to the inclusion of a large number of Muslim schools in the state sector have been exacerbated by the public debate over state support for faith schools.¹²⁹

While Voluntary Aided schools must fully incorporate the national curriculum, independent Muslim schools can determine their own curriculum, but have to meet academic standards that are checked through periodic inspections and compulsory national tests.¹³⁰ The Independent Schools Standards Regulations require independent schools to provide their students with an education that, among other things, “gives pupils experience in linguistic, mathematical, scientific, technological, human and social, physical and aesthetic and creative education” and that ensures “adequate preparation of pupils for the opportunities, responsibilities and experiences of adult life.”¹³¹ In addition, the independent school must educate its students to respect the law and to contribute to the community, and it must “provide pupils with a broad general knowledge of public institutions and services in England; and assist pupils to acquire an appreciation of and respect for their own and other cultures in a way that promotes tolerance and harmony between different cultural traditions.”¹³²

All independent schools, including independent faith schools, go through periodic inspections and may face closure if they fail to meet the required standards.¹³³ In a case involving a Jewish Hasidic private school which was threatened with closure for not teaching any secular subjects it was held that in general, in order to be considered “suitable”, education must “prepare the children for life in modern civilised society” and “enable them to achieve their full potential”.¹³⁴ Nevertheless, education by independent faith schools of religious communities will be considered ‘suitable’ “if it primarily equips a child for life within the community of which he is a member, rather than the way of life in the country as a whole, as long as it does not foreclose the child’s options in later

¹²⁸ Niehaus, *supra* note 124 at 114-115

¹²⁹ *Id.* at 115

¹³⁰ Niehaus, *supra* note 124 at 115

¹³¹ The Education (Independent School Standards) (England) Regulations 2010 (2010 No. 1997), schedule 1 part 1.

¹³² *Id.* schedule 1 part 2

¹³³ JANE FORTIN, CHILDREN’S RIGHTS AND THE DEVELOPING LAW, 423 (3rd. ed. 2009) reporting that 45 independent schools were closed between 2004-2007, one of which was a Muslim school.

¹³⁴ *Harrison v Stevenson* (unreported, Worcester Crown Court) (1981)

years to adopt some other form of life if he wishes to do so.”¹³⁵ Consequently, the school was obliged to implement a secular curriculum, which it was required to further amend following continual inspection, until its secular curriculum was found to be satisfactory.¹³⁶

In order to meet the standards set by the regulations, as well as for lack of financial resources, many of the independent Muslim schools follow the national curriculum and use existing textbooks, although the more conservative schools leave out aspects of the curriculum that are regarded by them as un-Islamic such as music, dance and figurative arts.¹³⁷ The independent Muslim schools vary in their educational approaches and in the level of religious observance, but all of them offer Islamic education through special Islamic instruction, communal prayers, special dress codes and observance of the Islamic calendar.¹³⁸ Unlike the Netherlands, in the UK most of the staff in Islamic schools are themselves Muslim, and thus it is easier for them to create and maintain an exclusive Muslim environment.¹³⁹ Following the 9/11 attacks and the increasing concerns that Islamic schools might isolate Muslim children from the larger society, a new citizenship curriculum was introduced in British schools in 2002 and in 2007 and Voluntary Aided schools were required to actively promote social cohesion.¹⁴⁰ This is done through participation in a “citizenship and social cohesion” program which is compulsory for all state funded schools and through other measures such as student exchange programs between Muslim and non-Muslim schools and community outreach programs.¹⁴¹ Some studies show that while in the past educators and parents have emphasized the role of Islamic schools in the process of islamization of their students, the current focus of many Islamic schools is on providing good academic results in a

¹³⁵ R v Secretary of State for Education and Science, ex parte Talmud Torah Machzikei Hadass School Trust (1985) (Times, 12 April 1985)

¹³⁶ The Office for Standards in Education has inspected the school in 2007 and found that while its religious curriculum was good, its secular curriculum was unsatisfactory in several respects and had to be expanded and improved. A subsequent inspection in 2010 found that a new secular curriculum was introduced and that the secular curriculum was now satisfactory. Both inspection reports can be found on the Ofsted website at <http://www.ofsted.gov.uk/inspection-reports/find-inspection-report/provider/ELS/100294>

¹³⁷ Niehaus, *supra* note 124 at 117-118

¹³⁸ *Id.* at 116

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 121-122

¹⁴¹ *Id.* at 122

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supportive environment that will enable the students to prepare for their roles in the job market and as active citizens.¹⁴²

To conclude, like in the Netherlands, while the state is willing to give extensive funding to faith based schools (although in practice mostly Christian schools enjoy this funding), it also monitors these schools closely, including requiring them to teach the full national curriculum and a “citizenship and social cohesion program”. Independent faith schools are relatively few in number, and although they are not required to teach the national curriculum, they are inspected to ensure that they give children an adequate education that includes secular studies and teaches tolerance and harmony between different cultural groups.

The USA

In 1925 in *Pierce v. Society of Sisters* the U.S. Supreme Court struck down an Oregon law which made it mandatory for parents to send their children to public schools, holding that: “The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.”¹⁴³ Nevertheless, while parents have a fundamental liberty to give their children private religious education, the constitutional “wall of separation” between church and state was held to prohibit any direct government funding for private religious education.¹⁴⁴ Even though the state cannot fund private religious schools the *Pierce* court held that it retains the power “reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare.”¹⁴⁵ The Supreme Court has

¹⁴² *Id.* at 125

¹⁴³ *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925)

¹⁴⁴ *E.g.*, *Everson v. Board of Education of Ewing Tp.*, 330 U.S. 1 (1947)

¹⁴⁵ *Id.* at 534

never specified what kind of state regulation of private schools constitutes “reasonable” regulation, but in general the regulation in the US is less intrusive and less comprehensive than the regulation in Europe.¹⁴⁶ An important reason for the lax regulation of private religious schools is the fear that tighter regulation will create an over entanglement of government with religion and violate the free exercise rights of religious communities.¹⁴⁷ Nevertheless, most of the states impose various curricular requirements on private schools, regardless of their religious character or of the fact that they are not funded by the state.¹⁴⁸ In the school year 2009-2010 there were almost 5.5 million students in private schools, 80 percent of which attended religiously affiliated schools.¹⁴⁹ Students in private schools constitute around 10 percent of the students in the USA.¹⁵⁰

The strict prohibition on state funding for religious private schools has been narrowed in recent years. In an important 2002 decision the US Supreme Court held that a voucher program which gives parents tuition aid through vouchers which they can use towards tuition costs in any private school of their choice, including private religious schools, does not offend the Establishment Clause of the First Amendment to the US Constitution. This decision has paved the way for indirect government funding of private religious schools.¹⁵¹ The Ohio program approved by the Supreme Court required participating private schools to meet statewide educational standards, to agree not to discriminate on the basis of race, religion, or ethnic background, and not to "advocate or foster unlawful behavior or teach hatred of any person or group on the basis of race, ethnicity, national origin, or religion."¹⁵² Despite the considerable entanglement of the state in religious messages that this form of state supervision over religious private

¹⁴⁶ Richard W. Garnett, *Regulatory Strings and Religious Freedom: Requiring Private Schools to Promote Public Values*, in EDUCATING CITIZENS : INTERNATIONAL PERSPECTIVES ON CIVIC VALUES AND SCHOOL CHOICE (Wolf et al eds., 2004), 324, 329. See also ROB REICH, BRIDGING LIBERALISM AND MULTICULTURALISM IN AMERICAN EDUCATION, 147 (2002)

¹⁴⁷ John F. Witte, *Regulation in Public and Private Schools in the United States*, in EDUCATING CITIZENS : INTERNATIONAL PERSPECTIVES ON CIVIC VALUES AND SCHOOL CHOICE (Wolf et al eds., 2004), 355, 360.

