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Religious freedom in the Middle East: study on the Lebanese, Israeli and Iraqi model

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GOBIERNO DE ESPAÑA
MINISTERIO DE ASUNTOS EXTERIORES Y DE COOPERACIÓN
SECRETARÍA DE ESTADO DE ASUNTOS EXTERIORES
DIRECCIÓN GENERAL DE NACIONES UNIDAS Y DERECHOS HUMANOS

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Les libertés religieuses au Liban
Etat des lieux, garanties constitutionnelles et prospectives

3 juin 2015

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Tous les problèmes dans le monde d'aujourd'hui relatifs à la gestion démocratique du pluralisme religieux et culturels sont vécus au quotidien au Liban, avec une expérience séculaire cumulée et des aménagements constitutionnels, juridiques et socio-culturels avec des niveaux positifs et négatifs d'effectivité.

Le Liban en effet, petite nation dans un environnement hostile ou, dans le meilleur des cas, en transition démocratique, est au cœur de trois grands problèmes internationaux d'aujourd'hui : le dialogue interreligieux et interculturel et son effectivité, l'efficience des systèmes de partage du pouvoir ou de parlementarisme pluraliste, et le sort des petites nations dans le système international. C'est dans cette perspective que le Pape Jean-Paul II s'est fortement intéressé au Liban durant

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Prix du Président Elias Hraoui : Le Pacte libanais, 2007.
Prix de la Fondation Mgr Ignace Maroun, 2015.

les années de guerres multinationales en 1975-1990 et d'après-guerres, en organisant surtout le Synode pour le Liban, en novembre 1995, avec la participation de toutes les communautés[2].

Pays « mosaïque » de dix-huit communautés reconnues, « erreur historique et géographique » selon une qualification (ou plutôt disqualification) par des auteurs sionistes, confessionnel, sectaire, communautaire, suivant des auteurs libanais, français, et surtout américains[3], le Liban suscite la honte d'intellectuels, programmés aux schèmes culturels du nation building en vogue en vertu duquel l'édification nationale s'opère exclusivement à travers un centre qui s'étend par la force à toute la périphérie. Or, il y a d'autres formes d'édification nationale par une politique d'accommodement, de pactes suivant la tradition libanaise, ou de diète, alliance, covenant, junktim… suivant des appellations en Suisse et en Autriche[4].

C'est dire que l'étude de l'état des libertés religieuses au Liban implique une approche sans présupposés et sans idéologie jacobine, et donc une approche qui prend en considération l'expérience historique libanaise et moyen-orientale, la problématique comparée de gestion du pluralisme dans un monde de plus en plus affronté à l'explosion des phénomènes identitaires, l'effectivité des garanties constitutionnelles et jurisprudentielles, et les perspectives d'évolution en conformité avec les normes universelles des droits de l'homme.

Nous exposerons l'état actuel des aménagements constitutionnels du pluralisme religieux et culturels au Liban, l'effectivité de ces aménagements dans la jurisprudence constitutionnelle et judiciaire, et les perspectives de conformité des garanties aux normes universelles des droits de l'homme.

La gestion du pluralisme religieux et culturel au Liban est régie par six articles de la Constitution libanaise de 1926 et ses amendements en vertu de l'Accord d'entente nationale, dit de Taëf, du 21/9/1991. Il s'agit des articles 9, 10, 19, 49, 65 et 95.

1. Fédéralisme personnel des art. 9 et 10 : Statut personnel, statut civil facultatif et respect mutuel

Les articles 9 et 10, fruits d'une tradition de plusieurs siècles, reconnaissent aux communautés le droit de gérer leur statut personnel (art. 9) et d'avoir leurs écoles « sous réserve des prescriptions générales sur l'instruction publique édictées par l'Etat » (art. 10). Ces articles, en continuité avec une longue tradition ottomane de plus de quatre siècles de gestion pragmatique du pluralisme religieux et culturel dans l'Empire ottoman[5], sont en parfaite conformité avec la philosophie du droit

[2] Jean-Paul II, *Exhortation apostolique post-synodale*, Cité du Vatican, 10 mai 1997, 198 p.
[3] A. Messarra, "L'acculturation du droit constitutionnel libanais », communication au séminaire à la Faculté de droit, Notre-Dame University en coopération avec la Fondation Konrad Adenauer, 7/3/2015, 5 p.
[4] Hans Daalder, "La formation des nations par consociatio: Le cas des Pays-Bas et de la Suisse", in *L'édification nationale dans diverses régions*, no spécial de la *Revue internationale des sciences sociales*, Unesco, XXIII (3), 1971, pp. 384-399.
[5] Benjamin Braude and Bernard Lewis (ed.), *Christians and Jews in the Ottoman Empire* (The functioning of a Plural Society), Holmes and Meier Publ. Inc., 2 vol. 1982.

en islam. D'une part, le droit musulman est *personnel*, en ce sens qu'il n'applique pas aux non-musulmans les mêmes prescriptions que pour les musulmans[6] et reconnaît en conséquence l'éventuelle existence de plusieurs ordres juridiques en société, à la différence de la tradition juridique occidentale. Après le tragique massacre de la Saint-Barthélémy en France (23-24/8/1572), le slogan a été lancé : « Une foi, une loi, un roi », et des protestants ont été chassés de France[7].

Les articles 9 et 10 s'intègrent dans la théorie du fédéralisme personnel, dans les cas où les clivages religieux et culturels ne sont pas géographiquement concentrés et donc où les frontières géographiques ne coïncident pas avec les frontières culturelles. Le fédéralisme personnel libanais, qui témoigne du caractère composite de la liberté de religion, constitue un système adapté aux pays où les minorités sont réparties sur tout le territoire national.

Le Liban est aussi le seul pays dans la région sans détermination, avec des formules variables, d'une religion d'Etat. La Constitution se propose d'assurer la participation et le libre exercice des croyances religieuses. On peut même dire que toutes les religions au Liban sont religions d'Etat avec des dispositions fort explicites : « La liberté de conscience est absolue » et « L'Etat respecte toutes les confessions et en garantit et protège le libre exercice » (art. 9).

En opposition avec une longue tradition juridique arabe et musulmane, l'idéologie sioniste a introduit dans la région le phénomène explosif de l'espace identitaire, c'est-à-dire d'une religion dans un espace géographique.
Le fédéralisme personnel des art. 9 et 10 fournit trois garanties fondamentales :

1. Il régit la *liberté* des statuts personnels et de l'enseignement sans déplacement de populations (*people engineering*), génocide, extermination ou intégration forcée.

2. Il assure l'*égalité* entre les régimes de statut personnel, à la différence de la situation dans les autres pays arabes. En cas de conflit de loi de statut personnel au Liban, aucun statut ne prédomine sur l'autre. Dans les autres pays arabes, c'est le droit musulman qui est considéré d'ordre public[8].

3. Il institue des instances supérieures de *régulation* qui sont, en matière de statut personnel, la Cour de Cassation qui tranche en dernier ressort en cas de conflit de loi et, en matière d'enseignement, les prescriptions étatiques générales sur l'enseignement, les examens officiels et la reconnaissance et équivalence des diplômes.

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[6] Emile Tyan, *Histoire de l'organisation judiciaire en pays d'islam*, Leiden, E.J. Brill, 2e éd., 1960, 673 p., p. 93.
[7] Elizabeth Labrousse, *Une foi, une loi, un roi?, La révocation de l'Edit de Nantes*, Paris, Payot / Labor et Fidès, 1985, 231 p.
Janine Garrisson, *L'Edit de Nantes et sa révocation. Histoire d'une intolérance*, Paris, Seuil, 1985, 312 p.
[8] Pierre Gannagé, *Le pluralisme des statuts personnels dans les Etats multicommunautaires* (Droit libanais et droits proche-orientaux), Bruxelles – Bruylant et Beyrouth-Presses de l'Université Saint-Joseph, 2014, 400 p.

Il s'agit, non pas de renoncer au fédéralisme personnel, mais d'aller jusqu'au bout de quatre au moins de ses implications normatives :

1. Il faudra d'abord rendre le fédéralisme personnel *égalitaire*. Il est égalitaire au Liban, c'est-à-dire en cas de conflit entre deux statuts personnels, aucun statut ne prédomine sur l'autre. Dans les autres pays arabes, en cas de conflit de lois de statut personnel, c'est l'islam qui est considéré d'ordre public. On relève des protestations en Egypte et ailleurs pour que les statuts personnels soient égalitaires.

2. Il faudra aussi moderniser le fédéralisme personnel en le rendant *ouvert*. L'arrêté 60 LR du 13 mars 1936 du temps du Mandat français prévoyait la création d'une communauté de droit commun. Cela existait aussi en ex-Yougoslavie et à Chypre, ce qui implique la possibilité de ne pas être membre d'une communauté.

3. Il faudra aussi dans le fédéralisme personnel une *instance supérieure de régulation*. Dans le cas du Liban, c'est la Cour de Cassation qui tranche en dernier ressort.

4. Il faudra aussi développer dans des politiques publiques un *espace public neutre*, transcommunautaire, qui n'est pas anticommunautaire, du fait que l'appartenance à une communauté n'est pas nécessairement moins légitime que l'appartenance à un parti ou à un syndicat[9].

Les violations ou des fois le déficit dans la garantie des libertés religieuses au Liban résident dans les trois faits suivants :

1. *L'inexécution de l'arrêté 60 LR du 13 mars 1936 du Haut Commissaire de Martel* : Ceux qui n'appartiennent à aucune communauté, ou qui désirent abandonner leur communauté de naissance, pourraient adhérer à la communauté non communautaire, non seulement en ce qui concerne le mariage, mais tout le statut de la famille, y compris les règles sur la succession. L'art. 14 définit ainsi cette communauté :

« Les communautés de droit commun organisent et administrent leurs affaires dans les limites de la législation civile. »

Aucun texte organique n'a cependant été publié pour l'organisation de cette communauté civile.

2. La création d'institutions scolaires et universitaires qui relèvent des communautés a favorisé historiquement le développement culturel et égalitaire entre les communautés. La prolifération actuelle risque de communautariser l'enseignement en dépit des conditions législatives normatives par le canal du ministère de l'Education et de l'Enseignement supérieur.

[9] Nous avions exposé ces exigences normatives de modernisation des régimes de fédéralisme personnel au cours du Forum des Fédérations : *Unity in Diversity* (Learning from Each Other), 4th International Conference on Federalism, Forum of Federations, 5-7 November 2007, New Delhi, 2007, 496 p. et synthèse in *an-Nahar*, 28/11/2007.

3. L'évasion légale par rapport aux régimes communautaires du statut personnel et du droit successoral s'élargit de façon sensible. Nombre d'empiètements communautaires sur les droits individuels sont dénoncés, avec une emprise croissante du communautaire sur la vie civile et les droits individuels. Le projet de statut civil facultatif, proposé en 1998 par le président Elias Hraoui et adopté à la majorité par le Conseil des ministres, s'est aussitôt heurté aux instances religieuses, notamment musulmanes. Le mufti de la République, le président du Conseil supérieur chiite et le cheich Akl de la communauté druze ont violemment exprimé leur opposition. Les instances communautaires chrétiennes n'ont pas fait paraître de communiqués officiels, mais on relève quelques déclarations prudentes, notamment par l'ancien patriarche maronite Nasrallah Sfeir qui a exprimé des réserves, non seulement parce que le projet s'oppose à l'enseignement de l'Eglise qui considère le mariage comme un sacrement, mais aussi et surtout dans le souci de préserver l'unité nationale. Bien que les chefs des instances religieuses disposent du droit de saisir le Conseil constitutionnel pour les lois relatives au statut personnel, ces instances ont préféré sommer le gouvernement de « retirer immédiatement le projet sans discussion », selon les termes du communiqué de Dar el-fatwa. C'est ainsi qu'au lieu d'être transmis à la Chambre des députés, comme l'exige la Constitution, le projet a été enterré dans les tiroirs du gouvernement. L'autonomie segmentaire reconnue aux communautés ne retire pas à l'Etat le pouvoir de légiférer, pouvoir original et absolu et l'un des attributs de la souveraineté, comme l'a rappelé le Conseil constitutionnel dans de nombreuses décisions[10].

La création d'un statut civil facultatif met le droit libanais en conformité avec les droits fondamentaux auxquels l'Etat libanais s'est engagé dans le Préambule de la Constitution et dans les traités internationaux.

Les principales dispositions contraires aux droits fondamentaux sont :

1. Les empêchements pour différence de religion ou de confession, tel le mariage entre druzes et musulmans qui ne peut pas être célébré au Liban. Cette interdiction des unions mixtes oblige à des conversions « religieuses » formelles préalables au mariage, portant ainsi atteinte à la liberté de conscience garantie par la Constitution

2. Le principe de l'égalité de tous devant la loi, garanti par la Constitution, est méconnu par les discriminations fondées sur le sexe ou la religion : inégalité des époux dans le mariage, autorité parentale, garde des enfants, inégalité entre garçon et fille en matière successorale, interdiction d'hériter entre musulmans et non-musulmans…

3. Des pratiques devant des tribunaux communautaires, notamment dans les procès en annulation de mariage, constituent une violation du droit au procès équitable garanti par l'art. 14 du Pacte international relatif aux droits civils et politiques.

[10] Conseil constitutionnel, *Recueil des décisions du Conseil constitutionnel*, 1994-2014, 2 vol., surtout vol. 2, 2014.

4. La liberté reconnue par l'art. 9 de la Constitution n'est pas pleinement garantie, puisque les individus qui adhèrent à des communautés non reconnues ou les individus athées, agnostiques, libres penseurs qui voudraient conclure un mariage mixte islamo-chrétien et qui abandonnent leur communauté pour n'en rejoindre aucune autre, ne bénéficient d'aucun statut. On a certes autorisé les Libanais à supprimer la mention de leur communauté sur les registres de l'Etat civil, mais ces personnes se retrouvent sans statut à chaque fois que leurs droits et devoirs dépendent de leur appartenance communautaire : mariage, filiation, succession…, sans compter la participation à la vie politique ou la nomination aux postes de fonctionnaires de première catégorie.

5. Le projet de loi en avril 2010, pour la protection des femmes, contre la violence domestique s'est heurté à l'opposition des tribunaux chériés sunnites qui considèrent que l'art. 26 porte atteinte à leurs compétences en ce qui concerne les rapports conjugaux. Aussi le texte a été modifié comme suit :
« En cas d'opposition entre les dispositions de la présente loi et celles des lois sur le statut personnel ou sur la compétence des juridictions musulmanes, écclésiastiques et druzes, ce sont les dernières qui sont applicables en toute matière. »

De la sorte si une femme poursuit le mari pour l'une des infractions, se plaçant sous la protection des autorités civiles de l'Etat (FSI, ministère public, juge pénal), le mari pourrait opposer une règle ou tradition religieuse qui lui est favorable ou soulever la compétence exclusive des tribunaux religieux en matière de rapports conjugaux, neutralisant ainsi la procédure devant l'autorité civile et le droit pénal, domaine réservé de l'Etat.

Il découle de ces exemples que ce n'est pas le principe du fédéralisme personnel qui doit être contesté, mais le fait de ne pas aller jusqu'au bout de ses implications normatives. Marie-Claude Najm Kobeh, qui analyse nombre d'exemples, relève :

«Les quelques exemples ne sont que les aspects juridiques d'une tendance plus globale. Ils ont tous une cause et un effet communs : le recul de l'Etat et le développement du communautarisme, par grignotage systématique et sous couvert à chaque fois – de protection des droits communautaires ou culturels et du pluralisme religieux. »[11]

Une avancée incomplète s'est opérée depuis le cas du mariage de Khulûd Hassib Succariyé et Nidal Darwiche, constatée par contrat le 2/11/2012 devant le notaire à Chiah, Joseph Béchara. Ce contrat conclu au Liban va-t-il valablement être enregistré à l'Etat civil au ministère de l'Intérieur ? L'avis consultatif du Département de législation et de consultation au ministère de la Justice, no 1015 du 10/12/2012, relève en conclusion :

[11] Marie-Claude Najm Kobeh, "L'empiétement du confessionnel sur les droits individuels", conférence à *Ninar*, compte-rendu in *L'Orient-Le Jour*, 30/3/2011, et développement *ap*. Marie-Claude Najm Kobeh, *Principes directeurs du droit international privé et conflit de civilisations. Relations entre systèmes laïques et systèmes religieux*, Paris, Dalloz, 2005, XIX + 705 p.

« Il est inévitable de promulguer une loi régissant l'appartenance d'un Libanais hors des communautés religieuses et d'une loi régissant le mariage civil. »

Dans un autre avis consultatif, à la demande du ministre de la Justice, no 1015/A.T du 26/1/2013, du Département de législation et de consultation au ministère de la Justice, composé alors des magistrats Omar Natour, Sami Mansour et Marwan Karkabé, aboutit aux quatre conclusions suivantes :

« 1. Il est du droit du Libanais qui n'appartient pas à une communauté de conclure un mariage civil au Liban.

« 2. Le notaire est habilité à la conclusion et approbation du mariage civil.

« 3. Il relève des deux époux de déterminer et choisir la loi civile qui régit le mariage en ce qui concerne tous ses effets.

« 4. Il n'y a pas d'objection à l'enregistrement du document de mariage de Khulud Sukkariyé et Nidal Darwiche aux registres de l'Etat civil. »[12]

Plusieurs manifestations avec plus d'un millier de personnes, notamment le 1/2/2015, en vue de la reconnaissance du mariage civil facultatif, suite au refus du nouveau ministre de l'Intérieur d'officialiser les actes de mariage civil contractés depuis 2012, ainsi que les certificats de naissance des enfants nés d'un mariage civil. A l'époque, le ministre de l'Intérieur, Marwan Charbel, avait signé le contrat des deux époux, suite à de nombreux avis juridiques favorables, au soutien inconditionnel du Chef de l'Etat, Michel Sleiman, et du ministre démissionnaire de la Justice Chakib Cortbawi. Cette reconnaissance a alors ouvert la voie à d'autres contrats similaires. Des mariages civils ont été dûment reconnus et enregistrés auprès de l'administration. Le ministre Nouhad Machnouk a refusé de suivre la même procédure, estimant nécessaire de se référer au Conseil des ministres. Sur des banderoles des manifestants, on lit : « Egaux et libres », « Nos femmes ne sont pas esclaves des hommes, nos enfants ne sont pas esclaves de leurs pères. Nous ne sommes pas esclaves des religions. » Khouloud Succariyyé déclare au cours d'une manifestation :

« Nous avons appliqué la Constitution lorsque nous nous sommes mariés. Nous n'allons pas nous arrêter et nous allons porter plainte contre le ministre de l'Intérieur. Les blocages ne sont qu'une manœuvre politique et confessionnelle et ils ne réussiront pas. L'arrêté no 60 LR de 1936 stipule dans sont art. 10 que les Libanais qui n'appartiennent à aucune communauté sont régis en matière de statut personnel par la loi civile. Le minsitre Machnouk ne respecte pas la loi et c'est pourquoi nous porterons plainte. Plus de 45 couples ont aujourd'hui la vie administrativement paralysée. Et d'autres couples continuent de se marier. »

La présidente de l'Union des handicapés du Liban, Sylvana Lakkis, déclare :

[12] Cf l'ensemble de ces documents *ap*. Antoine Messarra, *al-Ahwâl al-shakhsiyya al-ikhtiyâriyya: Mashâri' wa-munâqashât wa-marâgih* (Statut civil facultatif : Projets, débats et références), Beyrouth Fondation libanaise pour la paix civile permanente, série « Documents », no 47, 2014, 105 p. et nouvelle édition augmentée, 2015.

« Il est incroyable de constater comment les politiciens de tous bords s'unissent quand il s'agit de diminuer l'emprise communautaire sur les citoyens. »[13]

En visite au Liban, Heiner Bielefeldt, rapporteur spécial de l'ONU sur la liberté de religion ou de conviction, invite les autorités, au cours d'une conférence de presse, à préserver la diversité en développant la citoyenneté commune et en instaurant le mariage civil :

« Le Liban doit défendre et préserver cette diversité communautaire unique en son genre qui le caractérise (…). La liberté de religion n'est pas seulement la liberté d'aborder et de ne pas être persécuté (…). Il est nécessaire de donner aux personnes davantage d'espace pour organiser leur vie, un espace plus honnête qui va renforcer la liberté de religion. Les gens de différentes religions ont besoin de se retrouver (…) en mettant en place les réformes et les changements nécessaires en vue d'instaurer le mariage civil au Liban (…). Beaucoup de maronites se tournent vers l'islam pour divorcer et se remarier. Est-ce une conversion honnête, alors qu'ils utilisent la religion ? Il s'agit d'un moyen de coercition détourné. »[14]

Les manifestants, notamment dans le cadre de l'association Chaml (Jeunes citoyens libanais non sectaires et non violents) réclament « une loi libanaise, ni communautaire, ni étrangère. »[15]

La reconnaissance par l'Etat libanais du mariage conclu à l'étranger règle le mariage lui-même et le divorce, mais non les autres questions relatives à l'héritage, la garde des enfants, la tutelle, les droits au sein du couple…, lesquels demeurent régis par les lois communautaires. Le mariage civil de conjoints de confession musulmane est régi par la Charia.
En l'absence de loi reconnaissant le mariage civil, il est compliqué pour les Libanais de contracter un mariage avec une personne d'une autre religion ou d'une autre communauté. Aussi choisissent-ils de s'unir à l'étranger, souvent à Chypre, dans une autre langue, face à un juge étranger, en l'absence de la famille… Zoubeida-el-Hage déclare :

« J'ai dû faire des pieds et des mains au niveau administratif pour que ma fille puisse hériter de mon appartement, car en tant que musulmane, elle ne peut pas hériter de moi. J'ai donc éliminé ma religion de mon état civil, même si je reste croyante. »[16]

Selon Ibrahim Najjar, professeur et ancien ministre de la Justice, la problématique du statut personnel facultatif devrait prendre en compte quatre présupposés :

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[13] Compte rendu de la manifestation et des déclarations dans *L'Orient-Le Jour*, 2/2/2015.
[14] Anne-Marie el-Hage, entretien in *L'Orient Le Jour*, 3/4/2015 ; et Manal Cha'ya, *an-Nahar*, 5/3/2015.
[15] Anne-Marie el-Hage, « Les couples mariés civilement dans la rue demain », *L'Orient-Le Jour*, 16/4/2015.
[16] Rémi Carlier, "Le mariage civil, un droit fondamental », *L'Orient-Le Jour*, 18/4/2015
et Maria al-Hachem, *an-Nahar*, 16/4/2015.

« 1. Des traditions communautaires, à savoir notamment l'interprétation de la charia en ce qui concerne les musulmans et, en général, le régime de séparation des biens entre époux.

« 2. La loi reconnaît les mariages civils et mixtes contractés à l'étranger, sans opposition communautaire, y compris les communautés musulmanes, en considérant que pour l'islam le mariage est un contrat.

« 3. Le juge libanais applique pour les contrats de mariage conclus à l'étranger la loi du pays choisi par les deux époux, même s'ils sont de communautés différentes ou si l'un d'eux est étranger, pour tous les effets non matériels du mariage.

« 4. Plus de 500 enfants sont nés de mariages mixtes et chaque année près de 850 mariages civils sont conclus à Chypre, sans compter les mariages civils en France, Turquie, Canada, Etats-Unis, Australie et ailleurs. Il en découle qu'une communauté prend naissance que le législateur ne peut ignorer.

« Par quel miracle ce qui est licite à Chypre devient prohibé au Liban ? Pourquoi consacrer la fraude à la loi en tant que règle impérative ? Pourquoi le Libanais se trouve-t-il astreint au mensonge et à la roublardise pour se dérober à des règles désuètes ? Aussi avons-nous présenté un projet de loi en 2010 reconnaissant au Liban le droit d'option au Liban, mais régissant les effets non matériels du mariage, alors que les effets matériels demeurent régis par les lois communautaires, comme c'est le cas aujourd'hui au Liban. »[17]

Le 4/2/2015, 54 contrats de mariage civil conclus au Liban, dont 27 devant le notaire Joseph Béchara, sont à l'étude devant le Conseil des ministres. L'ancien ministre de l'intérieur, Ziad Baroud, s'étonne du

« retour à zéro pour l'enregistrement des mariages civils conclus au Liban, puisque sept contrats avaient déjà été enregistrés en application de l'avis consultatif du ministère de la Justice. Comment des époux régis par le même ordre juridique peuvent-ils être soumis à des traitements différents et mêmes contradictoires ? Le pouvoir et les institutions ne sont-ils pas une continuité ? La non publication d'une loi régissant le mariage civil ne dénie pas la légalité aux contrats de mariage conclus civilement au Liban, tant que ces contrats ne violent pas l'ordre public libanais. »[18]

Le notaire Joseph Béchara affirme :

« Il s'agit d'un dossier humain et légal. Humainement, on ne peut dénier le droit au mariage. Juridiquement, ces personnes ont exercé leur liberté de croyance et certains ont éliminé la mention de leur communauté, aussi sont-ils de fait engagés civilement, sans éventualité d'enregistrement d'un autre mariage. »[19]

[17] Claudette Sarkis, entretien avec Ibrahim Najjar, *an-Nahar*, 6/3/2015.
[18] *an-Nahar*, 4/2/2015.
[19] *an-Nahar*, 4/2/2015.

Le débat est continu depuis la promulgation de la loi du 2 avril 1951, où des députés ont réclamé l'approbation d'un statut civil facultatif. L'ordre des avocats de Beyrouth avait alors déclenché une grève qui a duré six mois en protestation contre les compétences reconnues aux instances religieuses en vertu de la loi du 2/4/1951. Nombre de projets ont été présentés en vue du statut civil facultatif.

Les débuts de la reconnaissance d'une communauté de droit commun remontent aux années 1960, notamment en vertu d'un jugement de la Cour d'appel de Beyrouth, présidée par Youssef Gebran, devenu ultérieurement président de la Cour de Cassation, en ce qui concerne la suppression de la mention de la communauté sur le registre de l'Etat civil à la suite d'une requête de l'avocat Sami Choukaifi.

