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Beyond Dissent and Compliance

A Grounded Theory of Decisionmaking in Conflicts Between Law and Religion

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A Grounded Theory of Decisionmaking in Conflicts Between Law and Religion

Netta Barak-Corren*

INTRODUCTION

September 3, 2015, was an unusual day for Kentucky's small Rowan County. On that day, the County saw its clerk, Kim Davis, sent to jail for refusing to comply with a court order to issue marriage licenses to gay couples. In a statement released through her attorneys, Ms. Davis explained her defiant decision: "I never imagined a day like this would come, where I would be asked to violate a central teaching of Scripture and of Jesus Himself regarding marriage," she wrote. "It is not a light issue for me. It is a Heaven or Hell decision."

Ms. Davis is a contemporary controversial example of a more enduring and general phenomenon. Throughout history and across many societies, people have been facing conflicts—revolving around myriad issues and beliefs—between their faith and the law. While Davis' refusal to issue marriage licenses is particularly extreme due to her position as an elected government official who tool a public role and swore to uphold the Constitution, her narrative follows the same lines of justification of others who seek to defy secular law in the name of divine law. These conflicts divide societies and continually preoccupy the courts. Many of them have become known as instances in which avid believers defy the law and face litigation and possibly sanctions. Ms. Davis is therefore just one link in an enduring chain of cases suggesting that when secular law conflicts with religious law, disobedience is inevitable. Or is it?

Commenting on Davis' refusal to issue marriage licenses, one gay marriage activist said, "If the big backlash and the mass resistance that our opponents promised is one clerk from a county of under 25,000 people, I think we're in really good shape".[1] To anyone following the religious campaign against gay marriage, this observation must be striking. Indeed, despite vehement religious opposition to the legalization of same-sex marriage, only few clerks refused to issue marriage licenses and none of them, except Davis, remained defiant to the point of civil contempt. How can that be? More specifically, if many religious individuals oppose the law yet choose not to defy it, what *do* they choose instead? How do they tackle the seemingly intractable conflict between law and religion? What explanations do they provide, and what behaviors lie in between disobedience and compliance with the law?

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[1] Blinder, Alan, & Tamar Lewin. "Clerk in Kentucky Chooses Jail Over Deal on Same-Sex Marriage", *New York Times*, 3 Sept. 2015.

To answer these questions, this article empirically examines how religious people perceive and tackle conflicts between secular law and religion. I follow the influential research tradition on legal consciousness[2] to study the thoughts, feelings, and behaviors of people in everyday life, including their understanding and interpretation of their experiences, and the transformations that occur in their thinking. Though subjective, these individual accounts often shed light on social institutions and expose their structure.[3] In the present context, the object of these thoughts, feelings, and experiences is not exclusively the law, but also religion, and the strained relationship between the two. I therefore call this type of legal consciousness *conflict consciousness*.

To study religious conflict consciousness in situations of competing legal and religious norms, I conducted in-depth interviews with 41 religious educational leaders. Educational leaders in particular are an interesting population because, by virtue of their role, they instill values and norms and socialize the next generation into religion and the community.[4] At the same time, education is commonly regarded as a public good and is heavily regulated by secular law (in part for the same reasons, namely the societal interest in socializing children to become productive, law-abiding citizens). Because educational leaders' religious responsibilities are often coupled with legal ones, they are highly likely to experience norm conflicts and to experience navigating them in practice. Indeed, many conflicts between law and religion in the modern era revolve around education, from teaching religiously-controversial subjects to religiously-motivated discrimination in admissions and hiring.[5] Yet, as I suggest towards closure by returning to the Davis case, the insights stemming from this study may shed light on additional instances of conflict between law and religion.

The case study for this study and where the interviews were conducted is Israel, where there have been high-profile conflicts in recent years around gay acceptance, religion-based ethnic and pregnancy discrimination, and teaching curriculum, among other issues. The abundance and variety of conflicts, alongside their strong similarity to conflicts facing religious communities in other Western democracies, make Israel a highly relevant case study. Israel also offers several unique advantages for this type of research. First, it provides an opportunity to engage with a highly diverse religious society in a relatively small geographical area which is governed by one legal system, thus minimizing much of the demographic and legal variation that may differentiate religious communities in other countries. Second, Israel is a powerful case study because its dual identity as a Jewish and democratic state intensifies the conflict between secular and religious laws in political, legal, and social debates.[6] This intensity sharpens the issues at stake and can inform lawmakers and religious communities facing similar issues in other legal regimes.

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[2] Patricia Ewick and Susan S Silbey, *The Common Place of Law: Stories from Everyday Life* (University of Chicago Press 1998).

[3] ibid; Elizabeth Hirsh and Christopher J Lyons, 'Perceiving Discrimination on the Job: Legal Consciousness, Workplace Context, and the Construction of Race Discrimination' (2010) 44 Law & Society Review 269.