¹⁴⁸ Catherine J. Ross, *Fundamental Challenges to Core Democratic Values: Exit and Homeschooling*, 18 WILLIAM & MARRY BILL OF RIGHTS JOURNAL 991, 992 (2010). For a court case rejecting a challenge to state supervision of private schools see Fellowship Baptist Church v. Benton, 815 F.2d 485 (8th Cir. 1987)

¹⁴⁹ Data taken from the Council for American Private Education website. Can be found at <http://www.capenet.org/facts.html>

¹⁵⁰ *Id.*

¹⁵¹ *Zelman v. Simmons-Harris*, 536 US 639 (2002)

¹⁵² *Id.* at 645

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schools that accept vouchers might require, the court did not strike down these requirements. However, while it seems that the American constitution does not forbid such supervision of private religious voucher schools, it does not require it either. Consequently, it is up to the individual states to decide what sort of conditions to attach to their voucher programs, and this can potentially open the way to indirect state funding of private religious schools that do not meet educational standards and that teach discrimination and hatred. While this should certainly be of concern, the small number of children currently participating in voucher programs in the US makes this concern less pressing.¹⁵³

In addition to private religious schools, a second form of private education, which is mostly religious, and that has grown considerably in recent years in the USA, is home schooling. It is estimated that around 1.5 million children (almost 3% of school-aged children) are being homeschooled in the USA.¹⁵⁴ Almost ninety percent of the parents who homeschool their children do so because of their religious beliefs.¹⁵⁵ Most of them “have religious objections to placing their children in a public, or even a private, school environment.”¹⁵⁶ Homeschooling is dominated by conservative Christian parents, although other deeply religious parents are also increasingly turning to homeschooling.¹⁵⁷ Interestingly, the number of homeschooled children is almost double the number of children in private Conservative Christian schools, a fact which seems to indicate that Conservative Christian parents have a preference for homeschooling.¹⁵⁸ Several state and federal courts have rejected the claim that homeschoolers are constitutionally entitled to complete freedom from state supervision.¹⁵⁹ For example, the Third Circuit rejected a claim by Conservative Christian parents against Pennsylvania’s homeschooling laws.¹⁶⁰ Pennsylvania requires parents who are homeschooling their children to provide instruction for a minimum number of days and hours in certain

¹⁵³ According to data from the school year 2008-2009 only 171,000 students all over the US participated in voucher programs. See Council for American Private Education, CAPE Outlook, March 2009 Number 343, pg.3 can be accessed at <http://www.capenet.org/pdf/Outlook343.pdf>

¹⁵⁴ Ross *supra* note 148 at 996

¹⁵⁵ *Id.* at 998

¹⁵⁶ Reich *supra* note 146 at 146

¹⁵⁷ Ross *supra* note 148 at 997-998

¹⁵⁸ Reich *supra* note 146 at 145

¹⁵⁹ *Id.* at 993

¹⁶⁰ Combs v. Homer-Center Sch. Dist., 540 F.3d 231, 247 (3d Cir. 2008)

subjects and to submit a portfolio of teaching logs and the children's work product for review. In addition, it requires homeschooled children to take nationally normed standardized achievement tests in reading/language arts and mathematics in grades three, five and eight.¹⁶¹ The parents claimed that the state's supervision violates their right to freedom of religion since it is their sincerely held religious belief that God has given them the exclusive responsibility for educating their children.¹⁶² The court rejected the claim, holding that "the particular right asserted in this case – the right to be free from all reporting requirements and "discretionary" state oversight of a child's home-school education – has never been recognized."¹⁶³ Nevertheless, in most states in the US homeschooling is significantly less regulated than private schools, and in some states such as Alaska, it is not regulated at all.¹⁶⁴ The considerable number of homeschooled children, coupled with the fact that most of the parents choose to homeschool their children in order to prevent their exposure to different world views and to critical thinking, has raised concerns regarding these children's lack of civic education and especially their lack of exposure to the constitutional norm of tolerance.¹⁶⁵

To conclude, while the regulation of private schooling in the US is lax and that of homeschooling is minimal or non-existent, these forms of schooling are not funded by the state, and where private schools are partially funded through vouchers their regulation is tighter. The fact that private schooling is not funded by the state can explain its relatively small size and serve as a partial check on the expansion of forms of religious education that might be inimical to the interests of children and of the liberal state.

Malaysia

Unlike the countries discussed so far Malaysia is not a secular liberal democracy but an Islamic federation. Article 3 of the Malaysian constitution states that "Islam is the religion of the Federation; but other religions may be practised in peace and harmony in

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.* at 247

¹⁶⁴ *Id.* at 993. Reich *supra* note 146156 at 147, 168-169

¹⁶⁵ Ross *supra* note 148 at 991

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any part of the Federation.”¹⁶⁶ Around forty percent of Malaysia’s population is non-Muslim.¹⁶⁷ Religion and ethnicity are closely intertwined in Malaysia and while the country maintains a façade of interracial harmony and religious pluralism, clear preference is given in the constitution and in federal law to the Malay ethnic group, who are generally Muslims.¹⁶⁸ While Islam has always played an important role in Malaysian politics and public sphere this role has increased in recent years as the ruling UNMO party has been trying to counteract the success of the conservative Muslim opposition PAS party by promoting a relatively moderate form of Islam (Islam Hadhari or civilizational Islam).¹⁶⁹ As will be discussed below, this struggle has also had implications for Islam education in Malaysia.

The Malaysian constitution guarantees individual religious freedom and the right of every religious group to manage its own religious affairs.¹⁷⁰ However, the constitution includes special provisions for Islam, which both give preference to Muslims but at the same time restrict their behavior. For example, the constitution allows state and federal law to restrict “the propagation of any religious doctrine or belief among persons professing the religion of Islam”.¹⁷¹ Consequently, it is forbidden to propagate non-Muslim religious doctrines to Muslims, and those wishing to propagate Muslim religious doctrines and beliefs to Muslims must obtain permission from state religious departments.¹⁷² The control over the propagation of Muslim religious doctrines granted

¹⁶⁶ Constitution of Malaysia

¹⁶⁷ Farish A. Noor, *From Pondok to Parliament: The Role Played by the Religious Schools of Malaysia in the Development of the Pan-Malaysian Islamic Party (PAS)*, in Farish A. Noor et al. (Eds.), *MADRASA IN ASIA : POLITICAL ACTIVISM AND TRANSNATIONAL LINKAGES*, 191, 192 (2008).

The largest minority in Malaysia is the Chinese minority which comprises almost 24% of the population. In addition to primary national schools in the Malay national language, the national government provides primary education in government schools and in government assisted schools in which the languages of instruction are Mandarin (21percent of primary school students) and Tamil (7 percent of primary students). Richard G. Kraince, *Reforming Islamic Education in Malaysia: Doctrine or Dialogue?*, in HEFNER, ROBERT W. ED. *MAKING MODERN MUSLIMS : THE POLITICS OF ISLAMIC EDUCATION IN SOUTHEAST ASIA*, 106, 115 (2009)

¹⁶⁸ RAN HIRSCHL, *CONSTITUTIONAL THEOCRACY*, 128 (2010)

¹⁶⁹ *Id.* at 128-129

¹⁷⁰ Article 11(1) - (3) of the Constitution of Malaysia

¹⁷¹ Article 11(4) of the Constitution of Malaysia

¹⁷² AHMAD FAUZI ABDUL HAMID, *ISLAMIC EDUCATION IN MALAYSIA*, RSIS Monograph No. 18, 25 (2010)

to the government in the constitution has enabled the government, among other things, to clamp down on dissident Muslim organizations and shut down their schools.¹⁷³

In terms of religious education article 12 of the constitution states that:” Every religious group has the right to establish and maintain institutions for the education of children in its own religion, and there shall be no discrimination on the ground only of religion in any law relating to such institutions or in the administration of any such law.”¹⁷⁴ Nevertheless, the article gives a clear preference to Islam over other religions with respect to state funding when it states that “it shall be lawful for the Federation or a State to establish or maintain or assist in establishing or maintaining Islamic institutions or provide or assist in providing instruction in the religion of Islam and incur such expenditure as may be necessary for the purpose.”¹⁷⁵ Consequently, only Muslim religious schools can be funded by the state in Malaysia.¹⁷⁶

