



## **Engaging Israel: Foundations for a New Relationship**

### The Shalom Hartman Institute Video Lecture Series

#### Lecture 7: Background Reading 1

Alexander Yakobson, "Jewish Peoplehood and the Jewish State, How Unique?  
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#### ABSTRACT

The Jewish-Israeli case—that of the Jewish people, the Jewish national movement—Zionism—and the Jewish nation-state—Israel—is often said to be unique. Its unique features are said to be the "extra-territorial" character of the Jewish people and Israel's ties with the Jewish Diaspora expressed, most controversially, in the Law of Return) and the strong connection between the Jewish religion and the prevalent notion of Jewish peoplehood. Some argue that these features of the Jewish-Israeli national identity are inconsistent with modern civic democracy; many others defend or even celebrate them, pointing to the uniqueness of Jewish history and culture. The underlining premise of uniqueness itself is rarely questioned. In fact, however, it appears that this case is far less unique in the modern democratic world than is widely assumed. There are numerous other cases where national identity and religion are officially connected in some way, and where there are official bonds between a nation-state and an ethno-cultural Diaspora.

"Of course you are unique, but you are not unique in being unique"—such was, a few years ago, the wise answer given at a public lecture in Jerusalem by a visiting foreign Professor (whose name I have unfortunately forgotten) to the question: "Do you think that the Jewish people are unique?" The Jewish-Israeli case—that of the Jewish people, the Jewish national movement—Zionism—and the Jewish nation-state—Israel—is indeed often said to be unique. There are two main grounds for this. First, the strong connection between the Jewish religion and the prevalent notion of the Jews as a people—which implies that a Jewish state cannot, by definition, be religiously "neutral", and that national memory and consciousness go back (or purport to go back) to Biblical times. The second reason is the strong connection between the State of Israel and the Jewish Diaspora, reflected among other things in the Law of Return. This connection results from and fosters a notion of 'peoplehood' or national identity not confined

to a given territory and not congruous with citizenship (and thus, inevitably "ethnic" or ethno-cultural rather than "civic").

Many people find all this unique and not a few take a rather dim view of this uniqueness—some to the extent of denying that a "normal" modern national identity or a "normal" modern liberal democracy can exist in such conditions. Others view the Jewish uniqueness sympathetically or at least neutrally, as a historical and cultural "fact of life"; it is frequently defended and sometimes positively celebrated. The assumption of uniqueness itself is rarely questioned. To return to the saying with which we started, of course the Jewish case is unique. Yet, is it as exceptionally and uniquely unique as is often claimed? A closer examination of the various national peculiarities in these fields may lead us to the conclusion that there are more uniqueness's in heaven and earth than are dreamt of in many people's philosophy.

We start with some contemporary constitutional texts dealing with religion and state. Constitutions are not the whole picture, but they are an important part of it. Reality might be more "neutral" than the constitutional text implies—especially when the text itself is not much more than a relic of the past which no longer reflects the current state of affairs. The establishment of the Church of England can perhaps today be viewed largely in this light. On the other hand, it is far from exceptional for the constitution of a democracy to be rather more "neutral" than the political, social, and cultural realities actually prevailing in a given country.<sup>1</sup>

#### THE PREVAILING RELIGION IN GREECE

The first example is Greece (the Hellenic Republic). Its current constitution was adopted in 1975, when democracy was re-established after the fall of the 'black colonels'. It reflects a consensus deliberately shaped by the country's main democratic forces, the Conservatives ("New Democracy") and the Socialists (the Pan-Hellenic Socialist Party). Since its adoption it has been amended several times, without affecting the official status of the Orthodox Church (although the more secular Socialist governments have carried out a number of reforms, including one, in the 1990s, that erased the rubric "religion" from the Greek citizens' identity cards). As in all democratic constitutions, the Greek one guarantees equal rights and freedom of conscience to all citizens. It is, however, anything but "neutral". There is no way to avoid (uniquely) lengthy verbatim quotations if one wishes to get the flavor of this document.

##### [Quasi-Preamble]

In the name of the Holy and Consubstantial and Indivisible Trinity, the Fifth Constitutional Assembly of Greece votes:

##### Article 3 [Relations of Church and State]

(1) The prevailing religion in Greece is that of the Eastern Orthodox Church of Christ. The Orthodox Church of Greece acknowledging as its head Our Lord Jesus Christ is indissolubly united in doctrine with the Great Church of Constantinople and every other Church of Christ of the same doctrine. It observes steadfastly, as they do, the holy apostolic and synodical

canons and the holy tradition. It is autocephalous, exercising its sovereign rights independently of any other church, and is administered by the Holy Synod of Bishops. . .

(3) The text of the Holy Scriptures shall be maintained unaltered. The official translation thereof into any other linguistic form, without the sanction of the Autocephalous Church of Greece and the Great Church of Christ in Constantinople, is prohibited.

#### Article 13 [Religion]

(1) The freedom of religious conscience is inviolable. The enjoyment of civil and individual rights does not depend on the religious conviction of each individual .

(2) Every known religion is free and the forms of worship thereof shall be practiced without any hindrance by the State and under protection of the law . The exercise of worship shall not contravene public order or offend morals. Proselytizing is prohibited .

#### Article 16 [Education]

(2) Education constitutes a fundamental state objective and aims at the moral, intellectual, professional, and physical instruction of the Greeks, the development of national and religious consciousness, and the formation of free and responsible citizens.

### Section II. The President of the Republic

#### Article 33 [Installation]

(2) The President of the Republic shall take the following oath before Parliament, and prior to his taking office: 'I swear in the name of the Holy Consubstantial, and Indivisible Trinity to observe the Constitution and the laws, to provide for the faithful observance thereof, to defend the national independence and territorial integrity of the country....'

### Chapter III Regime of Mount Athos

#### Article 105 [Traditional Self-Government]

(1) The Athos Peninsula extending beyond Megali Vigla and constituting the district of Mount Athos shall, in accordance with its ancient privileged status, be a self-governing part of the Greek State whose sovereignty thereon shall remain unaffected. . . . All persons residing therein shall acquire Greek nationality upon admission as novices or monks without any further formality

(2) Mount Athos shall, in accordance with its regime, be governed by its twenty Holy Monasteries, among which the entire peninsula is divided and its territory shall be exempt from expropriation. . . . The dwelling therein of heterodox or schismatic persons shall be prohibited.

(3) The determination in detail of the Mount Athos regimes and the manner of operation thereof is effected by the Constitutional Charter of Mount Athos, which, with the co-operation of the State representative, is drawn up and voted by the twenty Holy Monasteries and ratified by the Oecumenical Patriarchate and the Parliament of the Hellenes.

(4) The correct observance of the Mount Athos regimes shall, in the spiritual sphere, be under the supreme supervision of the Oecumenical Patriarchate...