Il faut rappeler qu'à la suite de plusieurs manifestations à Beyrouth, le haut commissaire de Martel publie l'arrêté 53 LR/1939 excluant les communautés musulmanes du champ d'application de l'arrêté 60 LR. De la sorte les communautés musulmanes sont exclues, en vertu de la charia, du mariage civil hors du Liban. L'art 79 du Code de procédure civile, en vigueur depuis 1983, confirme l'application de la charia aux mariages civils conclus par des musulmans à l'étranger :

Art. 39 – Les tribunaux civils sont compétents pour juger les litiges nés du contrat de mariage conclu dans un pays étranger entre Libanais ou entre Libanais et étrangers sous la forme civile régie par la loi dudit pays. Sont appliquées les législations relatives à la compétence des tribunaux chériés et druzes si les deux époux sont de communauté musulmane et l'un au moins est libanais. »

Nombre de propositions avaient été présentées pour l'institution du statut civil facultatif[20]. Ibrahim Traboulsi, l'un des plus grands spécialistes en matière du droit de la famille et l'un des auteurs du Projet Elias Hraoui, relève que le contrat de mariage, à la différence de tout autre contrat, est régi, quant à sa conclusion et son enregistrement, par des procédures spécifiques et substantielles. En outre l'art. 10 al. 2 et l'art. 17 al. 1 de l'arrêté 60 LR disposent : « Les Syriens et Libanais qui relèvent de la communauté de droit commun et ceux qui ne relèvent d'aucune communauté sont régis par la loi civile dans les questions du statut personnel. » Il y a donc, souligne Ibrahim Traboulsi, un « vide juridique et, plus particulièrement en cas de conflit entre Khulud et Nidale, quelle loi sera-t-elle appliquée ? » Selon un premier avis consultatif du Département de législation et de consultation au ministère de la Justice, les tribunaux libanais sont habilités à appliquer à des Libanais la loi du pays où le mariage a été conclu[21]. Il est donc parfaitement loisible aux contractants devant notaire d'opter pour la loi qui régira les effets du mariage.

[20] Proposition de Raymond Eddé (1957), Document de réforme du Mouvement national (1976), Projet du Parti démocrate (Abdallah Lahoud et Joseph Moghaizel, 1972), Proposition d'Auguste Bakhos (1977), Proposition du Parti national syrien (juillet 1977), Projet du Président Elias Hraoui approuvé à la majorité en Conseil des ministres, le 18/3/1998), projet Youssef Takla (2010), Chakib Cortbawi…

[21] Ibrahim Traboulsi, *Ishkâliyyat qânûn al-ahwâl al-shakhsiyya al-madanî al-ikhtiyâri* (Problématique juridique du statut civil facultatif), étude inédite, 2015, 18p.
Muriel Rozelier et Alexa Héchaimé, « Mariage civil : Une pratique en train de prendre forme », *Le Commerce du Levant,* mai 2014, pp. 84-88.

On constate à travers une enquête par sondage et une conférence organisée par la « Commission épiscopale pour la famille au Liban », les 11-13/2/2010, la régression des obstacles culturels et religieux en matière de mariage mixte, mais la persistance des barrières juridiques.

L'entrecroisement des intérêts dans un petit pays, l'enchevêtrement des liens de parenté, d'amitié et d'échange, la multi-appartenance des citoyens à plusieurs organisations sociales, la pluralité communautaire de fait de plusieurs institutions scolaires et universitaires, et la libéralisation progressive des jeunes à l'égard des contraintes familiales et sociales, d'où l'importance accrue des sorties, font que nombre d'obstacles du passé sont, et seront, de plus en plus rompus, même dans des milieux qualifiés de traditionnels et qui ont déjà accédé à l'éducation, aux moyens modernes de communication et plus généralement à l'urbanisation. Les résultats de l'enquête incitent à un choix presque dichotomique : opter pour le maintien des *rigidités légalistes* qui craquent, et qui vont de plus en plus craquer avec l'extension des évasions légales en matière de statut personnel et l'extension des libertés individuelles et collectives, rigidités qu'on essaie depuis longtemps de maintenir, ou opter pour une pastorale du mariage réaliste, active, vivante et renouvelée dans le respect des normes de la liberté de croyance[22].
L'adoption d'un statut civil facultatif implique des changements partiels dans l'aménagement de la participation politique, surtout au niveau de la représentation électorale[23].

En outre, dans certaines pratiques sociales, il y a violation du « respect » (art. 9 de la Constitution). Le respect est *mutuel*, sinon il devient imposition. Tel est le cas dans des situations, certes fort restreintes au Liban aujourd'hui, où dans certaines zones sous influence hégémonique d'une communauté, on relève des violations, incompatibles avec le caractère absolu de la liberté de croyance et du respect :

1. *Restauration* : L'imposition de fermeture des lieux de restauration durant les périodes du jeûn musulman.

Sur les dimensions religieuses dans les législations au Liban et dans le monde arabe : *Droit et religion*, Centre d'études des droits du monde arabe – Cedroma, Faculté de droit et des sciences politiques, Université Saint-Joseph, Bruxelles, Bruylant, 2003, 580 p., et surtout Bahige Tabbara, « La religion et la fonction de légiférer » (sur la grève du Barreau de Beyrouth en 1951), pp. 57-68.

[22] A. Messarra, "Les résultats de l'enquête nationale par sondage. Mariages mixtes : Régression des obstacles culturels et religieux et persistance des barrières juridiques. Le défi de la loi face à la mutation des mentalités », conférence de synthèse au Congrès : « Mariages mixtes : Fondements théologiques, défis, perspectives pastorales », Commission épiscopale pour la famille au Liban, 11-13/2/2010, 19 p.
Cf. aussi : « Nouhad Machnouk veut soulever la question du mariage civil au Conseil des ministres », *L'Orient-Le Jour*, 4/2/2015 et le projet de statut civil facultatif de Youssef Takla, *an-Nahar*, 15/1/2010.
Hana Fadlallah, « Bibliographie sur le statut civil facultatif et conflit de compétences juridictionnelles en matière de statut personnel : Le cas du Liban et de l'Egypte », inédit, 11/12/2013, 12 p.
Marie-Thérèse Zahr, « Bibliographie sur le mariage mixte au Liban », 27/1/2010, *ap*. A. Messarra (dir.), *al-Ahwâl al-shakhsiyya*…, *op. cit*., pp. 70-90.

[23] Georges Assaf, « Système communautariste et déconfessionnalisation : la problématique de la mutation de système politique libanais », *Travaux et Jours*, no 64, automne 1999, pp. 43-73.

2. *Boissons alcoolisés* : L'imposition, en tout temps, d'offrir des boissons alcoolisées.

3. *Voile* : L'imposition dans des écoles du port du voile, et même l'organisation d'une cérémonie officielle et collective dans des écoles à propos du port du voile.

4. *L'affichage dans l'espace public* : Des banderoles et signes religieux, surtout à l'entrée des rues et boulevards, représentent de nouvelles démarcations communautaires de l'espace, surtout au Liban où il y a des lieux de cultes musulmans et chrétiens presque partout et qui traduisent l'identité du Liban. Les affichages occasionnellement lors de grandes fêtes sont en parfaite conformité avec les traditions et le patrimoine du Liban.

5. La convivialité au quotidien : Le refus de participer à un repas, et même de s'asseoir sur une table, où une boisson alcoolisée est servie (sans propension certes à l'alcoolisme et à la débauche), constitue une imposition incompatible avec l'exigence de mutualité du respect. Il en découle, dans le cas du Liban, une rupture avec des habitudes ancestrales de rapports humains au quotidien et la réserve de nombre de convives de ne plus inviter chez eux des membres d'une communauté avec lesquels ils partagent cependant des relations amicales ou professionnelles fort solides.

2. La participation politique ou la discrimination positive de l'art. 95 : Egalité de fait, parité et collège électoral unique

Nombre de notions sont utilisées pour désigner la règle du quota : discrimination positive, *affirmative action*, action positive, action correctrice, inégalité compensatoire… La notion de discrimination, de par son origine latine, *discriminatio*, ne devrait pas comporter nécessairement une connotation négative, puisqu'elle signifie l'opération analytique de *distinguer* entre des faits différents. Des constitutions et jurisprudences constitutionnelles utilisent les termes : mesures positives (Suisse), actions positives (traduction de l'expression italienne « *azioni positive* »), mesures compensatoires ou compensatrices, inégalités correctrices, ou une expression plus neutre : traitement différencié positif. La discrimination positive

« consiste, au plan juridique, à substituer au principe d'égalité constitutionnelle entre les citoyens, le principe d'inégalité constitutionnelle entre les citoyens pour mieux réaliser entre eux l'égalité de fait. »

On utilise aussi l'expression de « compensation de l'inégalité des chances ». Il ressort des jurisprudences constitutionnelles quatre principes pour la discrimination positive :

a. Il faut qu'il y ait au départ une *inégalité du fait*.

b. Il faut que cette inégalité de fait s'accompagne d'une *inégalité de traitement*.

c. Il faut que la discrimination positive émane d'une *volonté* de l'autorité publique visant à accorder une priorité à une catégorie de citoyens qui ont souffert dans le passé de discrimination.

d. Il faut que la discrimination soit *positive*, en ce sens qu'elle corrige une inégalité et institue une égalité de fait par le canal de la dénonciation de l'égalité formelle.

On emploie aussi l'expression d' « égalité modulable », en partant de la pensée d'Aristote, du fait que :

« traiter de la même façon des situations différenciées est aussi injuste que de traiter différemment des situations semblables.[24] »

Le régime de la parité islamo-chrétienne (*munâsafa*) dans la représentation, adopté dans l'Accord d'entente nationale de Taef et en vertu de l'amendement constitutionnel du 21/9/1990, vise à consolider le caractère islamo-chrétien du Liban et à mettre fin à des polémiques démographiques inopérantes dans un pays où toutes les communautés sont des minorités.
Cependant, sous couvert de représentation communautaire, la règle de la proporz ou du quota est violée pour la couverture du clientélisme, avec la bénédiction d'intellectuels et d'académiques qui incriminent de façon idéologique le « système confessionnel », alors que ce système, malgré ses imperfections, n'est pas hors-la-loi. Le nouvel art. 95 de la Constitution stipule :

« Les postes (de première catégorie et fonctions assimilées) seront répartis à parts égales entre chrétiens et musulmans, sans spécification d'aucune fonction pour une communauté déterminée appliquant les principes de la spécialisation et de la compétence. »

Dans la représentation électorale, le principe du collège électoral unique, consacré par l'arrêté no 1308 du 10 mars 1922 et en vertu duquel des candidats de différentes communautés sont élus par des électeurs de différentes communautés, favorise la coopération. De la sorte aussi la compétition devient *intracommunautaire* et non *intercommunautaire*.

L'arrêté no 1308 du 10 mars 1922 dispose que « l'ensemble des électeurs de la circonscription électorale, de chaque collège électoral, sans distinction de rite, vote pour le ou les candidats à élire ». La même disposition est aujourd'hui reproduite sous une forme légèrement modifiée dans l'article 4 de la loi no 171 du 6 janvier 2000 : « Tous les électeurs de la circonscription électorale sans distinction de communauté votent pour les candidats de cette circonscription. »

Les inconvénients du collège électoral unique découlent de son avantage même. Il contraint à la modération, mais risque d'exclure de la représentation des candidats jugés plus représentatifs de leur communauté ou de noyer la représentation de minorités dans une représentation plus globale et souvent factice. Il en découle

[24] A. Messarra, "La gestion du pluralisme religieux et culturel dans les jurisprudences constitutionnelles", Conseil constitutionnel, *Annuaire 2011,* vol. 5, pp. 99-173.

une faible aptitude du Parlement, comme il a été souhaité par les premiers constituants, à être le lieu du dialogue national permanent et institutionnalisé.

Le système exclusivement concurrentiel de gouvernement risque de *ne pas* représenter les minorités, mais le système consensuel, tout en garantissant la représentation, risque de *mal* représenter les minorités par le canal d'une représentation purement quantitative.

La règle du quota électoral comporte cependant un grand avantage : la compétition électorale n'est pas interconfessionnelle, mais *intra- confessionnelle*, en ce sens que le rival d'un candidat maronite n'est pas le sunnite ou le chiite, mais un autre ou d'autres candidats maronites. Quant aux Collèges électoraux séparés, ils bouleversent toute la nature du système[25].
Jamais le sentiment d'impuissance n'a été aussi profond chez le citoyen libanais, qui se trouve dépouillé de son pouvoir face à des listes bidons et des chefs de liste qui traînent avec eux des alliés dont on se demande s'ils ne sont pas plutôt des clients.

La grande circonscription, jointe à un système majoritaire et à un scrutin de liste bidon, augmente les effets de la sous-représentation. Elle réduit aussi l'effectivité du choix de l'électeur, choix désormais dicté par la sélection préalable effectuée par le pouvoir de l'argent.

Les grandes villes dans chacun des grands mohafazats, Beyrouth, Zahlé, Tripoli, Saida…, exigent un traitement électoral particulier. Autant les problèmes urbains méritent d'être gérés au quotidien par des conseils municipaux et des comités de quartier, autant l'unicité de la ville doit être sauvegardée au sommet de la représentation politique. La ville, lieu par excellence de la rencontre et de l'échange, est la plus menacée de rupture et de fragmentation.

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[25] "Le projet dit orthodoxe: Ségrégation, théocratie et wilâyat al-faqîh chez toutes les communautés », inédit, 21/1/2013, et synthèse par Fady Noun, *L'Orient-Le Jour*, 22/1/2013.

Tableau 1 – Répartition géographique et communautaire de la population libanaise

	Chrétiens	**%**	**Musulmans**	**%**
Akkar et Nord	422.966	36,87%	721.575	62,89%
Mont-Liban	686.180	62,74%	403.810	36,92%
Beyrouth	218.106	34,54%	405.031	64,14%
Baalbeck-Hermel-Békaa	214.509	26,54%	591.934	73,23%
Sud et Nabatié	173.502	14,77%	998.886	85,06%

Source : Hyam Kosseifi, d'après une étude de Youssef Chahid Douaihi, *an-Nahar*, 13/11/2006.

Tableau 2 – Répartition communautaire de la population

Maronites	945.082	19.47%
Orthodoxes	332.453	6,85%
Grecs-catholiques	220.751	4,55%
Arméniens orthodoxes	110.255	2,27%
Arméniens catholiques	24.850	0,51%
Protestants	22.772	0,47%
Autres minorités chrétiennes	59.100	1,22%
Chiites	1.410.830	29.06%
Sunnites	1.410.213	29.05%
Druzes	261.028	5,38%
Alawites	39.165	0,81%
Sans appartenance communautaire	18.568	0,38%

Source : Hyam Kosseifi, d'après une étude de Youssef Chahid Douaihi, *an-Nahar*, 13/11/2006.

3. La protection judiciaire et constitutionnelle des libertés religieuses

Les tribunaux, saisis de recours en matière de liberté d'expression sur des problèmes religieux, ont toujours défendu la liberté de croyance et d'expression.

Le nouvel article 19 de la Constitution accorde aux chefs des communautés reconnues légalement le droit de saisine du Conseil constitutionnel, dans certaines questions en rapport avec les art. 9 et 10, dans le but de protéger encore davantage ces libertés :

Art. 19 (…) Le droit de saisir le Conseil pour le contrôle de la constitutionnalité des lois appartient au Président de la République, au Président de la Chambre des députés, au Président du Conseil des ministres ou à dix membres de la Chambre des députés, ainsi qu'aux chefs des communautés reconnues légalement en ce qui concerne exclusivement le statut personnel, la liberté de conscience, l'exercice des cultes religieux et la liberté de l'enseignement religieux. »

Le Conseil constitutionnel a dû statuer à la suite de recours par le chef de la communauté druze[26].

Un arrêt de la Cour de Cassation, 5e Chambre (Muhib Maamari, Yahya Mawlawi et Jean Eid) concerne la liberté de changer de religion. Un arrêt du Tribunal du Mont-Liban, 3e Chambre (Président John Azzi et Ala' al-Khatib et Nagi Dahdah, membres), arrêt du 29/6/2006, autorise le mariage d'un Libanais avec une Palestinienne israélienne. En outre, un procès avait été intenté contre Marcel Khalifé pour avoir chanté un verset coranique, d'après un poème de Mahmoud Darwich. Le tribunal a considéré qu'il faut reconnaître la diversité des modes d'expression, dans le respect cependant des croyances.

Est-il permis de se soustraire à l'enseignement religieux à l'école ? Un arrêt du juge Fawzi Khamis en 2008 reconnaît cette liberté, se basant sur l'art. 9 de la Constitution et la convention internationale sur les droits de l'enfant en 1989, ratifié par le Liban en 1990. L'arrêt no 2/2007 du Tribunal de 1re instance du Mont-Liban, (Président John Azzi et Ala' al-Khatib et Nagi Dahdah, membres), concerne le droit d'adopter un enfant naturel par des époux mariés civilement.

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[26] Pierre Gannagé, "L'accès des communautés légalement reconnues au Conseil constitutionnel », Conseil constitutionnel, *Annuaire* 2013, pp. 69-80.
Ibrahim Najjar, « Droit laïc et pesanteurs confessionnelles » (Contribution à l'étude du droit de la famille dans la jurisprudence libanaise », *Revue internationale de droit comparé*, 1979, vol. 31, pp. 285-305.
La jurisprudence constitutionnelle en matière de liberté confessionnelle et le régime juridique des cultes et de la liberté confessionnelle en France, Rapport du Conseil constitutionnel français, Eléments rassemblés par Brigitte Gaudemet – Badevant, Université Paris-Sud, Jean Monnet, XIe conférence des Cours constitutionnelles européennes.

La jurisprudence, à propos des dispositions du Code pénal qui sanctionnent les « dissensions confessionnelles », relève qu'on ne peut parler de dissensions confessionnelles que si elles sont assorties de « début d'exécution ». Où commence, où s'arrête, le droit de la critique religieuse, sous condition de « respect » exigé par l'art. 9 de la Constitution ? La problématique est surtout culturelle et pédagogique, dans un climat libanais fortement rodé à la convivialité au quotidien, mais toujours menacé par la politologie de la religion dans la mobilisation politique[27].

4. La religion à l'école : Liberté et débat

Dans un pays de dix-huit communautés religieuses officiellement reconnues et qui jouit de traditions séculaires de conflit et de consensus, il n'y eut jamais une « querelle de l'école » en matière de laïcité scolaire, d'enseignement religieux à l'école ou de la place scolaire de la religion. Il y eut des moments hautement polémiques et conflictuels, mais le débat a souvent été vite circonscrit à sa dimension éducative. Il n'en découle pas moins que la problématique de la religion à l'école est centrale au Liban en vue de la consolidation de la paix civile à travers une connaissance mutuelle, authentique et sans stéréotypes, des religions et, plus généralement, la contribution des religions à une culture de paix.

Le principe de convivialité, avec ce qu'il implique comme altérité, ouverture, reconnaissance mutuelle, estime réciproque et foi dans l'aptitude des religions à pacifier les relations humaines, a au Liban une valeur non seulement historique, culturelle et œcuménique mais, en premier lieu, constitutionnelle. Les deux articles

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27. Antoine Messarra et Paul Morcos, *Observatoire libanais de la magistrature* (Soutien de la société civile en faveur des bonnes sentences et pratiques judiciaires), Fondation libanaise pour la paix civile permanente en coopération avec Middle East partnership Initiative (MEPI), Beyrouth, Librairie Orientale, 2 vol., 2006 et 2007, vol. 1, pp. 132-135et 201, et vol. 2, pp. 197-200.
Alexandre Najjar, *Qadiyyat Marcel Khalifé : Intisâr li-l-'adâla* (L'affaire Marcel Khalifé, une victoire de la justice), *ap*. A Messarra, R. Jarjour et A. Abi Habib (dir.), *al-Masâdir al-dîniyya li-huqûq al-insân*), Beyrouth, Conseil des Eglises du Moyen-Orient, 2 vol., 2002 et 2006, vol. 1, pp. 311-322.
Ibrahim Traboulsi, *Ishkâliyyat al-tabanni fî al-qawânîn al-tâifiyya wa-l-madaniyya* (Problématique de l'adoption dans les lois communautaires et civiles), *an-Nahar*, 20/2/2007 (commentaire à propos de l'arrêt du 8/2/2007 du Président John Azzi).
Paul Morcos, « Expérience de l'Observatoire de la magistrature au Liban », *ap*. A. Messarra (dir.), *Pratique de l'unité plurielle* (Exemples et modèles normatifs de vivre ensemble au Liban), Master en relations islamo-chrétiennes et Fondation G. Frem, Université Saint-Joseph, 2 vol., vol. 1 2010, pp. 141-146 et vol. 2, 2014, pp. 255-272 et article de Claudette Sarkis, *an-Nahar*, 9/2/2007 et de Ghassan Tuéni, *an-Nahar*, 21/2/2007.
Luna Farhat, *al-Hurriya al-dîniyya fî-l-qânûn al-Muqâran* (La liberté religieuse en droit comparé), Publications de l'Université Libanaise, 2008, 348 p.
Sur la critique de l'institution religieuse : Mgr. Georges Khodr, *Naqd al-Mu'assasa al dîniyya* (Critique de l'institution religieuse), *an-Nahar*, 21/11/2003 et al-Kânûn (La loi), *an-Nahar*, 20/8/2011.

9 et 10 de la Constitution libanaise, qui perpétuent une tradition constante dans l'histoire du Liban, impliquent un contenu pédagogique[28].

Si le « respect » de toutes les confessions et de leur « dignité », s'impose à l'Etat, il s'impose encore davantage aux individus et aux groupes. L'article 10 subordonne « la liberté de l'enseignement » au respect de la « dignité des confessions ».

Respecter, va au-delà de la connaissance mutuelle et de la reconnaissance des différences. C'est traiter quelqu'un ou quelque chose avec égard et déférence. Quant à la dignité, elle implique un respect résultant d'un mérite et d'une valeur reconnue. Une pédagogie interculturelle dans un monde où le religieux est omniprésent implique une recherche renouvelée sur la traduction didactique de l'exigence de *respect* qui, au Liban, a une valeur constitutionnelle.

Le débat sur l'enseignement religieux à l'école au Liban a passé sur le plan institutionnel par quatre grandes étapes de 1968 à nos jours :

1. *Un horaire pour tous dans le cursus scolaire* : Les programmes scolaires officiels, tant pour les écoles privées que pour les écoles officielles, ont toujours prévu l'affectation d'un horaire hebdomadaire pour l'enseignement religieux, en laissant aux instances religieuses la pleine liberté d'en déterminer le contenu et l'organisation. Avec l'amendement des programmes en 1968 et 1971, l'enseignement religieux a été introduit à raison d'une heure hebdomadaire en tant que matière obligatoire dans les écoles et dans tous les cycles d'enseignement, le contenu étant déterminé librement par les instances religieuses, « *enseignement assuré par les instances religieuses concernées* ».

En 1995, le Centre de recherche et de développement pédagogiques (CRDP), qui relève du ministère de l'Education, a formé une commission conjointe islamo-chrétienne pour l'élaboration d'un manuel commun islamo-chrétien. Une proposition a été élaborée en vertu de laquelle une heure hebdomadaire serait consacrée à l'enseignement religieux, chrétien ou musulman, pour les cycles primaire et moyen mais, au cycle secondaire, il y aurait une heure hebdomadaire conjointe d'enseignement religieux sur la base d'un manuel commun islamo-chrétien.

A l'issue de cette tentative, un projet de décret a été élaboré prévoyant un manuel distinct pour les chrétiens et un autre pour les musulmans, à condition que, au cycle secondaire, un complément sur l'islam soit joint au manuel chrétien, et un complément sur le christianisme soit joint au manuel musulman. Des démarches

[28] A. Messarra, « La religion dans une pédagogie interculturelle. Le cas du Liban », *Revue internationale d'éducation*, Centre international d'études pédagogiques – Sèvres, no 36, juil. 2004, pp. 101-110, et *La culture citoyenne dans une société multicommunautaire* (Le Liban en perspective comparée), Beyrouth, Publication de Gladic, Librairie Orientale, 2013, 560 p.

ont été entreprises au plus haut niveau, mais sans résultat, en vue de l'inscription du projet à l'ordre du jour du Conseil des ministres.

2. *La suppression dans les écoles officielles en 1997* : Dans le cadre du Plan de rénovation pédagogique, le gouvernement a décidé la suppression de l'enseignement religieux dans les écoles officielles, par le décret no 10.227 du 8/5/1997, en laissant aux écoles communautaires et aux écoles privées en général la pleine liberté[29]. Le décret a suscité une forte opposition des représentants de toutes les communautés, surtout des communautés musulmanes et particulièrement de la communauté sunnite.

En vertu de cette décision, dont l'effet se limite aux écoles officielles, il n'y aura plus un enseignement religieux dans l'horaire scolaire. Toutefois les écoles officielles ont la liberté d'assurer un enseignement religieux au sein de l'école, mais en fin de semaine et exclusivement pour ceux qui le souhaitent. Le ministère a aussi exprimé le souhait qu'il y ait un manuel commun pour les chrétiens et les musulmans. Une commission conjointe islamo-chrétienne a réclamé la révision du projet gouvernemental. Le ministère de l'Education y a souscrit sous condition que toutes les communautés chrétiennes adoptent un manuel commun pour l'enseignement religieux chrétien et que les musulmans fassent de même. Toutes les communautés chrétiennes œuvraient déjà dans cette perspective. Les communautés musulmanes (sunnite et chiite) et la communauté druze n'avaient pas autant progressé sur cette voie.

3. *Le rétablissement conditionnel en 1999* : Suite à une forte opposition, la décision a été abrogée et un décret no 1847 du 6/12/1999 rétablit l'affectation d'un horaire pour l'enseignement religieux. Cependant, par sa décision no 5 du 10/11/1999, le Conseil des ministres avait limité l'enseignement de la religion à partir de l'année scolaire 2000-2001 au manuel en préparation au Centre de Recherche et de développement pédagogiques à l'exclusion de tout autre manuel. Il s'agit *« d'un manuel unique pour les chrétiens et d'un manuel unique pour les musulmans, à condition que chacun des manuels et pour chaque classe du cycle primaire contienne un complément qui fait connaître l'autre religion* ». Pour le cycle secondaire, il y aura un manuel unique pour les chrétiens et les musulmans qui contient, en plus des matières relatives aux deux religions chrétienne et musulmane, un tronc commun sur les valeurs partagées (*al-qiyam al-mushtaraka*) par les deux religions.

Une Commission de 12 membres a été formée au CRDP en vertu d'une décision du CRDP no 180 du 12/3/2001 pour l'élaboration des manuels. Cette commission a sollicité un délai de trois ans au cours duquel les communautés chrétiennes

[29] Décret 10.227 du 8 mai 1997 : *Manâhij al-ta'lîm al-â'm wa-ahdâfuha* (Les programmes d'enseignement général et leurs objectifs), Beyrouth, Centre de recherche et de développement pédagogique, Sader, 1997, 832 p.

s'efforceront de concevoir un manuel chrétien unifié, ainsi que les communautés musulmanes[30].

4. *Le statu quo depuis 2000 en attendant un changement envisagé* : Une circulaire du ministre de l'Education, M. Jean Obeid, demande aux écoles officielles de poursuivre le statu quo en ce qui concerne l'enseignement religieux dans les écoles[31].

En quoi consiste ce statu quo ? Une heure d'enseignement religieux est prévue dans l'horaire scolaire. L'administration scolaire ne peut s'y opposer. Les comités de parents n'ont jamais formulé d'opposition. Il arrive que des élèves se plaignent, sans effet cependant sur l'organisation générale de l'enseignement[32]. Dans chaque évêché, un responsable est désigné qui, en accord avec l'administration des écoles officielles de son secteur, dispense l'enseignement religieux chrétien dans le cadre de l'horaire scolaire. Ce responsable reçoit une rémunération, mensuelle ou par heure d'enseignement, de l'évêché[33]. La même procédure s'applique aux communautés musulmanes.