The close ties between Malay identity and Islam, and the government’s resolve to affirm Malay hegemony, have led to the increasing importance of Islamic education and to attempts to systematize it within the national system.¹⁷⁷ In 1961 Islamic education was incorporated into the curriculum of national primary and secondary schools, and this has led to a decline in enrollment in both state and private Islamic schools.¹⁷⁸ These changes were consistent with the policy of gradual absorption of Islamic educational institutions and practice into the broad national educational system, and with the increasing emphasis on Islam as a prominent part of the national Malay identity and culture.¹⁷⁹ In 1973 a separate religious education division was established that is in charge of Islamic educational policy and curriculum, the recruitment of Islamic education staff and the raising of standards in both national Islamic schools and government assisted Islamic schools.¹⁸⁰ One of the goals of the Islamic Education

¹⁷³ For example the government has banned the Darul Arkam movement in 1994 and closed down its schools. *Id.* at 60-63

¹⁷⁴ Article 12(2) of the Constitution of Malaysia

¹⁷⁵ *Id.*

¹⁷⁶ Abdul Hamid *supra* note 172 at 25

¹⁷⁷ *Id.* at 29

¹⁷⁸ *Id.* at 27

¹⁷⁹ *Id.* at 28

¹⁸⁰ *Id.*

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Division is to take over state Islamic schools and private Islamic schools and turn them into national Islamic schools with a uniform syllabus.¹⁸¹

Private Islamic schools in Malaysia are governed by independent boards and their funds come from relatively low student fees and private contributions. However, due to financial difficulties many of these schools have turned to the government for financial assistance and have become semi-independent government-assisted Islamic schools.¹⁸² After 9/11 the pressure on private Islamic schools to conform to national authorities has increased, and funding has been withdrawn from hundreds of schools.¹⁸³ While some of these schools have closed for lack of funding, others have forgone their independence and become fully aided government Islamic schools.¹⁸⁴ The private Islamic schools whose funding has been cut have been accused of stocking Islamic extremism and being tied to Islamic militants.¹⁸⁵ In addition, the Malaysian government claimed that the non-religious curriculum in these schools was so deficient that it left the children graduating from them virtually unemployable.¹⁸⁶ Furthermore, in order to persuade people not to enroll their children into these schools the government claimed that while 90% of the graduates of government schools qualified for admission to Malaysian universities, less than 25% of the graduates of private Islamic schools were similarly qualified.¹⁸⁷ However, critics claim that the main motivation for the funding cuts was political, as these schools were connected to the PAS opposition party which threatens the continued rule of the UNMO party.¹⁸⁸ The funding cut combined with the government's campaign against the quality of private Islamic schools and the parallel expansion of the Islamic education curriculum in national schools have led to a sharp decline in enrolment to private Islamic schools.¹⁸⁹ By 2004 these schools have suffered a decrease of more than 50% in their enrolment and their student body represented only 0.7 percent of the total

¹⁸¹ *Id.* at 29

¹⁸² *Id.* at 45

¹⁸³ *Id.*; According to Noor *supra* note 167 at 209 funding was cut to 260 schools

¹⁸⁴ Abdul Hamid *supra* note 172 at 4, 45

¹⁸⁵ Jonathan Kent, Malaysia's doubts over Muslim schools, BBC News (3/4/2003) <http://news.bbc.co.uk/go/pr/fr/-/2/hi/asia-pacific/2913565.stm>

¹⁸⁶ *Id.*

¹⁸⁷ Noor *supra* note 167 at 211

¹⁸⁸ *Id.* at 192

¹⁸⁹ Kraince *supra* note 167 at 124-125

student population in Malaysia.¹⁹⁰ Following the Malaysian government's Ninth Malaysian Plan for the years 2006-2010 all private Islamic schools in Malaysia were required to adopt the official Islamic education curriculum, thereby creating a homogenous Islamic education curriculum in all Malaysian schools.¹⁹¹

To conclude, Islam is given a prominent role in Malaysia and the Malaysian constitution gives preference, power and money to Islam and to Muslim religious authorities. Nevertheless, the Malaysian legal system ensures that the state maintains complete control over the interpretation of Islam and over religious authority. This state of affairs enables the government to dictate the form and content of Islamic education and to retain a high degree of control over private Islamic schools.

Turkey

When the Republic of Turkey was proclaimed in 1923 religion was banished from the public sphere.¹⁹² Hundreds of religious Muslim schools (medreses) that were seen as incompatible with modern academic requirements were closed, and the state established compulsory schools that followed a national curriculum devoid of any religious instruction.¹⁹³ Although secularization was central to the Kemalist modernization project, and various Muslim practices such as the pilgrimage to Makkah (hajj) were banned by law until 1947, Islam continued to play an important role in the Kemalist understanding of the Turkish nation due to Islam's importance as the "unspoken bond" that created the Turkish nation from a multitude of separate ethnic groups including Anatolians, Kurds, Caucasians, Albanians, Bosnians Tartars, etc.¹⁹⁴ The introduction of democracy in 1946 along with the realization that the

¹⁹⁰ *Id.*

¹⁹¹ Abdul Hamid *supra* note 172 at 46-47

¹⁹² Bekim Agai, *Islam and Education in Secular Turkey: State Policies and the Emergence of the Fethullah Gulen Group*, in *SCHOOLING ISLAM THE CULTURE AND POLITICS OF MODERN EDUCATION*, HEFNER AND ZAMAN EDS. 149, 150 (2007). Nevertheless, the 1924 constitution stated that Islam was the religion of the Turkish state and while this article was removed in 1928 the principle of laicism (secularism) was put in the constitution only in 1937. Levent Koker, *Religion, Education and the Turkish Constitution: A Critical Assessment*, Turkish Review 14.10.2010

¹⁹³ *Id.*

¹⁹⁴ *Id.* at 151

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official ban on any form of religious education is leading many to seek it via channels over which the state has no control, has led to the gradual reintroduction of religion into the public sphere and into the state system of education.¹⁹⁵ Consequently, the notion of laicism which initially meant a complete ban on Islam was transformed to mean the control of religious expression by the state, and the following years saw a gradual increase in state-controlled Islamic education.¹⁹⁶ In the 1980s the role of Islam in Turkish society has further strengthened. Islam was portrayed as a national trait of the Turks and as a source of social and moral stability, and obligatory religious courses were introduced in state schools.¹⁹⁷

Although Turkey is defined in its 1982 constitution as a secular state, state control over Islamic education and its compulsory introduction into state schools are enshrined in the constitution.¹⁹⁸ Article 24 of the constitution stipulates that: “Education and instruction in religion and ethics shall be conducted under state supervision and control”, and determines that “instruction in religious culture and moral education shall be compulsory in the curricula of primary and secondary schools.”¹⁹⁹ The content of education and the control of the state over it are further guaranteed by article 42 of the constitution which states that: “Training and education shall be conducted along the lines of the principles and reforms of Atatürk, on the basis of contemporary science and educational methods, under the supervision and control of the state. Institutions of training and education contravening these provisions shall not be established.” The article further stipulates that: “The freedom of training and education does not relieve the individual from loyalty to the Constitution”, and ensures the conformity of private education by requiring that “the principles governing the functioning of private primary and secondary schools shall be regulated by law in keeping with the standards set for

¹⁹⁵ *Id.* at 152; See also Diren Çakmak, Pro-Islamic Public Education in Turkey: The Imam-Hatup Schools, 45(5) Middle Eastern Studies, 825, 829 (2009)

¹⁹⁶ *Agai supra* note 192 at 152

¹⁹⁷ *Id.* at 152-153; Çakmak *supra* note 195 at 833

¹⁹⁸ The Constitution of the Republic of Turkey. The definition of Turkey as a secular state appears in article 2

¹⁹⁹ The Constitution of the Republic of Turkey, article 24.

state schools.”²⁰⁰

The secular state through its Directorate for Religious Affairs, which controls 70000 mosques and thousands of Qur’anic courses, and supervises private forms of religious activities, is the most important religious player in Turkey.²⁰¹ The compulsory religious instruction given in all state schools follows a relatively progressive form of Islam advanced by the state, which has been called “Turkish-Islamic-Synthesis”, and which is aimed at undermining Islamic influences outside of state control and assisting in the project of national homogenization.²⁰² The deep involvement of the Turkish secular state with religion has made it necessary for the state to have schools that can train students to perform religious functions in the community. This has led the Turkish Ministry of Education to establish vocational schools for Imams (prayer-leaders) and Hatips (preachers) – the Imam Hatip Schools - whose operation began in 1951.²⁰³ Imam Hatip schools teach the full curriculum that is taught in general high schools, while adding to it a considerable number of religious vocational courses, and initially they included both junior high school (6-8) and high school (9-12) grades.²⁰⁴