Heterodox or schismatic persons, then, need not apply for a dwelling on Mount Athos. This is of course quite natural and normal; what is rather unique is for such provisions, and indeed such terms, to appear in the constitution of a modern democracy. Moreover, "All persons residing on Mount Athos shall acquire Greek nationality upon admission as novices or monks without any further formality"; whereas, as we shall see, ethnic Greeks from foreign countries immigrating to Greece are naturalized under a facilitated procedure but have no automatic right to citizenship. The constitutional ban on proselytizing and on "official translation" of the Holy Scriptures without the permission of the Oecumenical Patriarch of Constantinople, the (symbolic) authority given to this Patriarch, who is a citizen of a foreign country (Turkey)—the very fact that the capital of a neighboring state (Istanbul) appears in the Constitution under its historic and "loaded" Greek name—all these things are surely unique. Although, as we shall see, there is nothing exceptional about the fact that a modern democratic constitution is not religiously neutral.

The Greek Orthodox Church is not merely "Established by law", as is the Church of England; it is national in a much stronger sense than could perhaps even in the past be applied to England. Historically and culturally, Orthodox Christianity is closely connected to Greek national identity. This is reflected, among other things, in the constitutional provision on public education which is said to aim at the "development of national and religious consciousness", as well as in the actual content of what is taught in Greek public schools.

#### THE UN-AMERICAN PREAMBLE TO THE IRISH CONSTITUTION

Another European country in which a close link between religious and national identity has traditionally existed is Ireland. The strongly Catholic character of the Irish state established after partition in the 1920s conflicted both with the more liberal and secular tendencies in society and with the officially proclaimed national goal of a united Ireland. In 1973, the 1937 Constitution was amended to remove the clause recognizing "the special position" of the Catholic Church as "the guardian of the Faith professed by the great majority of the citizens". However, the preamble to the Constitution remains "non-neutral" and reflects a connection between religious (though no longer explicitly Catholic) and national consciousness:

In the Name of the Most Holy Trinity, from Whom is all authority and to Whom, as our final end, all actions both of men and States must be referred, we, the people of Eire, humbly acknowledging all our obligations to our Divine Lord, Jesus Christ, Who sustained our fathers through centuries of trial, gratefully remembering their heroic and unremitting struggle to regain the rightful independence of our Nation...

The *Encyclopedia Americana* finds fault with this language: "The first of these clauses [invoking the Holy Trinity] cannot but be repugnant to Unitarians, as the second [mentioning "our Divine

Lord Jesus Christ"] must be to the Jewish community."<sup>2</sup> The preamble to the Irish Constitution is distinctly un-American. However, the US, with its strict separation of church and state, practices another form of official "non-neutrality" on matters of religion: American atheists can no more identify with the constant official references to God (including the mention of God in the text of the Pledge of Allegiance established by an Act of Congress<sup>3</sup>) than any Unitarians who might be found in Ireland—with the constitutional reference to the Holy Trinity.

#### SCANDINAVIA: OFFICIAL CHURCHES

Scandinavia has a tradition of national or established churches. The official status of the Lutheran Church in Sweden was abolished in 2000, but it still remains in Denmark, Iceland, Finland, and Norway (despite calls to repeal or change it). In Finland, the small Orthodox Church also enjoys official status; this arrangement is peculiar, but not wholly exceptional: there are two official Churches in various Swiss cantons. The connection between church and state is expressed in Scandinavian constitutions in emphatic language (more emphatic than may be thought to fit the current state of affairs). In Denmark,

The Evangelical Lutheran Church shall be the Established Church of Denmark, and, as such, it shall be supported by the State. The King shall be a member of the Evangelical Lutheran Church. The constitution of the Established Church shall be laid down by Statute...

In Norway,

The Evangelical-Lutheran religion shall remain the official religion of the State. The inhabitants professing it are bound to bring up their children in the same. . . . The King shall at all times profess the Evangelical-Lutheran religion, and uphold and protect the same . . . More than half the number of the Members of the Council of State shall profess the official religion of the State . . . The King ordains all public church services and public worship, all meetings and assemblies dealing with religious matters, and ensures that public teachers of religion follow the norms prescribed for them.

The constitutional duty to raise one's children as good Lutherans (perhaps as unique as unique can get) is obviously unenforceable in a modern democracy. That it is still retained in the Constitution (originally adopted in 1884) is not a measure of Norway's religiosity but a symbolic acknowledgement of the fact that the Lutheran church is regarded, in this largely secular society, as part of Norwegian culture and identity.

#### EX-COMMUNIST WORLD: CHURCHES AND NATIONAL IDENTITIES

In post-Communist Poland, the real power and influence of the Catholic Church is greater than in any contemporary democracy—too great for comfort, as far as Polish liberals and secularists are concerned.<sup>4</sup> When the country's democratic constitution was formulated in 1997, the

secular forces were strong enough to prevent any official status being conferred on the Church (which has not prevented it from obtaining, under conservative governments, various concessions to its demands). Nevertheless, the preamble to the Constitution reflects the notion of a connection between Christianity and Polish national identity which is uncontroversial despite fierce controversy surrounding many issues bearing on the relations between church and state:

Beholden to our ancestors for their labours, their struggle for independence achieved at great sacrifice, for our culture rooted in the Christian heritage of the Nation and in universal human values. . .

The Constitution of another East-European "new democracy", <sup>5</sup> Bulgaria, also manages to combine secularity with an explicit acknowledgement of the connection between religion (in this case, specifically the Orthodox Christianity) and Bulgarian identity. According to article 13, "(1) The practicing of any religion is free; (2) The religious institutions shall be separate from the state; (3) Eastern Orthodox Christianity is considered the traditional religion in the Republic of Bulgaria".

Bulgaria contains a large Muslim Turkish-speaking minority. The constitution includes the usual provision on the equal rights of all citizens regardless of "race, nationality, ethnic self-identity, sex, origin, religion, education, opinion, political affiliation, personal or social status, or property status". However, it also connects Bulgarian identity embodied by the State with both Eastern Orthodox Christianity and the language of the Bulgarian-speaking majority—in a way that goes beyond the usual constitutional provisions on the official or state language: "The study and use of the Bulgarian language is a right and obligation of every Bulgarian citizen" (Article 36;<sup>6</sup> under Article 3, Bulgarian is the official language of the Republic). Moreover, Bulgaria is one of the countries whose constitution acknowledges a link with an ethno-cultural Diaspora ('A person of Bulgarian origin shall acquire Bulgarian citizenship through a facilitated procedure'—Article 25.2).

Using more emphatic language, the constitution of Armenia adopted in 2005 provides for a separation between church and state and recognizes the Armenian Apostolic Church as a national church (Article 8.1):

The church shall be separate from the State in the Republic of Armenia. The Republic of Armenia recognizes the exclusive mission of the Armenian Apostolic Holy Church as a national church, in the spiritual life, development of the national culture and preservation of the national identity of the people of Armenia.