[4] Sarah Barringer Gordon, *The Spirit of the Law* (2010); Austin Sarat, *Legal Responses to Religious Practices in the United States* (2012); Jeff Spinner-Halev, 'Education, Reconciliation and Nested Identities' (2003) 1 Theory and Research in Education 51; Nomi Maya Stolzenberg, '"He Drew a Circle That Shut Me out": Assimilation, Indoctrination, and the Paradox of a Liberal Education' (1993) Harv. L. Rev. 581; Robert M Cover, 'Foreword: Nomos and Narrative' (1983) 97 Harv. L. Rev 4.

[5] GORDON (N 4); COVER (N 4).

[6] Gila Stopler, 'Religious establishment, pluralism and equality in Israel—Can the circle be squared?' (2013) 2 OJLR 150.

Indeed, the study findings portray a rich and nuanced picture of conflicts between law and religion. Most educational leaders have personally experienced conflict with the law, many have opposed some forms of legality, and some have participated in breaking the law. At the same time, many leaders show a surprising inconsistency: They acknowledge the conflict between law and religion while virtually denying its existence. At face value, these views seem incoherent. A closer analysis, however, reveals a dynamic of cognitive dissonance[7] in which people seek to mitigate the conflict they experience between competing cognitions and norms. My findings show that in order to mitigate the conflict, religious leaders attempt to redraw the boundaries of law and/or religion in three related ways. I define these practices as redefinition, withdrawal, and restraint and show that each has substantial practical consequences. *Redefinition* involves altering the meaning of law and religion such that they do not conflict. *Withdrawal* involves forgoing religious claims with respect to certain people or realms, effectively evacuating religious normativity from some zones of conflict. *Restraint* involves seeking to impose limitations on the execution and enforcement of legal normativity (as exercised by judges, policemen, and other officials), in order to sustain religious authority.

These practices thwart the conventional paradigm of dissent/compliance. Rather than simply defying secular law or obeying it, religious leaders act as problem-solvers, redefining the meaning and scope of law and religion in ways that reduce their conflict. The leaders' converging accounts reveal common institutional practices with significant implications. For example, educational leaders commonly restrict religious norms to the public sphere and turn a blind eye to private violations of religious norms. The resulting practice walks a fine line between deviance (in public) and compliance (in private). In yet another common practice, religious leaders seek to restrain the law's coercive normativity by substituting monetary sanctions for specific performance. In their view, this course provides a way of compliance even when they disagree with the law—while simultaneously forming an effective outlet for dissent. I provide additional instances of redefinition, withdrawal, and restraint in the findings section.

The theoretic contribution of this research is threefold. First, it nuances and enriches the legal discourse on conflicts between law and religion with empirical evidence on the lived experiences of central religious stakeholders, while mapping and theorizing the central themes that emerge from these experiences. The study thus offers the first grounded theory[8] of how individuals navigate conflict between contending legal and religious norms. The implications of this research are particularly illuminating given the frequent assumption that the conflict between law and religion is intractable. While the ways in which religious leaders redraw normative boundaries and redefine the scope and meaning of law and religion offer no definitive solutions to the conflict, they provide directly applicable tools to reduce the conflict and may be used to generate more insights on how to cope with current conflicts between law and religion.

Second, this study extends the research on legal consciousness by focusing on conflicts and groups that have not been thoroughly studied before. Previous research on the legal consciousness of dissent primarily examined conscientious objectors from military service[9] and radical

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[7] Leon Festinger, *A Theory of Cognitive Dissonance* (Stanford university press 1962). *See* p.8 for more detailed discussion.

[8] As defined in Barney G Glaser and Anselm L Strauss, *The Discovery of Grounded Theory: Strategies for Qualitative Research* (Transaction Publishers 1967).

[9] Hadar Aviram, 'When the Saints Go Marching In: Legal Consciousness and Prison Experiences of Conscientious Objectors to Military Service in Israel' in Laura-Beth Nielsen and Ben Fleury-Steiner (eds), *The New Civil Rights Research* (Dartmouth-Ashgate, 2005).

environmentalists[10], but not people in official positions. The informants were individual activists who were already committed at the time of their interview to a course of conflict with the law. (Aviram, for example, interviewed activists in prison or shortly after their release.) Their situation and the timing of their interviews made these activists inherently more likely to provide justifications that undermine legality to justify their actions.[11] Their post-objection status also made them less likely to discuss ways to mitigate the conflict in advance. In contrast, the educational leaders in the present study were not activists but leaders in official positions who experienced normative tensions of varying intensity as part of their job and on a repeated basis. By presenting their narratives and experiences, the present study sheds light on a form of norm conflict that was relatively unexplored to date.