While the state has full control over Imam-Hatip schools, provides the teachers and pays for their salaries, all other school expenses are covered by private donations.²⁰⁵ The private donations given to these schools on the basis of their religious appeal were used to provide a better learning environment for the students, such as a better teacher-student ratio than in other public schools.²⁰⁶ The Imam-Hatip schools became very popular among the more pious Muslim parents who seized the opportunity to send their children to a school that gives them both secular and religious education, and by the mid-1990s about ten percent of all students in Turkey

²⁰⁰ The Constitution of the Republic of Turkey, article 42

²⁰¹ Agai *supra* note 192 at 153-154

²⁰² *Id.* at 156

²⁰³ Çakmak *supra* note 195 at 830; Mustafa Öcal, *From the Past to the Present: Imam and Preacher Schools in Turkey—An Ongoing Quarrel*, 102(2) RELIGIOUS EDUCATION, 191, 195 (2007)

²⁰⁴ Öcal *supra* note 203 at 196

²⁰⁵ *Id.* at 197

²⁰⁶ Agai *supra* note 192 at 154

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went to Imam-Hatip schools.²⁰⁷ One reason for these schools' popularity was that while they enabled their graduates to go on to become Imams and Hatips, they also enabled them to go on to study any university subject they desired, and their graduates would usually achieve high scores in the central university entry exam.²⁰⁸

The growing popularity of the Imam-Hatip schools has generated an extensive public debate regarding their desirability, with opponents arguing that these schools were a threat to Turkey's laicism and a hotbed for political Islam.²⁰⁹ These concerns have led from 1997 onward to the enactment of reforms that significantly restricted Imam-Hatip schools and their graduates. The first reform required all students to attend general, non-vocational, schools for the first eight years of their education, thereby canceling the junior high section of the Imam-Hatip schools.²¹⁰ The second, even more significant, reform, implemented in 1999, changed the admission criteria to universities, making it almost impossible for Imam-Hatip graduates to enter any faculty except for theology faculties.²¹¹ In addition, Imam-Hatip graduates were denied access to police schools and other sensitive positions.²¹² These measures resulted in a sharp drop in student enrolment and the closure of many Imam-Hatip schools.²¹³ However, these reforms were later overturned by the Turkish government led by the Justice and Development party (AKP).²¹⁴

To conclude, although the Turkish state is defined as a secular state, it employs a significant state apparatus to disseminate a state generated form of Islam, and retains tight control over Islamic education.

²⁰⁷ *Id.*

²⁰⁸ *Id.* although women are not employed as Imams or Hatips, Imam-Hatip schools accept girls and even had the highest proportion of girls of all high schools. *Id.* (see also Çakmak *supra* note 195 at 831) this may be due to the fact that conservative parents feel it is safer to send their daughters to religious education and Imam-Hatip schools are the only option for such education in Turkey

²⁰⁹ *Id.* ; Öcal *supra* note 203 at 197; Çakmak *supra* note 195 at 839-841. Çakmak posits that the Imam-Hatip schools have had a significant contribution to the resurgence of Islamism in Turkey (many of Turkey's current leaders are graduates of these schools) and that under the current rule of the Islamist Justice and Development Party they pose a more serious threat to Turkish democracy than in the past.

²¹⁰ Agai *supra* note 192 at 154-155

²¹¹ Öcal *supra* note 203 at 199

²¹² Agai *supra* note 192 at 154-155

²¹³ *Id.*; Çakmak *supra* note 195 at 836

²¹⁴ <http://www.silkroadstudies.org/new/inside/turkey/2012/120402a.html>

Lessons from Theory and from Comparative Law and Practice

The review conducted above of theoretical literature on religious education and of the comparative law and practice of liberal and non-liberal countries reveals that while there are significant differences between the different theorists reviewed and between the different countries reviewed, some general conclusions that are pertinent to the UO education in Israel can be drawn.

First, while in all surveyed countries there is, at least on the legal level, state control over private religious education, in the US this control is less strict than in the other countries. This can be explained both by the strong constitutional separation between church and state, which prevents government entanglement with religion, and by the strong ethos of negative liberty and of small government, which reduces government involvement in the private sphere to a minimum. Nevertheless, the same constitutional principles that restrict the control over religious education in the US also work to prevent funding of religious schools. In the Netherlands and in the UK where there is extensive funding for religious education there is also quite extensive control over this education and while in both countries there exists the option of running a private school with no state funding and with considerably less supervision, this option is utilized by very few. In the non-liberal democracies (Malaysia and Turkey) close supervision exists regardless of funding.

Thus, in the three liberal democracies examined there is a direct link between the extent of funding and the extent of supervision. A similar close relationship between funding and supervision can also be found among the liberal theorists reviewed. This link is important, because it ensures that government money that is used to support and expand the private religious education system is not used towards purposes that are inimical to the liberal democratic state. Unfortunately, this is not the case with the UO system in Israel, which receives extensive funding despite its refusal to teach the core curriculum.

Second, although the three liberal democratic countries surveyed differ in the

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amount of funding that they give religious education and have different degrees and methods of control, neither of their systems is considered incompatible with the right to religious freedom or with the right to culture. This is important from the perspective of UO education in Israel, whose supporters claim that despite the heavy funding that the UO education system receives from the state, any supervision of it and any enforcement of standards would be a violation of the parents' religious freedom and of the community's right to culture.

Third, In the four countries in which Muslim education was surveyed – England, Netherlands, Malaysia and Turkey - a major concern for parents in their choice of school was the need to give their children good secular education, in addition to religious education, in order to enable them to integrate in society and find good jobs in a modern economy. Thus, the need to acquire sufficient skills to find good jobs has an important integrative and de-radicalizing role. This need has led parents to withdraw their children from schools that put too much emphasis on religious studies and too little on civic education. Furthermore, most theorists discussed agree that a curriculum comprised exclusively of religious studies is inimical to the rights of children. While Barry and Callan believe that children have the right to receive an education that develops their autonomy, Spinner-Halev and Galston settle for an education that guarantees the children's right of exit in the sense that it enables them later on in life to live outside the community if they choose to do so. The same concern for ensuring children's right of exit was expressed by the Israeli court in the *Core Curriculum* cases and by the British court.²¹⁵ Nevertheless, the current situation in the UO education in Israel, which has been reinforced and made legal by the Unique Cultural Educational Institutions Act, is that UO schools for boys teach exclusively religious studies, and that consequently, young UO adults have almost no option of exiting their community.²¹⁶

Fourth, most of the theorists discussed, except kukathas, also emphasize the right and the duty of the liberal state to encourage and even ensure that children receive

²¹⁵ For the British court see note 135 and accompanying text

²¹⁶ Friedman *supra* note 13 at 188

some form of civic education that educates them to tolerance and to life in a pluralistic diverse democratic society. Similarly, in both England and the Netherlands such civic education is mandatory. In the UO education system in Israel no such education is provided, despite the fact that one out of every four students in the Jewish education system studies at an UO school and that data shows that the UO community is the most intolerant towards diversity.

If what I said until now is correct then the treatment of UO education in Israel is not required by the right to religious freedom of UO parents or by the right to multicultural accommodation for the UO community. It also violates the right of UO children to education and to equal opportunity and Jeopardizes the democratic structure of the state due to the inordinately high number of children who are not exposed to any form of civic education. I could finish here, but my claim against the right to an exclusively religious education granted to the UO through the Unique Cultural Educational Institutions Act runs deeper than that. I claim that the unique state religion structure in Israel and the unique position of the UO community in the Israeli polity significantly exacerbate the problem and that the comparative perspective can help us to understand this.