The previous version of the post-Communist Constitution, adopted in 1995, contained no recognition of the national character of the Armenian Apostolic Church (to which 90% of the population belongs). The Venice Commission of the Council of Europe (European Commission for Democracy through Law) submitted a generally positive report on this constitutional reform, examining its various aspects in light of European norms of democracy and human

rights/ No criticism is directed, in this report, at the change which "upgraded" the status of the Armenian Church to that of a national church (though not an official one). This is not surprising, since official churches established by law exist in long-established West European democracies. The European Commission for Human Rights in Strasbourg has repeatedly ruled that the existence of an "official church" or "state church" does not breach European human rights norms, provided that all individuals are free not to belong to it without being adversely affected.<sup>8</sup>

According to Article 9 of the Constitution of Georgia a country with large national and religious, including Muslim, minorities:

- (1) The state shall declare complete freedom of belief and religion, as well as recognize the special role of the Apostle Autocephalous Orthodox Church of Georgia in the history of Georgia and its independence from the state.
- (2) The relations between the state of Georgia and the Apostle Autocephalous Orthodox Church of Georgia shall be determined by the Constitutional Agreement....

#### TIBET: GETTING UNIQUE AND UNIQUE

Tibetan peoplehood, culture, and society cannot be conceived of without the distinct Tibetan form of Buddhism (sometimes called Lamaism). This state of affairs is more akin to the way some Orthodox Jews would have liked to see the Jewish people than to Israeli (or Diaspora Jewish) realities. The position of His Holiness the Dalai Lama, at once the spiritual and temporal national leader of the Tibetan people, is nothing if not unique. A Jewish parallel would perhaps be to imagine the Zionist movement, and then the State of Israel, being headed, ex officio, by a descendant of a High Priest or a Patriarch.

The Tibetan Constitution adopted by the Assembly of Tibetan People's Deputies in 1991 begins, "Whereas His Holiness the Dalai lama has offered a democratic system to Tibetans, in order that the Tibetan People in-Exile be able to preserve their ancient traditions of spiritual and temporal life, unique to the Tibetans . . ." It states that the ". . .future Tibetan polity shall uphold the principle of non-violence and shall endeavour to be a Free Social Welfare State with its politics guided by the Dharma, a Federal Democratic Republic . . ." At the same time, the Dalai Lama is proclaimed as "chief executive of the Tibetan people" and given considerable powers. "All Tibetan citizens shall be equal before the law . . ."; "All religious denominations are equal before the law." At the same time, the Tibetan Administration "shall endeavour to establish pure and efficient academic and monastic communities of monks, nuns, and tantric practitioners, and shall encourage them to maintain a correct livelihood." "It shall endeavor to disseminate a non-sectarian and wholesome tradition of Buddhist doctrines".

This is an attempt to combine fidelity with ancient culture and tradition (unique and particular, as they must be) with a strong commitment to universally acknowledged modern democratic principles. If a self-governing Tibetan polity is established, these laudable intentions will be put to the test and, no doubt, not a few dilemmas will emerge—among other things, regarding the

exact character and content of public education, as well as the status of minorities. The mode of selection of this polity's chief executive or head of state certainly promises to be unique in the world of contemporary democracies: neither election nor hereditary succession (as in constitutional monarchies) but reincarnation—attested by a group of monks who pick a child and proclaim him the Dalai Lama. On reflection and judging by actual results, this mode of selecting a leader is not necessarily inferior to other, more usual ones. Can a state be both Tibetan and democratic? The answer should surely be positive in principle, and one feels a measure of optimism that this is quite feasible in practice too.

#### ITALY: THE CRUCIFIX AS A NATIONAL SYMBOL IN A SECULAR STATE

Italy is, officially and in practice, a secular state. It is, historically, a Catholic country, with a strong anti-clerical tradition precisely for this reason, and because of the Church's far-reaching political pretensions in the past. Its Constitution contains only a low-key reference to the Catholic Church. Under Article 7,

(1) The State and the Catholic Church shall be, each within its own sphere, independent and sovereign. (2) Their relations shall be regulated by the Lateran Pacts. Such amendments to these Pacts as are accepted by both parties shall not require the procedure for Constitutional amendment.

Nevertheless, the Italian Republic has maintained the law, originally passed under Mussolini, requiring that the crucifix be displayed in State school classrooms, courts of law, and hospitals. In 2002, a Muslim parent of a pupil studying in a public school petitioned a local court arguing that an obligatory crucifix in his son's school violated the constitutional requirement of civil equality and equal respect for all religions. The court ruled in his favor. This caused an outcry in the course of which some fascinating things were said by high-ranking public figures on the question of Italian identity. The President of the Republic stated that, "The crucifix has always been considered not only as a distinctive sign of a particular religious credo, but above all as a symbol of the values that are at the base of our Italian identity".

In 2004, Italy's Constitutional Court overturned the lower court's decision, and in 2006 the Italian Council of State ruled, in a similar case, that the crucifix was not just a religious symbol, but also a symbol of. . ." the values which underlie and inspire our constitution, our way of living together peacefully." The Council's judges held that the notion of tolerance and individual rights originated with Christianity and ". . . in this sense the crucifix can have a highly educational symbolic function, regardless of the religion of the pupils." They also noted, rightly, that the concept of a secular state is variously interpreted in different states, depending on their history and culture.<sup>9</sup>

The official insistence that the crucifix appears in Italian public schools as a symbol not of a particular religion but of the Italian national identity and culture may be thought to solve the problem from the viewpoint of the principle of secularism as conceived by the majority which is either Catholic or post-Catholic. However, it is wholly incompatible with the broader notion,



advocated by some, that a democratic state is, or should be, "neutral" when it comes to culture and identity. Of course, many regular features of contemporary democracies are incompatible with this notion. First and foremost, this applies to the existence of an official or a national language. It should be remembered that most theories of nationalism consider language to be an essential characteristic of a modern national identity. However, saying that the Italian language is central to Italian identity is not quite the same as saying that the crucifix is its symbol. The former saying is, naturally, "non-neutral" from the viewpoint of the German-speaking minority in South Tyrol; in this, their situation is no different from that of any national and linguistic minority. Communities of immigrants, however, are usually not regarded as national minorities. Muslims immigrants (and their children) are therefore not supposed to have a national identity distinct from that of the majority, but to adopt the Italian one (Italian language included); it is widely accepted today that they have a right to do so while preserving some features of their culture. It is then far from trivial that in a country with a large Muslim and small Jewish minority, the crucifix is officially proclaimed as a symbol not only of Catholicism or Christianity but also of Italian identity.<sup>10</sup>

For the crucifix to be officially defined as a national symbol in a contemporary secular Western state is rather unique. Not so when it comes to the cross. The sign of the cross appears on the national flags and emblems of numerous Western democracies. Scandinavian countries are the best known example; Greece and Switzerland join the club. The British Union Jack presents three crosses, each standing for another component of the United Kingdom; it is reproduced on the flags of Australia and New Zealand. The coats of arms of Spain and the secular and multi-cultural Netherlands feature small crosses that are placed on top of the royal crown. The cross is not a neutral symbol—either religiously or ethnically, in countries with a significant non-Christian population. From the religious point of view, it is in fact more "non-neutral" than the Star of David that appears on the Israeli flag. The Star of David is a traditional Jewish symbol, but it has no particular religious significance; no Muslim or Christian soldier in the Israeli Army needs to feel a religious scruple when saluting a flag which contains it.