It is also worth noting that previous studies of dissent did not engage religious populations. While the activists in these studies often justified dissent in the name of a higher moral law, *religion* was not their higher law. Instead, dissenters reasoned their actions, even in the context of a collective movement, as individualistic acts stemming from personal morality. In contrast to the religious leaders in the present study, they did not draw on a comprehensive, totalistic normative system like religion.[12] This difference is significant, because systems that aspire to encompass and explain the entirety of human existence inevitably include tensions and contradictions that are often expressly formulated and discussed. Indeed, many religious leaders discussed normative tensions *within* religion that they often brought to bear on the relationship between law and religion. Consequentially, their accounts nuance legal consciousness beyond previous accounts of the conflict between law and competing ideologies. These differences do not necessarily suggest that religion is special[13] or that there are no similarities between secular dissenters and religious dissenters.[14] But I believe that these differences help explain the novelty of the research and why it expands our accounts of the myriad relationships between individuals, communities, and legal institutions.

This article proceeds as follows: I begin with a brief background of law, religion, and education in Israel as well as a discussion of my methodology and sample. The results begin with a descriptive discussion of the type of conflicts that educational leaders experienced and are then organized around the three themes I discovered: redefinition, withdrawal, and restraint. Following conclusion, I revisit the Davis example to examine the explanatory power and potential reach of the three-partite model I develop in this article. The results are nuanced and surprising, and show that the theoretical framework established in this article can potentially extend beyond the scope of conflicts studied in this article.

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[10] Erik D Fritsvold, 'Under the Law: Legal Consciousness and Radical Environmental Activism' (2009) 34 Law & Social Inquiry 799; Simon Halliday and Bronwen Morgan, 'I Fought the Law and the Law Won? Legal Consciousness and the Critical Imagination' (2013) 66 Current Legal Problems 1.

[11] Indeed, both Aviram, *supra* note 7, and Halliday and Morgan, *supra* note 8, found their informants feeling "above the law".

[12] Aviram (n 9); Halliday and Morgan (n 10).

[13] In the sense discussed in Steven G Gey, 'Why Is Religion Special: Reconsidering the Accomodation of Religion under the Religion Clauses of the First Amendment' (1990) 52 U.Pitt.L.Rev. 75; Andrew Koppelman, 'Is It Fair to Give Religion Special Treatment' (2006) U. Ill. L. Rev. 571.

[14] Indeed, traces of "above the law," *see* Aviram, *supra* note 8, and the classic schemas of legal consciousness—"before," "with," and "against the law", *see* EWICK AND SILBEY (N 2). occasionally surfaced in the data.

LAW, RELIGION, AND EDUCATION IN ISRAEL

The case study for the present research is Israel, where tensions between secular law and religion have occupied the public and the courts since the conception of the state. Israel is defined as the national home of the Jewish people and as a Jewish and democratic state. As such, it provides public funding to Jewish courts and schools (it also funds institutions of other religions, to some extent and with varying levels of supervision and autonomy). At the same time, Israeli law is largely secular and liberal, with deep common law roots and strong North American influences. All laws are generally binding for religious groups and individuals, with few religious exemptions.[15] Ultimately, conflicts between law and religion pervade the country much like they do in other liberal democracies.[16] As I noted earlier, due to Judaism's special status, when conflicts occur they tend to be intense and divisive, raising issues of national identity and value priorities.

Religious schools in Israel enjoy varying levels of autonomy and funding. Jewish ultra-orthodox (*Haredi*) schools enjoy the highest degree of educational autonomy and receive funding in proportion to the degree to which they teach the general curriculum, including math, science, English, and civic studies. (The teaching of these subjects is a highly contentious issue due to ultra-orthodox insularity, and from time to time propositions to impose the curriculum or parts thereof are being made.) A second large Jewish Orthodox sect is the national-orthodox (or national-religious). This group is fully embedded in the public system, teaches the general curriculum and receives full funding.[17] At the same time, they also teach religious studies and maintain and foster religious culture in their schools. All religious schools in Israel are subject to generally-applicable secular law, including antidiscrimination law (e.g. Equal Opportunities in the Workplace Act 1998) and education law (e.g. Law of Public Education 1953; Student Rights Act 2000). Additional obligations may follow from Basic Law: Human Dignity and Liberty which is considered constitutional. This situation inevitably creates an overlap of normative regimes and gives rise to potential clashes between law and religion, for example in the context of sexual orientation discrimination (prohibited under Israeli anti-discrimination law) and pregnancy out of wedlock (the same). The normative tensions experienced by religious educational leaders as a result of this dual normativity are at the heart of this study.

DATA AND METHODS

Forty-one Jewish-orthodox educational leaders in Israel were recruited to participate in the study. To ensure diversity of religious perspectives and educational positions, interviews were conducted with women and men in a broad range of positions (teachers, principals, and administrators), schools (all-girls, all-boys, secondary, and higher education), religious affiliations

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[15] Shimon Shetreet, 'State and Religion: Funding of Religious Institutions-The Case of Israel in Comparative Perspective' (1999) 13 Notre Dame JL Ethics & Pub. Pol'y 421.