Thus, the *Fifth* conclusion that can be drawn from the comparative analysis concerns countries in which religion plays an essential role in their national identity. While the two non-liberal countries surveyed – Turkey and Malaysia – differ from each other markedly in their state religion relations, in both countries Islam is heavily entangled with the state and is used by the state as a unifying factor. In this respect both countries resemble Israel, in which, as will be further discussed below, the Jewish religion plays a crucial role in its self-identity, and is heavily entangled with the state. There is one crucial difference between the situation in Israel and that in Malaysia and in Turkey, which is highly relevant for our purposes. Because Malaysia and Turkey acknowledge and promote the importance of Islam in their national life and its power over the population, they control Islam tightly, stifling dissent and endorsing a unitary version of a state controlled religion. While this state of affairs is

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illiberal and disrespectful of individual rights, it is effective in preventing the power of religion from being turned against the state. Conversely, Israel, while emphasizing the importance of the Jewish religion to the national ethos and giving the Orthodox Jewish religion both state power and state budgets, refrains from controlling it. This is because controlling religion in the way that Malaysia and Turkey do would go against another important component of Israel's ethos – the liberal component. Consequently, Israel emerges as a unique hybrid which attempts to reconcile two irreconcilable ideals: on the one hand it gives considerable state power and state funds to its preferred religion – Orthodox Judaism (and is therefore an instance of what Hirschl calls a constitutional theocracy), but on the other hand, and at the same time, it attempts to respect liberal ideals such as religious freedom in all areas not directly under the control of religious law. Tellingly, as will be discussed below, the failure of this theocratic-liberal hybridity does not manifest itself through Israel's relatively decent treatment of its Muslim and Christian minorities, but through its unremitting, and indeed exaggerated, respect to the religious freedom of adherents of its dominant religion – Orthodox Judaism – of which the UO Jewish minority is an important component.

In the last section of this paper I will describe how the combination of state power and state funds for Orthodox Judaism coupled with extensive freedom for its adherents to pursue and to radicalize their religious beliefs has resulted in the UO's minority exponential growth and in its radicalization to an extent that today poses a threat to the liberal democratic ideals on which Israel is based and requires a change of policy towards the UO education system.

IV. UO Education in Israel – An Analysis

In order to understand the uniqueness of the Israeli situation and the depth of the problem that the current status of the UO education system poses for Israel, it is important first to give a short overview of state religion relations in Israel.

State religion relations in Israel

Unlike most other liberal democratic states whose definition does not include a reference to the ethnic or religious character of the state, Israel is defined in its Basic Laws as a Jewish and Democratic state. This definition is relatively new, and was adopted along with the two Basic Laws on human rights - Basic Law: Human Dignity and Basic Law: Freedom of Occupation.²¹⁷ However, the origins of this definition can be traced to the Israeli declaration of Establishment, which states that Israel is to be a "Jewish state", but at the same time that 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."²¹⁸ It is important to note that there is an ongoing and as of yet unsettled debate with regard to the exact meaning of the definition of Israel as a Jewish state. While some consider that the definition of Israel as a Jewish state mandates an establishment of the Jewish religion in the state, and the granting of legal authority and status to the Jewish religion, others dispute this reading of the Basic Laws, arguing that the definition "Jewish state" should be understood as a national definition designating the character of Israel as the home of the Jewish people, where Jews realize their right to self-determination, and not as an establishment of the Jewish religion in the state.²¹⁹ Regardless of this debate and long before the enactment of the Basic Laws, the Jewish religion in its Orthodox version has been partially established in the state through laws granting legal status to Orthodox Jewish religious authorities in several areas, the most important of which being that of personal laws. This partial establishment originates in the pre state era and in the need of the leaders of the Zionist movement to secure the support of the religious factions within the Jewish community for the establishment of the Jewish state, and has come to

²¹⁷ Basic Law: Human Dignity & Liberty, 1992, S. H. 1391, 60, available at <http://www.mfa.gov.il/mfa/go.asp?MFAH00hi0> . See also, Basic Law: Freedom of Occupation, 1994, S. H. 1454, 90, available at <http://www.mfa.gov.il/mfa/go.asp?MFAH00hj0> .

²¹⁸ THE DECLARATION OF ESTABLISHMENT OF THE STATE OF ISRAEL (Israel, May 14, 1948) available at <http://www.mfa.gov.il/mfa/go.asp?MFAH00hb0>

²¹⁹ See Avigdor Levontin, "Jewish and Democratic" -- *Personal Reflections*, in THE STATE OF ISRAEL: BETWEEN JUDAISM AND DEMOCRACY, 251 (Yossi David ed., 2000) (taking a position against interpreting the term Jewish in the Basic Laws as including the Jewish religion). See cf. Menahem Alon, *Constitution by Legislation: The Values of a Jewish and Democratic State in Light of Basic Law: Human Dignity and Personal Freedom*, 17 IUNEI MISHPAT 659, 668-70 (1993) (taking a position supporting the inclusion of the Jewish religion in the term "Jewish").

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be known as the "Status Quo".²²⁰ Some argue that this partial establishment was also motivated by the need of the new Zionist secular regime to gain legitimization by maintaining a connection with the Jewish past.²²¹ Be that as it may, the Israeli model of state religion relations, which from the onset has given substantial preference to the Orthodox Jewish religion, deviates from the classical liberal model which aspires to treat all religions equally and neutrally.

The most important aspect of the partial establishment of Orthodox Judaism is that all Jews in Israel are subject to Orthodox Jewish religious personal laws. At the same time, it is important to note that members of other recognized religious communities such as Muslims and various Christian denominations are also subject to the personal religious laws of their particular religions.²²² This state of affairs has first been instituted at the period of the Ottoman rule over the Eretz-Israel/ Palestine region and has been maintained by the British mandate and later by the state of Israel. The imposition of the religious personal laws of the various religious communities on all residents, and the lack of an alternative civil marriage, constitute a violation of the right to freedom of conscience and belief, as well as a violation of the rights of women who are subject to the discriminatory patriarchal religious laws of the various religious communities.²²³

While establishing an exclusively religious system of laws in matters of marriage and divorce is probably the most serious entanglement of religion within the Israeli state, there are several other areas in which religion, and in particular the Orthodox Jewish religion, is given a preferred status by the state, either through statutes or through administrative decisions, which confer to it state power as well as money. Thus, the state

²²⁰ Daphne Barak-Erez, *Law and Religion Under the Status Quo Model: Between Past Compromises and Constant Change*, 30 CARDOZO L. REV. 2495 (2009) For more on the Status Quo see f.n. and accompanying text

²²¹ Yonatan Shapira, *Secular Politicians and the Status of Religion in the State of Israel*, in MULTICULTURALISM IN A DEMOCRATIC AND JEWISH STATE, THE ARIEL ROSEN-ZVI MEMORIAL BOOK 661 (Menachem Mautner et al. eds., 1998)

²²² The authority of the various religious communities was established through legislation from the period of the British Mandate that was later incorporated into Israeli law, Sign 51(1) of the King's Order in Council, 1922. The detailed authority of the Jewish Rabbinical Courts is set out in the Jurisdiction of Rabbinical Courts (Marriage and Divorce) Act 1953. The detailed authority of the Muslim religious courts can still be found in Sign 52 of the King's Order in Council, (1922).