Some may argue that an immigrant community should be more willing to accept "non-neutrality" of this kind than a native or indigenous minority (as is the case in Israel). This raises the interesting question whether the Jews of Europe should be regarded as immigrants or as "natives". From the strictly orthodox Zionist point of view, they are immigrants in Europe and anywhere else outside the land of Israel. Without dismissing this point of view in any way, it should be noted that people whose roots in Europe go back hundreds and thousands of years are at all events no ordinary immigrants. Moreover, the large and growing Muslim communities are also, with the passage of time, becoming less "immigrant"; they now include many people who were born citizens, and whose parents were already born citizens. In Greece, apart from numerous Muslim immigrants and their descendants, there is a small native Muslim Turkish-speaking community (a remnant of a much larger one that lived there in the past). This community has its grievance and complaints, but the sign of the cross on the Greek flag is not one of them (any more than is the official status of the Orthodox Church or the country's official ties with the Greek Diaspora).

It is obvious that contemporary democratic states are often officially "non-neutral" in matters of religion and, moreover, that official and symbolic links to a religion regularly reflect a certain notion of national identity rather than religiosity as such. There is, then, nothing extraordinary about a nation-state of a people whose history and culture strongly connect it to a certain religion. This connection, apart from being a fact of cultural and social life, can also be enshrined in a country's constitution and embodied in its national symbols. Though it may seem counter-intuitive, all this is compatible with the country in question being secular not just in practice but also as a matter of constitutional definitions, and with an official separation between state and religious institutions. On the other hand, in some contemporary democracies there is no institutional separation between church and state (while the religious freedom and equality of all citizens is ensured in theory and in practice). Where this separation exists it is interpreted very differently in different places.

Thus in France, this separation does not preclude the direct financing of religious schools by the state; in America, this is unacceptable. On the other hand, in France a religious marriage cannot legally take place prior to a civil one; in America, ministers of religions are authorized by state authorities to perform marriages. In America, it is part of American civic culture and identity that belief in God is publicly and officially expressed in a way that would be quite unacceptable in France. Subject to certain basic democratic principles, a great variety of solutions exists to the question of the relations between state, religion, and national identity.

#### THE ISRAELI CASE: NATIONAL IDENTITY, RELIGION, STATE

The connection between Jewish peoplehood and the Jewish religion is a hallmark of Jewish history and culture. While this case can and should be compared to others, one should not overlook the difference between a national church and a national religion—a religion which is, avowedly, the (traditional) culture of a particular people. This does not necessarily mean that the modern nation-state of the Jewish people must confer an official status on the institutions of the Jewish religion. This is, and has always been, one of the most hotly debated issues in Israeli public life.

The Zionist movement, like many other national movements, had from the outset a strong modernizing and secularizing streak and its relations with the traditional Jewish religion were far from easy. However, Israel had no Ataturk who could impose from above a secular order on a traditional population. Labor Zionism had to operate, in the first years and decades of Israel's independence that shaped the "status quo" on those issues, in a multi-party parliamentary democracy with strict proportional representation, always ruled by coalition governments.

When the State was established, the secular forces were strong enough to ensure that God is not mentioned explicitly in Israel's Declaration of Independence (contrary to what is usual for such documents). Within a few years, the make-up of Israel's population was radically changed by massive immigration from countries of the Middle East and from Europe (mainly by Holocaust survivors); both groups were more traditional than the majority of the pre-state Jewish population of the country. The "status quo" reflects a compromise between the

different forces in Israeli society. It is not set in stone, but liable to be eroded in favor of either side; contrary to what is often claimed, in recent decades it has been eroded in favor of the secular side more than the Orthodox one.

An institutional separation of religion and state, should this solution be adopted in Israel, would in no way preclude the State from official and symbolic acknowledgement of the link between Judaism as a religion and tradition and Jewish-Israeli culture and national identity. The main significance of this link is of course social and cultural rather than a matter of official definitions; the Jewish character of the State, officially and unofficially, is a reflection of the Jewish character of its Hebrew-speaking society. An institutional separation would not make Israel any less of a Jewish nation-state. Moreover, Israel would still be a Jewish nation-state if it did not officially acknowledge any cultural debt to Judaism, and even if it decided to outlaw and persecute the Jewish religion. In the latter case, of course, it would not be a democracy, but nonetheless it would be a Jewish state, reflecting the (rather unsavory, under that scenario) character of its Jewish majority population.

On the other hand, an institutional connection between religion and state—whether one thinks that it is a good idea generally and in the specific Israeli case—does not, in and of itself, violate any internationally accepted democratic norm (contrary to what is sometimes claimed and often assumed). Moreover, "connection" as well as "separation" are mere general headlines; a great variety of practical solutions is compatible with both of them. A Jewish state can be democratic or undemocratic, more democratic or less democratic—as any other nation-state; there is nothing essentially undemocratic about it because of the connection between Jewish national identity and Jewish religion.

The real-life Israel is a complex and often paradoxical mix of ultra-orthodoxy, super-modernity, and everything in between. Overall, as a society, it is more religious than Europe but less religious than America. It is very far from being (or moving in the direction of becoming) a semi-theocracy, as is sometimes claimed. Semi-theocracies do not hold gay pride parades—certainly Middle Eastern semi-theocracies do not. On the other hand, no Western-type democracy has a system of religious courts (Jewish and non-Jewish) with exclusive jurisdiction over matters of personal status.<sup>11</sup> This particular uniqueness is not at all to be celebrated—it is clear violation of liberal-democratic norms. Various creative ways of circumventing this religious monopoly have been devised, including the "Cyprus marriage" where Israeli couples marry there under local law, and return in a matter of days to be registered by the Israeli Ministry of interior, which is obliged (under a Supreme Court ruling) to register them as legally married. This is obviously not enough: full-fledged legislative reform in this field, providing for civil marriage and divorce, is required.

In recent decades while coalition politics often favored the religious parties, other and much stronger forces made Israel more modern, more Western, and more liberal in many fields. The Sabbath observance in the public sphere has been greatly eroded (for much the same social and economic reasons that encouraged Sunday shopping in many Western countries). Non-kosher restaurants and shops have mushroomed throughout the country. What is celebrated in

the gay pride parades and protected by liberal judicial rulings on the rights of same-sex couples was in the eighties still a criminal offence (not that the law was ever enforced).