[16] *See* Lotem Perry-Hazan, 'Court-Led Educational Reforms in Political Third Rails: Lessons from the Litigation over Ultra-Religious Jewish Schools in Israel' (2015) Journal of Education Policy 1. For a discussion of other conflicts *see*, e.g., David Weisburd, *Jewish Settler Violence: Deviance as Social Reaction* (Penn State Press 2010); Dana Yagil and Arye Rattner, 'Between Commandments and Laws: Religiosity, Political Ideology, and Legal Obedience in Israel' (2002) 38 Crime, Law and Social Change 185; Arye Rattner and Dana Yagil, 'Taking the Law into One's Own Hands on Ideological Grounds' (2004) 32 International Journal of the Sociology of Law 85.

[17] Zehavit Gross, 'State-Religious Education in Israel: Between Tradition and Modernity' (2003) 33 Prospects 149.

(national-orthodox and ultra-orthodox) and sub-affiliations (e.g. Ashkenazi, Sephardic, Hassidic, etc.). Table 1 summarizes the sample characteristics.

---- Table 1 about here ----

The interviews discussed the key conflicts, considerations, and strategies used by religious educational leaders to cope with conflicts between law and religion. They also included a discussion of recent legal cases that contrasted the religious freedom of schools with Israeli antidiscrimination law. The cases involved such issues as whether religious schools should be allowed to dismiss teachers for pregnancy out of wedlock (*the pregnancy case*) and adopt admission and exclusion policies that result in ethnic segregation (*the segregation case*). The cases were used to allow the educational leaders to engage in real-time deliberation and reflection on pertinent conflicts. The appendix contains full description of qualitative methods.

RANGE OF CONFLICT: FROM ADMISSION TO ADMINISTRATION

Educational leaders' experiences of tension between religious and civic commitments were abundant and diverse. Most educational leaders (73%—see Table 2) shared at least one story, and some were bursting with stories: "I don't know where to start, because conflicts arrive as frequently as once every couple of weeks and you can't avoid them," said one ultra-orthodox community educational leader.[18] Other interviewees described the tension in words such as "agonizing," "painful," and "ever-recurring."[19]

The tensions that religious educational leaders described ranged from issues of curriculum and content to relationships with students and management. Educational leaders were conflicted about the teaching of religiously-disputed topics in science (e.g. the Evolution or the Big Bang theories), literature, and history.[20] National-orthodox educational leaders in particular struggled with addressing the Israeli evacuation of Gaza in their classes (the evacuation was widely opposed on religious and political grounds—not only, but mostly, by the national-orthodox society).[21] Relatedly, some recounted deliberating what to advise former students who, as soldiers, debated whether or not to disobey the military evacuation command.[22]

Other tensions revolved around the educational leaders' relationships to the student body. National-orthodox educational leaders described their reluctance to admit non-Jewish and/or insufficiently religious students, which is in tension with the laws and regulations that govern admission.[23] They expressed similar conflict over the expulsion of students who failed religious standards (by desacralizing the Sabbath or engaging in premarital relationships[24]).

Few educational leaders initially discussed conflicts between teachers and management, but after hearing the factual description of the pregnancy case, many interviewees noted that a similar situation had arisen in their school or in other settings.[25] None of these other pregnancy cases reached the court, according to the interviewees, and not all of them resulted in dismissals.

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[18] Interview 33. Similar statements were made also by interviewees 8,28,41.
[19] Interviews 32,27.
[20] Interviews 1,9,6,13,21,26.
[21] Interviews 26,27,2,5,15,19.
[22] Interviews 2,15.
[23] Interviews 14,35,7,8,12,21.
[24] Interviews 7,8.
[25] Interviews 5,14,16,8,15,19,35.

Ultra-orthodox educational leaders shared similar tensions, as well as different ones. A recurring tension involved disputes over student admission, in the spirit of the segregation case.[26] Another frequent tension contrasted educational leaders' obligation to report incidents of violence, abuse, or neglect to the police or the social services with their communal obligation "to handle things internally."[27] Ultra-orthodox educational leaders also noted instances when they or others in their community filed false reports in order to qualify for more funding from the government, pay less in taxes, or lower employee wages.[28] Though these acts of fraud may appear as ordinary gain-driven deviance, ultra-orthodox educational leaders attributed them to a strong religious resentment of the state: "the religious point of view that the law is something you should sort out, get around, play with" because "the state is perceived [by the ultra-orthodox] as something negative," and "this is what children are taught since the day they are born."[29] According to these narratives, religious education inculcated legal alienation that, in turn, justified an instrumental approach to the law, and ultimately deviance[30].

As expected, the common view among national-orthodox and ultra-orthodox leaders alike was that the law acts as a constraint on religiously-motivated action, narrowing the scope of action for religious individuals and institutions. Interestingly, however, a small number of leaders described *reversed conflicts*: instances in which the law served their interests *better* than religion.