²²³ See e.g., Frances Raday, *On Equality*, in WOMEN'S STATUS IN ISRAELI LAW AND SOCIETY, 19 (F. Raday et al. eds., 1995)

has established a chief rabbinate and has given full control over it to Orthodox Judaism.²²⁴ The chief rabbinate is a powerful state organ which enjoys large budgets and which controls the religious services given by the state to the Jewish population. Some of the state and municipal institutions established and financed by the state and subject to the religious authority of the Chief Rabbinate are the rabbinical courts that deal with matters of marriage and divorce of Jews in Israel, the regional religious councils which deal with the supply of religious services - such as burial (public cemeteries in Israel are overwhelmingly religious), synagogues, kashrut, etc. - to Jews on a regional basis, and the conversion courts which deal with conversion to Judaism.²²⁵

What does all this have to do with the UO? Despite the UO community's anti-Zionist ideology and its enclave mentality, the UO community holds key positions in Israel's religious establishment. UO Rabbis have been serving as judges in the Rabbinical Courts system, to which all Jews are subject in matters of marriage and divorce, from its inception.²²⁶ In fact, UO Rabbis form the majority of rabbinical court judges, and in the Great Rabbinical Court, which is the highest rabbinical court that decides appeals from all the regional rabbinical courts, all judges are UO.²²⁷ Through their positions the UO judges are authorized to impose their version of ultra-orthodox Jewish religious law on all Jews in Israel. In recent years, with the increasing radicalization in the UO community the rulings of rabbinical courts have become more conservative and more detrimental to the rights of women and to the rights of converts. To give just one example, a rabbinical court has recently ruled that a wife who sued her husband for damages because of his refusal to release her of their marriage for ten years is herself to blame for his continuous refusal to divorce her, and that until she consents to her husband's financial demands she is not entitled to the divorce.²²⁸

Moreover, UO officials have been using their control over Israel's Chief Rabbinate to discriminate even against orthodox Zionist rabbis. Thus for example, recently a petition

²²⁴ The Chief Rabbinate of Israel Law, 1980, S.H. 965, p. 90

²²⁵ The Jewish Religious Services Law, 1971, S.H. 628, p. 130

²²⁶ Nissan Slominski, *The Appointment of Rabbinical Court Judges – An Ultra-Orthodox State or a Zionist State?*, <http://www.toravoda.org.il/node/584>

²²⁷ <http://www.kipa.co.il/now/47971.html>

²²⁸ Rivka Luvitch, *Rabbinical courts, raise the anchor*, Ynet 8/2/11 <http://www.ynet.co.il/articles/0,7340,L-4025574,00.html> [Hebrew]

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was filed to the Supreme Court claiming that the Chief Rabbinate's criteria for determining which rabbis are authorized to conduct marriages are drawn in such a way as to include as many UO rabbis (and even UO members who are not rabbis) as possible while excluding without any plausible justification many orthodox Zionist rabbis.²²⁹

In addition, the influence of UO political parties, which has started as early as the establishment of the state, has strengthened considerably ever since.²³⁰ This influence has allowed UO politicians to obtain considerable budgets for the UO community, which support their Yeshiva studies and their increasing families.²³¹ It has also allowed them to have significant impact on general issues affecting the Israeli society at large, through control over key state organs such as the Ministry of Interior, the Ministry of Housing, the Health Ministry, the Ministry of Religion, the Knesset Budget Committee, and through control over key municipal positions such as the mayorship of Jerusalem. In their capacities in the government, in the Knesset and in the local municipalities UO politicians and public servants strive to implement their ultra-Orthodox religious ideology on the public at large, in contravention of the liberal values of the state. To give one example, in Jerusalem UO politicians controlling the municipal government have for years been denying municipal budgets to the Homo-Lesbian community in Jerusalem despite repeated court rulings holding that such denial is discriminatory and illegal.²³² To give another example, the deputy Minister of Health, who is a member of an UO political party, has initiated segregation between men and women in official events held by the Ministry of Health and in November 2011 has even forbidden two women, a doctor and a nurse, who received an award from the Ministry of Health for their research, to come up on stage and receive the award at the official award ceremony. The women were instructed to send a male representative to receive the award in their name, while they had to sit in the balcony of the segregated auditorium to which all women were restricted.²³³ A final example is a religious ruling issued in 2010

²²⁹ Supreme court petition H.C. 457/12

²³⁰ See note 220 and accompanying text

²³¹ Friedman *supra* note 13 at 189

²³² See A.A. (administrative appeal) 343/09 Open House v. Municipality of Jerusalem (14/9/10)

²³³ Ethan Bronner and Isabel Kershner, Israelis Facing a Seismic Rift Over Role of Women, NY Times 14.1.2012 <http://www.nytimes.com/2012/01/15/world/middleeast/israel-faces-crisis-over-role-of-ultra-orthodox-in-society.html?pagewanted=all>

by 50 municipal Rabbis, both ultra-Orthodox and religious Zionist, forbidding the sale and rental of homes to gentiles, particularly to Arabs.²³⁴ All of these examples involve UO public servants who receive their salary from the state and claim to be acting within their authority.

The above account demonstrates how UO state officials, representing the UO community, are engaged in strengthening the hold of ultra-Orthodox religious ideology in the Israeli government and in the Israeli public sphere and have significant impact on the lives of all Israelis. At the same time these officials contend that the UO education system is entitled to full autonomy as part of the freedom of religion and of the multicultural respect owed to the UO community as a secluded religious minority, which is dedicated to its deeply religious (yet deeply illiberal) way of life. This position was adopted by the Knesset in the Unique Cultural Educational Institutions Act which exempts UO high school students from studying the core curriculum. The act defines a “unique cultural group” as a group that has unique cultural characteristics, and goes on to define a “unique cultural educational institution” as an educational institution which gives systemic education that originates from the way of life of the unique cultural group and is in accordance with the unique characteristics of the group.²³⁵ The only group to which the act explicitly applies is the UO community.²³⁶ The act exempts “unique cultural educational institutions” such as UO high schools (Yeshivot Ketanot) from the duty to teach the core curriculum while guaranteeing them state funding of 60% of the funding awarded to public schools. The act legalizes the de facto situation in which UO boys’ high schools do not teach their students any basic skills such as math or English or any citizenship education, and restrict their curriculum to religious studies, but at the same time continue to get funding from the state. Neither of the theorists discussed above supports such a state of affairs, nor does any country discussed have a similar legal arrangement. While most of the theorists discussed support state supervision of religious education to different extents, even Kukathas, who denies the state’s right to interfere in children’s education in religious and cultural groups, does not support state

²³⁴ Kobi Nahshoni, 50 municipal rabbis: Don't rent flats to Arabs (Ynet 12.7.2010) <http://www.ynetnews.com/articles/0.7340.L-3995724.00.html>

²³⁵ The Unique Cultural Educational Institutions Act, 2008, section 1.

²³⁶ *Id.* The Minister of Education has the authority to recognize other groups as unique cultural groups for the purposes of the act, but thus far no other group has been recognized as such.

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financing of such education. In terms of comparative law, none of the surveyed states has a similar model of complete non-intervention combined with extensive state funding.

But furthermore, in light of the considerable state power that the UO community yields through its representatives, the allegedly multicultural accommodation legislated through the Unique Cultural Educational Institutions Act is theoretically unsound and poses a serious threat to the liberal democratic infrastructure of the state. The idiosyncrasy of providing this type of multicultural accommodation to the UO in Israel can be best understood by comparing their situation to that of two American enclave minorities – the Amish and the Satmar Hasidim of Kiryas Joel.

Partial citizenship and the UO Community in Israel

When considering the appropriateness of multicultural accommodations for illiberal minorities, Jeff Spinner-Halev introduces a useful distinction between full citizens and partial citizens. He argues that in general all citizens of the state must adhere to moral requirements of liberal citizenship, including citizens belonging to illiberal minority communities. However, a narrow exception to this rule can be made in the case of minority communities whose behavior vis-a-vi the state entitles them to be considered partial citizens and consequently be partially exempt from some of the requirements of liberal citizenship.²³⁷ According to Spinner-Halev many illiberal religious groups want to lead their lives away from the mainstream community in order to maintain a distinct identity. Nevertheless, partial citizens are only those whose separation from the liberal state and society is almost complete. Members of such groups must not involve themselves in politics, they must not “press the state for financial favors or funds to establish institutions for themselves”, and they should not “ask for things that will harm other citizens”.²³⁸ Spinner Halev believes that allowing partial citizenship under such conditions will not threaten liberal citizenship because the conditions for becoming partial citizens are so difficult that there is very small likelihood that many groups will

²³⁷ Jeff Spinner-Halev, *Extending Diversity: Religion in Public and Private Education*, in CITIZENSHIP IN DIVERSE SOCIETIES, pp. 68-97, (Kymlicka, Will; Norman, Wayne eds.), 71

²³⁸ *Id.*

choose this path. Thus, partial citizenship rests on a bargain: “as long as the group stays away from the common life of the country, and doesn't try to eat at the public trough, then society can agree that citizenship has fewer claims on them than on others.”²³⁹