Foi et convivialité : Catholiques, orthodoxes et protestants sont-ils d'accord pour un enseignement chrétien unifié, et éventuellement un manuel commun dans les écoles privées et publiques ? En 1996, une commission de huit membres a été formée sous la direction du P. Jean Corbon, en vertu d'un accord entre les patriarches catholiques et orthodoxes au Liban, pour l'élaboration d'un programme commun. Un programme a été élaboré en 1998, légèrement différent de celui adopté en 1980 par l'Assemblée des patriarches et des évêques catholiques au Liban (APECL). Sept manuels ont été rédigés, mais non encore publiés, pour le cycle primaire à l'usage des écoles publiques, mais les écoles privées peuvent aussi les utiliser. Les écoles privées consacrent une ou deux heures hebdomadaires pour l'enseignement religieux, avec pleine liberté de choix du manuel.

Les problèmes de l'enseignement religieux au sein du cursus scolaire ou, accessoirement et de façon facultative en fin de semaine, ou le retour au statu quo

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[30] Ugarit Yunan (dir.), *al-Ta'lîm al-dînî al-ilzâmî fî Lubnan* (L'enseignement religieux obligatoire au Liban), actes du séminaire organisé par le Mouvement des droits du peuple, Beyrouth, 2000, 280 p.

[31] Le Conseil des ministres décide le rétablissement de l'instruction religieuse dans les écoles officielles, *an-Nahar,* 12 nov. 1999.
__Lettre du ministre de l'Education, M. Jean Obeid, au Conseil des ministres, *an-Nahar*, 17 sept. 1998, reproduite *ap.* A. Messarra (dir.), *Observatoire de la démocratie au Liban*, Beyrouth, Fondation Moghaizel en coopération avec l'Union européenne, Librairie Orientale, 2000, pp. 235-238.

[32] Cf. un film documentaire sur ce point de Roger Nasr, *al-Safîr*, 11 déc. 2001, et l'ouvrage collectif d'Ugarit Yunan, *op.cit.*

[33] Données puisées, en vue de la rédaction de notre article, d'un entretien, le 20 avril 2004, par Mme Arlette Saadé Abi Nader avec Frère Ildephonse Khoury, de la Commission catholique pour la catéchèse au Liban. Cf. aussi : cccatechèse@inrab.edu.lb / www.catelubnan.org

antérieur à la mise en application du Plan de rénovation pédagogique se greffent sur celui du *contenu* de cet enseignement dans un pays multicommunautaire où on appréhende que l'enseignement religieux soit facteur de ségrégation des élèves, de discrimination et de communautarisation conflictuelle. Il s'agit donc du problème du contenu valoriel de l'enseignement religieux. Que se passe-t-il dans les classes de religion ?

Des travaux dénoncent l'enseignement privé et communautaire, qualifié de reproducteur automatique et exclusif des clivages communautaires, proposent l'intégration au moyen d'une action planifiée et unificatrice de l'Etat, et le « mixage » des étudiants de l'Université Libanaise dans un seul et même campus comme condition presque exclusive d'une convivialité harmonieuse.

Tout d'abord l'école n'est pas le véhicule valoriel exclusif. Elle est en compétition avec la famille, le milieu, le groupe des pairs, les événements, les médias… L'étude du rôle de l'école, de son impact sur la citoyenneté et sur la construction de l'identité et les clivages communautaires au Liban ne peut être appréhendée exclusivement d'après des données relatives à la composition de la population scolaire, au degré de mixité intercommunautaire, à la structure du système scolaire et au contenu des programmes et des manuels d'enseignement. La grande erreur serait de déduire, de la recherche sur l'organisation, la sociographie de la population scolaire et le contenu valoriel des manuels, que l'école au Liban induit dans la réalité vécue des *comportements* compatibles ou incompatibles avec la tolérance, le dialogue et la convivialité. Tolérance, dialogue et convivialité par le canal de l'école sont des problèmes de *comportement* et donc, par essence, des problèmes *qualitatifs* qui exigent une observation directe et participative, à partir de témoignages vécus et de récits de vie.

La mono-appartenance communautaire du public scolaire et estudiantin, bien qu'elle limite l'interaction, le débat, la connaissance de l'autre et la confrontation créatrice, n'est pas l'unique indicateur de la convivialité, ni du degré de promotion d'une culture de concordance. D'autres indicateurs doivent être pris en compte, dont notamment la place de l'institution dans le champ du débat culturel dans le pays, l'existence ou non de discrimination par rapport aux élèves et étudiants, le contenu valoriel de l'enseignement et des travaux des élèves et étudiants, professeurs et chercheurs de l'institution, les motifs à caractère académique, confessionnel ou, au contraire, convivial qui commandent les implantations géographiques et les branches et le degré d'autonomie de l'institution et du corps enseignant par rapport aux forces politiques et au jeu politique communautaire.

Ce n'est pas l'appellation de l'institution, ni la composition communautaire dominante de sa population scolaire qui constituent les indicateurs *exclusifs* de communautarisation. A titre d'exemple, l'histoire de l'Université Saint-Joseph est celle de la lutte continue pour la promotion de l'unité dans la diversité et, surtout

durant les années de guerres (1975-1990), celle de l'acharnement à maintenir le campus à la rue de Damas et à le restaurer à plusieurs reprises, en tant que symbole de convivialité et de résistance civile. Détermination aussi à ouvrir des branches dans diverses régions pour contrer la ségrégation confessionnelle de fait instituée à Beyrouth par les barricades. Orientation aussi de la recherche scientifique à l'Université Saint-Joseph vers la reconstitution du tissu social libanais, notamment dans le cadre des recherches sur les déplacements de population et sur la réforme des programmes scolaires[34].

Dans quelle mesure l'enseignement religieux dans les écoles diffuse-t-il une foi chrétienne et musulmane, porteuse d'une spiritualité universaliste et conviviale plutôt qu'une mentalité confessionnelle, sectaire, exclusive et porteuse d'images altérées de l'autre ? Des récits de vie – certes incomplets dans l'état actuel de la recherche-témoignent de l'apport des grandes écoles communautaires au Liban à la promotion d'une culture de concordance, aux collèges Notre-Dame de Jamhour, Saint-Joseph d'Antoura, Congrégation des Sœurs des Saints-Cœurs, Frères des Ecoles chrétiennes, Makassed, Amlié…[35] Parmi tant d'exemples, je cite celui-ci : Wassef Harakeh, avocat, chiite, membre du Comité exécutif de la Fondation libanaise pour la paix civile permanente, rapporte qu'il suivait en classe de 3e les cours d'instruction religieuse chrétienne, alors qu'il avait la liberté en tant que musulman de ne pas suivre cet enseignement. Durant une leçon sur la foi, le prêtre enseignant s'arrête et demande aux élèves de la rangée droite de regarder par la fenêtre, en direction de la cour de récréation, puis à la rangée gauche de faire de même. Dans la cour, un ouvrier musulman avait étendu son tapis à l'heure de midi pour réciter sa prière. Le prêtre enseignant explique alors aux élèves : « *Voici la foi chrétienne* ! »

L'enseignement religieux provoque-t-il discrimination et ségrégation dans les écoles ? Des témoignages concordants et des récits de vie montrent que les élèves sont davantage influencés par les discours sectaires extrascolaires des partis politiques et des politiciens.

Le P. Camille Zeidan, ancien secrétaire général de la Commission épiscopale des écoles catholiques, souligne :

« La formation religieuse est adaptée à chaque établissement. Dans certaines de nos écoles, il existe 90% de non-chrétiens. Le problème est étudié en proportion avec le nombre des élèves et de leur confession.

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[34] Jean Ducruet s.j., *L'Université dans la cité*, Beyrouth, Université Saint-Joseph, 1995, 314 p.
[35] Bassam Tourbah, « La mission jésuite : valeurs et engagement », *L'Orient-Le Jour*, 24 fév. 2000.
Emile Joppin, *Le Révérend Père Sarloutte* (Une belle figure de missionnaire du Levant), Préface par le Général Weygand, Paris, La Colombe, 1956, 236 p.
Victor Hachem, *Antoura de 1657 à nos jours* (Une histoire du Liban), Antoura (Liban), 2003, 334 p.
Mémoire d'une école : L'Institution Saint-Anne des Sœurs de Besançon, Beyrouth, 1998.

« Là où les musulmans forment la majorité dans les classes, la formation religieuse prend une tonalité différente, notre objectif fondamental étant de former l'élève, abstraction faite de la confession dont il se réclame.»[36]

Le point le plus litigieux porte sur la ségrégation des élèves, partout unis dans une même classe et pour toutes les disciplines, en deux groupes segmentés lors de l'enseignement religieux, surtout au cas où le maître formule l'injonction aux élèves chrétiens ou musulmans de « sortir » de la classe. Moment décisif pour alimenter une image et une idéologie de la différence. Mais dans la plupart des cas au Liban, ce sont les élèves eux-mêmes qui optent, en accord avec les parents, pour le suivi ou non du cours d'instruction religieuse d'une religion qui n'est pas la leur, par curiosité, par désir de s'informer et de mieux connaître l'autre religion, ou par attachement à la méthode d'explication du professeur.

Sous le titre : « IV. Invitation au renouveau pastoral : La catéchèse », *L'Exhortation apostolique* relativise le rôle de l'école :

« La catéchèse doit d'abord être concrètement assurée par les *parents*, au sein de la famille, car ils sont les premiers éducateurs de leurs enfants. L'école tient aussi une place importante, quoique limitée ; en effet, elle ne peut assurer l'intégration du jeune dans sa tradition liturgique propre, car les élèves qui fréquentent les écoles appartiennent le plus souvent à diverses Eglises particulières. La *paroisse* aura donc la charge d'aider et de seconder les parents dans l'enseignement religieux, de favoriser l'intégration des jeunes dans l'Eglise locale et d'assurer aux adultes une catéchèse adaptée.»[37]

Sous le titre : « I. Le dialogue islamo-chrétien », *L'Exhortation apostolique* s'inscrit dans la perspective de promotion de la convivialité :

« Les chrétiens et les musulmans au Liban doivent trouver dans le dialogue respectueux des sensibilités des personnes et des différentes communautés la voie indispensable à la convivialité et à l'édification de la société.»[38]

A la suite d'une forte contestation, émanant non seulement des communautés chrétiennes, mais aussi de plusieurs personnalités musulmanes, le projet transmis au Parlement par le décret du 30/10/2003, en vue de l'adhésion du Liban au Pacte

[36] *La Revue du Liban*, 5 nov. 1994. Cf. les actes du colloque : « L'école catholique et le service de la foi », 2-4 sept. 1997, notamment l'intervention de Mgr Kyrillos Bustros : « Eclairage synodal sur l'éducation chrétienne dans une école pluriconfessionnelle ». Et témoignages : « Education chrétienne dans une école pluriconfessionnelle ».
[37] Jean-Paul II, Exhortation apostolique post-synodale, *Une espérance nouvelle pour le Liban*, Libreria Editrice Vaticana, 10 mai 1997, 180 p., no 71 et 72. En italique dans le texte.
[38] *Ibid.*, no 90. Dans une perspective musulmane : Dar al-Maqâsid al-islâmiyya, *Lubnân wa-l-tarbiya al-islâmiyya* (Le Liban et l'éducation islamique), Beyrouth, 5 vol., 1981.

de l'ISESCO (Islamic Educational, Scientific and Cultural Organization), a été retiré, texte qui stipule entre autres « la transformation de la culture islamique en pôle central de l'éducation à tous les niveaux et à tous les cycles », convention incompatible avec le Pacte libanais de coexistence et avec les principes élémentaires des droits de l'homme.

Dépolitisation du religieux et culture religieuse : Les options libanaises sont à la fois simples, complexes et pragmatiques, fruit d'une longue maturation historique qu'il est dangereux et fort coûteux de heurter ou de bouleverser. Elles se résument en trois points :

1. *Promouvoir une culture religieuse* : Le désir libanais de vivre ensemble ne s'est jamais effacé, malgré des années de guerres, dans une société où les différentes communautés se définissent par des paramètres religieux enchevêtrés. Il est particulièrement important qu'elles arrivent à se situer les unes par rapport aux autres sur le plan des croyances, des pratiques et des valeurs spirituelles profondes et partagées.

Laïcité de combat ? De neutralité ? D'ouverture ? Le Liban opte délibérément pour une laïcité d'ouverture en reconnaissant la place et la pleine légitimité du fait religieux en société, fait fondateur en quelque sorte de l'entité nationale libanaise.

Cette perspective n'est pas sans intérêt aujourd'hui au niveau international. Alors que des religions en mutation sont omniprésentes en politique et que des pouvoirs publics et des associations s'inquiètent du phénomène des nouveaux mouvements religieux, l'éducation dans nombre de pays continue à extrapoler les religions de l'opération éducative ou à les circonscrire dans des cours religieux spéciaux ou dans l'histoire ancienne, mais en les ignorant délibérément dans les cours d'histoire, de littérature générale et de formation morale et civique. La pédagogie répond alors par le vide à un profond problème de société.

La résurgence du religieux, les nouveaux mouvements religieux, les sectes et les intégrismes ne peuvent que remettre en question sur le plan pédagogique – et il s'agit ici de la pédagogie dite profane – l'idée d'une laïcité qui ne s'occupe pas de religion, l'excluant de l'étude générale des civilisations pour la restreindre, le cas échéant, à la catéchèse, ou pour la réduire dans des cours d'éducation civique à un problème général de tolérance et d'intolérance interreligieuse.

L'analyse des manuels scolaires de certains pays européens prouve qu'on peut arriver à une confrontation réaliste des différentes traditions religieuses, sans escamotage et sans jugement de valeur. Une chose est certaine : ce n'est pas en entretenant l'ignorance en matière de religion ou en répandant un enseignement complètement aseptisé que l'on arrive au mieux à développer les aptitudes au discernement, à la différenciation réaliste et à la pacification des relations.

L'exemple du Liban montre que l'ignorance de la réalité vécue, loin d'aboutir à son dépassement, entraîne son approfondissement dans la mémoire collective, faute de recul et de perception de sa dimension historique. A cause de la méconnaissance du fait communautaire dans les manuels scolaires d'histoire, des histoires confessionnelles sectorielles, et souvent légendaires, se développent dans l'inconscient libanais, alors que la relation historique et factuelle dépouille les idéologies confessionnelles de leur impact et contribue à la reconnaissance de la légitimité historique des communautés. Les syncrétismes, les globalismes intolérants et les totalitarismes ont souvent pour point de départ l'inculture religieuse[39].

2. *Dépolitiser le religieux dans le débat éducatif* : Le problème de l'enseignement religieux dans les écoles a suscité des débats polémiques et conflictuels surtout à partir de 1997, à la suite de la décision du Conseil des ministres de rendre cette matière facultative dans les écoles officielles et en fin de semaine, hors de l'horaire scolaire officiel, soit le dimanche pour les élèves chrétiens et le vendredi pour les élèves musulmans.

Comme le vendredi n'est pas au Liban jour de chômage officiel, cette perspective n'a pas manqué de susciter des appréhensions quant à la relance d'une polémique sur le chômage du vendredi[40]. On relève que quelques écoles musulmanes, contrairement à la tradition, n'ont pas chômé Noël[41]. Il a fallu alors rappeler l'obligation « d'observer le chômage durant les fêtes officielles »[42].

Le débat qui a suivi la décision du Conseil des ministres montre tous les dangers de politisation (ou plutôt de politification) de l'éducation. Profitant de la polémique, il en est qui ont réclamé « l'affectation d'une salle spéciale dans chaque école pour les activités religieuses et la prière » et « la consécration d'une épreuve de religion aux examens officiels »[43]. Le président de la République, M. Elias Hraoui, au cours de la cérémonie du démarrage du Plan de rénovation pédagogique, met un terme à la polémique :

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[39] Antoine Messarra, *La religion dans une pédagogie interculturelle* (Essai comparé sur le concept de laïcité en éducation et son application aux sociétés multicommunautaires), Francfort, Deutsches Institut fur Internationale Pedagogische Forschung, 1988, 136 p. Et commentaire sur ce travail de Pierre Erny, *Nouvelle revue pédagogique* , 1989, pp. 106-108.

[40] *an-Nahar*, 11 et 13 déc. 1995. Sur la polémique du chômage du vendredi, d'oct. 1972 à fév. 1973 : Robert B. Campell, « The Friday Holiday question in Lebanon », in *Cemam* (Université Saint-Joseph), no 1, 1972-1973, pp. 97-110.

[41] *an-Nahar*, 27 déc. 1997, p. 2 et les articles de Salwa Kandil, *al-Mustaqbal*, 5 août 1999 et Alaw Saada, *Al-Safîr*, 11 déc. 2001.

[42] *an-Nahar*, 28 déc. 1997, p. 2, et commentaire du ministre de l'Education, M. Jean Obeid, sur l'enseignement religieux facultatif, *an-Nahar*, 17 sept. 1998.Une présentation documentaire du débat polémique dans la presse par Paul Morcos, *ap*. Antoine Messarra (dir.), *Observatoire de la démocratie…, op. cit.*, pp. 239-247.

[43] Communiqué de huit associations islamiques, *L'Orient-Le Jour*, 1 oct. 1998.

« La liberté de l'enseignement ne signifie pas l'anarchie, ni que l'éducation est un luxe ou une marchandise (…).

« Nous voulons que l'éducation contribue à propager le respect de la légalité et à assurer le triomphe de la citoyenneté sur les dissensions confessionnelles (…).

« Il est absolument nuisible que chaque confession accapare un groupe d'élèves hors de la responsabilité de l'Etat et son contrôle, la responsabilité étatique étant exhaustive.»[44]

On comprendra alors pourquoi le retour au statu quo antérieur au Plan de rénovation pédagogique, fruit d'une longue maturation historique et d'une pratique à moindre coût, statu quo à la fois obligatoire sur le plan institutionnel, mais en fait souple, facultatif et libéral pour les élèves, les parents et les institutions, avec aussi la perspective d'un *manuel conjoint de culture religieuse*, sécurise la plupart des instances et circonscrit la polémique conflictuelle.

3. *Assainir le contenu de l'enseignement religieux en conformité avec l'exigence constitutionnelle de « respect »* : Beaucoup de travail reste à faire au Liban, situé dans une région où la dérive idéologique et dogmatique est facile et tentante. Mais les chances libanaises de traduire la synthèse libanaise islamo-chrétienne dans la pédagogie vécue est exaltante et hautement possible.

Or en pratique, dans nombre de situations et dans des manuels d'enseignement religieux, l'exigence constitutionnelle de « respect » est encore peu intégrée, mal comprise et doit être mieux mise en application. En outre, le dogmatisme ambiant fait croire que l'élaboration d'un manuel commun de *culture religieuse* qui expose avec authenticité les fondements des différentes religions, à la différence de *l'instruction religieuse* proprement dite avec sa composante de *foi* religieuse, est une opération complexe. Il faudra peut-être, dans une première étape, puiser de multiples exemples étrangers et les traduire en arabe, ce qui permettra de dépouiller le débat des endoctrinements, présupposés et polémiques endogènes[45].

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[44] Discours du président Elias Hraoui, Palais de l'Unesco, 29 sept. 1998.

[45] Cf. Dossier de culture religieuse, Rédaction René Berthier – M. H. Sigaut avec une équipe de professeurs de collège du diocèse d'Autun, Ed. Alcapré-Loché, 71000 Macon, France.
Tahar Ben Jalloun, *L'islam expliqué à ma fille*, Paris, Seuil, 2002, 96 p. Et dans la même série : Jacques Duquesne, *Dieu expliqué à ma fille,* Roger – Pol Droit, *Les religions expliquées à ma fille…*Cf aussi les hors série de la revue Pèlerin, *50 clés pour comprendre le christianisme ; 50 clés pour savoir, pour comprendre, pour vivre avec l'Islam ; 50 clés pour comprendre Jésus*…, Paris, éd. Bayard.
Cf. pour le Liban les programmes et publications de l'Association *Adyan* sur l'éducation interculturelle, de la Fondation libanaise pour la paix civile permanente, et du programme du Master en relations islamo-chrétiennes à l'Université Saint-Joseph.
Cf aussi : Hiam Mouannes, « L'enseignement des religions au Liban : Les épreuves d'une liberté », *Revue du droit public*, mai-juin 2010, pp. 789-806.

Pédagogie du dialogue islamo-chrétien au Liban aujourd'hui : Quelles sont les *priorités pédagogiques* pour la promotion de la *culture du dialogue* parmi les élèves des écoles, et plus généralement les jeunes libanais d'aujourd'hui, après des années de guerres et d'après-guerre ?

1. Culture d'immunité et de prévention : Oublier, mais se souvenir, afin que l'expérience des années 1975-1990 ne se répète plus.

L'histoire de ces années est douloureuse, mais aussi exaltante à travers la relecture de la résistance civile de la population, de la défense des libertés et de la souveraineté, des solidarités intercommunautaires malgré les démarcations…

2. Les réalisations communes intercommunautaires et transcommunautaires : Les jeunes ont besoin de mieux connaître et de vivre le Pacte libanais, toujours recommencé, expression du vivre ensemble et de gestion démocratique du pluralisme, dans un environnement ravagé par l'espace identitaire et par des risques d'exclusion.

3. Connaissance mutuelle : Pour concrétiser le Liban message de dialogue islamo-chrétien, il faut certes une connaissance mutuelle vécue, mais qui transcende le dogmatisme clos, le ritualisme, le savoir abstrait, pour aller vers le sens, la *foi* dont la source est une et universelle et dont les expressions sont multiples.

Il appartient aux Libanais de fonder une théologie plurielle qui réponde de façon concrète, originale et vivante, à la question : Qui est mon prochain ?

4. L'espace public commun et partagé : A l'encontre d'approches en vogue en termes d'identités et de communautés, c'est la culture de l'espace public transcommunautaire, commun et partagé, surtout dans un petit pays comme le Liban, qui forge l'unité et la solidarité, face aux menaces internes et externes de guerres pour les autres ou par procuration.

5. Des figures pionnières : C'est à travers des figures pionnières de bâtisseurs de ponts dans l'histoire du Liban, surtout l'histoire la plus récente, que les jeunes puiseront le courage, la détermination, les repères, et les modalités d'engagement.

6. Valeurs communes ou hiérarchie des valeurs ? La recherche sur les valeurs communes et partagées islamo-chrétiennes est inopérante, à défaut d'un travail

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A. Messarra, « La gestion du pluralisme religieux et culturel dans les jurisprudences constitutionnelles. Le Liban en perspective comparée », Conseil constitutionnel libanais, *Annuaire 2011*, vol. 5, pp. 99-173 et 93-106 (ccliban.org).

plus approfondi sur la hiérarchie des valeurs. C'est la hiérarchie des valeurs qui est source de conflit ou de concorde.

La recherche et la praxis sur la hiérarchie des valeurs a régressé dans un relativisme académique au nom d'un culturalisme à la mode.

5. Normativité du parlementarisme pluraliste et suprématie de la Constitution

Alors que le texte de la Constitution libanaise est fort explicite et normatif pour tout ce qui concerne la gestion du pluralisme religieux et culturel, avec des aménagements en parfaite conformité avec les principes fondamentaux et les normes universelles des droits de l'homme, et surtout en conformité avec les évolutions récentes en matière de diversité et de gestion démocratique du pluralisme, la gouvernance constitutionnelle au Liban, après des années de guerres multinationales (1975-1990) et d'après-paix et occupation, est dans quelques domaines en violation des principes fondamentaux.

Le régime parlementaire pluraliste libanais, pluraliste en ce sens qu'en plus des règles fondamentales du régime parlementaire classique, *il associe des processus à la fois compétitifs et coopératifs*, est perturbé par des pratiques visant, sur le plan intérieur, à camoufler le clientélisme sous couvert de « confessionnalisme » et, dans les rapports régionaux, à rendre le système constitutionnel ingouvernable, au moyen d'abus de minorité, ingouvernable sauf par le recours à une Sublime Porte[46]. Il ne s'agit donc pas de changer la Constitution, mais de l'appliquer en conformité avec le texte et l'esprit.

Il peut y avoir dans une société plurielle trois situations : situation où un groupe est fortement majoritaire (*majority situation*), comme à Chypre, celle où un groupe est proche de la majorité (*near majority situation*) comme en Belgique, et celle où tous les groupes sont minoritaires (*all minority situation*). Le dernier cas est celui du Liban où toutes les communautés sont des minorités et où donc toute majorité est, par nature, multicommunautaire. Il y a cependant le risque d'hégémonie d'une communauté sur ses membres pour provoquer, en contradiction avec la nature

[46] Pierre Copens, *L'abus de majorité dans les sociétés anonymes*, Librairie René Fonteyn, 1947.
Anne-Laure Champetier de Ribes-Justeau, *Les abus de majorité, de minorité et d'égalité,* Paris, Dalloz, 2008.
Ingrid Roy, *Le droit de participation des minorités à la vie de l'Etat : Exemples de solutions intégratives et autonomistes*, *Revista de Llengua*, Dret, num. 52, 2009, pp. 227-274.
Caroline Lantero, « L'impact de la reconnaissance institutionnelle des minorités sur la discrimination », *Revue du droit public,* no 3, 2009, pp. 817-851.
Franck Violet, *L'abus de minorité en droit des sociétés*, Université Catholique de Lyon, no 11, 2007, pp. 23-27.
Conseil de l'Europe, *Vivre ensemble* (Conjuguer diversité et liberté dans l'Europe du XXIe siècle), Rapport du Groupe de personnalités du Conseil de l'Europe, 38 p.

même de la société, et sous couvert de respect du Pacte national, un abus de minorité dont, finalement, le règlement relève d'une Sublime Porte externe. Remédier à la *pillarization* communautaire au Liban relève d'une législation électorale qui réduit l'emprise de chefs au sommet (*aqtâb*) sur leur communauté, emprise qui se répercute inévitablement sur l'extension des réseaux de clientélisme, de subordination et de violation quant à l'effectivité de droits fondamentaux et leur accessibilité.

Les mots ou plutôt les slogans de *confessionnalisme, sectarianisme, communautarisme*… ne sont pas des concepts scientifique, ni des catégories juridiques et constitutionnelles. Ces slogans, pourtant dans des recherches et des travaux académiques, aussi encombrants qu'inopérants, et surtout dans des discours et débats idéologiques, camouflent l'ignorance des modalités d'aménagement juridiques et constitutionnelles du pluralisme religieux et culturels dans nombre de sociétés aujourd'hui.

Le nation-building par un centre qui s'étend par la force à toute la périphérie et les systèmes concurrentiels de gouvernement ne sont pas exclusifs et les seuls normatifs. Les régimes parlementaires qu'on peut appeler pluralistes parce qu'ils associent des processus à la fois compétitifs et coopératifs ne sont pas hors-la-loi, mais régis par des normes de légalité. Leur étude comparative a commencé à émerger à partir des années 1970. La terminologie en langue étrangère, en parfaite conformité avec les normes de droit, a souvent été polluée par l'usage.