This change, of course, is part of the general tendency which has prevailed throughout the Western world; but it is far from trivial that Israel is part of that world and of that tendency. When Israeli state television—the sole channel at the time—was inaugurated in 1968, Golda Meir's Labor government ruled that broadcasts should be interrupted for the duration of the Jewish Sabbath. That decision was overturned on appeal by the Supreme Court. With today's multi-channel TV, even successfully imposing Sabbath observance on the state channel would have been quite pointless.

The Orthodox establishment has lost the symbolically important (though marginal in practice) argument over "who is a Jew" for the purpose of the Law of Return—and hence, over its claim to define the boundaries of the Jewish people: non-Orthodox converts who come to Israel are recognized as Jews (the argument is now over the status of non-Orthodox conversions carried out in Israel). More importantly, since the Law of Return applies also to non-Jewish relatives of Jews coming to Israel, great numbers of such people have come from the former Soviet Union (where the percentage of mixed marriages among Jews was very high). They received Israeli citizenship and the bulk of them are successfully integrating, socially and culturally, in the Hebrew-speaking Jewish Israeli society, fully identifying with the State. It is thus no longer true in practice that the only way to join the Jewish people is through religious conversion (Orthodox or non-Orthodox).

The argument over the future of the territories occupied in 1967 generated the most problematic and dangerous mixture of religion and politics: the view that withdrawing from any part of the historical land of Israel is not just ill-advised but a transgression against the laws of religion. Since the early nineties, Israeli governments, including right-wing ones which included religious parties, have repeatedly broken this alleged religious prohibition and, under Sharon, dismantled settlements. Whether or not one is optimistic regarding the chances for peace, only a small minority of the Israeli right now holds onto the notion that any territorial concession is a religious taboo.

Religious parties in Israel can still translate their political influence into controversial (and sometimes clearly excessive) gains and advantages for the sector which they represent, notably by channeling public expenditure and, as regards the ultra-Orthodox, in the shape of exemption from military service. Their ability to do so has actually grown in the last decades. However, the civil rights of the secular public are much better protected against religious influence than before, and Israeli democracy as such is certainly not threatened by it.

#### DIASPORAS: GREECE AND ARMENIA

The Jews may have contributed the term Diaspora to the international vocabulary, but theirs is certainly not the only Diaspora in the modern world. People migrated and borders shifted throughout history. Unsurprisingly, not a few contemporary states regard themselves as

connected, in some way, with populations beyond their borders. The two most salient examples of Diaspora peoples and "Diaspora nationalism", besides the Jews, are the Greeks and the Armenians.<sup>12</sup>

What distinguished the Jewish case was that almost the entire people were in the Diaspora, with only a small Jewish community in the historic homeland, at the moment when the Jewish national movement emerged; the nation-state was therefore created by the Diaspora. This is only one of the historic and cultural reasons for the particularly close ties between the State, after its establishment, and the Diaspora. The Diaspora also played an important role in Greek and Armenian history, and both these states attach great importance to homeland-Diaspora ties. A large number of Greeks and most Armenians live in the Diaspora today.

A conservative estimate puts the number of Greeks outside Greece at about three million. Many of these are descendants of emigrants from the modern Greek state, but many others hail from ancient Greek communities both inside and outside of what is now Greece. Their connection with Greece is no different, in principle than the Jews' connection with Judea. Both categories alike (as well as the Greeks of Cyprus) are officially regarded as part of the Greek (Hellenic) nation. According to Article 108 of the Constitution of Greece, "The State shall be concerned with those Greeks who live abroad and the maintenance of their links with the Motherland". These links are maintained by the State through the "General Secretariat for the Hellenic Diaspora"—an official institution the likes of which exist in most countries with an acknowledged "kin-minority" abroad—both to assist overseas Greeks in such areas as language, culture, and education, and to mobilize their political support when needed (for example, on the issue of Cyprus and during the conflict with Macedonia)

Under Article 6 of the Greek Law of Citizenship, "If a foreign citizen is not of Greek ethnic extraction, he must have resided in Greece for eight years . . ." before applying for Greek citizenship. Thus, ethnic Greeks who immigrate to Greece are privileged by exempting them from the requirement of eight years of residence demanded of all other foreign citizens who seek naturalization. In addition, sections 12 and 13 of the law confer automatic Greek citizenship on ethnic overseas Greeks who volunteer for military service in the Greek armed forces. In practice, the official policy is to bestow Greek citizenship on ethnic Greeks in what amounts to an automatic fashion.

Since the collapse of the Soviet Union and the opening of its successor republics to emigration, some 200,000 ethnic Greeks from those countries have arrived in Greece and received citizenship. The Greek government defines their immigration as a return to the homeland—repatriation. The Pontic Greeks, as the 'returnees' from the former USSR are called (reflecting the ancient tradition of Greek settlement on the shores of the Black Sea), have no connection with the modern Greek state other than being part of the Hellenic nation as perceived by it. Even the Greek that they speak, a dialect combining modern and ancient Greek, is different from the modern Greek spoken in Greece. The massive project of resettling and absorbing these people in Greece has largely been financed by the European Union.

Under Article 14 of the Armenian Constitution "a person of Armenian descent will obtain citizenship through a shortened procedure". It is the policy of the Armenian Republic to award citizenship to people of Armenian descent who request it. The Armenian Diaspora greatly exceeds the population of Armenia, originating mainly outside the areas that now constitute the Republic. The connection between these people and Armenia is the same kind of ethno-cultural link (often with a strong religious element, as is also the case with Greeks) that connects Diaspora Jews with Israel. Today, there is no significant demand for Armenian citizenship, other than among Armenian refugees from Nagorno-Karabakh. In the past, there was a wave of repatriation to Soviet Armenia, encouraged by the Soviet government which appealed to overseas Armenians to immigrate to the Soviet Armenian Republic—an avowed national home for the entire Armenian people. Around 250,000 ethnic Armenians from different countries, many of them refugees from Anatolia in the wake of the genocidal anti-Armenian massacres of the First World War, settled there.