In terms of education Spinner-Halev maintains that while partial citizens cannot be exempt from the duty to teach their children basic skills, they can be exempt from teaching them the critical thinking skills that future citizens in a liberal democracy need to acquire.²⁴⁰ A group which according to Spinner-Halev is entitled to a status of partial citizenship is the Amish in the USA. Consequently, he supports the Yoder decision which exempted the Amish in Wisconsin from the legal duty to send their children to school for the last two years of the state's compulsory education.²⁴¹ In its decision the court relied heavily on the nature of the Amish as a law abiding, “separate, sharply identifiable and highly self-sufficient community” which is self-sustaining to such an extent that it rejects any form of public welfare.²⁴² The court further held that the Amish carried the burden of demonstrating that the vocational education that they want to offer their children in lieu of the compulsory state education is better at providing them basic skills such as “reliability, self-reliance, and dedication to work”, and that there are probably few other religious groups or sects who could carry such a burden.²⁴³

Conversely, Spinner-Halev argues that groups that want to retain their separation but at the same time want the state to help them do so pose a real threat to citizenship. An example of such a group, which Spinner-Halev discusses, is the Satmar Hasidim of Kiryas Joel in NY. In particular he criticizes the establishment of a publicly funded school exclusively for Satmar children with disabilities.²⁴⁴ He argues that public funds

²³⁹ *Id.* at 71-72

²⁴⁰ *Id.* at 72. A similar suggestion is made by Galston in passim with respect to the imposition of the demands of education for shared citizenship on all groups. According to his suggestion groups that are willing to abide by the basic laws of the community without making full claims upon it may be given some form of intermediate status and be exempted from some of the requirements of full citizenship. *Two Concepts of Liberalism*, *supra* note 51 at 529

²⁴¹ *Wisconsin v. Yoder*, 406 U.S. 205 (1972). For a detailed criticism of the view that the Amish are a secluded minority which does not utilize political power see Barry *supra* note 52 at 176-193

²⁴² *Wisconsin v. Yoder*, 222, 225

²⁴³ *Id.* at 224, 235-236

²⁴⁴ The law establishing the special school district for the Satmar was struck down by the US Supreme Court in *Board of Education of Kiryas Joel Village School District v. Grumet*, 512 U.S. 687 (1994), but a subsequent law allowing for the reestablishment of the special school district was affirmed by a state court [Tamar Lewin, *Controversy Over, Enclave Joins School Board Group* (published April 20, 2002)

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should only be used to support public schools that are open to all and not public schools that provide separate education to children of insular groups.²⁴⁵ Because the Satmars want to use public funds to educate their children separately from other children they cannot be considered partial citizens. In addition, Spinner-Halev argues that the Satmars should not be considered partial citizens because many of them use food stamps and live in public housing, and because they vote. In fact, he observes that it is because the Satmars vote, and because they usually vote en bloc, following the directions of their rabbi, that politicians were willing to cater to their demand for a separate school district.²⁴⁶

The UO community in Israel cannot qualify as partial citizens. They are deeply involved in state and municipal politics and their community is heavily funded by the state. In fact, perhaps ironically, the UO's extensive involvement in politics and their extensive funding by the state are what enabled UO leaders to create and maintain the semi enclave for which they are claiming multicultural protection. The large state funding for religious education from early childhood through late adulthood has enabled the transformation of the UO community into a community of learners in which an unprecedented number of adult men study religious studies and do not need to work for a living. This enables these men to lead most of their lives without having to step out of the UO community. In addition, state funding of UO men's religious studies has enabled the UO education system to shun any secular studies, since many of its graduates continue their religious studies into adulthood and consequently do not have to find jobs. The shunning of any secular education and the exclusive focus on religious studies made possible by increasing state funding has led to the growing radicalization of the UO community.²⁴⁷ It is instructive to contrast this phenomenon with the development of Muslim religious education in the countries discussed earlier.

Moreover, another reason why the UO cannot be considered partial citizens is that as explained above, the establishment of the Orthodox Jewish religion has enabled the UO

<http://www.nytimes.com/2002/04/20/nyregion/controversy-over-enclave-joins-school-board-group.html>]

²⁴⁵ *Id.* at 80-81

²⁴⁶ *Id.* at 79-80

²⁴⁷ Friedman *supra* note 14 at 80-86

community through its representatives to exercise important state powers over other citizens in areas where the Jewish religion is entangled with the state. In these areas the UO (with, to a lesser extent, orthodox religious Zionists) have become the official interpreters of the Jewish religion, determining the legal status of other citizen's marriages and divorces, of their conversions and of their children's religious status on the basis of their own radical religious ideology. Consequently, one could argue that not only are the UO community not partial citizens, but in a sense they are *prodigious* citizens since they are the only Jewish community (together with the orthodox religious Zionists) who is granted power by the state to enforce its religious ideology on others through the state's religious establishment, which includes the rabbinical courts, the Chief Rabbinate, religious councils, etc.

Historical Agreements – The Status Quo Letter

In his discussion of Spinner-Halev's definition of partial citizens Kymlicka supports the definition, but warns that it should be further narrowed, and applied only to old religious groups, such as the Amish, that have been historically accommodated by the state.²⁴⁸ In general, Kymlicka believes that multicultural claims by minority groups that are based on historical agreements and exemptions should be taken very seriously, although their compatibility with equality arguments must also be assessed.²⁴⁹ He is more cautious with regard to new minorities and maintains that if states will be willing to recognize newly emerging insular religious groups as partial citizens and exempt them from certain duties of citizenship, many groups will accept the bargain in order to retain their illiberal norms and their specific identities, thereby posing a threat to the functioning of the liberal democratic state.²⁵⁰ Kymlicka's warning is important, however, the case of the UO community in Israel highlights yet another danger, which is that groups that have been historically accommodated by the state may, on account of this accommodation, experience such a change of circumstances as to become a threat to the functioning of the liberal democratic state.

²⁴⁸ Will Kymlicka, *Comments on Shachar and Spinner-Halev: An Update from the Multiculturalism Wars*

in CITIZENSHIP IN DIVERSE SOCIETIES, pp. 112-130, (Kymlicka, Will; Norman, Wayne eds.), 107

²⁴⁹ WILL KYMLICKA, MULTICULTURAL CITIZENSHIP, p. 120, 170 (1995)

²⁵⁰ *Id.* at 126

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As already mentioned, at the establishment of the state the UO were a small minority that distanced itself from Zionism and from the emerging Jewish Zionist community and could therefore reasonably be considered an insular minority. In order to enlist its support for the establishment of the state Zionist leaders have reached an agreement with the UO's political representatives at the time - Agudat Israel - the details of which were laid out in what has come to be known as the "Status Quo Letter".²⁵¹ The letter covered the areas of Sabbath observance, the keeping of Kashrut, personal status law, and education. It is important to observe that the first three issues in the letter pertain to measures that would apply to all Jewish citizens of the state and not only to the UO themselves. The UO's active attempts to shape the government of the state in a way that curtails the rights of all citizens, for example by restricting all citizens to religious marriage and divorce, makes viewing them as partial citizens even at that early stage highly problematic.

The fourth subject dealt with in the Status Quo Letter was education. With respect to education the letter stated that the new state will guarantee full autonomy to the various education systems that will operate in it, and that the government will respect the religious freedom of all communities. Nevertheless, the letter specifically stated that this autonomy will be subject to state determination of a minimal core curriculum, which will include subjects such as Hebrew, history, science and the like, and whose implementation will be supervised by the state. Thus, the letter followed the standard liberal state practice of granting religious autonomy to the minority group while retaining the right to ensure that all citizens of the state receive minimal secular education. The letter was silent with regard to state funding for private religious education and did not promise anything in that respect.

During the years since the agreement outlined in the letter was reached three things happened. *First*, the state decided to fund the UO education system despite the fact that the letter did not require that. This decision, which was taken at a time when the UO minority was very small and expected by Zionist leaders to gradually recede into the

²⁵¹ For a copy of the letter see (Hebrew) http://he.wikisource.org/wiki/%D7%9E%D7%9B%D7%AA%D7%91_%D7%94%D7%A1%D7%98%D7%98%D7%95%D7%A1_%D7%A7%D7%95%D7%95

past, has turned out to be highly significant, for it enabled the UO community to dramatically increase the number of its schools and at the same time provide many in the community with secure state jobs as teachers in UO schools.²⁵² *Second*, although the letter stated that a core curriculum will be enforced in UO schools, and subsequent Israeli law explicitly linked state funding with the teaching of the core curriculum, this linkage was never enforced and to this day most UO boys' schools do not teach the core curriculum, but still receive extensive state funding. *Third*, the UO community, which at the time of the letter was small and dwindling, has experienced incredible growth and has at the same time gained extensive influence in Israeli society through its involvement in politics and through its increasing control over the religious establishment.