La réhabilitation des normes de légalité constitue ainsi un impératif prioritaire, la gestion par nature difficile du pluralisme ayant été agressée par les démarcations en 1975-1990 puis par une stratégie de manipulation par un pouvoir occupant pour rendre le régime ingouvernable.

L'alternance, les coalitions gouvernementales, les variantes du fédéralisme et les exigences de la participation dans l'administration publique et dans le système électoral apportent la preuve que les régimes politiques se classifient d'après les modalités d'application du principe majoritaire, principe universel pour des raisons pragmatiques, mais avec des aménagements variés. C'est la dimension juridique normative de ces régimes qui a été insuffisamment explorée à ce jour dans la recherche internationale. Le Liban constitue un cas fondateur[47].
Le Rapport 2014, pourtant en 118 pages, sur la situation des droits de l'homme au Liban, transmis à la Commission arabe des droits de l'homme de la Ligue arabe, se contente sous le titre : « Garantie de la liberté de pensée, de croyance et de

[47] A. Messarra, *Théorie juridique des régimes parlementaires pluralistes* (constitution libanaise et Pacte national en perspective comparée), Beyrouth, Librairie Orientale, 2012, 246 p.
Issam Sleiman, *al-Anthima al-parlamâniyya bayna al-nazariyya wa-l-tatbîq. Dirâsa muqârâna* (Les régimes parlementaires: Théorie et application. Etude comparative), Beyrouth, éd. juridiques al-Halabî, 2010, 456 p.

religion » de reproduire l'article 9 de la Constitution, sans autre explication ![48] Cela traduit l'incompréhension des normes juridiques et constitutionnelles de ce texte et, aussi, le tabou qui entoure un problème qui constitue le fondement du Liban et de son patrimoine de liberté et de pluralisme.

Le verset coranique, fort explicite dans ses implications : « Pas de contrainte en religion » (verset 2/256) est, dans cette même perspective de l'incompréhension ou du tabou, le plus souvent éludé dans les recherches et les débats. Pourtant le sujet est susceptible d'être amplement étudié à la lumière d'une grille d'analyse[49].

La politologie de la religion, c'est-à-dire l'exploitation de la religion dans la compétition politique, phénomène qui va à l'avenir s'étendre à la suite du recul des idéologies traditionnelles, est *distinct* des aménagements juridiques et constitutionnels des libertés religieuses et culturelles. Raymond Aron écrit, en 1944 : « Les mythes, les religions seront désormais maniées scientifiquement par des élites cyniques »[50].

Pour éviter de se pencher sur ce problème de la manipulation, des intellectuels et académiques dans le monde, avec toute l'apparence d'un souci de modernité et de modernisation, critiquent de façon absolue et idéologique ce qu'ils appellent le « confessionnalisme » et donc nombre d'aménagements pour la gestion du pluralisme religieux et culturel. Ils présupposent, idéalement, qu'un autre système jugule la politologie de la religion dans la mobilisation politique et la lutte pour le pouvoir. C'est la normativité et le respect de cette normativité dans la gestion du pluralisme religieux et culturel qui jugule et freine – et toujours dans des limites – la politologie de la religion, laquelle exige des investigations pragmatiques et de terrain par des chercheurs soucieux d'humanisme et de pacification par les religions et le droit.

La disposition finale du Préambule de la Constitution :

« j. Aucune légitimité n'est reconnue à un quelconque pouvoir qui contredise le pacte de vie commune », disposition qui prête souvent à des interprétations fantaisistes et tributaires des rapports de force en politique, son interprétation doit être circonscrite aux normes des régimes parlementaires pluralistes régis par les six art. 9, 10, 19, 49, 65, 95 de la Constitution.

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[48] République Libanaise, Ministère des Affaires étrangères et des Emigrés, Direction des organisations internationales, des congrès et des relations culturelles, Rapport présenté à la Commission arabe des droits de l'homme Ligue arabe, *Hâlat huqûq al-insân fî Lubnân* (Etat des droits de l'homme au Liban), sept. 2014, 118 p., p. 55.
[49] A. Messarra, "Les composantes de la liberté religieuse : Grille de recherche », *ap.* A. Messarra, *La gouvernance d'un système consensuel*, Beyrouth, Librairie Orientale, 2003, 600 p., pp. 281-285.
[50] Raymond Aron, *L'homme contre les tyrans,* Paris, éd. de la Maison française, 1944, 402 p., p. 21.

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Qu'est-ce qu'une identité (*identitas*, idem, le même) quand elle est fermée, cloisonnée ? Quand elle n'est pas le fruit de l'échange ? C'est le chauvinisme, le fanatisme. Le Liban est l'exemple de la formation d'une identité à la fois une et plurielle faite du dialogue de la vie au quotidien, de l'expérience commune et partagée, de la confrontation et du conflit et qui débouchent sur des compromis pour le vivre ensemble. « Le compromis, disait le sociologue allemand Georges Simmel, est la plus grande invention de l'esprit humain. » C'est à travers l'autre que chacun découvre sa singularité, se découvre lui-même et, en même temps, découvre l'autre ou ne le découvre pas.

La connaissance, et surtout la reconnaissance mutuelle, produit une synthèse originale. C'est le Liban. En tout Libanais, culturellement, il y a un maronite, sunnite, druze…, une personnalité nationale bien identifiable, avec des caractéristiques communes. Il faudra désormais appréhender l'identité dans le vécu d'un peuple, à travers le mode de vie, les chansons, les habitudes, la gastronomie… Le Liban est le pays du *mezzé* aux plats multiples et harmonieux, sous condition cependant de ne pas boire trop d'*arak* (boisson alcoolisé à l'anis) et nourrir des rêves suicidaires de supériorité, d'homogénéité et d'hégémonie. L'expérience douloureuse des guerres multinationales au Liban en 1975-1990 débouche, doit déboucher, sur une sagesse nationale, une libanité enfin pleinement assumée dans un environnement hostile où prédomine l'idéologie sioniste de l'espace identitaire et un autre environnement ravagé par des idéologies d'exclusion, des « identités meurtrières ».

SUMMARY
Religious Freedoms in Lebanon Current Situation, Constitutional and Prospective Guarantees

3rd June 2015

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Current world problems related to the democratic management of religious and cultural pluralism have always been part of the Lebanese daily life. Lebanon has a secular accumulated experience, as well as constitutional, judicial and socio-cultural arrangements with positive and negative levels of effectiveness.

As a small nation in a hostile environment or in the best-case scenario, a nation in a democratic transition, Lebanon is in fact in the heart of three big international issues today: interreligious and intercultural dialogue and its effectiveness, efficiency of the power-sharing system or parliamentary pluralism system, and fate of small nations in the international system.

The management of religious and cultural pluralism in Lebanon is governed by six articles provided in the Lebanese Constitution of 1926 and its amendments by

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Award of the President Elias Hraoui: The Lebanese Pact, 2007.
Award of Fondation Mgr Ignace Maroun, 2015.
For the details, see the integral text with references, in French, 31 p.
Executive Summary translated from French to English by Marie-Thérèse Zahr.

virtue of the Pact of National Agreement, known as Taëf, of November 21, 1991. These articles are the articles 9, 10, 19, 49, 65 and 95.

1. Personal Federalism of art. 9 and 10: Personal Status, Optional Civil Status and Mutual Respect

Articles 9 and 10, the fruit of a tradition that lasted for several centuries, acknowledge the right of the different communities to manage their personal status (art. 9) and to have their schools "provided they follow the general rules issued by the state regulating public instruction" (art. 10). These articles, in continuity with the long Ottoman tradition dating back to more than four centuries of pragmatic management of religious and cultural pluralism in the Ottoman Empire, are in perfect conformity with the philosophy of law in Islam. On one hand, the Muslin law is personal, which means that it does not apply to non-Muslims the same legal prescriptions that it applies on Muslims, and therefore recognizes the eventual existence of several legal systems in society, unlike the occidental legal tradition.

The personal federalism of articles 9 and 10 provides three fundamental guarantees:

1. It governs the freedom of personal statuses and of education without displacing the population (people engineering), genocides, extermination or forced integration.

2. It guarantees the equality between the systems of personal status, unlike the situation in other Arab countries because no personal status in Lebanon dominates the other in case of law conflict. While in other Arab countries, the Muslim law is considered of public order.

3. It establishes higher regulatory bodies that are, in personal status, the Court of Cassation which makes a final decision in case of law conflict and in education, the general prescriptions of the state on education, the official exams and the recognition and equivalence of diplomas.

It is not about renouncing personal federalism, but about going through at least four of its normative implications:

1. First, personal federalism should become egalitarian. It is egalitarian in Lebanon, i.e. in case of conflict between two personal statuses; no status dominates over the other. In other Arab countries, in case of conflict between laws of personal status, Islam is considered of public order. We notice the demonstrations in Egypt and other countries that required egalitarian personal statuses.

2. Personal federalism should be also modernized through making it open. The Decree 60 LR of March 13, 1936 during the French mandate provided the creation of a community of common right. This type of community also existed in ex-Yugoslavia and Greece. This leads to the possibility of not belonging to any community.

3. In personal federalism, there should be high regulatory court. In Lebanon, this court is the Court of Cassation which makes the final decision.

4. A neutral public space, which is a cross-community and not an anti-community, should be also developed in public politics; belonging to a community is not necessarily less legitimate than belonging to a party or a syndicate.

Violations or sometimes deficiencies in guarantying religious freedoms in Lebanon reside in the three following facts:

1. The non-application of the Decree 60 LR of March 13, 1936 of the High Commissioner De Martel: Those who do not belong to any community or want to abandon their birth community can join the non-community society, not only in the case of marriage, but also in all cases of familial status, including succession law.

2. The creation of school and university institutions that belong to communities have historically promoted cultural and egalitarian development between communities. The recent proliferation of educational institutions risks communitarizing education despite the normative legislative conditions via the Ministry of Education and Higher Education.

3. The legal avoidance of personal status and law of succession concerning communitarian systems is broadening significantly.

The creation of an optional civil status makes the Lebanese Law in conformity with the fundamental laws the Lebanese Government has committed to in the Preamble of the Constitution and international treaties.

1. The main provisions that contradict the fundamental laws are: The obstacles due to differences in religion or confession, such as marriage between Muslims and Druzes, which cannot be celebrated in Lebanon. This banning of mixed unions forces formal religious conversions before the marriage, which contradicts the freedom of conscience guaranteed by the Constitution.

2. The principle of equality between all people before the law, guaranteed by the Constitution, is unrecognized by sexual or religious discrimination: inequality between the spouses in a marriage, parental authority, child custody, gender inequality regarding succession, prohibition of inheritance between Muslims and non-Muslims …

3. The practices before religious courts, especially regarding marriage annulation, are violations to the right of fair trial guaranteed by art. 14 of the International Covenant on Civil and Political Rights.

4. The freedom recognized by art. 9 in the Constitution is not completely guaranteed because individuals who join unrecognized communities or atheists, agnostics, and free thinkers who want to enter into a mixed Islamo-Christian marriage and who have abandoned their community and have not joined any other community, do not have any status. Admittedly, the Lebanese have been authorized to cancel any indication of their community on their Civil Status Record. However, these individuals find themselves without status every time their rights and obligations depend on their belonging to their community: marriage, filiation, succession…, without taking into account the participation in the political life or the nominations of Grade One posts.

5. The draft law of April 2010 on the protection of women against domestic violence encountered the opposition of Sunni courts, which consider art. 26 a threat to their competence concerning marital relations.

It can be concluded from these examples that it is not the principle of personal federalism which should be contested, but the fact of not going through its normative implications.

An incomplete progress has been registered since the marriage of Khulud Hassib Sukariyye and Nidal Darwish, confirmed by the contract made on November 2, 2012 before the notary Joseph Bshara at Chiah. Will this contract concluded in Lebanon be legitimately registered at the Civil Status Registrar of the Ministry of Interior?

On December 4, 2015, 54 civil marriage contracts concluded in Lebanon, with 27 of them before the notary Joseph Bshara, are currently before the Council of Ministers.

Adopting an optional civil status implies partial changes in the development of political participation, especially at the level of electoral representation.

Nevertheless, in some social practices, there is a violation of "respect" (art. 9 of the Constitution). Respect is *mutual*, or else it becomes imposition. This is the case in some certainly limited cases in Lebanon nowadays, where in certain regions under the hegemonic influence of a community; there are some violations that are incompatible with the absolute character of the freedom of belief:

1. *Catering:* The imposition of closing restaurants during Muslim lent (Ramadan).

2. *Alcoholic Beverages*: The refusal of offering alcoholic beverages at all times.

3. *Veil*: The imposition of wearing a veil and even the organization of official and collective ceremonies in some schools promoting the importance of wearing the veil.

4. *Posting in public spaces*: Religious banners and symbols, especially at the entrance of streets and boulevards, represent new communitarian demarcations of the area, specifically in Lebanon, where there are Muslim and Christian regions almost everywhere that translate Lebanon's identity. Taking into consideration that posting such banners occasionally during big events are in perfect conformity with the Lebanese customs and traditions.

5. *Daily conviviality*: Refusing to participate in a meal or even to sit at a table where an alcoholic beverage is served (certainly without propensity to alcoholism and debauchery) is an incompatible imposition to the mutual respect requirement. This leads in Lebanon to a rupture with ancestral habits of daily human relationships and to the exclusion of some guests from other communities with whom they share friendly or professional strong relationships to participate in some social events.

2. Political Participation or Positive Discrimination of the art. 95: Equality in Practice, Parity, and Single Electoral College

A number of notions are used to designate the quota rule: positive discrimination, *affirmative action*, positive action, corrective action, compensatory inequality… The notion of discrimination, its Latin origin being *discriminatio*, should not necessarily hold a negative connotation because it denotes the analytic operation of distinguishing between different facts. Constitutions and constitutional jurisprudences use the terms: positive measures (Swiss), positive actions (translation of the Italian expression "*azioni positive*"), compensatory measures, corrective inequalities, or a more neutral expression: positive differentiated treatment.

The system of the Islamo-Christian parity (*munasafa*) in the representation, adopted in the Pact of National Agreement of Taëf and by virtue of the constitutional amendment of September 21, 1990, aims at consolidating the Islamo-Christian character of Lebanon and at putting an end to the inoperative demographic polemics in a country where all communities are minorities.

Nonetheless, under the cover of communitarian representation, the rule of the proporz or the quota is violated to cover clientelism, with the benediction of intellectuals and academics who ideologically incriminate the "confessional system" while this system, despite its imperfections, is not an outlaw.

In the electoral representation, the principle of Single Electoral College, enshrined by Decree no 1308 of March 10, 1922 and by virtue of which, different community electors elect different community candidates, favors cooperation. Therefore, the competition becomes *intra-communitarian* and not inter-communitarian.

The competitive government system risks *not* representing the minorities, but the power-sharing system, which guarantees representation, risks misrepresentation of the minorities through a purely quantitative representation.

As for the separated electoral colleges, they all turn the nature of the system upside down.

3. Judicial and Constitutional Protection of Religious Freedoms

The courts, before which proceedings are brought regarding the freedom of expression over religious problems, have always defended the freedom of belief and expression.

The new article 19 of the Constitution gives the legally recognized community leaders the right of referral to the Constitutional Council regarding some issues according to art. 9 and 10, in order to further protect religious freedoms.

4. Religion at School: Freedom and Debate

In a country with eighteen officially recognized religious communities that enjoy secular traditions of conflict and consensus, there was never a "school quarrel" about school secularism or religious education at school. There were highly polemic and conflictual moments, but the debate was always quickly circumscribed in its educational dimension. Therefore, the problematic of religion in schools is central in Lebanon. It aims at consolidating civil peace through an authentic and non-stereotyped mutual knowledge of religions and more generally, the contribution of religions in a peace culture.

The debate of religious education in Lebanese schools has gone through four big stages from an institutional point of view, from 1968 until now. It is not the name of the institution or the dominant communitarian composition of its school population that constitute the exclusive indicators of communitarization.

In what measure does religious education in schools spread Christian and Muslim faith? A faith that holds a Universalist and friendly spirituality rather than a confessional, sectarian, exclusive mentality that holds altered images of others. Life stories witness the relation between big Lebanese communitarian schools and the promotion of a culture of national agreement.

The most litigious issue is student segregation; joined in the same class and for all disciplines everywhere, divided into two segmented groups during religious education, especially when the teacher summons the Christian or Muslim students to "leave" class. A decisive moment to fuel the image and ideology of differences. However, in the majority of cases in Lebanon, the students themselves, in agreement with their parents, opt for attending or not religious instruction of one of the religions to which they do not belong. Their decision is based on curiosity, desire to learn and better know the other religion, or on attachment to the teaching method the instructor uses.

Research about the common values between Islamo-Christians is inoperative for want of a more profound study of the hierarchy of values. The hierarchy of values is the source of conflict or harmony.

Research and praxis concerning the hierarchy of values have regressed in an academic relativism in the name of *trendy* culturalism.

5. Normativity of Pluralistic Parliamentarism and Supremacy of the Constitution

The Lebanese pluralistic parliamentary system - pluralistic in terms that, in addition to the fundamental rules of the classical parliamentary system, *it combines competitive and cooperative processes at the same time* – is troubled by practices that aim, at the level of the interior plan, at camouflaging clientelism under the cover of "confessionalism". These practices also aim, in regional relations, at making the constitutional system ungovernable through the uses of minority powers, ungovernable except for appealing to a Sublime Porte. Thus, it is not about changing the Constitution, but about implementing the text and the spirit in conformity.

The words or rather the slogans of *confessionalism, sectarianism, communitarism…* are not scientific concepts or judicial and constitutional categories. These slogans, although they are in researches and academic studies, reveal to be inconvenient

and inoperative, especially in speeches and ideological debates, camouflage the ignorance of judicial and confessional development modalities of religious and cultural pluralism in a number of societies today.

The Report 2014 of 118 pages about the situation of human rights in Lebanon, transmitted to the Arab Commission of Human Rights in the Arab League, simply reproduces art. 9 of the Constitution under the title: "Guarantee of the freedom of thought, belief and religion", without any further explication!

The final provision of the Preamble of the Constitution:

"j. There shall be no constitutional legitimacy for any authority which contradicts the pact of mutual existence",

A provision that usually leads to fanciful and different interpretations of the power relations in politics, whose interpretation should be circumscribed in the norms of pluralistic parliamentary systems governed by the six articles 9, 10, 19, 49, 65, and 95 of the Constitution.

Religious freedom in Israel

3rd June 2015

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Index

The research was made possible through a grant from the Cegla Center for Interdisciplinary Research at Tel-Aviv University Faculty of Law.

1. Introduction

The approach to religion in the State of Israel is inherently eclectic, combining traditional and new theories, freedom from religion and religious coercion, freedom of religion from state intervention, communal and individual rights, and equality among religions and differential treatment of them. These principles are rooted in historical, theological, political, and national grounds. Perhaps the most significant factor contributing to this complexity is the unique role of this part of the world—the "Holy Land"—as the birthplace of the three main monotheistic religions. Moreover, while contemporary Israel is predominantly Jewish in culture and religion, the principles and practices of previous regimes that governed the Holy Land still have their influence.

2. Religious Sociology

On the eve of its 67th anniversary (April 2015), the population of Israel (including the Golan Heights and territories annexed to Jerusalem after the 1967 war) totaled 8,345,000 people. By religious affiliation, 74.9% (6,251,000) were Jews (including Israeli settlers in the West Bank, known also as Judea and Samaria) and 20.7% (1,730,000) Arabs.

At the end of 2013 the population of Israel totaled 8,134,500 people. By religious affiliation, 75.04% (6,104,500) were Jews, including Israeli settlers in the West Bank; 17.46% (1,420,300) Muslims; 1.97% (160,900) Christians and 1.63% (133,400) Druze (including residents of the Golan Heights). In addition, there were *179,882* foreign workers. There were also some *46,437* illegal immigrants from Africa, mainly from North Sudan and Eritrea. In spite of the substantial Jewish immigration to Israel the percentage of Arabs grew from 18% at the establishment of the State of Israel to 20.7% in 2014. This is due to several reasons such as the annexation of East Jerusalem in 1967 and the influx of Palestinians into Israel. Another major source of this growth is the difference in birthrate between the different groups: while the total growth of the Israeli population in 2013 was 1.9%, the growth of the Jewish population was 1.7%, the Muslim growth was 2.4%, and the growth of the Christian population was 1.6%. This tendency is expected to continue in spite of a slight drop in the birthrate among the Arab population. It is expected that by 2035 the Jewish population will drop by 1.74-2.04% and constitute 73.0-73.3% of the total population. At the same time the Arabs will constitute 22.8-23.0% of the population. According to the Israeli Central Bureau of Statistics, the Muslim population will grow to 19.9-20.0% of the population while the Christian Arabs will decrease to 1.3-1.4%. The Druze population will grow to 1.6-1.7% of the total population.

Among the Jewish population in Israel age 20 and above, 43.9% defined themselves as not religious, 36.2% as traditional, 9.9% as religious, and 9.4% as Ultra-Orthodox (the figures are correct for the end of 2012).

Alongside the Jewish population there are two small communities: the Karaites, a movement which adheres to the written Torah and rejects oral, or rabbinic, law, and the Samaritans, an ethno-religious group that identifies their religion as the authentic religion of the ancient Israelites. According to Rabbinical approach the Samaritans originated from a mixture of the people living in Samaria and other peoples at the time of the conquest of Samaria by Assyria (722–721 BC). Leading Rabbinical sources hold that they converted to Judaism yet regard them as apostates having re-converted from the Jewish fate or having adopted foreign believes. As such they are not allowed to marry Israelites before they relinquish their believes. However, if a Samaritan marries a Jewess she must obtain a *get* [Bill of Divorce] in order to terminate their marriage. This is so since according to *Halakha* a Jews cannot relinqish their religious affiliation. The Karaites do not perform census of the members of the community. The Israeli government decided to support the community financially according to an estimate of 31,200 people. The size of the Karaite population worldwide is even less accurate and the estimate is that their numbers are between 4,500 and 18,000 (the figures being accurate for April 2015). The Samaritans who numbered *circa* two million at the beginning of the 5th century consist today of only 760 (the figure being accurate for May 2014).

While most of the Muslims in Israel adhere to the Sunnite rite, the Muslim population in Israel includes various denominations. Out of the four schools of faith within Sunnite Islam, the Shafi'i *mazhab* is most common among rural Muslims while the Hanafi *mazhab* is prominent in urban areas. The latter is also followed in the State-recognized Sharia religious courts.

Most Muslims are Arabs. There exists, however, the Ciracssian community whose origin is the Caucasus who are also Sunnites. There are some 4,000 Circassians living in Israel (April 2014). Unlike the Arabs, who in general do not enlist in the Israeli army, Circssians do enlist. Another non-Arabic sect is the Ahmedans, whose origin is in Punjab, India. Their Middle-Eastern center is located in Haifa. Currently there are some 1,500 Ahmedans living in Israel (the figure being accurate for June 2014). Two communities which stem from Islam and are no longer considered Muslim are the Druze community, with approximately 133,400 members, and the Bahá'í faith, which includes approximately 650 members, most of them foreign citizens who serve in the community's institutions. Many of the Muslims in Israel live in villages. There are also towns with large Muslim populations, and a few mixed Jewish-Arabic townships. The Muslims live mainly within traditional communities and are characterized by strong religious sentiments that might have been strengthened via nationalistic motivation. There are also religiously

fundamentalist political movements, such as the Islamic Movement, which combine religious fundamentalism with nationalistic ideology. The Islamic Movement gained strength and heads the local councils in some of the largest Arab settlements. It's southern more moderate section is also represented by 3 members in the *Knesset*, the Israeli parliament. The number of Christians and Christian churches grew substantially following the 1967 War and the unification of Jerusalem under Israeli rule. The Christian population of Israel, which is mostly ethnically Arab, is divided into some 35 different churches and denominations, despite its relatively small overall numbers. This variety should not be surprising due to the central role of the Holy Land in Christianity and the vast number of holy Christian sites in Israel.

The various churches may be classified into four main groups: the Catholic churches, with the largest number of adherents; the Orthodox churches, the most important of which is the Greek Orthodox; the Monophysite, or pre-Chalcedonian churches, who originated in the 5th century following a theological split regarding Christ's nature; and the Anglican Church which is relatively new in the Holy Land and dates back to early 19th century.

There are several estimations as to the division of the Christians among the various churches but no exact figures are available. The largest churches are the Greek Catholic and the Greek Orthodox, each including close to one third of the Christian population (according to Jerusalem Center for Jewish-Christian relations ("JCJCR"), more than 70% of the Christian population is either Greek Catholic or Greek Orthodox). Another large community is the Latin (Roman Catholic) Church (15%). Next, though much smaller, is the Maronite Church (8%). Other Christian denominations have a rather small numbers of followers, in some cases no more than a few dozen, and in some cases even fewer - Jehovah's Witnesses, Seventh-day Adventist Church followers, Baptists, Mormons, Quakers and Lutherans. Israel also includes representatives of several overseas churches, which do not enjoy a local following – Assyrians, Coptic Orthodox, Presbyterians. In the past years dozens of churches opened to serve the foreign workers and illegal immigrants currently in Israel. Note: the majority of the figures mentioned above regarding the various religions were officially published, and some were provided by the community leaders, who stated that it is difficult to provide accurate and reliable figures.

3. Historical Background

A key to understanding the contemporary relations between the different religions and the State of Israel is the *status quo*, the preservation of the existing relations between church and state, which stems from the legal position laid down during the Ottoman era, and continued mostly unchanged during the British occupation of Palestine.

The Ottoman Empire sponsored a differentiation between Muslim and other religious groups. As Islam was the established religion of the Ottoman Empire, Muslim religious courts enjoyed the status of state courts and applied Muslim religious law, the Sharia, in the area of personal status, being family law in its broad sense. Meanwhile, non-Muslims were divided between religions based on the Sacred Book (the *Kitabaia*), namely Jews ("The People of the Book", as they had been called by Mohammad) and Christians, and "the heathens". With respect to the former, the Turkish Sultan adopted a system of *millet* or "nation", granting recognized religious communities organizational autonomy and jurisdiction in matters of personal status, according to the religious law of the community.

The community-oriented jurisdiction in the area of personal status was preserved by the British Mandate, according to the Palestine Order in Council of 1922, which applied personal law and communal jurisdiction. The statute recognized 11 religious communities which had been established and were exercising self-jurisdiction during the Ottoman rule over Palestine. These were: the Muslim community, the Jewish community, and nine Christian churches: the Eastern (Orthodox) Community, the Latin (Catholic) Community, the Gregorian Armenian Community, the Armenian (Catholic) Community, the Syrian (Catholic) Community, the Chaldean (Uniate) Community, the Greek (Catholic) Melkite Community, the Maronite Community, and the Syrian Orthodox Community.