These efforts gained support outside the borders of the Soviet Union, from people who were moved by the Armenian tragedy. The renowned humanitarian activist Fridtjof Nansen addressed the Council of the League of Nations on this subject in 1927, urging it to support the repatriation and settlement of Armenians in the Soviet Armenia, describing the plight of the Armenian people and nature of their connection with Armenia:

I beg [you] to think for a moment what the history of the Armenian people has been . . . [N]o people in recorded history have endured misery and maltreatment in any way comparable to that through which the Armenians have passed. . . . I would not care to describe the nerve-shattering terror and the nameless infamy of the appalling pilgrimage of death which the historians will call deportations, when innocent victims—men, women, greybeards, and tiny children—perished. . . . by hundreds of thousands, and with every circumstance of savage torture. . . . Here was a people with intense national feeling, with a remarkable history of achievement in bygone days, with finest gifts of intellect and practical capacity, a people who had made . . . a great contribution to the medieval culture from which our modern civilization is in so great a part derived—in a few years almost wiped out or scattered to the winds. And yet the surviving remnant of this people, with a tenacity and a national patriotism which no one can sufficiently admire, is now making with desperate courage another valiant attempt to build up a new national home. The Republic of Erivan is nothing less than that to Armenians of every class and every party in whatever land they may now be. . . . the land at the foot of the eternal snows of Ararat, as the place where the destiny of their nation must in future lie.<sup>13</sup>

#### DIASPORAS AND "KIN-MINORITIES" — OTHER EXAMPLES; ISRAEL

The Irish Diaspora is more closely connected with what today is the Irish Republic. Nevertheless, it does not consist solely, or mainly, of descendants of its citizens who left the country. The massive emigration from Ireland started in the 19th century. It included, naturally,

people from what today is Northern Ireland, which is not a part of the Republic (but whose inhabitants are proclaimed part of the Irish Nation by the Republic's Constitution and given the right of citizenship by law—reflecting the official notion of Irish nationhood and the ideal of unification). There are now tens of millions of people with Irish ancestry in the United States. Most of them cannot of course be described as "Irish" in any strong sense; but there have been, over time, numerous examples of active and passionate involvement in Irish affairs on the part of Irish Americans that are best described as displays of Irish Diaspora nationalism.<sup>14</sup>

Most countries with a Diaspora or a "kin minority" abroad officially define their members as part of their nation or people—as Greeks or Armenians or Poles or Italians<sup>15</sup> or Hungarians or Germans or Slovenians or Slovaks or Albanians or Finns or Koreans or Chinese or Indians living outside the "homeland". The Irish Constitution uses a more circumspect language: "the Irish nation cherishes its special affinity with people of Irish ancestry living abroad who share its cultural identity and heritage" (Article 2). Section 16 of the Irish Nationality and Citizenship Act empowers the Minister for Justice to grant an exemption from the ordinary prerequisites for naturalization ". . . where the applicant is of Irish descent or Irish associations." In practice, Irish policy has been to confer citizenship upon applicants of Irish descent without delay. In recent decades, with the growth of the Irish economy, many have acquired citizenship through the provisions of this section of the law. Generally, these were descendants of Irish citizens who emigrated in the course of the twentieth century. However, a 'person of Irish descent' may also be the descendant of someone who had left Ireland before the modern Irish State came into being in 1921, or someone who emigrated from Northern Ireland.

Finland defines as 'repatriation' the immigration of ethnic Finns from the former USSR. In November 1997 it submitted to the UN a report on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination. The report deals mainly with the rights of immigrants in Finland. A chapter in the report is devoted to 'Finnish repatriates' from Russia and Estonia; these, according to the document, are . . ."descendants of Finns who emigrated to Ingria and St. Petersburg in the 17th, 18th, and 19th centuries and are customarily called 'Ingrian Finns'."<sup>16</sup> In 1996 the 'Foreigners' Law' was amended to confer residency status on ethnic Finns who come to Finland from the former USSR.<sup>17</sup> This is not a large group: as of 1997, about 15,000 Ingrian Finns were repatriated and granted a status facilitating their naturalization.

It should be noted that Finland, though it has a substantial Swedish speaking minority, has adopted what is usually defined as a civic model of national identity, i.e., one which is presumed to be shared by all of the country's citizens. Thus, Swedish-speakers are not regarded as a national minority; rather, the Finnish people are considered as consisting of two components—Finnish-speaking and Swedish-speaking.

Nevertheless, the country regards itself as responsible for the fate of ethnic Finns who live in Russia and Estonia, descendants of seventeenth- and eighteenth-century emigrants from the land which only generations later became the Finish Republic.<sup>18</sup> Finland both assists the Ingrian Finns in preserving their ethno-cultural identity in their countries of residence and defines their

immigration as a return to the homeland. The example of Finland shows that an inclusive civic concept of national identity within the country is compatible with maintaining official ties with an ethno cultural Diaspora. There are those who insist that the only acceptable notion of national identity in a modern civic democracy is the one that is fully congruous with state citizenship. Whatever the theoretical merits and demerits of this view, it clearly contradicts the prevailing European norms as regards both "kin-minorities" abroad and national minorities at home (largely two sides of the same coin). And it should be born in mind that European norms on democracy and human rights have "teeth" in the shape of European institutions that enforce them, including the Human Rights Court in Strasburg; this applies also to the new democracies in East Europe whose Constitutions and laws come under close scrutiny.

In Poland Article 6 of the Constitution states that the Republic "...shall provide assistance to Poles living abroad to maintain their links with the national cultural heritage"; the preamble speaks of the Polish nation "bound in community with our compatriots dispersed throughout the world". According to Article 52, "Anyone whose Polish origin has been confirmed in accordance with statute may settle permanently in Poland". The Polish Diaspora numbers in the millions, the result of both emigration and exile, as well as the drastic changes in the borders of the Polish State in the course of history. The State actively cultivates its ties with the Diaspora; official rhetoric defines it as an integral part of the nation. In January 2000, the Polish parliament enacted a 'Repatriation Law' directed mainly at people of Polish origin living in the former USSR, some of them the children or grandchildren of Polish citizens who went or were sent to distant regions in the course of the turbulent twentieth century. Others are descendants of Polish emigrants or Polish minorities from earlier periods (before the existence of the modern Polish State). Both categories are entitled to citizenship provided that they have preserved their Polish cultural identity. The law grants such 'returnees' Polish citizenship and requires the government to assist them in their integration into Polish society.

The issue of official ties between European nation-states and their "kin-minorities" abroad has been comprehensively examined in a report of the European Commission for Democracy through Law—an advisory body of the Council of Europe better known as the "Venice Commission". This committee of legal experts was established to assist countries in adopting constitutional laws "that conform to the standards of Europe's constitutional heritage". This examination was prompted by a Hungarian law that conferred certain economic privileges on ethnic Hungarians who are citizens of neighboring states, notably Romania. Romania complained to the Venice Commission, asserting that this law infringed its sovereignty by selectively conferring privileges on Romanian citizens without prior agreement of their government and creating inequality between them.

While objecting to the terms of the law, Romania did not dispute, in principle, the legitimacy of such cross-border ties: its own Constitution states that "The State shall support the strengthening of links with the Romanians living abroad and shall act accordingly for the preservation development and expression of their ethnic, cultural, linguistic, and religious identity under observance of the legislation of the State of which they are citizens" (Article 7). This provision is parallel to Article 6.3 of the Constitution of Hungary, according to which, "The



Republic of Hungary bears a sense of responsibility for the fate of Hungarians living outside its borders and shall promote and foster their relations with Hungary". The Commission's detailed report in response to this complaint, submitted in October 2001,<sup>19</sup> notes that "The concern of the "kin-States" for the fate of the persons belonging to their national communities (hereinafter referred to as "kin-minorities") who are citizens of other countries ("the home-States") and reside abroad is not a new phenomenon in international law" (A). The report notes favorably the growing tendency of kin-States to concern themselves with the protection of the rights of 'kin-minorities'—mainly by means of bilateral agreements with home-States. The Commission cites the agreements signed in recent years between various Eastern European countries and between those countries and Germany, and recalls the 1969 agreements between Italy and Austria which secured the rights of the German-speaking minority in Tyrol.