These developments, which occurred due to the shortsightedness of early Zionist leaders who viewed the UO community as an insular and disappearing minority, and failed to predict the consequences of their concessions, make the continued relevance of the agreement in the letter questionable. Even more so, they make the later concessions such as the grant of state funding and the failure to enforce the core curriculum, which were also motivated by political expediency and by the perception that the UO community was a secluded community which is entitled to pursue its unique way of life, even more questionable. Today, one out of every four children in the Jewish education system studies in a UO school, most UO boys receive no secular education, and all UO children receive no citizenship education. Thus, concessions made when the UO community was small and insular have now become impracticable and pose a real danger to the liberal democratic fabric of the state. This should at least serve as a cautionary tale for those advocating the grant of exemptions from basic educational requirements to religious minorities.

Is Liberal Multiculturalism Applicable to the Situation of the UO Community in Israel?

In light of all of the above I would argue that liberal multicultural theory, with the accommodations that it offers to illiberal cultural groups, is not applicable to the situation of the UO community in Israel. Liberal multiculturalism is based on the

²⁵² Heilman & Friedman *supra* note 7 at 236-237

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assumption that while the minorities asking for multicultural accommodation may themselves be illiberal and may request accommodations in order to preserve their own illiberal way of life, they accept the fact that they live within a liberal state and do not challenge its liberal democratic framework.²⁵³ Granted, more often than not the acceptance of the liberal structure by the illiberal minority is not whole hearted and the existence of the minority may in itself create an illiberal influence over society (or vice versa). As long as the illiberal influence is negligible it can be contained by the liberal democratic structure. However, where the illiberal influence threatens the liberal democratic structure itself, there can be no room for multicultural accommodation. All the more so, where the situation is such that the threat to the liberal democratic structure has been embedded in the structure itself.

The size of the UO community in Israel and the fact that one in every four Jewish children studies in the UO education system are certainly reason enough to conclude, even from within multicultural theory, that there is no room for multicultural accommodation with respect to the teaching of the core curriculum in UO schools.²⁵⁴ Nevertheless, in my analysis I have tried to show that there are deeper structural reasons for the inapplicability of liberal multiculturalism to the position of the OU community within Israeli society. The Status Quo Letter, the structure of state religion relations in Israel, the political power of the UO, their hold over the religious establishment and the way they utilize their power in order to enforce their illiberal religious ideology on all Israelis, all highlight the fundamental difference between the UO community in Israel and many other religious minorities around the world. Thus, for example, the Satmars in NY have no intention of challenging the liberal structure of the USA and are in fact supportive of it, since it guarantees their religious freedom and their rights as a minority culture. Furthermore, the Satmars' small size, as well as the separation of church and state that exists in the US, precludes their ability to enforce their illiberal religious ideology on others. Thus, although the Satmars vote and use government funds and therefore may not be considered partial citizens, they can still be

²⁵³ Yael Tamir, *Two Concepts of Multiculturalism*, 29 JOURNAL OF PHILOSOPHY OF EDUCATION 161 (1995)

²⁵⁴ Perhaps ironically it was Yael Tamir in her position as Israel's Minister of Education who has defended the state's refusal to enforce the core curriculum in UO schools in the second Core Curriculum Case.

considered a disempowered minority that may have the right to claim some forms of multicultural protections for their illiberal way of life. Conversely, the UO community in Israel has, from early on, challenged the liberal democratic structure of the state and has been given state power and political influence that have enabled it to gradually erode this structure and implement its own illiberal religious ideology. Under these circumstances it is wrong to view the UO community as a disempowered minority that is entitled to multicultural protection for its illiberal practices.

V. Conclusion

One out of every four Jewish children in Israel is educated in the UO education system, which is heavily funded by the state, but at the same time does not teach boys almost any secular studies. This state of affairs poses a serious threat to the continued sustainability and stability of Israeli democracy. Those who support its continuation claim that it is required by the right of UO parents and community to freedom of religion and to multicultural accommodation. The survey of theorists and countries brought in part III refutes this claim. Furthermore, supporters of the continued exemption of UO education from the core curriculum regard the UO community as an enclave community and fail to take into consideration both their extensive political power and their hold over Israel's religious establishment, which due to Israel's state religion relations yields considerable power over the lives of all Israelis. Thus, they fail to take into account the violation of rights that women, Arabs, homosexuals, converts and others suffer as a consequence of the application of deeply illiberal ultra-Orthodox religious ideology by OU politicians and state officials who are the products of an UO education system that shuns any civic education.

The aforementioned suggests that it is imperative to introduce the core curriculum into the UO education system. The most straight forward way to thwart the threat to Israel's democratic structure that the current situation poses would be to enforce the core curriculum on all UO schools. However, since the UO education system is known for its lack of cooperation with the state and for being almost impenetrable to outside

Should Ultra-Orthodox Schools in Israel be Required to Teach the Core Curriculum?

supervision this task can prove daunting.²⁵⁵ It would seem that a more suitable way to go about creating the necessary change in the UO education system is by cutting the funding to any UO school that does not teach the core curriculum, including citizenship education. While cutting funding is less intrusive than direct and universal enforcement, the experience in the countries discussed in this paper shows that funding is an efficient means of ensuring that schools conform to state requirements. Supervision over the teaching of the different subjects by schools that choose to receive funding can be done by testing the students' knowledge in each subject, a method which is both less intrusive and more accurate.

However, in this paper I tried to show that the characteristics of the UO education system cannot be understood or assessed without understanding the structure of the UO community and its position in the Israeli polity. It would have been impossible for the UO education system to shun all forms of secular education if the UO community would have not been able to offer most of its young male adults the option of continuing their religious studies for an unlimited time with government funding. Consequently, an essential step in order to encourage the UO education system for boys to teach secular studies is to gradually cut the funding for most of the adult men who study in UO religious institutions of higher education – Yeshivot Gdolot and Kolelim, and retain funding only for a select few on the basis of excellence. As the experience in other countries shows, the realization that most of their graduates will have to find a job in the modern world, coupled with the need for state funding, would encourage UO schools to introduce adequate secular studies that would be supervised by the state. It is important to note that despite the central importance of Talmud Tora as a religious precept, it has in the past always been the case in UO communities, both in Israel and abroad, that only those who excel in Yeshiva studies become professional learners, while all others go out to work and earn a living that supports them as well as their community.²⁵⁶ The transformation of the UO community in Israel into a community in which most men are learners and do not work for a living is a modern phenomenon facilitated by the UO

²⁵⁵ Spiegel *supra* note 9 at 107-109; Lupu *supra* note 24 at 32-33

²⁵⁶ Lupu *supra* note 24 at 42-47

community's political power, which has enabled it to obtain ever increasing budgets for its religious institutions.²⁵⁷

Finally, a third step that must be taken in order to facilitate the introduction of secular studies in UO schools is to gradually require candidates for public service positions in Israel's religious establishment to meet minimal requirements for secular studies, including citizenship education. The fact that most, if not all, UO representatives in Israel's religious establishment lack secular education, and especially citizenship education, including education for tolerance and equality, has serious implications for the rights of all Israelis. It is hardly surprising that UO public servants apply their radically illiberal religious ideology to the citizens they are expected to serve, if this ideology is the only one they have ever been exposed to. If UO public servants were exposed from an early age to secular education and to citizenship education, they might be more open to accepting the diversity which characterizes modern Israeli society and to endorsing the state's legal commitment to equality and pluralism, as their position in the public service requires them to do. Although studying the core curriculum may not be sufficient to instill in UO public servants and indeed in any public servant the necessary commitment to equality and pluralism that must characterize the public service in a liberal country, it is certainly a prerequisite.

²⁵⁷ *Id.*; Friedman *supra* note 14 at 188-191