The Palestine Order in Council assured the various communities full autonomy in their internal affairs subject to any future enactment. It further conferred upon the recognized communities the exclusive jurisdiction over the constitution and internal administration of religious endowments (*wakfs*). Under the British rule the Muslim courts ceased to serve as state courts, yet they still enjoyed a much wider jurisdiction than that of the Jewish and Christian courts.

As mentioned, the Karaites movement adheres to the written Torah and rejects oral, or rabbinic, law. For this reason they cannot use the rabbinical religious services and the rabbinical courts in particular. Although the Karaite movement is not recognized by the state of Israel, throughout the years the Karaites were allowed perform marriages and grant a divorce by their religious court. Although the function of the court is without any legal basis, this procedure was recently approved by the Supreme Court until an appropriate law is passed by the *Knesset* (*Shemesh Case*).

4. Constitutional Provisions

Upon the establishment of the State of Israel a Constituent Assembly was elected with the task of drafting a constitution for the State. The Assembly prematurely dissolved transferring its authority to the *Knesset*, which acts both as the legislative body of the State and as its constituent assembly. The *Knesset* drafted to date only

selected chapters of the constitution. In the area of human rights merely two chapters including human dignity and liberty and freedom of occupation. No provisions regarding freedom of religious were enacted. The common understanding, however, is that this freedom should be inferred from the right to human dignity. The Supreme Court stated that human dignity reflects the humanity of a person as a human being. Human dignity as a constitutional value is a person's free will and the autonomy of that will. Human dignity as a constitutional right is a framework right or a "mother-right", which includes a bundle of "daughter-rights" which reflect the various aspects of the mother-right. These "daughter-rights" include freedom of expression and freedom of conscience and religion. The Supreme Court ruled that freedom of religion encompasses the liberty of the individual to believe and to act according to his faith. It includes as well the right to convert to another religion and the right to preach and spread it, as well as the right not to belong to any religion and not to be subject to religious coercion (*Chief Justice Barak*).

Two other documents of constitutional value should be mentioned. The first is sec. 83 of the Palestine Order in Council, enacted by the British Mandate and adopted by the State of Israel:

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

The other document is the Declaration of the Establishment of the State of Israel. In its relevant part the Declaration states:

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

The Declaration has always been accorded normative value. However, in 1994 it has been elevated to a constitutional value, as Basic Law: Human Dignity and Liberty has been amended to declare:

Fundamental human rights in Israel are founded upon recognition of the value of the human being, the sanctity of human life, and the principle that all persons are

free; these rights shall be upheld in the spirit of the principles set forth in the Declaration of the Establishment of the State of Israel.

5. Change of Religion and Procelytizing Religious Organizations

It would be appropriate to start our plight into the issue of proselytizing religious organizations within the State of Israel at the Vatican on January 26, 1904. Theodor Herzl, founder of the Zionist Movement who is regarded by the Israelis as Visionary of the Jewish State is on his way for an audience with Pope Pius X. This is going to be one of several meetings with world leaders seeking their support for the Zionist effort to establish a Jewish state in Palestine. Herzl is in an optimistic mood. He just met with King Vittorio Emanuele III who expressed positive interest. Yet Herzl knows that the Pope's support is by far more important. Yet Herzl gets a cold shoulder. "The Jews" reprimands the Pope "have not recognized our Lord, therefore we cannot recognize the Jewish people". Distressed Herzl pleads: "But, Holy Father, the Jews are in terrible straits. I don't know if Your Holiness is acquainted with the full extent of this sad situation. We need a land for these persecuted people." Yet the Pope is assertive: "Gerusalemme must not get into the hands of the Jews", and he warns: "If you come to Palestine and settle your people there, we shall have churches and priests ready to baptize all of you." (*Patai*).

The approach of the Jews in Israel toward Christian missionary cannot be detached from their bitter history with the Catholic Church - the persecutions, forced baptism and expulsion. Neither can it be detached from the role of baptizing the Jews in Christian theology. When taking into consideration this historical background one should not wonder that the popular sentiments among Jews disfavor missionary work. Jews are even more offended by missionary work done by Jews such as the Messianic Jews or Jews for Jesus who are most active in trying to get Jews converted to Christianity. On top of the principled objection to their work there is popular resentment to their means. These include misrepresentation such as pretending to propagate the Jewish religion while attempting to proselyte. They are also blamed of taking advantage of people's poverty to convince them to convert.

The legal background of missionary activity in Israel regarding proselytism is rather clear. There is full freedom of conversion and of soliciting conversion. However, in 1997 the Penal Law was amended adding a provision regarding pecuniary remuneration in order to induce a person to change his or her religion. These provisions prohibit both "giving or promising money, valuable consideration or another material benefit in order to entice [a person] to change his religion to cause him to entice another to change his religion" and accepting or agreeing to accept the same. While the former is liable for up to five years imprisonment, the latter might face three years imprisonment.

These provisions are consistent with international norms – *e.g.* Article 18(2) of the 1966 Covenant on Civil and Political Rights, which prohibits coercive acts that impair freedom to change one's religion. An argument was raised that granting material benefits as an inducement to change a religion impairs freedom of choice to have or change religion (*Hirsh*). Additionally, due to the sensitivity of the matter prosecution under the said provisions needs prior authorization by the Attorney General. As a matter of fact no charges were ever filed under these provisions.

Several private bills have been submitted to Israel's Parliament, the *Knesset*, to criminalize missionary activities. These bills provided that the dissemination or distribution of materials, which constitute solicitation to change a religion, or even the preparation, import and possession thereof constitute a criminal offence punishable by law. In addition any such material should be confiscated. However, these bills were never enacted.

The Capacity and Guardianship Law enables to change the religion of a minor to that of his or her parents or one of them. It prohibits the change of the religion of the minor without the consent of both parents or of the court if one of the parents objects. If the minor has reached the age of ten his or her consent is required on top of that of the parents or the court. Conversion contrary to the said provisions has no legal effect and the person performing such conversion is liable to imprisonment for a term of six months. Instigation of a minor, by directly addressing him, to change his religion is as well a criminal offence.
The Adoption of Children Law conditions the adoption on the adopter belonging to the same religion as that of the adoptee. It enables however to change the religion of a minor to that of the adopter if the minor has lived in his household with a view to adoption in the year preceding to the filing of the application for the change of religion and the court is satisfied that the change of religion is necessary for the adoption of the minor.

The issue of religious affiliation is relevant since many aspects of personal law applicable to Israeli citizens are based on their religious affiliation.

Change of religion may be registered with the Population Registry upon an application by the concerned person. In one case registration is necessary in order to give legal effect to the conversion. This is the case where a person changes his religious community, namely moves from one recognized religious community to another. This procedure is relevant for adjudication in family matters. The registrar, a state employee, has no say in the procedure itself and merely registers the certificate granted by the head of the accepting religious community attesting that the conversion conforms to the religious requirements of that community. Converting from one religious community to another may have some practical consequences. Thus, a couple that belongs to a religious community which does

not recognize the institute of dissolution of marriage may mutually convert to another religion in order to enable the termination of their marriage.

In a peculiar case the Family Court ordered a wife to pay her husband damages for frustrating the husband's suit for divorce. Since the couple belonged to the Maronite community divorce was not open to them. The court held that the wife should convert "temporarily" in order to effectuate the divorce and then return to the Maronite community. In rendering its decision the court noted that the wife's refusal to do so had not been generated by religious reasons but rather by her refusal to grant her husband the freedom to remarry. The decision was overruled. The Court of Appeal declared that "obviously a court cannot force a person to act contrary to the rules of his religion".

Missionary activities are widespread in Israel. Yad L'Achim (Heb.:"hand for brothers") an Orthodox Jewish organization engaging in counter-missionary activity argues that over 100 missionary congregations and cults are currently active in Israel. Yad L'Achim fights unsuccessfully against letting public halls for their activities. In one case, the Supreme Court ordered the Municipality of Tiberias to grant a permit to a group, which included Christians and Messianic Jews, to open an audio visual center at the Lake of Galillee. At the center a sound and light show would be presented showing, inter alia, the life of Jesus. The Supreme Court harshly condemned the attitude of the municipality, which "raises grave concern and presents a gloomy picture of the behavior of the municipality representatives." *(Galilee Case)*. Recently the Supreme Court upheld a decision that a local authority may not cancel an agreement to lease its sport center for an event of the Jehovah's Witnesses (*Raanana Municipality Case*). This decision followed a petition by Jehovah's Witnesses to prohibit the municipality from refraining to lease its halls to them "due to their religious affiliation and viewpoint."

Furthermore, there is a peculiar arrangement regarding the activities of the Mormon Church in Israel. The Israel Land Authority leased State land to Brigham Young University to establish a Center for Near Eastern Studies in Jerusalem. This agreement was met by fierce opposition by the Orthodox community in view of the central role of proselyting in the Mormon creed. This concern led Brigham Young University, The Church of Jesus Christ of Latter-day Saints, and BYU's Jerusalem Center for Near Eastern Studies, to expressly assure the State of Israel that "no member of the Church, nor anyone affiliated with the University or participating in a University-sponsored program will engage in proselytizing of any kind within Israel and Palestine (the West Bank and Gaza)." In a letter addressed to the Israeli Government the Church of Jesus Christ of Latter-day Saints made a commitment that "it will not contradict the educational and cultural values of Israel [including missionary activity] within the borders of Israel as long as such activity is not allowed by the government of Israel."

6. Holy Places and Places of Worship

Some of the most sacred sites of Judaism, Islam and Christianity are in Israel; just to mention a few – the Temple Mount, the Western Wall and the Church of the Holy Sepulcher. Several sites are sacred to more than one religion or religious stream, causing bitter disputes over the control and access, disputes which are not always amenable to rational resolutions.

The Treaty of Vienna of 1858 confirmed the *status quo* of the Holy Sites in Palestine and the British adopted this policy. Moreover, in 1924 they enacted the Palestine (Holy Places) Order in Council, which provided that "no cause or matter in connection with the Holy Places or religious buildings or sites in Palestine or the rights or claims relating to different religious communities in Palestine shall be heard or determined by any court in Palestine." The intention was to establish a special committee which would deal with these matters, yet such body has never been constituted, whereas this authority is bestowed upon the government under its residual powers. Though Israeli courts limited the scope of this provision it is still valid. Even where the jurisdiction of the courts is undisputed they refrain from intervening in matters pertaining to religious sites. Thus, the Supreme Court declared numerous times the right of Jews to enter Temple Mount and pray there yet it never intervenes in the police decision to prevent them from doing so based on concern for public order.

Freedom of worship and defending holy sites are expressed in several enactments. Section 83 of the King's Order in Council, 1922-1947 provides: "All people in Palestine will enjoy absolute freedom of conscience, and may practice their form of worship undisturbed, as long as public order and morals will be upheld". After the 1967 war when east Jerusalem and other holy venues came under Israeli control the Knesset enacted the Protection of Holy Places Law. This statute provides that "[t]he Holy Places shall be protected from desecration and any other violation and from anything likely to violate the freedom of access of the members of the different religions to the places sacred to them or their feelings with regard to those places". The statue provides that the desecration and violation a Holy Place or the freedom of access of the members of the different religions to the places sacred to them or their feelings with regard to those places constitute a criminal offence punishable by up to seven years imprisonment. These provisions are on top of the Penal Law, which includes as well an offence of desecrating a place of worship. The Penal Law includes a whole section dealing with offences against religious and traditional feelings. It imposes a penalty of three years imprisonment on a person who disturbs religious worship or assaults a worshiper. A similar sanction will be imposed on a person trespassing a place of worship with the intent to hurt religious people or revile their religion.

The Basic Law: Jerusalem Capital of Israel likewise provides: "The Holy Places shall be protected from desecration and any other violation and from anything likely to violate the freedom of access of the members of the different religions to the places sacred to them or their feelings towards those places".

The Protection of Holy Places Law provides that "after consultation with, or upon the proposal of, representatives of the religions concerned" to promulgate regulations "to any matter relating to such implementation." The Supreme Court ruled, however, that such regulations are not a precondition for the application of the statute. A site would be defined as holy according to the relevant religion's definition.

7. Festivals and Days of Rest

Religion also affects Israeli labor laws. The connection between them takes place on two levels:

1. Statutory provisions that derive from Jewish principles. This is exemplified by the entitlement of an employee to severance pay upon dismissal—a right with roots in the obligation of a master to confer a grant upon his released slave. Severance payment became customary within the Jewish community in Palestine and was later enacted by the Knesset.

2. Considerations of religious requirements. As an example we can take the fact that the Jewish Sabbath (Saturday) as well as Jewish holidays are the official days of rest. The Sabbath is also the compulsory day of rest for Jewish employees. The same goes for the Jewish holidays. Arguably, these provisions might pass the blue pencil rule. The same can be said for the fact that non-Jewish employees may choose the Sabbath and Jewish holidays or their religious days of rest. However, there can be no denying that the duration of the rest is dictated by the halakhic definition of Sabbath (starting from the previous day's sunset), as well as the fact that the committee authorized to grant a permit to engage employees on the Sabbath consists of the Minister of Religious Affairs as well as the Prime Minister and the Labor Minister, expose the religious motives behind this provision.

Religious motives behind days of rest legislation are further stressed in municipal bylaws providing for the closure of shops and businesses on the Sabbath and Jewish holidays. Local municipalities enacted such provisions based on their general authorization. When the Court decided that municipalities may not take into account religious considerations the Knesset intervened and expressly empowered them to take into account "considerations of religious tradition". Nevertheless the Supreme Court overruled a municipal order to close theaters on the Sabbath (*Israel Theatres Case*). At present cinemas and other entertainment as

well as restaurants operate on the Sabbath in a great number of municipalities and in some of them shopping centers operate as well. Yet, in most towns supermarkets and most shops are closed on Saturday. It should be noted, however, that some do so voluntarily in order not to lose their *kashrut* certificate. Recently the Supreme Court ruled that a municipality may not turn a closed eye on the violation of its bylaws that prohibit operating businesses on Sabbath (*Bermer's* Case). Public transportation does not operate in most of the State, infringing the freedom of movement, especially of lower classes who do not own private cars. A municipality may not intervene in the operation of gas stations on Sabbat (*Isramax* case).

These are good examples of religious restrictions competing with and dominating over liberal free-market values. Such provisions may not only curtail freedom from religion but also clash with the interests of the minority non-Jewish populations living in Jewish populated areas. On the other hand it benefits non-Jews by giving them the choice of choosing the Jewish Sabbath or their day of rest, a choice denied to Jews. It should be noted that the remuneration paid to employees on the Sabbath is substantially higher, as is the income of businesses.

8. Religious Education

Israel recognizes the status of religious schools at all levels, from kindergarten to high school, as well as institutions for the training of school and kindergarten teachers. The education system includes both religious and non-religious state schools as well as private schools. Judaic texts, such as the Bible, as well as Jewish history and Jewish holidays, are taught in all general [Jewish] schools, including those that are not religious. This is natural considering that those texts constitute part of Jewish culture and history beyond their religious manifestations. Indeed, State Education Law outlines the objects of state education, *inter alia*, as educating the students to respect their heritage, their cultural identity, and their language. The law specifically provides that these objects include "teaching the Torah of Israel, the history of the Jewish people, Israel's heritage and Jewish tradition."

Religious education is defined as "State education, yet its institutions are religious according to their way of life, their curricula, their teachers and inspectors" and which educate to a life of Torah and mitzvoth [religious commandments] according to the religious tradition and in the spirit of religious Zionism."

Arab state schools operate in Arab towns and villages and in city quarters with large Arab populations. The same goes for Druze and Circassian villages. Students belonging to these ethnic groups may choose to attend these schools or general ("Jewish or Arab") schools where available. The Arab schools are part of the general state schools and are not regarded as religious schools, however the law provides for a curriculum that will fit "their special conditions." In practice the

curriculum is adapted to the religion of the student body, whether Muslim or Christian. The same goes for the Druze and Circassian. The main language of instruction in these schools is Arabic, and Arab culture is being taught. The use of Arabic represents a characteristic of cultural autonomy, the language being related to cultural, historical, and religious attributes of the Arab minority in Israel.

Alongside the state schools there operate schools that are recognized by the state yet are "non-official." Under this provision various types of "non-official" schools have been established; most of them are religious, both Jewish and Christian.

Most of the recognized religious Jewish schools are ultra-Orthodox. There are at least fifteen variants of these schools' networks, belonging to various religious communities. There is a strict sexual division among the students in these networks. Such division exists also in many Religious State education schools.

According to State Education Law the Minister of Education may regulate the basic curriculum of recognized schools, as well as their administration and inspection. There are no provisions as to the content of this curriculum, nor provisions that the curriculum is subject to the approval of the minister. The result was that these schools enjoyed vast independence in calculating their educational system.

In 1969 the *Knesset* enacted the Inspection of Schools Law. The Law introduced an important innovation in the subjection of schools to state control and subjection of the curriculum and textbooks to the inspection of the minister. It also empowered the minister to ensure that their education is based on the principles set out in the State Education Law.

The law does not apply, however, to *yeshivas* [institutions of Torah studies], as well as seminaries for the training of clergies. Nor does it apply to religious studies in high-school *yeshivas*. In the same vain it does not apply to institutions of higher education.

State schools are fully funded by the state and by the local authorities. Recognized schools, on the other hand, are not automatically entitled to state funding. However, the Minister may regulate the state's participation in the budget of non-official schools. From the very first days, the state-supported recognized non-official schools, including church schools, though the scope of supported institutions, as well as the amount of support varied over the years. "Exempt" schools managed to receive state funding as well.

School funding generates heated political as well as legal controversy in Israel. In 1999 secular NGO petitioned the Supreme Court (*Paritzky Case*) arguing that the Minister of Education failed his duty to set a basic curriculum for recognized education institutions. He argued that State Education Law was meant to ensure

that every student will study core subjects in order to equip him with the necessary knowledge and tools that will enable him to become part of society. In his response the minister undertook to prepare and publish a basic curriculum as required "within 30 days." This undertaking became part of the Court's decision. Following the decision the Minister of Education established a Committee for Examining the System of Budgeting. The Committee submitted its recommendations that were endorsed by the minister. Following these recommendations the Ministry of Education adopted a core curriculum that must be taught at all primary educational institutions in order for them to be eligible for state funding. The Director General of the Ministry of Education issued a circular that implemented the decision. The circular established what is known as "the Core Curriculum Scheme" for primary education in Israel (grades 1-6). It stated "the common denominator, consisting of substances, skills and values that are obligatory to all the students in the Israeli education network."

The subjects included in the scheme have been defined as "the obligatory basis in the entire education network," on which the various schools may add complimentary subjects. The core curriculum is comprised of four compulsory and two recommended clusters of subjects. The compulsory clusters are: Heritage (including Bible and history) and social studies (including civic studies); Language and literature (Hebrew language and literature for Jewish schools; Arab language and literature for Arab schools; and English language and literature for all schools); mathematics and sciences; and physical training.

In 2002 the Union of Teachers in High Schools, Seminaries and Colleges petitioned the Supreme Court to suspend the funding of *Haredi* high schools that do not teach the basic curriculum including "the basic pedagogical knowledge that each boy and girl in the State of Israel must obtain." The Court accepted the petition and declared that funding of institutions that do not teach the core curriculum and do not fulfill the objects of state education is illegal. The Court added that the authority conferred upon the minister to set conditions for recognizing a non-official school, is subject to the objects of state education, including values of tolerance and respect for the other.

Failing to implement the Court order the *Union of Teachers in High Schools*' case came again before the Supreme Court (*Jewish Pluralism Case*). The case revealed a gloomy picture. Not only did the Ministry of Education fail to implement the core curriculum in Small *Yeshivas*, as ordered in the Union of Teachers in High Schools, Seminaries and Colleges Case, it did not even have any concrete plans to do so. Moreover, the Ministry came up with the idea of changing the status of these institutions from recognized non-official schools to exempt schools, thus avoiding the duty to teach the core curriculum. The Court declared that although the specific order of the Court referred to recognized non-official schools, its reasoning applies to all kind of schools including exempt schools and prohibits state funding for

schools, which do not implement the targets of public education by avoiding teaching the core curriculum. The Court clarified that the core curriculum creates a balance between the privilege of the parents to educate their children according to their viewpoint and beliefs and the state's duty to acquire basic common educational values to all students, prepare them for life and enable them to take part in society. The Court emphasized that this is of special significance in the Israeli society which consists of a mosaic of cultures and believes. At the end of its decision the Court was going to order the Ministry to implement without any delay the core curriculum in all recognized non-official high schools and withhold any financial support from both these schools as well as from exempt schools that do not teach the core curriculum. However, four days before the decision was handed down, the Knesset enacted the Unique Cultural Education Institutions Law, 2008. This statute created "unique cultural education institutions" defined as "an education institution where… systematic education steaming from the compulsory way of life of the unique cultural group is provided in accordance with its unique characteristic" designated for students in grades 9-12. The legislature spelled out which "unique cultural group" it had in mind. This is either "the *Haredi* group whose students study religious studies according to Jewish *Halakha* in a *Yeshiva*" or "another group which has been recognized by the Minister's order."

In the explanatory notes to the statute bill it was expressly stated that the motive for this statute was to overcome the court decision in *The Center for Jewish Pluralism* case and enable state financial support to these institutions contrary to that decision. It was also mentioned that the statute is needed in view of "other petitions, which are pending in the Supreme Court."

The constitutionality of the Unique Cultural Education Institutions Law was challenged in a petition submitted to the Supreme Court (*Rubinstein Case)*. The petitioners argued that the statute infringes the autonomy of *Yeshiva* students, which is part of human dignity, by preventing them from developing their self and choosing a way of life since they are being exposed only to religious studies. Thus their ability to integrate into society and to develop a sense of belonging is being negated. Moreover, by preventing them from acquiring basic knowledge their ability to acquire higher education and prestigious professions are severely hampered.

On September 17, 2014, the Supreme Court ruled in regard to the constitutionality of the Unique Cultural Educational Institutions Law (2008), which exempts Haredi secondary schools for students in grades nine to twelve from teaching a core curriculum. Seven of the nine judges refused to nullify the law, although most of them determined that the right to education is constitutional. The Court further held that the law meets the conditions of the limitation clause of the Basic Law: Human Dignity and Liberty. Justice Amit, who joined the majority opinion, argued that the Court should not "pull the chestnuts out of the fire" in the "sensitive and

explosive issue of education in the Haredi sector". In opposite, Justice Arbel, who joined the minority opinion, argued that the Court should protect Haredi children from this "clear and simple" derogation of their right to education since it is the "just" result that reflects the Court's faithfulness to basic human rights.

In 2008 the State Education Law (Recognized Institutions) Regulations, 5714-1953 were amended. According to the amendment recognized schools, up to grade 9, that teach the required core curriculum and on top of that carry on an integrative registration policy and whose students' socio-economic is similar to that of other schools within a local municipality will receive 75% of state budget allocated to similar official school. Recognized schools who fulfill only one of the latter requirements will receive 70% of the budget. If it fails to fulfill both requirements the school will receive 65% of the budget. In any case the school must teach the required core curriculum, which is a prerequisite for granting recognition to the school.

The constant struggle between the melting pot policy, advocating educational uniformity, and the demand for religious autonomy in the area of education ended with a salient triumph of the latter. Israel's educational system appears as a convincing example of educational autonomy, particularly religious autonomy, and as a model of multicultural education.

9. Marriage and Divorce

There is no such thing as Israeli law of marriage and divorce but rather Israeli laws of marriage and divorce. The Israeli legal system is unique among modern system of law in that it preserves personal law and religious jurisdiction in the area of family law. Family law stands at the crux of state-religion relations in Israel. Major parts of family law are regulated by the religious law of the concerned persons. Nevertheless, over the years civil law has gradually replaced many of the topics of religious law and excluded them from jurisdiction.

The subjection of secular people to religious law and jurisdiction obviously curtails their freedom from religion. This is true both on the ceremonial level of imposing a religious wedding ceremony and in substantive aspects. Several religions—notably Judaism—prohibit mixed marriages and even regard them as void. They moreover impose restrictions on marriages within the community. Thus *halakha* prohibits the marriage of an adulterous wife with her adulterer and of a divorcee with a *Cohen*, a person of priestly heritage. Islam, on the other hand, recognizes the marriage of a Muslim man with a Jewish or Christian woman as long as she undertakes to raise their children as Muslim. Initially the bride was not required to convert to Islam however due to the system of communal structure of Israeli family law the Imams were prohibiting from performing the marriage unless the bride has converted.

Though Israel has a system of civil family courts they deal with dissolution of only of mixed marriages and of spouses that do not belong to recognized religious communities. Until this very day there are no civil marriages in Israel, save for marriages performed by foreign consuls over the nationals of their countries. Only in recent years did the Knesset enact the Spousal Covenant for Persons Having No Religious Affiliation Law. This law enables an unmarried couple to register with the Spousal Relations Registrar an agreement between them to live jointly and maintain family life and common household. Though not regarded as married such couples would enjoy all rights and duties pertaining to married couples. However the statute limits its application to persons who do not belong to recognized religious communities. People who belong to such communities and cannot or do not wish to marry in a religious ceremony must travel overseas in order to get married. Even then they will be able to divorce only by the religious courts of their communities.

The issue of religious divorce might prove problematic. Thus, Catholic couples cannot divorce; no divorce might be executed between Jewish couples unless the husband grants a bill of divorce – known as a get - out of free will. A Muslim husband, on the other hand, may divorce his wife against her will without a court order although by doing so he will commit a criminal offence.

In fact due to the fact that the number of Christians leaving in Israel is rather limited while they belong to several churches there are just a few courts of the larger communities, which cater for both their community and for sister churches [Catholic, Orthodox, Anglican as well as the Armenian church]. Divorces approved by these courts are recognized by the state. On the other hand marriages will be registered even if performed by non-recognized communities.

Religious law might discriminate between sexes. Thus while according to Jewish law both husband and wife might not remarry without the granting and accepting of a bill of divorce, a *get*, this obstacle is especially severe regarding the wife. This is so since an offspring of an adulterous relation by a married woman is regarded as a *mamzer* as is the offspring of incestuous relations. Though popularly translated "bastard", a *mamzer* is a unique *halakhic* term. Under Jewish Law a child born out of wedlock is not regarded illegitimate. However the marriage between a *mamzer* and a "legitimate Jew" is prohibited. This prohibition is conferred also upon the offspring of the *mamzer*. Since civil divorce has no *halakhic* validity this rule applies also where civil divorce has been executed. Thus a married woman who did not obtain her *get* is regarded an "anchored woman" (*aguna*). This rule does not apply to the husband. On the other hand *halakha* favors the mother in granting her guardianship over minor children up to the age of six. Moreover, a husband must pay maintenance to his wife regardless of their relative wealth. He must also solely supply the basic needs of their children.