Educational leader 15, a national-orthodox principal, described how he resisted litigation with students over tuition, even though the law was on his side, due to fear of losing his educational impact, which he considered "more important than the money." Educational leader 20, an ultra-orthodox principal, described a dilemma over a lawsuit that a former teacher brought to a rabbinical court instead of a civil court. The interviewee knew that civil law was on her side and that she could potentially seek to transfer the case to a civil court, but instead she accepted the compromise sought by the rabbinical court. "This was a difficult situation because I felt [the teacher] is wrong and that she is not entitled [to the extra money]. But when the rabbi told me to go beyond the letter of the law I said okay, I'll talk to my supervisors."

Leaders 15 and 20 described their reversed conflicts as dilemmas in which they could have pursued legal recourse but chose not to. Educational leader 32, an ultra-orthodox feminist who helps women pursue their divorce in civil rather than rabbinical courts, chose differently. Describing herself as a religious deviant for what she does, and how it feels, she said: "You breach [religious law] one time, and then again, and again—and then you don't see it as a breach anymore. It used to bother me in the past but today I am less worried about it." Overall, however, instances where religion was viewed as a constraint and the law as a superior instrument of justice were quite rare.

---- Table 2 about here ----

[26] Interviews 22,23,30,36,40,41.
[27] Interviews 23,28,33,39.
[28] Interviews 28,36,41,33.
[29] Interviews 36 and 33,39 respectively.
[30] Echoing the findings of James L Gibson and Gregory A Caldeira, 'The Legal Cultures of Europe' (1996) 30 Law & Society Review 55; Patricia Ewick and Susan Silbey, 'Narrating Social Structure: Stories of Resistance to Legal Authority1' (2003) 108 American Journal of Sociology 1328.

A CONCIOUSNESS OF CONFLICT: REDRAWING NORMATIVE BOUNDARIES

The leaders' discussion of tension and conflict revealed a remarkable discrepancy. On one hand, many noted abundant tension between law and religion and readily shared stories describing such tension. On the other hand, as this section reveals, the educational leaders made substantial efforts to deny that tension between law and religion exists. An excellent example is provided by Educational leader 17, a high-ranking administrator and long-time teacher in national-orthodox schools. This leader repeatedly presented contradictory arguments as though they were consistent. He portrayed the religious school that dismissed the pregnant teacher as aligned with the court (ignoring that the court held the school liable for discrimination) and presented two rabbis who disagreed with each other about the permissibility of the teacher's pregnancy as though they actually agreed. This leader also viewed himself as subscribing to the same judgment as the court, although his views were quite contradictory. I observed that he was surprisingly and profoundly unaware of these inconsistencies.

One helpful concept that can elucidate this behavior is cognitive dissonance theory.[31] Cognitive dissonance refers to a state where an individual holds two (or more) ideas, beliefs, or opinions that are psychologically inconsistent. Inconsistent normative commitments from law and religion can surely trigger psychological tension. People, and religious leaders in particular, may feel obligated to instill, follow, and model religious values and doctrine as active participants in the ongoing effort to affirm, nurture, and safeguard the identity and practices of their communities; concomitantly, they are also subject to some degree to civic values and laws that entail different institutional and professional commitments. This is likely to entail some dissonance. Notably, cognitive dissonance theory was mostly used to explain conflicts of "should" and "want" (like smoking, or unhealthy eating[32]) rather than conflicts of norms ("should" and "should"), as those experienced by religious leaders. Clearly, the two types of conflicts are not conceptually identical. In a should/want conflict, the agent can always avoid or resolve the dissonance if she only acts as she *should* act. But in a should/should conflict, regardless of how one chooses to act, a dissonance is bound to remain.

Notwithstanding these important differences, the motivation to achieve consistency among beliefs and values in should/should conflicts should be no different than it is in should/want conflicts. A particularly notable feature of cognitive dissonance is that it motivates people to change one or more of the conflicting cognitions to make them more consonant, or to bridge them using a third cognition.[33] Educational Leader 17, for example, was so successful in reconciling rival parties and arguments in his mind that he was seemingly unaware of the inconsistencies of his position. While this is a somewhat extreme example, many leaders showed a similar need in finding consonance. The next section uncovers the first mechanism that helped leaders mitigate the tension: redefining the conflict as something *other* than a conflict between law and religion.

I. Redefinition

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[31] FESTINGER (N 7).

[32] See Frederick X Gibbons, Tami J Eggleston and Alida C Benthin, 'Cognitive Reactions to Smoking Relapse: The Reciprocal Relation between Dissonance and Self-Esteem.' (1997) 72 Journal of personality and social psychology 184; Harold H Kassarjian and Joel B Cohen, 'Cognitive-Dissonance and Consumer-Behaviour' (1965) 8 California Management Review 55; Renata Tagliacozzo, 'Smokers' Self-Categorization and the Reduction of Cognitive Dissonance' (1979) 4 Addictive behaviors 393.

[33] FESTINGER (N 7).