European normative documents, including the Framework Convention for the Protection of National Minorities, encourage countries to negotiate arrangements regarding protection of the status of national minorities. One might add, as an additional example, the 1955 Bonn and Copenhagen agreement (exchange of official declarations) between Germany and Denmark that protects the cultural and language rights of Danes living in northern Germany and Germans living in southern Denmark, and guarantees, among other things, the right of members of both groups to be considered as belonging to the Danish and the German people, respectively, without damage to their civic status.

While bilateral arrangements dealing with the status of 'kin-minorities' are a well-established European norm, the Venice Commission holds that when states confer benefits on their 'kin' in a foreign country unilaterally, care should be taken not to infringe that country's sovereignty and not to create economic inequalities among its citizens. Hence, while benefits in the field of education and culture are legitimate, benefits in other fields should be restricted to exceptional cases when the aim is genuinely to foster the bond between the state and its 'kin-minority' (rather than simply improving their material conditions).

Preference in immigration and naturalization is mentioned in the report briefly as an example of legitimate preference: 'Indeed, the ethnic targeting is commonly done, for example, in laws on citizenship.' By way of illustration, the Commission refers to Article 116 of the German Constitution—a well-known example of repatriation legislation based on ethno cultural affiliation rather than on a prior civic connection with the country. In the 1950s Germany expanded the right to automatic citizenship, which its Constitution provides for refugees and displaced persons of German ethnic origin ('a refugee or expellee of German ethnic origin or the spouse or descendant of such person') to all ethnic Germans from the USSR and Eastern Europe. This applied to a large population of ethnic Germans living in those areas for hundreds of years. Following the collapse of the Soviet Union, the law was revised so that eligibility for citizenship was limited to emigrants from the former Soviet Union. Germany's current policy toward ethnic Germans in other Eastern European states is to encourage them to remain where they are and to assist them in preserving their German culture and identity. This, rather than encouragement of immigration, is also the policy of most other kin-States.

Those who criticize Israel's Law of Return are often aware of the German case; sometimes they point to the 'irony' of the similarity between the Jewish State and Germany on this matter. Of course, the Federal Republic of Germany is a full-fledged liberal democracy. The attempt to find fault with the Law of Return because of its similarity to the repatriation laws of the Federal Republic, hinting at Germany's dark past, is sheer demagoguery; nor, as we have seen, is Germany's case the sole existing parallel. Since its enactment half a century ago, the German repatriation legislation under which citizenship was granted (along with considerable financial benefits) to millions of people has never been challenged in the European Court of Human Rights. This is not surprising given that in international law, a sovereign state has wide latitude as regards its policies on immigration and naturalization.

This principle is specifically recognized by the International Convention on the Elimination of All Forms of Racial Discrimination (1965) which broadly forbids any discrimination based on race, ethnicity, or religion. Article 1 (3) of the Convention states that "[n]othing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality." This provision, which should of course be understood as relating to the citizenship being conferred on immigrants, rather than to people entitled to citizenship as of right, allows the state to give foreign citizens preferential treatment as regards naturalization at its discretion, but forbids it to single out a certain group (based on ethnicity or religion) by placing it in an inferior position in this respect.

Not every kind of preference in this field is compatible with current standards of human rights. Australia's 'whites only' immigration policy was still considered legitimate in the 1970s; today it would surely be regarded as discriminatory, i.e., directed in practice against non-whites rather than in favor of any specific group with a genuine connection to Australia. For a state established as a national home for the Jewish people it is not only legitimate but natural to open its gates to Jews from other countries—whether its connection with them should be defined as national, transnational, ethno-cultural or in some other way (a hotly debated issue of little, if any, practical consequence). This is exactly what was envisaged by the international community in 1947 when it decided to partition Palestine into a Jewish state and an Arab state.

The issue of Jewish immigration features prominently in the report produced by the United Nations Special Committee on Palestine (UNSCOP) which examined the question of Palestine and adopted the Partition Plan that was eventually approved by the General Assembly on November 29, 1947. The majority supported granting independence, in the shape of two nation-states, to both peoples living in the country. The minority report suggested a single federative Arab-Jewish state, which had the advantage of avoiding the inconveniences inherent in any territorial division. The Arab side rejected both options, demanding a unitary Arab state, while the Jewish side accepted partition. The majority report holds that the issue of immigration necessitates a two-state solution.<sup>20</sup>

Jewish immigration is the central issue in Palestine today and is the one factor, above all others, that rules out the necessary co-operation between the Arab and

Jewish communities in a single State. The creation of a Jewish State under a partition scheme is the only hope of removing this issue from the arena of conflict.

It is recognized that partition has been strongly opposed by Arabs, but it is felt that that opposition would be lessened by a solution which definitively fixes the extent of territory to be allotted to the Jews with its implicit limitation on immigration . . . A partition scheme for Palestine must take into account both the claims of the Jews to receive immigrants and the needs of the Arab population, which is increasing rapidly by natural means. Thus, as far as possible, both partitioned States must leave some room for further land settlement. The proposed Jewish State leaves considerable room for further development and land settlement and, in meeting this need to the extent that it has been met in these proposals, a very substantial minority of Arabs is included in the Jewish State.

The Committee proposed turning the question of Jewish immigration into an internal affair of the Jewish state comprising one part of the country (thus "removing this issue from the arena of conflict") alongside which would be an Arab state whose citizens would be free from the fear that uncontrolled Jewish immigration would eventually turn them into a minority in their own country. On the other hand, "the claims of the Jews to receive immigrants" were, in the eyes of the Committee, weighty enough to justify allotting to the Jewish state a larger part of Palestine than would have reflected the existing ratio between the country's Arab and Jewish communities in 1947. In order to leave room for Jewish immigration, the UNSCOP members were willing to increase the size of the Arab minority in the future Jewish state—although their general policy was to place both national communities, as far as possible, in their respective national states. They saw no contradiction between their support for a "Jewish state" (open to Jewish immigration) and their demand, in the report, that the large Arab minority in this state should enjoy full civil equality—any more than they saw a contradiction between their proposal to establish an "Arab state" and their demand that it, too, should ensure equal rights to the small Jewish minority in its midst (and to other non-Arab citizens). Today, as a result of the conflict that followed their rejection of Partition, the Palestinian Arabs too are a people with a Diaspora. Nobody doubts that the future Palestinian state will maintain links with this Diaspora, and will have a national repatriation law. The Jewish-Israeli case is certainly unique in important ways. It is not, however, "unique in being unique". Other peoples and nation-states have characteristics, in both the areas examined in this paper as well as, no doubt, in others that are distinct in each particular case and, at the same time, have enough in common to make comparisons profitable.