An interesting example of state-religion relations lies indeed in the area of divorce. While divorce matters among Jews are within the exclusive jurisdiction of the Rabbinical Courts, they are incapable of carrying out the divorce. This is so since the divorce may take place only upon the granting of the Bill of Divorce by a willing husband to a willing wife. In order to induce the reluctant spouse to cooperate in the execution of the *get* the Knesset empowered the Rabbinical Courts to issue an injunction against him or her preventing them from leaving the country, holding an Israeli passport or a driving license, having a bank account, holding a public position or office, or running a business. The court may also confiscate their pension or annuity, confiscate their property, and even order their imprisonment. In the most severe cases a reluctant spouse might be imprisoned until he cooperates with the divorce. Though verbatim this rule applies to both husband and wife it is carried out only against reluctant husbands as in suitable cases the husband may be granted a permission to remarry upon depositing the *get* in court.

The communal structure of family law in Israel left members of non-recognized religious communities and persons who adhered to no religion in limbo. No less problematic is the situation of spouses that belong to different religious communities. Only in 1969 did the Knesset intervene to enable such people to dissolve their marriage and only in 2010 did registration of their civil unions became possible. However, even this narrow avenue is open to persons that are not affiliated with recognized religious communities, thus frustrating the possibility of mixed unions.

The Knesset is not very active in setting aside hardships stemming from the application of religious law and jurisdiction. The judiciary, on the other hand, intervened to mitigate some of these hardships.

The Supreme Court ruled that the validity of a personal status—such as marriage and divorce—will be determined in accordance with the prevailing law of the couple at the time of marriage or divorce. This is the rule even when the spouses later became citizens or permanent residents of the State of Israel. It is, moreover, irrelevant whether the religious law of the spouses which applies at the time of the proceedings recognizes their marriage or divorce. While originally relating to spouses who got married before becoming Israeli citizens, it has been extended to Israeli citizens and residents who marry abroad. First it applied merely to registration in the Population Registry without passing on their validity. Later it was extended to spouses who married abroad by proxy. Finally, it was applied to same-sex marriages performed abroad. This was just the first stage. In the second stage the recognition of such marriages has been extended to their legal validity. At first the Supreme Court recognized the ceremonial validity. Following this decision the court expressed its opinion that the substantial validity of marriages celebrated abroad should be recognized.

The Supreme Court moreover interpreted the power conferred upon consuls to unite their nationals as applying also where only one of the spouses is a foreign national while the other is an Israeli citizen.

The Supreme Court also ruled that marriages performed in Israel should be recognized even if they violate a *halakhic* prohibition, which does not nullify them, such as the marriage of a divorcee and a priest and the marriage of adulterous spouses.

A constant area of conflict between the Rabbinical Courts and the Civil Courts relates to jurisdiction over matters ancillary to divorce proceedings such as children's custody. Arguments are frequently made that the religious courts tend to grant custody to the parent that will ensure the religious upbringing of the child regardless of his or her best interest. Where such issues materialize the Supreme Court intervenes and sets aside the court's decision.

The gap between religious restrictions on marriages and popular notions led to the wide recognition of the institute of *de facto* marriages or reputed spouses. This institute developed as a result of young men who were killed in the 1948 War of Independence leaving behind girlfriends whom they had not yet married. The Knesset recognized these relations for matters of financial support. Later the legislature widened their status to substantial incidents. Thus, Israel was the first legal system to recognize inheritance rights of reputed spouses. The Supreme Court pushed further the institution of *de facto* marriages. Ironically the insistence on religious marriages led to their circumvention.

Obviously, when state law clashes with religious commandments the former prevails. Thus an argument was made that the statute banning bigamy interferes with the dictates of Islam while restricting the age of marriage infringes both Jewish and Muslim tradition. This did not derogate from the validity of these restrictions.

10. Social Perceptions of Religious Freedom

When dealing with Social Perceptions of Religious Freedom we must bear in mind several factors:

1. Judaism is both a religion and a nation. Judaic perceptions are rooted in Jewish culture and identity. On the other hand we should note that the Zionist movement emerged as a reaction to Jewish religious life in the Diaspora.

2. The Jewish population in Israel is diverse spanning from extreme Orthodox, including groups that defy Zionism to secular and even atheists. Nevertheless, even the latter are not detached from Jewish culture.

3. The Arab population is more conservative and subject to social pressure. Moreover, Arabs may combine religious autonomy with national independence.

A survey conducted in 1999 revealed that Israeli Jews who define themselves as secular but not anti-religious, and even as secular and anti-religious, do observe some traditions. Most Israeli Jews (61%) believe that the Conservative and the Reform movements should have equal status with the Orthodox. The same majority believes that public life in the State of Israel should be conducted according to the Jewish religious tradition. Yet two-thirds of the respondents are in favor of allowing movie theaters, cafes, and restaurants to be open and of holding sporting events. More than half support public transportation on the Sabbath and permitting shopping centers to do business as usual. On the other hand, an overwhelming majority (87%) believe that food served in public institutions must be kosher. With regard to civil marriage, roughly half believe that civil marriage outside the rabbinate should be instituted in Israel (51% answered "absolutely," "yes" or "perhaps yes". A 2014 survey reveals that 84% of the Jewish population of Israel favor support freedom of religion and conscience; 61% favor separation of religion and state; 66% favor recognition of all forms of marriage; 70% favor public transportation on Sabbath and 65% favor operating supermarket.

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Freedom of Belief in the Middle East. Studying Models

3rd June 2015

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Necessary References

To promote Human Rights in the countries of the Middle East and the Arabian countries where the people and the communities are characterized by religious, sectarian and cultural diversity, Freedom of Belief has been chosen as a subject for our research. This because exercising such freedom is a natural right for every human being. It's important for the Belief in building the character of the human and also for its importance in his life and existence. Especially because religious belief is an important pillar in human life, its importance elevates to the degree of willingness to sacrifice his life for it. Therefore no human or community accepts any assault on his faith by the owners of other beliefs, and throughout history, numerous conflicts took place on the basis of the protection of faith. The need for faith or religion is necessary for all humans. Whereas the believer is insured that his faith is the correct truth, it only comes through reason and the guidance of God and not through pressure and coercion.

Freedom of choice is the right environment for truth to grow and thrive; it makes no sense to choose and to prove the truth without freedom. So the Freedom of Belief is to give a human the right to choose a faith or religion that he is convinced in freely and without coercion or force.

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Clarifying the meanings of Freedom of Belief and raising confusion on this sensitive subject is to enrich the available information about it, this in order to spread the spirit of tolerance between different religious and ideological people. Trying to raise awareness and promote coexistence with no intolerance and narrow minded thinking.

Therefore, this research deals with the meaning of faith and its importance, and what it is meant by Freedom of Belief. This Research also reveals where Judaism, Christianity and Islam are when talking about Freedom of Belief and religious freedoms generally.

And because the Freedom of Belief overlaps with a number of other freedoms, where without them Freedom of Belief can't have a deep meaning, the relationship between the Freedom of Belief and other freedoms is also discussed. For example the freedom of opinion thought, information, education… etc.

The Research exposes mainly the status of the Freedom of Belief in international declarations and conventions and the degree of protection and its applications at the local and international levels.

Therefore, the Research tried to have an approach on the contents of international declarations and conventions regarding the Freedom of Belief with a number of running constitutions in the Arab countries and some of its national laws, in order to shed light on the importance of this freedom and its legislative provisions, analyzing the reasons for violations in some countries and finding ways to address them or at least reduce these violations and also searching in the importance of religious tolerance and acceptance of others and the necessity of interfaith dialogue to address the problems faced by the Arab communities.

And because modernization and its secularism tools and globalization impact the subject of Freedom of belief, this research discusses the nature of this impact and the role of modernization tools to penetrate the material and moral barriers of humans and to loot his freedom and leave him to live in the framework of its current sweeping.

I rely on a descriptive and analytical method and a historical, comparative approach to answer many questions including the following: is it that the Freedom of Belief that is full of international declarations and conventions or agreements and constitutions guaranteed? And what are the necessary guarantees for this right? How adaptable the constitutions and laws in the Arab countries are with the international standards in the contest of respect for Freedom of Belief?

Definition of Belief:

Belief or opinion, linguistically, it comes from Belief, plural Beliefs, it means what is held by heart and conscience and what the human takes as religion[53] and belief comes from taking an assertiveness and it means what the believer believes in that is right and correct[54]. Al-Mawrid dictionary for Baalbaki gives Belief other meanings as faith, trust and believing[55], that is linguistically, but the idiomatic meaning is a group of ideas and principles that its owner believes it is the right and correct interpretation of the universe, life and human, and it all derives from one idea, which serves as a basis for a curriculum life or full law[56].

What it is meant by Freedom of Belief:

The French Declaration on Human and Citizen Rights of 1789 defines freedom as "the right or the ability of human to come with acts that doesn't harm others" and defined by John Locke as "the right to do something permitted by the laws"[57], therefore, to differentiate between freedom and chaos, freedom is when a human uses his right without dominating the rights of others, chaos in belief is tyranny and exceeding the use of right over the rights of others, and to ensure freedom, laws and regulations are legislated, and any act out of these laws is an aggression against organized freedom. Because freedom goes back to the free work, and freedom is the antithesis of slavery, and it's the best out of everything.

Whereas belief, creed or religion is "what is held by heart and conscience and what the human takes as religion, and has a well-established creed, free of doubt"[58].

Whereas Freedom of Belief means to embrace the religion or belief the one wishes or wants, and to be free to practice its rituals in private and public, alone or in groups, one is also free not to believe in any religion – since God almighty can take people accountable by himself – nor may it impose a religion or be forced into direct outward appearances or to participate in rituals contrary to his religion Imam Muhammad Abu Zahra says: Freedom of Belief consists of three elements:

[53] Almonjed in language and media, Darelmachreq, Beirut, 1996, P.519.
[54] Author: Naser Ahmad BakhitAlsaeed, Title: international protection of the freedom of embracing religion and practicing its rituals, Prints 1, Dar ElgamaaElgadida, Alexandria, 2012, P.23.
[55] MunierAlbaalabakki, Al-Mawrid dictionary English – Arabic, Dar El-Elim El-Malayin, Beirut, 1998, P.97.
[56] Naser Ahmad BakhitAlsaeed, previously mentioned source, P.23.
[57] WahbaZuhayli, Haqq al-Huriyah fi al-Alam ("The Right to Freedom in the World"), Print 1, Dar al-Fikr al-Moaaser, Damascus, 2000, P.39.
[58]Moalim al-Bostani, Mohiet al-Mohiet, A lengthy Arabic Dictionary, Lebanon Library, 1987, P.618.

First: Free, non-fanatic thinking towards a nationality or a tradition, desire or passion, because often desires and passions control and rule in the name of religion.

Second: prevent temptation or coercion to carry on a faith, because there is no free believer who believes under the influence of money or position or wealth.

Third: working on the basis of faith, facilitating it for each believer in a religion with no exhaustion[59].

John Locke says: "no one has the right to cause damage to others' belongings or to destroy them because they believe in another religion or practice different rituals, It is necessary to maintain all human and civil rights as sacred rights, rights that are not subject to religion, and there must be caution from any type of violence or damage against this Christian or against any other person, Christian or not"[60]. Abdul QadirAoda refers to Freedom of Belief and says "everyone according to the Islamic law can embrace the faith that he wants, and no one can hold him accountable for leaving his belief or converting to another or prevent him from showing his faith"[61]. John Rivero says: "religious freedom is a complex freedom that includes at the same time the freedom of belief meaning the freedom of choosing between atheism or faith and between embracing a belief or religion one of the ones that is not imposed on people, and the freedom of performing rituals individually or within a group"[62].

In ancient times, in the times of state cities, and in the first civilizations that the world has known, the state imposes its religion on all its citizens, citizens that, in that time, didn't have the right to embrace any religion other than the religion of the city, and any violator was punished (Socrates was punished by drinking poison) because he insulted the Gods of the city and questioned them. And since that period to the present day, different individuals and groups faced serious persecution because their faith and beliefs differ from what is prevalent.

From this comes the importance of protecting the free exercise of religious belief, not only when facing the state in which individuals and groups live, but also when facing people who engage in public work by the state in addition of the actions and the practices of private individuals and other groups.

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[59] Al-Imam Mohammad abo Zahra, international relations in Islam, Dar al-Fikr al-Arabi, Cairo, no history, P.28.
[60] Mohammad Sabila, Abd al-Salam bin abd al-Alali, Human Rights philosophical books, D.M.G, 1995 P30.
[61] Abd al-KadirAwda, al-Tashri' al-Jinaee al-IslamiMoqarana be al-qanon al-wadee, al-Resalla institution, Syria, Print 6, 1985, P31.
[62] Ahmad RshadTahoon, Horiaa al-akida fi al-sharia al-Islamia, Print 1, etrac publishing, Egypt, 1998, P.96.

Religious belief may come by believing in a heavenly religion which comes from God, or it may be the creation of human thought, as if the thought of cult fantasy (imaginary force) owned by a person or animal, or anything else, or they may go out of faith to idolatry, which represents multiple gods.

The importance of belief:

Belief is based on intellectual and inner persuasion, because it's facts the delivers peace to the heart and the heart doesn't object it. Whereas it is rare or impossible to find a reasonable person on earth that doesn't have a faith which he believes in, as the human soul refuses what might be called ideological vacuum[63].

The human's life, his movement, daily social programs and events are determined according to platforms, tracks, values and specific goals. The process of setting these goals is not easy and possible without the existence of a specific faith. The history of mankind is completely devoid of a period where people lived without religion. Since they inherited the unification of god from their father Adam, peace be upon him, the succession of heavenly messages have continued to this day. No community or nation was devoid from a prophet, a messenger or a harbinger[64].

The importance of the religious belief:

Religious belief is now one of the important issues that draws attention to it because it relates to the relationship between man and God, which is one of the most important relationships that a man could be part in, and which could be an evidence of infidelity or faith, through believing in the existence of God and his singularity[65].

If nations and countries or even groups is based on the so-called ideologies – a group of beliefs and ides – and according to it the relationship between them is created, agreement of disagreement, peace or war, this explains the importance of the religious belief and the role of faith in this field[66].

At a domestic level, the importance of religious belief is shown as a social reality that shows a majority or a minority in the states, but this belief is often considered

[63] Naser Ahmad Bakhit Alsaeed, previously mentioned source, P.24, quoting Dr.Farouk al-Desoki, al-Towhid, Part 2, Quran approach in the fight against atheism, print 2, al-Akhbar publishing, no place, 2003,P.5.
[64] For more, check: Dr. Naser Ahmad Bakhit Alsaeed, previously mentioned source, P.24.
[65] Dr.Naser Ahmad BakhitAlsaeed, previously mentioned source, P.25.
[66] ShiekhJad al-hakaliJad al-Hak, Bayan Lilnas, previously mentioned source, P113 and after.

as a criterion for an election force, as well as showing the image of unity or separatism in the people of the same nation[67].

Religious belief also carries out the law in addressing conflicts and when dealing with disputes, and putting justice back on the right track, regarding civil and personal status, and other problems especially in the private relations between judicial systems (sectarian and secular), where the judges are forced to face these challenges, according to the difference in laws.

Freedom of belief and its relationship with other freedoms:

Whether we are talking about freedom of speech or belief and religion or education or other freedoms, it all comes back to the freedom of thought, so they all really are intellect freedoms, though they shouldn't be held inside the man, and for thought to thrive, it should be out in the field of existence and it should be offered the appropriate freedoms that could qualify it for creativity.

1- Freedom of Belief and Freedom of opinion:

Mainly, freedom of opinion means: the available possibilities for every human to decide by himself what he thinks is right in a field, whether he expresses that through speech, messages or different media[68].

And according to this concept, freedom of opinion in religion implies freedom of belief, so freedom of belief flourishes in societies that guarantee freedom of opinion and vice versa[69]. Freedom of opinion is mentioned in many declarations, international conventions of human rights[70] and in the constitutions of countries, including the American constitution, which protects freedom of opinion and belief, and the United States of America is one of the countries that follows the secular principles and that admits freedom of religion and protects it by the same degree to which it protects atheism and this is what makes the difference between countries that adopt a specific religion and countries that take the principle of secularism[71].

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[67] We see that majority of the percentage of members of different parliaments is determined in accordance with considerations of faith, and positions of leaders and presidents of states in accordance to religious considerations.
[68] Ahmad RshadTahoon, previously mentioned source, P.106.
[69] Check: Nabil Qarqour, Hoqoq al-Insanbain al-Mafhoum al-gharbi o al-Islami – dirasa fi huriyat al-Aqida, Print 1, Dar al-Jamiaa al-Jadida, Algeria, 2010, P.44.
[70] Article 19 of the Universal Declaration of Human Rights states: "Everyone has the right to freedom of opinion and expression, this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".
[71] E.X. the countries that embrace a specific religion, for instance, Arabian Counties (Islam), with the exception of Lebanon and countries that doesn't embrace any religion as France (the law of 1905).

2- Freedom of Belief and Media Freedom:

The media is the mirror of people's views and their ideas, attitudes and preferences, and at the same time media is the source where the public is provided with information and facts through which they can form their own opinion regarding an incident, a problem or a case. Therefore, the media whether it is read, heard or seen has a significant role in publishing opinions and beliefs and affecting them, it is no secret what information revolution did and what it is still doing for promoting beliefs of who clings to the traditions of media[72].

3- Freedom of Belief and the Freedom of meeting:

As it is well known that humans are social by nature, and they can't live in isolation from others, they need exchange views and discuss them with others, and this is hard to do without meeting them, meeting is one of the basic means for the dissemination of ideas and beliefs.

What we mean about Freedom of meeting is the right of individuals to meet somewhere at a certain time to express their opinions through seminars, conferences, lectures, dialogues and so on.

The relationship between the freedom of belief and the freedom of meeting is a strong relationship; freedom of meeting could be the result of freedom of belief and vice versa. Because a person who has a certain thought or religion tries to disseminate that through meeting with others, and that this meeting could be the reason to embrace ideas and beliefs they wouldn't have reckon without the opportunity of meeting with others[73]. The right to meet is approved by man-made laws, but even before that it is a normal right that shouldn't be denied, and whoever denies it, individual or group, then he denies the humanitarian instinct.

4- Freedom of Belief and the Freedom of thought and education:

Freedom of thought is formed by society using opinion and opposite opinion, and it necessarily includes freedom of expression, speech, rhetoric, and freedom of press and publishing, as well as the freedom of education[74].

Freedom of educations is strongly bonded with freedom of belief, the man is in the case of education and continues learning, and freedom of education should be considered among the basic rights that a man has.

[72] For more information check: Nabil Qarqour, previously mentioned source, P.45.
[73] Previous source, P.47.
[74] For more explanation: check: Naser Ahmad BakhitAlsaeed, previously mentioned source, P.207.

The main elements of education are to have the right to receive education equally with the other citizens, the right to choose the education you want, as well as the right to disseminate knowledge among people.

The relationship between freedom of education and freedom of belief varies according to the country and the rules applied to its education system.

When a government embraces a specific religion it devotes education to guide individuals to such ideological ideas, but when it takes a neutral position when it comes to religion – and it can't be neutral – as the countries that adopt secularism, it unleashes any idea and allows learning and teaching of any information, even if it is harmful to human religion and this is what we find in totalitarian regimes and liberal systems alike[75].

Belief and modernization:

1- Freedom of Belief and Secularism:

The real translation of Secularism in English is "irreligion or non-metaphysical or physical or unholy[76] and non-priestly[77].

Howard Boker, a secular philosopher, coined the term "Secularism" to counter the sacred term, "A secular state is the opposite of a religious state, and the secular community is the opposite of a sacred community, but sacred here is not the opposite of "impurity" rather than the opposite of Marginalization "developed" modern"[78]. And, to be more clear, secularism means to marginalize religion and welcome views of philosophers, which calls for faith in the absolute physical thought.

Mohammad Emara says in Islam "there is no place for secularism with Islam, and Muslims don't need it if they are real Muslims who are guided by Islam"[79], that is because Islam is a system of religion and state.

But in Christianity, modern secularism rejects the elements of religion and the authority of the Church and its institutions, laws and even the ethics that it developed.

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[75] Nabil Qarqour, previously mentioned source, P49.
[76] Awad bin Mohammad al-Korani, " secularism…. History and thought" a website on the internet www.google.com.
[77] Kamal al-Dienabd al-Ghani Morsi, secularism, globalization and the Azhar, Print 1, Dar al-Maarifa al-Jami'ia, Cairo, 1999, P.5.
[78] Mohammad Amara, secularism and its modern uprising, Dar al-Shorowq, Print 2, Cairo, P.15.
[79] Previously mentioned source, P.18.

Looking that man in the West was not feeling free and as a failure, so it was that he revolted against all these systems to offset them with the secular life, secularism in this term is an invitation for the independence of the world from religion, not only the church away from the state.

Although the general term of secularism means the separation between religion and state, and isolating religion from any interference in the state's affairs, there are intellectuals who consider "Secularism is the real protection for the freedom of religion, belief, thought, and creativity", Mohammad Arkoon thinks that secularism is a position of the spirit when it fights to own the truth or to reach it" Jamal al-Banna thinks "that applying the freedom of belief and thought and the absence of the religious institution and the simplicity of the idea of divinity moved Islam away from theocracy as much as it took it closed to secularism. Islam agrees with secularism that he refuses the theological state[80].

Therefore, we see that there are those who reject secularism, as the marginalization of religion and the deification of man that invites to atheism and thus is the word of truth used for void to call for religious freedom, and there are those who say that there is no antagonism between Islam and secularism because it includes the respect of liberties and the separation of religion from the state to protect freedoms of belief, and not using religion and its institution for other purposes[81].

The term "state secularism" is called to the states that are committed to the secular approach and what follows that from compliance with the law, human rights, freedom of belief and the states neutrality religiously and secularly, the goal of the secular state of law is not to push away religious groups to the edge of society, but to guarantee all abilities to go freely to establish religious and secular convictions in the modern society and to enable freedom and equality for all[82].

For five decades the most flexible thoughts about the society development was that nations will certainly convert to secularism with changing to modernization. The idea of modernization is strongly bonded with development, manufacture, and eliminating irrational opinions connected with religion and ethnical trends.

Losing religion faith and converting to secularism has been bonded with the belief that technology development and science practice will overcome on social chronic problems connected with poverty, environment deterioration, starvation, and

[80] Haitham al-Mannaa, Poring in Human Rights, a brief general encyclopedia, Print 1, al-Ahali for publishing, copying and distribution, Damascus, 2000, P.329.
[81] Nabil Qarqour, previously mentioned source, P.244-245.
[82] For more information, check: Nabil Qarqour, previous source P.245 and also Hainzbelafield, Muslims in the secular state of law, about the right of Muslims to form a society, al-Mostaqbal al-Arabi magazine, Center of Arab Unity Studies, Beirut, November 2001, issue number 273, P.65-66.

illness for the sake of long term human development. These ideas were proved wrong, it is clear now that societies do not convert to secularism when they are changing to modernization; some will change, others won't.

This wide spread refusal of secularism was identified by George Vecl: there was no certain reason to this change of events and no theoretical explanation will cover each case although countries seeking development depending on modernization weakened the belief of secular changing ideologies like socialism and communism which caused many people to feel lost instead of having the sense of achievement, but at the same time specializes different opportunities inside the nations and among them.

As a result, many people started looking for a new meaning for their identity, something that gives a meaning and a purpose to their lives during the huge and variable changing period which was the first of its time[83].

2- Freedom of belief and secularism:

The term secularism was used in the early nineties in political and economic writings. Later on, this term gained strategic and educational semantics after the developments happened in the world as a result of the breakdown of the Soviet Union and the single rule of the United States of America.

Secularism is "a trend to gather all in one world, a world without Geographic or time borders, a world without distinction in gender, color, and membership, a world where everyone who lives in it considers it as their homeland and their nationality […][84]".

Religious secularism is a front part of secularism and its influence on educational identity is very clear, it includes the ability of damaging religions and benefiting them at the same time, in a way that secularism is doing the job of informative and educational popularization of consumerism manners, and the relief of values by challenging religious and moral organizations and weakening the new generations that applies to it.

On the other hand, the religious organizations are considered one of the biggest used from secularism especially by investigating the modern means of communications and using them to popularize their missionary religious message.

[83] Bryan White and others, issues in the Universal politics, Print 1, al-Khalege researches center, Dubai, 2004, P.211-212.
[84] Hasan Ahmad Khodairi, needy globalization, print 1, al-nail Arabic group, 2001, P.341-342.

The special acting in secularism is in both spiritual or moral sides based on eliminating religious ideologies and bonding them with retardation and terrorism phenomena, that believing in the invisible is a fairytale and holding to religion is fustiness and so on secularism ends chaos with no society principles; the only principle is the necessity of killing others beliefs and so on killing the freedom of belief. When secularism can't eliminate religion it ignores it, so nobody will think of proving it[85].

Belief and politics:

Belief is an important source of major values, but it can make a strong influence in politics inside a country or a region, especially if it is bonded with ethnic or educational trends. Religious belief is often strengthened both ethnic awareness and the conflict between ethnic groups, especially in the third world (not only there but we should consider north of Ireland and old Yugoslavia)[86].

At the beginning of the eighties of the last century, religion was one of the major issues in the international politics. This development surprised a lot of people, while on the contrary with the common traditional thought that all societies will convert to secularism with changing to modernization. Whereas the strong speed rush of the modernization powers cross the world, it affected both advanced and growing worlds represented with many political, social and economic confusions which affected many people, who think now that the best way to achieve their goals is to be a member of a group or a movement which has a religious trend.

With the end of nineties there was a drift of devoutness which has a political tendency in the world with possibly dangerous results on the social completion, political stability, and world peace on the long term[87].

In the multiple-religion society, religion appears as one of the contrast concepts between groups, so one who belongs to one religion or to the same belief, with what they consider themselves a sect ,whereas others belong to different religious sects ([88]). The effect caused by religion belief might not only result in religious minority but also might participate forming ethnic minorities especially when a specific minority is distinguished regarding race or language or education in addition to the religious distinction.

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[85] Kamal abd al-Ghani Mursi, previously mentioned source, P.171-172.
[86] Marty, M.E. and Scott Appleby, R. (1993)" introduction" in M. Marty and R. Scott. Appleby (eds), Fundamentalism and the state: Remaking Politics, Economies and Militancy, Chicago, University of Chicago Press, P.3.
[87] Bryan white and others, issues in universal politics, Print 1, al-Khalege researches center, Dubai, 2004, P.211-212.
[88] Check: Mohammad Khaled Bara', Human Rights and protecting them under the provisions of the general international law, Print 1, al-Halabi legal publishes, Beirut, P.42.

Religion is not conditionally qualified to be a union element of the society, but it can be a factor for breaking down the society, especially if it has a religious or sect variety. It is expected the split of a group from its ethnic origins based on religion even if they speak the language of their origin ethnic group, their members belong to the same national origin which delivers the origin ethnic blood. This split group faces the other groups with the same language and the same national origin with an ethnic national minority behaviors because of their differences in religion or sect[89].