(a) "This is not a religious issue": Redefining religion as separate from the conflict

Cognitive dissonance is often revealed in people's efforts to reduce it. In the midst of sharing a personal story or deliberating the legal case, 44% of the educational leaders changed course and said that, in fact, "this is not a religious issue," and they began to redefine the conflict as social, political, or cultural instead.[34] This re-classification often came with the argument that "this is not Halakhah [Jewish law]… this is a social matter,"[35] or "with respect to the Halakhah there is almost no tension in education … But from a cultural perspective, tension is abundant."[36] They argued that social prejudices, attitudes, or norms *external* to what religion requires—not religion and religious law themselves—were the true motivators behind actions against the law.

Drawing distinctions between what is merely "social" and what is truly religious provided a way to separate out some of the more restrictive elements of religion from the religious ideal. Though the exact nature of "true religion" was not always clear, the educational leaders believed ideal religion to be less confrontational, and more accepting and flexible. "The Halakhah permits a single woman to bring a child into the world," argued Educational leader 1, a retired national-orthodox administrator. She continued, "the entire way [the school and the religious council] handled the issue was not in line with religion," and added, "this view is not from the Torah, it is [the rabbi's] personal, social, political opinion." Educational leader 26, a national-orthodox, reacted to the segregation of the *ultra*-orthodox school with a similar outright disavowal: "I do not have to accept the claim that this was a religious issue. I see it as a racial segregation by all means."[37]

Similarly, an ultra-orthodox administrator who supported the teaching of the core curriculum rejected typical religious objections as "complete nonsense; [there is] no connection whatsoever between the curriculum and the Halakhah."[38] Educational leader 39, another ultra-orthodox from a very insular and conservative sect, explicitly made a distinction between socio-religious norms and religious law: "I think that the tension is between *Haredism* and the truth… But there is no tension, as I see it, between the Halakhah and the truth. None. Do you understand? I feel that it's more like a matter of social norms." A young national-orthodox teacher put it in blatant terms: "Something inherent and basic is problematic in religious society. It's definitely not the Halakhah; it is a socio-religious issue."[39]

Clearly, these educational leaders did not simply accept the conflict as residing at the intersection between religion and law. Instead, they redefined and relocated it. Seeking to align their religious worldview with the law, they turned to a third concept—social norms—to replace religion as the source of opposition to the law. Social norms are an interesting concept to use for this purpose, as so much of everyday normativity in religious communities revolve around the community interpretation to religious law, as the law itself is scattered, ancient, and not fully accessible. Hence the meaning and application of religious law is highly dependent on social norms and untangling the two seems untenable. Yet perhaps the same ambiguity and indeterminacy of religious law allows religious educational leaders to justify their own interpretation against the "social norm". Indeed, in their narratives, the concept of the "social" served as a distancing device,

[34] Interviews 1,3,4,8,9,11,17,22,26,28,30,31,32,33,37,38,39,40.
[35] Interview 1.
[36] Interview 4.
[37] Interview 26.
[38] Interview 28.
[39] Interview 4.

granting the space for intolerance and prejudice (which are phenomena that have no special claim on religion). By characterizing the oppositional construct as one of social norms versus the law rather than religion versus the law, the educational leaders managed to disassociate themselves from—and thereby deny responsibility for—the tension that they themselves described as pervasive and agonizing only shortly before.

In his historical study of antislavery judges in the American slavery era, Robert Cover showed that the judges portrayed the law as mechanistic and formalistic in order to justify decisions to return fugitive slaves to their owners—decisions that were in conflict with their moral beliefs.[40] The religious educational leaders similarly retreated to formalism in their definition of religion, but unlike Cover's judges, formalism *legitimized* the educational leaders' moral judgment by reducing religion from the expansive social and cultural enterprise that it is—with multiple meanings, functions, and practices—to formal law (Halakhah) and nothing more. Thus, educational leaders were no longer required to be held accountable for religious views that put them in conflict with civil law. Formalism freed them, for if the conflict is truly social and religion has no stake in it, the law can prevail.

While many educational leaders used the social/religious distinction to detach themselves from conservative religion and to express their disapproval of deviance from the law in the name of religion, other educational leaders saw a role for social norms in a religious order. These educational leaders had no problem justifying the dismissal of the pregnant teacher and the segregation of the school based on social norms. "The social issues are important to me as well. They do not weigh less than the religious issues," said one national-orthodox teacher. "Some decisions are not about the Halakhah but about how an *ulpana* student should look like. This is a social consideration. It does not lean on a religious ruling (*psak Halakah*). This is something social." Leader 30, an ultra-orthodox principal, similarly argued that in the segregation case "there were cultural differences in every aspect, thus separation was necessary."[41] Interestingly, many of the educational leaders who used the social/religious distinction to justify religious deviance were *ultra*-orthodox. Perhaps they felt that defining the issues as "cultural" legitimized and normalized their objection to the law by demonstrating that their conflicts with the law are just like those of secular people. Along these lines, leader 33 argued that the ultra-orthodox families that pushed for segregation are no different from elitist families in Tel Aviv who would not educate their children alongside lower-class families.[42]

Overall, then, the social/religious distinction emerged as a dynamic that eased the conflict between law and religion in one of two ways: It either eliminated the conflict (i.e. "It is social hence it does not relate to me, because I am not part of this social group that challenges the law") or legitimized the religious stance in the conflict (i.e. "It is social hence it is normal, because everyone else experiences similar tensions with the law"). Beyond cognitive dissonance, these maneuvers disclose broad intra-religious diversity and substantial debate about the meaning and interpretation of religious texts and practices. This is only natural given the intricate fabric of religious commitments—the constant tension between the holy and the mundane, the traditional and the modern—and given the need to evolve and adapt over time. While the tension itself is real and inevitable, the crucial point is that religious people leverage this complexity and invoke the "social" argument to achieve consonance and mitigate their tension with non-religious norms.