#### NOTES

<sup>1</sup>. On religion and state in contemporary Europe, see John T. S. Madeley and Zsolt Enyedi (eds), *Church and State in Contemporary Europe: The Chimera of Neutrality* (London/Portland, 2003); Gerhard Robbers (ed), *State and Church in the European Union* (Baden-Baden, Germany, 2005).

<sup>2</sup>. "sub voce Ireland," in *Encyclopedia Americana*, International Edition, vol.15 (Danbury, CT, 1985) 428.

<sup>3</sup>. In 2002, in response to a petition by an avowed atheist, a federal court ruled that the mention of God at the recitation of the pledge of allegiance in his son's school was an unconstitutional endorsement of religion. This decision (an appeal against which has been making its way to the Supreme Court) has prompted both Houses of Congress to pass strongly-worded resolutions condemning the court's decision as an "erroneous" interpretation of the Constitution, urging the Supreme Court to overrule it, and affirming that "The pledge of allegiance at public schools is entirely consistent with our American heritage of reinforcing our commitment to the Nation and seeking Divine guidance and protection in all our undertakings."—109th Congress, 1st Session, H. Con. Res. 253, <http://www.undergodprocon.org/pop/congress.htm#7> (2001-2007 Congressional Actions on the Pledge of Allegiance).

<sup>4</sup>. For an account of the controversy over the status of the Catholic Church in Poland in the 1990s, see Sabrina T. Ramet, *Whose Democracy? Nationalism, Religion, and the Doctrine of Collective Rights in Post-1989 Eastern Europe* (Oxford, 1997) 97-110. Inter alia, the issues have included abortions, a law requiring public broadcasting 'to respect Christian values', the tax exemption given to Church property, and the struggle over the extent of the Church's control of religious instruction at State schools (including the appointment of priests as religious education teachers whose wages would be paid by the State).

<sup>5</sup>. On church and state in post-Communist East Europe, see Silvio Ferrari, W. Cole Durham, Jr., Elizabeth A. Sewell (eds), *Law and Religion in Post-Communist Europe* (Leuven, Belgium, 2003).

<sup>6</sup>. According to Article 3(1) of the Constitution of Spain (another country in which the language of the state is not a "banal" matter) "Castilian is the official

Spanish language of the state. All Spaniards have the duty to know it and the right to use it."

<sup>7</sup>. Opinion n. 313/2004, European Commission for democracy through law (Venice Commission). Final Opinion on constitutional reform in the Republic of Armenia, adopted at the 64th Plenary Session, Venice 21-22 October 2005 [http://www.venice.coe.int/docs/2005/CDL-AD\(2005\)025-e.asp](http://www.venice.coe.int/docs/2005/CDL-AD(2005)025-e.asp)

<sup>8</sup>. On the case law of the European Commission and the European Court

for Human Rights (into which the Commission was reorganized in the 1990s) see Stephanos Stravos, "Human Rights in Greece: Twelve Years of Supervision from Strasbourg," *Journal of Modern Greek Studies*, 17.1 (1999) 7-9; Nicos C. Alivizatos, "A New Role for the Greek Church?" *Journal of Modern Greek Studies*, 17.1 (1999) 26, 35n14.

<sup>9</sup>. See <http://blogs.britannica.com/blog/main/2007/01/italys-crucifix> controversy-schools-the-state-and-the-sacred

<sup>10</sup>. European secularism is obviously even more "non-neutral" from the view point of traditionally-minded Muslims than European (semi-)official (post-) Christianity—for all that it is sometimes justified by a rhetoric of neutrality. The French law against wearing the Moslem veil in public schools is a case in point. The report of the Stasi Commission, which recommended the ban, describes the French notion of laïcité as "constitutive de notre histoire collective" and states that it is based, among other things, on the 'neutralité du pouvoir politique'. See <http://www.fil-info-france.com/actualites-monde/rapport-stasi-commission-laicite.htm>

<sup>11</sup>. In Greece, civil marriage and divorce were introduced in 1982, over the objections of the Orthodox Church (the law allowing teachers not affiliated with the Orthodox Church to teach in primary schools was adopted in 1988). The ban on divorce in Italy and in Ireland, under the influence of the Catholic Church can be considered as an anomaly comparable to the Israeli one. The former was abolished by a popular referendum in 1974, the latter—as late as 1995.

<sup>12</sup>. See Anthony D. Smith, *Myths and Memories of the Nation* (Oxford, 1999) 212-213; John Rex, *Ethnic Minorities in the Modern Nation State* (New York, 1996).

<sup>13</sup>. E. E. Reynolds, Nansen (London, 1949) 265-266.

<sup>14</sup>. On the American ethnic diasporas' impact on the US foreign policy and their involvement in the affairs of "old countries", see Yossi Shain, "Ethnic diasporas and U.S. foreign policy," *Political Science Quarterly*, 109 (1994) 811-

841; Yossi Shain, *Marketing the American Creed Abroad: Diasporas in the U.S. and Their Homelands* (New York, 1999).

<sup>15</sup> See the 2000 "Law on the Measures in Favor of the Italian Minority in Slovenia and Croatia," mentioned in the report of the Venice Commission (see note 19 below).

<sup>16</sup> The Combined 13th and 14th periodic report of the Government of Finland on the International Convention on the Elimination of All Forms of Racial Discrimination (1997) <http://formin.finland.fi/doc/fin/ihmisoik/ihmisoic.html>

<sup>17</sup> "A permit for residency may be granted 1. if the applicant himself, one of his parents or at least two of his four grandparents are or have been registered as having Finnish origin, or 2. if there is another tie that shows the applicant's affinity to Finland and Finnishness, but he has no documents to show that he meets the requirements mentioned in point 1".

<sup>18</sup> See Anne de Tinguy, "Ethnic migrations from and to the new independent states following political changes in Eastern and Central Europe: 'repatriation' or privileged Immigration?" May 20-22, 1999, <http://www.demographie.de/ethnic/papers/tinguy.pdf>

<sup>19</sup> Venice Commission (European Commission for Democracy through Law), Report on the Preferential Treatment of National Minorities by their Kin-State, adopted by the Venice Commission at its 48th Plenary Meeting, Venice, 19-20 October 2001, [http://venice.coe.int/docs/2001/CDL-INF\(2001\)019-e.html](http://venice.coe.int/docs/2001/CDL-INF(2001)019-e.html)

<sup>20</sup> United Nations, Special Committee on Palestine (UNSCOP), Chapter VI, Part I, Articles 1-9; Chapter IV, Part II, Articles 3 and 5.