Islam is an example for this case, which announces itself as a world religion for the whole humanity, as in old Yugoslavia, nations were found based on their linguistic and educational features for instance : Croatian, Serbian, Turkish, Slovakian, Hungarian, Muslims appeared as one of these nations, they belong to the same ethnic blood and the same language with the other nations, yet they became a sprite nationality because of their dissimilarity with others in the matter of their Islamic religion[90].

Religious diversity or having religious differences in a country is not conditionally a reason for having issues and divisions that threatened the national unity, for the creed services don't affect the national unity if the societies are based on a high religious education and cultural awareness which supports the freedom of belief and the religious practice stipulated by all heavenly religions and the international and regional conventions[91].

Freedom of belief in Judaism, Christianity and Islam:

Religious freedom for Jews it's the freedom of children of Israel in believing with their religion and creeds, yet it wasn't an invitation for freedom of religion in general at the time that prophet Moses message was originally to set Israel free from the bondage of pharaoh of Egypt, and to achieve the freedom of belief to Israel, yet after Moses' achievement, Jew's priests and bishops denied Jews people from discussing their religion and added some extra additions on what Moses said and decided that whoever to break their teachings deserves to be cursed and ejected from the Jews environment[92].

As for Christianity, its originally humanitarian, spiritual, monotheistic message is distinguished by two features: **First**, it helped to set human free of state control in the spiritual domain, distinguishing from the beginning between God and Caesar. **Second**, it established the principle of equality, which means inclusively accepting

[89] Check: Mohammad Yousef Alwan, Mohammad Khalil Mosa, previously mentioned source, P.465-466.
[90] Previous source, P.466.
[91] Check: Mohammad Khalid Bara', previously mentioned source, P.44.
[92] Check: Ahmad Rashad tahoon, previously mentioned source, P.84-85.

others and their freedom of religious diversity, yet this was at the time of weakness, however, when Christianity had the power, they backed off their principles, even that it was forbidden to adopt another Christian creed, because they were considered as atheists, heretics and so on.

The raised feature of Christianity became forcing people into Christianity instead of respecting the freedom of belief which was established at the beginning. The freedom of belief relapsed in Europe in the twelfth century until the eighteenth century when investigating courts were built; humanity had tested the hardest kinds of torture. The mission of these courts wasn't only to trail the ones with different creeds, but also to trail the conciseness and the emotions[93].

But the impact of the reformation movement and the growing calls for the separation of church and state after religious wars especially during the sixteenth century until the eighteenth century, punctuated by conventions and religious tolerance. The most important one is the convention issued by King Charles in 1663, which gives the rulers the civil authority and prevent them from interfering in the religion affaires.

It happened also with the tolerance decree in England in 1609, which brought its current religious freedom. In 1689 John Locke issued a tolerance message written in the Latin language; the main idea was that the mission of the civil authority differs from the mission of religion, supporting the idea of separation of church and state. One of his famous sayings is “if it was fatal to impose Christianity upon infidels then it was easier that God would do it".

As for Voltaire and Rousseau's writings impact on establishing the freedom of choosing religion Voltaire said: “whoever to follow his religion without thinking as much people do is like a bull who succumbed to the yoke satisfied". Afterwards declaration of the rights of man and of the citizen was announced in France in 1789 which stipulated in article 10 that "no one may be disturbed for his opinions, even religious ones, provided that their manifestation does not trouble the public order established by law".

Also France in 1848 established the freedom to practice religious rites law which included "all can practice freely the religion that is followed". Freedom of religion was established completely with the declaration of law 9 in December 1905, which had the purpose of assuring the freedom of religion, which means not to focus on a specific religion or not to consider any religion the official religion[94].

[93] Check: previous source, P.85-86.
[94] For more details, Check: Nabiel Qarqour, previously mentioned source, P.90-95.

During these reactions about the religious freedom, church was having discussions in the matter of studying the effects of freedom in both individuals and groups.

The second Vatican council of the Catholic Church, which is one of the biggest churches in the world, acknowledged freedom in 22 of September 1965, which was a huge matter to deal with especially what church wouldn't approve on it in the last generations for the fear of the spread of religious indifference.

Religious freedom, according to the church, is based on the dignity of the human.

Depending on this dignity, a human being has the right to work on his will and to be responsible for himself, especially in the matter of religion. Society confirms that religious freedom is a fundamental human right that must be recognized by the civil law, whether for the individuals or groups. The freedom of religion is a natural right for the good of individuals and groups, and the government had to keep it, but it wasn't possible to district it unless if it affected the law[95].

As for Islam, their principle doesn't distinguish between Mohammad as prophet and the other prophets, as for prophet Moses and for Jesus they both have their own respect among the Islamic sects, also Islam admits by the heavenly messages which was preceded and invites to act positively with it: " Don't argue the people of the book, but the one that best [...]"[96].

"Allah does not forbid you to be kind and to act justly to those who have neither made war on your religion nor expelled you from your homes "[97] "yet they are not all alike. There are among the people of the book an upstanding nation that recite the verses of Allah (The Quran) throughout the night and prostrate themselves who believe in Allah and the last day, and they enjoin right and forbid what is evil [...]"[98].

And in the vow of the prophet Mohammad to the Christian people of Najran, as well as the speech of Abu Bakr in the army of Ausama was the conformation to commit with the Quran words (no obligation in religion), also in the prayer of Omar Ben Alkhattab outside the church of the resurrection in Jerusalem was another conformation to Christian people with their rights for their worship places and to make sure that there is no reason in the future to take it from them.

As included in the Omar's vow to the people of Iellya (Jerusalem) "This is granted for the people of Jerusalem from the prince of believers. It gave them peace for

[95] Second Vatican Ecumenical Council, Conciliar documents, Print 2, translated by AbdKhalifa and others, 1984, P.873-877.
[96] Quran, Sora al-Ankabot, verse 46.
[97] Same source, Sora al-Momtahana, verse 8.
[98] Same source, Sora al-Omran, verses 114-113.

themselves and for their money, churches and crosses not to be taken or destroyed, and not to force them into Islam and no Jews to live with them".

What was announced by the prophet Mohammad and his companions assured the positive attitude towards people of the book[99], yet this conformation on the religious freedom which was brought by Islam principles and which was applied in the different eras especially in the early Islam was not the whole case. We can't deny the occurrence of religious persecution in some eras of Islamic rule[100].

Policies have changed starting with the succession of Abdul Malik Ben Marwan so as to some caliphs and governors, who chose to have different policies to those before Abdul Malek of the Umayyad caliphs. In this part we can mention the intolerance of Hjaj against whoever did not speak Arabic and the extremism of Omar Abdul Azez against "people of the book" and the behavior of Oqba Ben Nafeaa, Yazeed Ben Aby Moslem and Mosaa ben Naser against Berbers, and the laws established by Alrashed and Almtwakal in the matter of Non-Muslims[101].

Mentioned by a number of scientists and researchers were such incidents of persecutions, but they were due to political reasons, not religious. Furthermore, some justify the persecution of Christians by caliph Alrasheed in some countries for the bad political relations between the Islamic state and Byzantine Kingdom and not because of the religious teachings.

As for the crusader wars sparked by some western countries, it had an effect on the Christian persecutions in the Islamic state[102]. Thousands of Christians in the contemporary history of murder and persecution in Iraq faced reprisals as a reaction from Islamist extremists, after the British occupation of Iraq in the second decade of the last century and the US occupation in Iraq in 2003[103].

One of the subjects discussed in Islam, one that has many suspicions around, is the interpretation of Jihad, Alrdda in Islamic law and its reflections on the freedom of belief. We don't want to discuss it because that requires a special research to show how contrary it is to the freedom of belief or to agree with it.

There are many opinions about Jihad, as for the ones who see Islam as a war trend or for the ones who consider it a peace trend, some consider Islam with a tendency of peace as a creed, yet the Sharia with a tendency of war. As for the rule of

[99] AoniFarsakh, minorities in the Arabian history since Jahiliyyah and until today, Print 1, Ryad al-Ris institution for books, London, Beirut, 1994, P.42.
[100] Nabil Qarqour, previously mentioned source, P.145-146.
[101] AoniFarsakh, previously mentioned source, P.32.
[102] For more explanation, Check: Nabil Qarqour, previously mentioned source, P.146.
[103] Check: Hammurabi Human Rights Organization, a report about the conditions of Human Rights in 2010, published on the organization's website: www.hhro.com.

apostasy in Islam and its relations with the freedom of belief, Fuqaha had different opinions and works about it.

Some consider it as a crime, and they shall be punished with death whereas another group claims that this is only a crime for the apostate fighter against Islam and Muslims and not the apostate who just was content to convert to another religion, based on what Quran said, not to kill just for the reason of apostasy"[104].

Some think that we shall search for the reasons for the apostasy, to read them in a new way for the scripts related with the issue and to search for solutions to move away from the works that repeat the interpretation of predecessor, in order to get closer to the meaning of the script, another meaning that justifies apostasy, as it is the responsibility of their own choices.

Freedom of belief and religion in regional and international charters:

Human rights, particularly freedom of religious belief emerged at an international level in the peace agreements that ended the first world war on the issue of the protection of minorities that were mostly religious minorities, although the charter of the league of nations did not refer to this topic only tangentially through the responsibilities of the mandate countries in the African countries, but it assured the need to protect the freedom of religious belief and refusing violations according to the limits imposed by public order and the right habits.

The United Nations set up and the concern for human rights after the failure of the era of the league of Nations, which included legal provisions on the protection of human rights, and formed a fundamental shift in the evolution of the rules of international law to face the challenges and changes brought by the Second World War and the acts of genocide suffered by religious groups, including Jewish groups.

So the Allies emphasized on the principle of freedom of religion more than their emphasis on the principle of the protection of religious minorities, which league was focused on, that is an urgent necessity for the protection of human rights and justice, not only in their country but in other countries .

The charter of the United Nations discussed the human rights and public freedoms, without determining if the freedom of religious belief is a basic ideal of public freedoms such as freedom of expression gender or not, but the issue didn't get clear until the Universal Declaration of Human Rights[105].

[104] NabielQarqour, previously mentioned source, P.180. Quoting SidqiTawfiq, Islam is only the Quran, al-Manar magazine, document 9, part 7, 1907, P.523 – quoting AmalKarami, freedom of belief in Islam, Dar al-Fank, Casablanca, Morocco, 1997, P.142.
[105] Naser Ahmad Bakhit, previously mentioned source, P.174-176.

All international and regional conventions have given the subject of freedom of religion a lot of attention, the Universal Declaration of Human Rights confirms that everyone has the right of freedom of religion and practicing his beliefs without distinction[106], also Article 27 of the International Covenant on Civil and Political Rights for the year of 1966 focused on guaranteeing this right and without any kind of distinction that could be based on sex, religion, race or any other features[107].

Article 18 of the International Convention on Civil and Political Rights (1976), in the third paragraph, subjected the freedom of the individual to express his religion and beliefs to the constrains listed in the law which is dictated by public safety or public order or public health or morals, or other rights and their basic freedoms[108].

Article 9 of the European Convention on Human Rights (1953) clearly stipulated the insurance of the freedom of religion or belief and practicing religious rituals for everyone while ensuring the right to teach, practice and observance, individually or while in an assembly, in public or privately[109].

The eight term of the Universal Declaration regarding the elimination of all forms of intolerance and distinction on the basis of religion or belief for the year of 1981

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[106] Article 2 of the Universal Declaration of Human Rights which was adopted and published by the United Nations General Assembly on the 10th of December 1948, resolution 217 A (III) (Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty), Article 18 says (Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance), for more information, Check:
Mahmood ShariefBasyoni, Documents on human rights, the first volume, previously mentioned source, P.27-32.

[107] Article 27 of the International Covenant on Civil and Political Rights, which was adopted and opened for signature, ratification and accession by the General Assembly, resolution 2200 (A) in the 16th of December 1966, Effective on the 23rd of March 1976, (In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language), Check: Mahmood ShariefBasyoni, Documents on Human rights, the first volume, previously mentioned source, P.88.

[108] BasielYousifBajak (& others), constitution in the Arab world, stability elements and the basics of change, Print 1, Center of Arab Unity Studies, Beirut, 2006, P.54.

[109] Article 9 of the European Convention on Human Rights, which freed Roma on the 4th of November 1950, says (Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance). Check: Mahmood ShariefBasyoni, Documents on Human Rights, regional and Islamic documents, Second Volume, Dar al-Shorowq, Cairo, 2003, P.57.

emphasizes the respect of the right to freedom of thought, conscience and religion, and calls upon states to take effective measures to prevent discrimination based on religion or belief.

Therefore, to protect religious minorities and to guarantee their rights, some countries with religious minorities were keen on adopting the system of the modern civil state which is based on the principle of citizenship, equality and the modern constitutional principles that have spread in the world, especially in the period of time between the First World War and the Second World War, and the period that followed, after the collapse of fascism, Nazism and the foundation of the United Nations organization and the adoption of the right of self-determination, through the formation of secular systems based on the style of separating religion from state and limiting the role of the state to performing service functions.

Many countries, especially democratic ones, adopted this technique to assimilate the religious, ethnic and nationalism pluralism, whereas other countries addressed this problem by establishing federal administrative systems.

Allowing religious, national and other minorities to practice their rituals and traditions in a way that guarantees practicing their rights in reality, in line with their aspirations and private concepts, shape a system that the majority of the modern states which has minorities are adopting.

Other countries meanwhile kept wandering in the way of dealing with minorities by denying their existence and lacking recognition of their rights, religious diversity and multiculturalism, which has deepen the problem of ruling in these countries, especially after the failure to achieve the slogans that focused on the framework of a national state that goes beyond religion, ethnicity and faith. In other words, it established a national state by surpassing these different religious and ethnical components.

Refusing to recognize minorities as equal to others, and disrespecting their privacy and sub identity, as well as marginalization and discrimination, under the justification of maintaining the national identity, was the cause for deepening the problem of religious minorities and others in those countries.

The international commitment to respect Human Rights and his basic freedoms, including freedom of belief and respecting rights of minorities is a legal duty, which every country has towards the international community. It includes taking the necessary measures to ensure the respect and application of Human Rights[110],

[110] Regarding this Matter, the first modification for the constitution of the United States of America assured that the congress wouldn't issue a law that would forbidden a religion or prevent the free practice of beliefs.

abstaining from all that would disable this goal and the international community has the authority to force it to this.

The international commitment to respect Human Rights is not purely out of moral or tolerance, but from a legal obligation which based on legal sources represented by regional and global international agreements, the consequences of any violation bears with the state's international responsibility[111]. The states recognition of Human Rights is not enough without providing the proper legal systems, effective systems to ensure and guarantee the practice of these rights without being just words on paper with no use[112].

Means for protecting Freedom of Belief:

First: International methods and mechanisms: there are several methods to protect freedom of belief in the international law, some of which will be under the framework of Human Rights, and others use private domains as private agreements for religious minorities, conferences and seminars on religious tolerance.

A– General Mechanisms and Methods:

1- Human Rights Committee:

Economic and Social Council of the United Nations, according to Article 68 of its covenant, has the authority to establish commissions for the economic and social matters and to promote Human Rights, and according to this authority, Human Rights Commission was established, with a general specialization, which means it doesn't specialize in only freedom of belief but in different issues connected to Human Rights, generally speaking.

The committee specialization requires the committee to raise reports containing recommendations and proposals to the Economic and Social Council in matters relating to fighting discrimination based on race, sex, language or religion. And protecting minorities and other issues connected to Human Rights which are required by the Universal Declarations for Human Rights.

2- Political and Civil rights Committee:

[111] Check: Ibrahim Ahmad Khalifa, the international obligation to respect Human Rights and his Basic Freedoms, Alexandrea, 2010, P.21.
[112] Nasir Ahmad Bakhit.

Established according to the international agreement for Political and Civil rights, specialized in looking through reports provided by countries about the taken procedures to guarantee the rights listed in the agreement.

3- Other general mechanisms to protect Human Rights:

This mechanism requires and according to the additional protocol, as an appendix to the International Agreement for Political and Civil rights, to raise any individual appeals and misconceptions to the Human Rights Commission which will do its work in studying individuals notifications who claim that they are victims of Human Rights violations, and the participating states should abide by the protocol's provisions.

B- Special Methods and Mechanism to protect Freedom of Belief:

Religious freedom protection mechanisms relate to the subject of minorities and discrimination based on Religion which is the result for lack of respect to others' freedom to embrace different religions and what causes abuse and contempt. Therefore, special mechanisms were put in the domain of the systems of the United Nations to guarantee this right, including: sub commission to prevent discrimination and to protect minorities, special work groups, holding conferences for religious tolerance[113] and other means of protection including special agreements, and resolutions to confront discrimination and racism.

1- Sub Commission to prevent discrimination and to protect minorities

It is a subsidiary system of experts to keep track of the commission of Human Rights and the economic and social council, and this system was formed to help the commission and the council with the tasks related to Human Rights, and the Sub Commission is one of the organs of the United Nations which has great importance in the field of Human Rights. In general, it is the main organ of the United Nations working in the field of minorities' rights particularly[114].

This commission specializes in preparing studies relating to racial discrimination and violation of Human Rights and protection of ethnic, national, religious and linguistic minorities, performing any task assigned by the economic and social council and the commission on Human Rights, and studying private complaints

[113] NabielQarqour, Previously mentioned source, P.108.
[114] Wael Ahmad Alaam, protecting minorities rights in the general international law, Print 2, Dar al-Nahda al-Arabiya, 2001, P.193.

regarding dangerous violations of Human Rights and taking recommendations and resolutions regarding these complaints[115].

This committee contributed significantly to the protection of freedom of belief and respect for differences on the basis of religion, and the protection of minority's rights.

2- Special Working Groups

The creation of the special working groups came late in the work of the commission on Human Rights, and moved with an international resolution to the council of Human Rights. The first group was a special working group for human rights in South Africa 1962, and the working group specialized in the policy of the Israeli oppression in Palestine 1969-1970 and another group specialized in Human Rights in Chile.

These groups perform field visits and hearing of witnesses in certain places and countries, they also raise reports to the council of Human Rights which publishes them as official documents within their documents. The benefit of such groups is very important; it reveals few major violations of human rights in places of the world with conflicts and political, ethnic or religious crises.

3- Conferences and Seminars about Religious tolerance.

4- International agreements about discrimination and the importance of tolerance.

5- Decisions issued by the United Nations to confront racism and discrimination and decisions on the elimination of all forms of religious intolerance[116].

Second: Internal National Means

1- Political Means – constitution and the extent of their adaptation with International texts which guarantees freedom of belief and religious Freedom.

2- The Parliament and its effectiveness in issuing legislations and laws that guarantees freedom of belief and religious freedoms, and the extent of its ability to monitor such legislations and its applications.

3- Judicial means to protect freedom of belief – monitor legislations – and court resolutions.

[115] Salem Mahmood Badr al-Dien, The obligation to protect human rights, a study in the framework of the United Nations and regional organizations and specialized international practices, Print 1, Dar al-Nahda al-Arabiya, Cairo, 1997, P.85.
[116] For more details: Check: Nabiel Qarqour, Previously mentioned source, P.111-114.

4- What the media and intellectual elites implement in this direction through Civil Society Organizations.

Freedom of belief in Arab constitutions and covenants:

The constitution in any country is the main law, it is the supreme law, also legal and basic document for the state, because it is above other laws, and it includes the organization of authorities, defining rights and general freedoms for citizens. What concerns us in this research is the constitutional texts related to freedom of belief – the subject of the research – as one of the main freedoms to promote Human Rights.

Before going through the constitutional texts in the Arab Countries, we should examine international Arab agencies documents and their vision on protecting beliefs, although the Arab League Charter, which is the highest Arab regional international agency, came to devoid of any mentioning of Human Rights or Freedoms, but the council of the League issued a resolution in 1968 to form a permanent regional Human Rights Commission, as a respond to a note sent by the secretariat of the United Nations in 1967, which included a recommendation of doing so, although the work of the commission didn't quite live up to the level of ambition, in the opinion of few researchers[117].

But the Arab Charter on Human Rights, which was prepared and adopted by the Arab League, addressed the issue and it is considered as the most important document for Human Rights in the Arabian region.

This charter was adopted in September 1994, the second part of it includes a set of basic freedoms "It acknowledged freedom of Belief and considered freedom of thought and opinion guaranteed for each individual, and guaranteed for individuals from different religions the right to practice their religious rituals and to express their thoughts and opinions according to the law"[118].

The Article 37 from the original text and a part of Article 30 from the edited text from the Arab Charter on Human Rights say "Minorities are not to be deprived of their right to enjoy their culture or to follow the teachings of their religion".

And likewise, most Arab Constitutions contain provisions which ensure freedom of belief, including its understanding of the concept and regulatory provisions for the practice[119], but, as it is known, practice reveals a gap between the legal texts and

[117] Check: Khalil Hasan, Modern Arabian Issues, Print 1, al-Halabi publishing, Beirut, 2012, P.155.
[118] Check: previous source, P.159.
[119] Check: Saadi Mohammad Khatieb, Freedom of Belief: and its legislated resolutions and application conditions and the importance of Interfaith dialogue, Print 1, al-Halabi Publishing, 2011, P.17.

the meanings of the constitution, laws could come quite often restricting what the constitution permitted.

In Monarchy constitutional regimes as in Jordan, Bahrain and Morocco, freedom of belief was linked with a condition providing the practice within the framework of public order and morality. The Jordanian constitution acknowledges freedom of Belief in article 14, which included "the state protects the freedom of practicing religious rituals according with the customs observed in the kingdom, as long as it doesn't affect public order or morality".

In the constitution of Bahrain, the Article 22 included "freedom of conscience is absolute and the state guarantees the inviolability of worship, and the freedom to perform religious rites and religious processions and meetings in accordance with the customs observed in the country".

As well as the Moroccan constitution, which recognized the freedom belief in Article 6, states "Islam is the state's religion, and the state shall guarantee for each individuals freedom of practicing his worship".

But Saudi Arabia is a religious country with a unilateral system[120]; Islam is the official religion of the state and the only source for legislations, and several Arab countries tend to head in the same direction such as Kuwait, Yemen, UAE, Bahrain and Egypt. However, a clear variable occurred in Egypt within the freedom of religious belief among the strongest legislation in the constitution in 2013.

Article 23, in the political bylaw of Saudi Arabia states "the state shall protect the faith of Islam… and apply its law and order the promotion of virtue and the denial of evil, and the duty of calling people to God". In the Article 26 it is stated that "the state shall protect Human Rights according to the Islamic Sharia".

Amiri Systems are unilateral systems, where Islam is the main religion of the state and the only source for legislation; it recognized freedom of belief to be practiced in the framework of public order and morality. Article 35 from the Kuwaiti states "Freedom of belief is absolute, the state shall protect the freedom of practicing religion according to the observed traditions, as long as it doesn't affect public order and morality".

And also Article 32 from the constitution of the United Arab Emirates states "Freedom of practicing religious rituals according to traditions is preserved, as long as it doesn't affect public order or contrary with public morals".

[120] Unilateral Systems: are the ones that has secular or religious systems, such as Saudi Arabia where the constitution is according to the Islam, whereas Senegal has a secular constitution. Check: the report of the institute of international law and Human Rights, minorities and law in Iraq, Issued 2011, P.103.

The Qatari constitution didn't differ either, which recognized freedom of worship according to Article 50 which states" freedom of worship is preserved for everyone, according to law, and the necessities of protecting public order and morality".

And in the same direction, the basic political bylaw of the Sultanate of Oman referred to freedom of belief in Article 28 which states "Freedom of practicing religious rituals according to traditions is preserved as long as it doesn't affect public order or morality".

Meanwhile, the republican constitutional systems approved freedom of belief in the context of respect for public order and the governing legal rules.

The Sudanic constitution approved freedom of belief in article 6 which included details about religious rights, and states "the state respects the following religious rights:

A- worship and assembly according to rituals of any religious or belief and establishing places for these acts and preserving it.

B- Establishing and preserving the proper Aid and Humanitarian institutions.

C- Ownership and possession of fixed and mobile property, manufacturing, possession and use of tools and materials related to the rituals or customs of any religion or belief.

D- Writing, issuing and distribution of religious prints.

E- Teaching of religion or belief in proper places.

F- Attract and receive voluntary financial contribution or any other contributions from individuals or private or public institutions.

G- Train or assign or electing or succession of the proper religious leaders according to the requirements and standards of any religion or belief.

H- Taking into account holidays, feasts and ceremonies in accordance with religious beliefs.

I- Contacting individuals and groups in regard of religious matters and matters of belief, regionally or internationally[121].

[121] Saadi Mohammad Khatieb, previously mentioned source, P.20-21.

Also the Algerian institution recognizes freedom of belief, Article 36 states "No one shall harm the sanctity and inviolability of the freedom of belief and opinion" and the Tunisian constitution includes in Article 5 a text that states "the Tunisian republic guarantees individuals freedom and freedom of belief and protects the freedom of practicing religious rituals as long as it doesn't affect public order".

And the constitution of Djibouti, acknowledges freedom of belief in Article 11, which states "every man has the right to freedom of thinking, conscience, religion, worship and opinion in the context of respecting for law".

And the constitution of the republic of Comoros, pointed to the freedom of belief, and it included the equality between people in rights and duties without discrimination based on belief or religion, which guarantees freedom of belief[122].

The Somali constitution also acknowledged freedom of belief in Article 29 which states "freedom of belief is guaranteed for everyone and he can freely announce his religion and practice its rituals and to broadcast its teachings within the limits set by the law for the protection of public health or morals or the system".

The Libyan constitution also includes texts about freedom of belief in Article 2 which acknowledges the states protection to practice religious rituals according to traditions.

The Yemeni constitution acknowledged freedom of belief implicitly through emphasizing the commitment to the Universal Declaration of Human Rights in Article 6 and reassurance in Article 52 that the places of worship had their own sanctity.

The Mauritanian constitution takes the same approach, because it didn't include clear texts about the freedom of belief, but the prologue of the constitution confirms the commitment to the principles of the Universal Declaration of Human Rights, and the African Covenant for Human Rights and nations, and the international agreements which is approved by Mauritania.

Those countries that we should look into and examine their constitutions are Iraq, Lebanon and Syria, as their communities consist on a number of religious, sectarian, ethnical and cultural components, besides the fact that the legal systems with regards to personal status are not unilateral as it is in Saudi Arabia, Kuwait, Bahrain, and UAE. But it also uses the dual legal system like Syria and Iraq, whereas Lebanon uses an associating system[123].

[122] Previous source, P.20.
[123] In many Arabian countries which has a Muslim majority, there are bilateral legal systems where the government is secular, but Muslims have the right to bring their family issues and disputes to the Islamic courts. And the specialties of such courts vary from one country to another, but it

1- Freedom of Belief in Iraq

Although many Iraqi constitutional Articles promotes freedom of Belief[124], and what the provisions of Article 372 of the Iraqi Penal Law number 111 Year 1969, provides guarantees to protect the beliefs of ethnics and acknowledgment of the sanctity of religious buildings, books and signs for different religions and ethnicities, and the criminalization of acts that desecrate the sanctity of religious minorities and their practices and traditions[125], but there are laws contrary to those Articles, and also with the concepts of the Islamic law itself which confirms the principle of "there is no compulsion in religion".