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[40] Cover (n 4) 232.
[41] Interview 26.
[42] Interviews 1,11,12,15,16,17,25,26,32,37.

(b) "It's not the law, it's the courts": Redefining law as separate from the conflict

Substituting social norms for religion was not the only way that educational leaders achieved consistency between competing legal and religious norms. The second common avenue—particularly used by those who objected to the law—involved redefining law, rather than religion, away from the conflict. To them, the problem was not the law itself, but rather the *courts* were to blame for misinterpreting and misapplying the law. Conflict emerged because the law "was not meant to apply in these situations,"[43] or because "[courts] take the letter of the law and try to apply it… on a non-legal issue," on "educational issues," or on "community issues, rather than legal issues."[44] Educational leader 29 said that the court "needs to understand" the principal's worldview and "cannot judge him only based on the law of equal rights for women in the workplace." Educational leader 30 was blunter: "the court simply failed to understand the matter… because the court was not raised in this tradition and is not familiar with it." In short, the courts are to blame because the law was never intended to restrict religious practice, because the issue is not legal in essence, or because the court is ignorant and prejudiced against religion. Related was the argument that legal authorities were selectively enforcing the law more harshly on religious people than on secular people.[45]

The accusations that educational leaders directed at the courts—lack of neutrality, inconsistency, bias, and incompetence—have been established in previous research as factors that shape perceptions of legitimacy and, consequently, the extent to which people defer to legal authority[46]. Religious objectors were able to "name" legal wrongs, "blame" the courts, and "claim" a different outcome[47]. But, interestingly, the courts' impaired image and perceived illegitimacy did not reflect on the legitimacy of the *law*, as objectors defined it. Contrariwise, the law/courts distinction allowed religious objectors to identify with the law despite disagreeing with the courts.[48] Like their counterparts who appealed to the social/religious distinction, educational leaders who distinguished between the law and the courts acknowledged the tension yet redefined it. They were thus able to see the law as right—"I cannot think of any law in Israel that contradicts my religious beliefs," said Educational leader 23—despite viewing the court as wrong: "I think this was ultimately a mistake of the court." Thus, redefinition allowed the leaders to purify "true law" from its mistaken application, as ultimately neither law-abiders nor law-objectors believed—or wished to believe—that they were in conflict with this normative regime.

II. Withdrawal

The previous section discussed how leaders redefine law, religion, and the conflict between them to reduce the cognitive dissonance associated with conflict consciousness. Merely reducing cognitive dissonance, however, provides no cure for the conflict (however defined). How then did

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[43] Interviews 18,2,33,31,40.
[44] Interviews 30,31, and 33 respectively.
[45] Interviews 11,30,25,33.
[46] Tom R Tyler, *Why People Obey the Law* (2nd edn, Princeton University Press 1990); Tom R Tyler, 'Multiculturalism and the Willingness of Citizens to Defer to Law and to Legal Authorities' (2006) 25 Law & Social Inquiry 983.
[47] William LF Felstiner, Richard L Abel and Austin Sarat, 'The Emergence and Transformation of Disputes: Naming, Blaming, Claiming...' [1980] Law and society review 631.
[48] Thus, while religious objectors were similar to "resisters against the law", Ewick and Silbey, *supra* note 20 at 1353–1355, in criticizing legal authorities, their resistance was also substantially different as they directed it selectively against the courts, not the law.

leaders solve or mitigate their conflicts between religion and law? Did they simply pick a side or did they find a middle way?

Surprisingly, very few educational leaders expressed unequivocal support of either "law" or "religion," broadly or narrowly defined.[49] Most leaders drew more nuanced compromises, transforming the normativity of religion, law, or both along the way. The leaders redrew these normative boundaries through the use of withdrawal and restraint, measures that had substantive practical implications.

This section discusses *withdrawal,* a concept that refers to redrawing religious normativity by rendering it inapplicable in certain realms or to certain categories of people, consciously limiting and narrowing the domain where religion dominates. Two types of withdrawal are discussed: role-based and sphere-based. Role-based withdrawal is characterized by a distinction between religious role-bearers and ordinary people—a distinction that results in applying religious normativity mainly to the first group (religious role-bearers) and withdrawing religious normativity from the second group (ordinary people). Sphere-based withdrawal creates a distinction between public and private spheres—a distinction that results in applying religious normativity mainly in the first (public) sphere, and withdrawing religious normativity from the second (private) sphere.