For example, people who follow the Bahai faith are not allowed to practice their rituals and beliefs, by enacting unfair and injustice laws against them, especially law number 105 which was issued in the eighties during the rule of Saddam Hussein.

And the Civil Status Law No.65 of 1972 amended, and the provisions of the Articles 21, 20,which concerns non-Muslim Iraqis and contravenes the constitution and the freedom of belief and the principles of equality that the constitution guaranteed in many of its Articles, Article 20 of the civil status law, paragraph 2 states "Non-Muslim may convert to another religion and according to the provisions of this act" in the concept that the Muslim can't convert because that's apostasy by the concept of the Sharia.

Whereas Article 21 paragraph 3 from the same law states "minors embrace the religion of who is Muslim from the parents". For years, non-Muslim Iraqis were trying to change this paragraph to "minors stays in their original religion and get the right to choose a religion after becoming adults" but they didn't succeed, especially as this article have had negative social effects on Christians, Mandaeans and Yazidis, according to which, the minor child would become Muslim if one of the parents converts, and this would take place in the governments records

specializes in Marriage, divorce, heritage and wills. But the associating systems, which includes the state that allows separate legislations for different religious groups where each religious component has his own laws, and for each religious groups its own law and courts to resort to when needed, and these courts receive acknowledgement by the state. For example, Lebanon.

[124] Second Article: Secondly, confirms "guarantee the full religious rights for all individuals to freedom of belief and religious practices, such as Christians, Yazidies and Mandaeans. And Article 14 states (Iraqi are equal in law with no differentiation based on sex, race, nationality, origin, color, religion, ethnicity, belief or opinion …) Article 37: Secondly: the state ensures the protection of the individual from intellectual, political and religious coercion. Article 41: "Iraqis are free with their personal commitments, according to their religion, ethnicity, belief or choices" and Article 42: "every individual has the freedom to think, conscience and belief" whereas article 13: First: stated "considering the constitution the supreme law in Iraq…"

[125] Check: Article 372 from the Iraqi Penal Law No.111 year 1969.

without the knowledge of the minor, this has caused and still causes problems for thousands of Christian, Mandaeans, Yazidi and Non-Muslim families generally.

Also non-Muslim minorities confirm that considering a minor Muslim is opposed to the provisions of the applicable laws because the minor is incomplete legally, with means it is not right for him to have legal acts, because the Iraqi Civil Law in Article 46, considers who isn't adult (18 years old) has a lack of eligibility. And considering a minor Muslim is contrary to the Islamic law "there is no compulsion in religion".

And concerning Personal Status Law No.188 Year 1959 amended, the provisions of the second Article, which indicates that the law goes on all Iraqis and there is no exception, just the ones excluded by special law, and whereas Non-Muslims in Iraq don't have a special law to organize their personal status, that means the texts of this law goes on them with all its provisions, including marriage, the house of marital obedience, alimony, child custody, disposition of a will, and the provisions of inheritance.

As known it differs, for example, no limit to the provisions of the law in terms that the wills for Christians from those in Personal Status Law, and also with regard to the provisions of the inheritance and the way of dividing the inheritance and devolution of property funds, according to the Islamic law[126].

The issue of inheriting a Muslim from a Non-Muslim and the inadmissibility of the contrary, which is against the constitution and the provision of Article 14 which confirms that "all Iraqis are equal in front of law with no differentiation based on sex, race, nationality, origin, color, religion, ethnicity, belief or opinion".

Although the court of Personal Status is guided by ecclesiastical courts, of each sect and as needed, but this only happens in rare cases, as in the case of divorce, as well as in the application of the provisions of Article 16 of the courts statement No.6 year 1917 concerning consulting from religious leaders or scientists.

Therefore, a number of legal texts requires to be reviewed, especially those that do not fit with civil rights of citizenship, equality, freedom of belief and personal rights, which affects Christians, Yazidies and Mandaeans, as Article 17 of the Personal Status Law does, which states "a Muslim man can marry a Kitabia (Christian, Jew or Mandaean) but the Muslim women can't marry a Non-Muslim" and also Article 18 of the mentioned law, which states "The conversion of one of the spouse to Islam before the other would go under the rule of the Sharia for the

[126] Check: Maher Saeed Matti, the rights of the Christian component in the Iraqi legislation: and analytical therapeutic and legal study, Print 1, Dar al-Mashreq al-thaqafia, Iraq – Duhok, 2012, P.30-31.

issue of the staying of the marriage, or differentiating between spouses". That when the husband converts to Islam, the wife can stay on her original religion if she is Kitabia (A woman from the people of the book), but Yazidis are not considered the people of the book, so the Yazidi wife would have to convert before marrying a Muslim. If the wife converts to Islam, the husband has to choose between Islam and divorce.

We believe that having separate provisions of the legislation for minorities would create a complex legal system on the charge of appropriate judicial resolutions and equality between all citizens. In our own opinion, not having protection for Non-Muslim minorities in the field of Civil Status comes from the lack of any relevant personal status laws to control their personal status.

The Iraqi Civil Status Law includes other Articles related to marriage (validity, dissolution…). Its resolutions violate the rights agreed in Article 5 of the International Convention on Eliminating All forms of Racial Discrimination and for which Iraq is a part of.

It also violates Article 14 of the Iraqi constitution which states the equality of all Iraqis in front of law without discrimination based on sex, religion, sect, belief or opinion. Article 12 of the Personal Status Law states "for the validity of the marriage, women should not be prohibited according to the Sharia for the man to be able to marry her" and Article 13 states "the reason for prohibition is the affiliation in an Non-heavenly religion" and Article 17 states "the Muslim man can marry a Kitabia (A woman from the people of the book), but the Muslim woman can't marry a Non-Muslim", we realize that Article 12 and 13 forbid the marriage from a person of a "Non-heavenly" religion, and Article 17 also forbids any marriage between a Non-Muslim man and a Muslim Woman. These resolutions affect the right to establish marital relations for Muslims as well as non-Muslim minorities, and causes the discrimination of Muslim and non-Muslim women.

Therefore, there is a need to reconsider Article 12, 13, 17 shown above, in a way to make marriage between religions possible and valid.

There are other Articles in the Iraqi Civil Status Law related to divorce and annulment, such as Article 34, which imposes performing divorce by a particular faith, and Article 37, which allows two married people to end their marriage just by saying a word, while there are other Muslims like Bahais who don't allow the man to use this way. There is the Kaka'isare, a Muslim minority in Iraq who doesn't recognize divorce. Islamic sects and teams vary on Al-Odda(the waiting period for the divorced woman until she can marry again), which is recommended by Article 47, under which the wife must fulfill the period before being able to marry.

Articles 34, 37, 47 of the Personal Civil Law are incompatible with Article 27 of the International Covenant on Civil and Political Rights, because it denies the right of religious minorities "with declaring their religion"[127].

And because non-Muslims in Iraq have a raising feeling of discrimination, appeals to reconsider the Civil Status and Personal Status Law have increased, going from the Civil right of citizenship and the principles of justice, equality and freedom of religion which is guaranteed by the Iraqi constitution, and assuring the **need to accelerate the procedures in addressing the problem of the Islamization of minors outside their will after the conversion of one of the parents to Islam, demanding the abolition of paragraph 3 of Article 21, or changing it to "Minors can stay in their original religion, and if they want to choose later, assure that they can have this right after being adults".**

Minorities also demand the modification of Personal Status Law No.188 Year 1959 amended, especially the Articles that non-Muslim minorities are suffering from by **adding a special section for non-Muslims to the running law – which includes rules and resolutions concerning personal status for non-Muslims in subjects connected to family, marriage, divorce, child custody, heritance, wills, adoption and other, after it is approved by religious scientists and scholars and legal experts from the non-Muslims components.**

2- Freedom of Belief in Lebanon

Belief and Religion play a significant role in Lebanon, it forms a prominent corner in political and constitutional structure by examining the social and political structure of the Lebanese state, it clearly shows that the composition of the current political and constitutional system, which is based on religious sects and sectarian distinct of 18 sects, 12 Christian and 4 Islamic, in addition of the Jewish sect which is in continues decrease[128].

This sectarian social structure had an effect on the constitutional political structure in Lebanon, where every sect has its own position in the structure, and this is clearly demonstrated through sectarian legislations both in the National Pact of 1943 and the Taef document of the Lebanese National reconciliation of 1989[129], followed by other legislations.

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[127] International Law Institute for Human Rights, a report about minorities and law in Iraq, 2011, P.45-46.

[128] Sects in Lebanon: Maronite Catholic, Shia, Sunni, Druze, Orthodox, Catholic, Coptic, Syrian Orthodox, Syrian, Kaldan, Assyrians, Orthodox Armenians, Latin, evangelicans, Alwaits, Ismailis and jews.

[129] Check: AhmanSaliemSuefan, general freedoms and human rights, Part 2, Print 1, al-Halabi Publishing, Beirut, 2012, P.159.

As for the Lebanese constitution, it acknowledges the freedom of belief in Article 9, which states "Freedom of Belief is absolute, and the state by performing reverence to God respects all religions and creeds and guarantees the freedom of practicing religious rituals under its protection, when it doesn't breach public order, and it also guarantees for the natives with the different denominations and respect of the personal status law and religious interest system[130]. According to this Article, each religious group will have a special Personal Status Law including courts to resort to when needed, Civil Judicial authorities regulates under the provisions of civil trials, whereas the jurisdictions of the community would be under the framework of various religious sects recognized by the Lebanese state.

The presence of many special laws for religious minorities would require having different courts to achieve a tight justice system, supporting such system is not an easy process and it could be complicated in practice.

For example, Lebanese courts can hear about disputes that may arise from the marriage contract between two Lebanese held abroad, or between individual Lebanese and a foreigner in accordance with civil procedures of the concerned country.

The provisions of laws relating to the capabilities of Sharia and Druze courts is applicable if the couple are Muslims and at least one of them holds Lebanese citizenship. And there are legislations applied for all Lebanese, legislations for Muslims only, and legislations of non-Muslims[131].

Keeping Civil Status issues, like marriage, divorce, heritage, adoption and others outside the framework of a personal status law would organize its affairs by the state, would make them subject to laws of sects and doctrines which varies from each other and it creates barriers as a way for building a system of equal citizenship and integration in the same society, whereas adopting a unified optional civil law for Personal Status would lead to create convergence and to fill the gap between the people of the Lebanese community.

3- Freedom of Belief in Syria

The Syrian community, as it is known, is a diverse community of races, religions and creeds as well as in Iraq and Lebanon, and its constitution acknowledges freedom of belief in Article 35, which states:

1- Freedom of belief is preserved and the state respects all religions.

[130] Saadi Mohammad al-Khatieb, previously mentioned sources, P.23.
[131] Check Article 79 of the Lebanese constitution.

2- The state guarantees the freedom of practicing all religious rituals when they don't affect public order.

But the political and legal system has flaws in the method of administrating this religious diversity, there is a clear discrimination for non-Muslim minorities in the Personal Status Law especially when it comes to marriage cases which reflects clearly the division of the Syrian people at the expense of citizenship that is supposed to make all citizens equal according to law "Civil law".

With the absence of Civil Law, the personal status law distinguishes between members of the society based on Islamic law, it uses terms as Zemma and Kitabia although "Zemma" is not mentioned in the Quran but two times (sora al-towba: 8 and 10). And it means the Moshrikeen (polytheists) of Quraish, and most Quran references to "other" uses descriptions as "ahl al-Kitab" or "Moshrikeen" or "Koffar" (Infidel)[132].

In 2009 a governmental commission which emerged from presidency of the Syrian Council of Ministers raised a draft for a new law for Personal Status, which raised controversial among the Syrian society, because it conflicts with many basic human rights and his personal freedom, in addition to containing texts devoted to religious discrimination.

This law draft doesn't only include legal material contrary with international principles of Human Rights, but it also conflicts with many Articles in the Syrian constitution, especially those concerning freedoms, rights and equality between citizens. Article 25 of the constitution states "freedom is a sacred right and the state shall guarantee the personal freedom of citizens and safeguards, their dignity and security" and paragraph 3 in the same Article states "citizens are all equal in law in duties and rights".

Religious freedom, as we mentioned previously, requires the freedom of embracing or not embracing any religion, and it also includes the right for everyone to change his religion or creed. A number of texts in the law draft conflicts with that. Article 63 of the law draft forbids marriage of the one who left Islam even if the other is non-Muslim, and this is a violation of personal freedom, in which states are not supposed to interfere, especially in religious ones.

Article 230 from the draft emphasizes the dissolution of marriage between any two Muslims when one of them converts to Islam and the other doesn't, such text would have negative effects on the marital bond and therefore affecting the children.

[132] A number of composers, minorities and the suppressed questions, previously mentioned source, P.124-125.

Articles 284 and 294 violate what comes in the texts of Articles 25 and 35 in the Syrian constitution, where the first one allows the protection of personal freedoms and the equality between citizens, whereas the second guarantees religious freedoms and beliefs. Article 284 restricts the right of the Muslim woman that converts to another religion in custody of her child, and article 294 states "custody is limited to the Muslim mother".

The texts of the last two Articles takes down the right of the Christian mother's custody in case her husband is a Muslim or a Muslim convert which caused divorce, which means that there is no interest in what's the best for the child, which should be the priority in determining the custody, regardless of the religion of the mother or the father.

Regarding the void of marriage, the draft of the law doesn't differ from the running Personal Status Law. Article 63 from the draft and Article 48 from the running law are the same regarding the void of the marriage of the Muslim with the non-Muslim.

Also, the marriage between a Muslim man and a non-Muslim girl is void if she is not Kitabia. Therefore, the Durzi woman, which isn't considered Muslim not Kitabia, has to convert to Islam in order to get married to a Muslim person[133].

It is noted that the Durzi woman faces the same problem as the Yazidi woman in Iraq. In addition, the project of the law legislates polygamy for the Christian man, this comes from the text of Articles 639 and 640, and it forces the Christian woman to the Iddah (the period a woman must observe after the death of her spouse of after a divorce, during which she may not marry another man) in Article 626, and as it is known that the issue of polygamy is incompatible with Christianity and with ecclesiastical laws and the essence of Christianity.

Having discriminatory differences and privileges of citizens do not reflect justice in laws, it was and it still is a reason to circumvent the law in order to gain certain privileges, just like converting to Islam to have the custody of the child or get rid of paying the alimony and the rest of the obligations or to be able to marry for the second time for a Christian, or to get a resolution of divorce which is subject to severe restrictions, or for the prohibition of all Christian denominations, changing religion could happen sometimes for the heritage, because the Syrian and Iraqi laws states "no heritance if there is a difference in religion".

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[133] NaelJurJus, legal study: the applicability of the draft of Personal Status Law with Syrian human rights system, al-hewar al-motamaddin website, No.2682, 2009/6/19, 2013/5/5.
http://www.ahewar.org/debat/show.art.asp?aid=175600
2_ rules of the eastern churches, translated by (Bishop John Mansour and others), Print 2, al-Maktaba al-Bolisia publishing, 2002, P.444.

It is worth mentioning that the personal status ecclesiastical laws states the prohibition of marriage between the followers of different religions, where law No.803 from the eastern ecclesiastical laws states "you can't celebrate a right marriage of a non-Baptist"[134].

Because of the growing criticism and resentment and continued controversy by Christian communities in Syria about the Civil Status Law either the one running or the proposed project, the Syrian president issued legislation No.76 in 2010/9/26 amending Article 308 from the Personal Status Law No.59 Year 1953, by adding heritage and the wills to it.

This legislation canceled the violation of the provisions of the Christian and Jewish laws, and it stated "for Christian and Jewish sects, the legislated rules of their religion are used when it comes to "engagement, marital contract, alimony, marriage dissolution, dowry, custody, heritage and wills"[135].

Legislation 76 was followed by another No.7 in 2011/1/11, where the Syrian president acknowledged provisions related to inheritance and wills owned by Eastern Christian denominations, and according to this legislation spiritual courts can organize an inventory inheritance document and will for the Christian communities as it is for Western Christian denominations, and Christian women became equal with men in the issue of inheritance, and the will has also became a half after it was defined by a third in the general Personal Status Law, and what exceeds the Third depends on the heirs[136].

After this review of many of the texts concerning freedom of belief in the constitutions of most Arab countries, it must be noted that through access to the constitutions of these countries and the basic laws, most of these countries except Lebanon carry controversial contradictions, while recognizing that the countries' citizens are equal in rights and duties.

It is confirmed that Islam is the state's religion in Egypt; the Egyptian constitution states in Article 2 "Islam is the religion of the state and Arabic is the official language and the principles of the Islamic Sharia are the main source for legislation".

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[134] Dowry: money or property that a wife or wife's family gives to her husband when the wife and husband marry in some cultures.
[135] Check: the text of legislation 76, about amending Article 308 from the Syrian Personal Status Law, Syria days website.
http://www.syriadays.com/index.php?mode=article&id=3086
[136] Check: the president of the republic ratify the provisions about inheritance in the private wills of the Eastern Christian denominations.
http://swoforum.nesasy.org/index.php?topic=6008.0

It is the same in the Tunisian constitution of 1959, which states "Tunisia is a free country, independent, sovereign, its religion is Islam, Arabic is its language, and it's a republic" as well as the Jordanian constitution which states in Article 2 "Islam is the religion of the state and Arabic is the official language" it goes the same for the constitutions of other countries like Algeria, Iraq, Kuwait, Qatar, Oman, Yemen, Saudi Arabia and Libya, it could be different in the Syrian constitution which states in the third Article "the religion of the president is Islam" and that "the Islamic Fiqh (the human understanding of the Sharia) is the source for legislation".

Strangely in Palestine, the basic law and with the impact of the Hamas movement adopted the Legislative Council in 1997 to have "Islam is the official religion in Palestine" at a time when the National Charter in the revolutionary period of 1968 didn't determine a religion for the state[137].

The constitutional provisions which confirms that the state's religion is Islam, or is the first source of legislation, contributed directly in marginalizing all located outside the Islamic framework, including sects of the Islamic framework, especially that most of these systems provided nationalist or socialist ideologies coupled with secular or liberal sides.

Also, most of these constitutions assume that the people are sovereign and the source of legislation, the Egyptian constitutions states in the 3rd Article "sovereign is only for the people and the people are the source of all authorities, and the people shall exercise and protect this sovereignty and safeguard national unity in the manner prescribed in the constitution" and in the Syrian constitution, Article 2 "Sovereignty is only for the people and they shall exercise it in the matter prescribed in the constitution". And here a question arises, how the people can be the sovereign, when he is restricted to a single source of legislation.

Specifying a religion for the state whether it is Islam, Christianity or Judaism is a form of discrimination, because it distinguishes between citizens and contradicts the principles of equality of rights and duties which is confirmed in most of the constitutions, and the discrimination that is based on religion or sect is not less negative than the one based on race or color. The idea of a State's religion is just a legal entity, and it contradicts with the legal logic.

A legal entity shouldn't have the characteristics needed to achieve his goals and objectives, and he shall not be given more than that, so it is not permissible for the state as a legal entity to determine its religion, but it may not be the same for the rest legal entities which are recognized by the legislator legally, as if they are companies or organizations.

[137] A group of researchers and writers, minorities and the suppressed questions, Print 1, Dar Batra for publishing and distribution, Damascus, 2010, P.151.

We believe that granting the state a religious status as a natural person involves a violation of the legal principles, because that isn't one of the requirements of its existence and it isn't located under the framework of conditions needed to achieve the purposes set up for it.

The laws that were legislated following these constitutional provisions deepened the problem, especially in countries with religious and sectarian diversity and the presence of non-Muslim minorities, which contributed in strengthening the feeling of discrimination and marginalization and the emergence of degrees of citizenship on the basis of religious affiliation.

All the Arabian laws states on the issue of changing religion, but they only permit changing the religion towards Islam, and this is a distinction against other religions and their followers, and this involves a violation of the constitutional principle of freedom of belief and respect for all religions.

Arabic laws don't allow a Muslim to leave the religion and convert to another, but they allow for the followers of other religions and faiths to leave their religions and convert to Islam. And they don't also allow the conversion from a non-Muslim faith to another non-Muslim faith, for example, a Jew or Yazidi can't convert to Christianity, and there is nothing in the text of Arabic laws that authorizes the recording of this transition and the official recognition[138].

In addition to this contradiction that exists between what is provided in the body of the Arab constitutions and laws and sentences in terms of freedom of belief and the consequences of this discrimination between Muslims and other religions, there is a social discrimination practices against non-Muslim minorities in Arab countries, a discrimination deepened over the years and coupled with colonial interventions which had an interest in distributing discord between the people of the region on sectarian and religious basis, and this takes a more complex character of the constitutional or legal distinction, because the constitutions and laws are clear and decisive in their texts, while the social reality is more complex, and it is more difficult to distinguish the victim from the executioner.

Conclusion

It is clear, through the review included in this study, that belief is a fundamental pillar of human life, and there is an urgent need to achieve goals and objectives, and that the protection of freedom of belief enhances the respect for human rights and contributes in increasing stability and civil peace of the country. And that man cannot accept to abandon his beliefs and faith easily, and history testified religious

[138] Check: a group of researchers and writers, minorities and the suppressed questions, previously mentioned source, P.37-38.

conflicts marked by cruelty and horror and based on the protection of belief and religion.

And that acknowledging or recognition of freedom of belief in isolation from the respect of other basic freedoms of humans, including freedom of thought, opinion, assembly and teaching, wouldn't give any sense for the freedom of belief.

It turns out that heavenly religions and to protect the religion and because of the fear of the departure of people to indifference towards religion, was reluctant to accept to give people absolute religion freedom, and so each religion adopted a specific approach in issues concerning religious belief, but, by principle, it didn't accept coercion to convert to religion or to practice its rituals.

Each religion or creed has basic constants and basic tenets formed over time and attempting to change it is a sensitive subject to any human being, whatever the methods and arguments, and the attempts to resort to proving its mistakes or marginalizing it could lead to more intolerance among believers, and so this issue requires the existence of a degree of tolerance and acceptance of the other, between different religions and faiths, and to open the door to a dialogue between different religions and sects.

And the attention on freedom of belief and religious freedoms which heavenly religions tried to devote shifted to international institutions, within the peace treaties at Versailles during the era of the League of Nations, and focusing on this matter increased in the era of the United Nations, and this interest had a reflection in international law through international declarations and conventions. Although, international law ensures broad implications on the freedom of belief, but it could be said that the freedom of belief in the world didn't live up to the level of ambition in reality, and in many cases, compliance with international law depends on the will and interests of the state itself and its goals, the commitment is more moral that legal, so the United Nations must activate the mechanisms of monitoring internal legislations of states, and to prevent any state from religious bias and the use of means to support a particular faith or underestimate the importance of another religion.

Also, the establishment of an ideological or religious state in a multi-religions, cultures and ethics country, must lead to discrimination and thus to instability and the destruction of peaceful coexistence, and the ancient and modern history has shown the failure of theocratic and ideological states which includes religious, cultural, national and linguistic diversity, and going from there it can be said that clergy, whether Christians, Muslims or others requires to focus attention on the spiritual side, guidance, advice and education away from politics, because the mixing of religious and political thought could lead to many problems adversely

affecting religion and politics all together. And who goes back to history can see that.

We saw through the research, that the tools of modernization had clear effects on people's lives, so they began returning to traditional values, which emphasizes the need to give greater attention to the spiritual side in order to fill the gap, the spiritual side is considered by the European Convention on Human Rights as a main principle coupled with democracy and Human Rights, and the space created by the tremendous development in technology in people's lives.

Also resorting to modernizing the state and the failure to achieve hoped ambitions to overcome social problems related to poverty, hunger, illness, environment and other. And the failure of secularism in achieving the ambitioned religious freedom, helped to turn people into religious values.

This, alongside the secularism's lack of harmony with the idea of adopting a certain religion or an official church for the state, sectarism also doesn't line with the Islamic principles in countries with Muslim majority, because there is no secularism in Islam, because Islam is seen by the majority of scholars as a religion and a state.

Conclusions:

- The declarations and covenants and international agreements are important in promoting freedom of belief, but it isn't enough unless it is conditioned with constitutions and domestic laws, and this is connected to the will of the countries to implement this and without this will, these texts make no sense. In other words, the protection of belief lies in the will of the state and those in charge of its system, and not at the extent of recognition of international laws, and then it is a moral obligation more than it is legal.

- Refusing to recognize religious diversity and freedom of belief and the denial of cultural diversity existing in the country deepens the problem of governance, and not recognizing religious minorities on the same degree of equality and disrespecting their privacy and sub-identity, as well as the marginalization under the justification for maintaining the national identity was a cause for deepening the religious minorities problem and others in those countries.

- It is true that the rapid rush towards modernization create opportunities and different ways for the well-being of people, but modernization undermined traditional values of the people, communities and nations, leading to a number of social, economic and political problems in the world, where people began under political vicissitudes and concepts of secularism and the changes imposed by globalization, looking for a new sense of identity by making large numbers of

people think now, that the most effective way to achieve their goals is to be a part of a religious group.

- The neutrality of the state with adopting civil identity, and ensuring non-discrimination and equal rights for the owners of religions, regardless of the nature of their faith, will greatly enhance respect for human rights and freedom of belief in particular.

- Working to strengthen the spirit of citizenship and the establishment of a culture of acceptance of others away from hatred and rancor. Tolerance and acceptance of the other can be a solid foundation for coexistence and peace between groups and nations, especially if it is based on a foundation of respect, any respect for the privacy of others, and their culture, religion and civilization.

- In Iraq, with many Iraqi constitution's Articles which emphasize freedom of belief, there are running laws that are still incompatible with those Articles, and also contrary to Islamic law, and to the same concepts that emphasizes the principle "no compulsion in religion". This requires reconsideration and adjustment to achieve an advance system of justice.

- In Lebanon, supporting private civil laws for many religious components, and the consequent of establishing special courts, is a complex process in practice, and this enhances the submission of the state to the laws of the communities, and will eventually lead to a deeper imbalance in the construction of equal citizenship system and weakens merger in the same society.

- In Syria, there is a flaw in the style of managing the religious and sectarian diversity, which is a characteristic of the Syrian society. There is marginalization of non-Muslim minorities in terms of personal status law, where a number of laws intersects with the constitution and the international conventions ratified by Syria.

In the End, we believe and in the framework of this conclusion that promoting freedom of belief in the Arab World, requires reconsidering many running national laws in Arabian countries and editing them to make it compatible with the declarations, laws and international treaties ratified by them, which promotes the respect for human rights and religious diversity and freedom of belief, and there should be a special role for civil society organizations to rehabilitate public opinion in the same state and on globally in spreading a culture of protecting and granting freedom of belief with the privacy of the elite media, cultural and intellectual work to achieve this goal.