Withdrawal served as a tool at the leaders' disposal, allowing them to impose limitations and to choose whether to reduce conflict or not. Withdrawing normativity, however, did not mean abolishing normativity. Quite the opposite. As withdrawal mitigated conflict in the 'evacuated' zones, it also focused normativity on the zones that remained 'under religious control.' Therefore, withdrawal had the double effect of reducing conflict in one category of cases and sharpening it in another.

(a) Role-Based Withdrawal

Role-based withdrawal is characterized by a distinction between religious role-bearers and ordinary people. It results in applying religious normativity mainly to the first group, and withdrawing religious normativity from the second group. Why?

For many educational leaders, religious roles are a means of social impact that come with certain religious standards[50] entailing a unique set of commitments, privileges, and social expectations. When applied to the conflict between law and religion, this view typically resulted in two distinct outcomes. First, the educational leaders often believed that persons occupying religious roles should not be entitled to *legal* protection if they fail to live by religious norms. Thus, a teacher—an agent of religious normativity—who comes out as gay should not be entitled to claim the protection of antidiscrimination law. Second, being a religious role-bearer intensified the consequences of breaching *religious* norms. Thus, a teacher who comes out as gay should be dismissed, whereas a student—a subject of religious normativity—who comes out as gay should be permitted to remain enrolled in school. In these ways, role became a mechanism that altered the application of religious normativity based on the relationship between the person and their religious responsibilities.

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[49] Educational leader 2, for example, clearly felt "above the law": "[A]s far as I stand, if I were the principal of this institution I would dismiss the teacher no matter what the law says. This is my obligation towards the entire Jewish people, given that she is a religious and spiritual misfit." In the same spirit, but in an opposite direction, leader 5 wholeheartedly sided with the teacher: "This is such a fortune that the law was there to protect her… This was exactly what the court needed to do."

[50] National-orthodox educational leaders were particularly likely to draw on role in their discussion, perhaps due to the fact that the pregnancy case evolved around a teacher.

The consequence-determining impact of role is best exemplified in normative conflicts involving teachers. Most religious educational leaders viewed teachers as religious "role models" who ought to present—in fact, embody—the ideal of religious life to their students through good deeds and exemplary personal conduct.[51] A failure to set the proper model was a professional failure on par with a religious fault. Relating to the pregnant unmarried teacher, a national-orthodox vice principal (7) said:

> "In an institution that educates students to raise a family… outliers cannot teach, lest they become models of non-ideal alternatives. We educate students to follow the best possible alternative: according to the Jewish view, a family should look like this and that, and one should get married at this and that age. Whoever disrupts this model should not be present at this intersection, at this stage. She should go teach in a junior high, or an elementary school."

Where religious impact is on the line, legal constraints are cast aside or discounted. Removing deviant agents of religious normativity—even at the expense of following the law—is imperative to prevent students from wrongly assuming that behavior that is not religiously sanctioned or condoned is in fact permissible ("Notwithstanding my empathy towards her, I can certainly see myself terminating her if the matter will surface in student talk").[52] The concern over impact was so strong that for some educational leaders, teachers' religious commitments superseded any rights they might have as *individuals*, such as the right to raise a family or the right to privacy. These rights were deemed completely irrelevant if they competed with norms that teachers were expected to follow in their official capacity. Reacting to a paragraph in the court's opinion concerning the right to raise a family, Educational leader 20 said: "I would have agreed [that such right exists] if it wasn't about a single woman. If the case were about a married woman, these rights would be relevant. But not for a single woman… She might have a personal need [for a family], but she doesn't have to have one."[53] This particularly strong view led to an either/or choice: single teachers could comply with religious law and forgo having a child, or have a child and accept their subsequent dismissal.

The same behaviors and conducts that may have resulted in dismissal for teachers were tolerated to a greater extent when enacted by students.[54] Although students *might* become a negative influence ("she could have, God forbid, passed it on to other girls too," 20), it is not their *role* to serve as a positive influence, and so their misconduct is treated less harshly. Thus, many educational leaders believed that students should stand corrected, but not be removed or excluded. Educational leader 9, for example, thought that a gay or unmarried pregnant teacher should not be allowed to teach in high school. He was also concerned that gay students might "negatively influence" other students, but "when it comes to students, surely they must not be removed... Their social situation is already difficult. We ought to make it easier for them. It is already painful for a student to come out. Accepting him does not mean waving the [LGBT] flag; surely we should not expel him but treat him like an ordinary human being." The contrast between the Educational leader's views of teachers and students demonstrates how role-based withdrawal operates.

Another category of cases in which role became a basis for withdrawing religious normativity was role conflicts. Educational leaders often faced conflicting norms, but the conflict intensified

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[51] Interviews 3,7,8,9,11,12,14,16,17,18,19,20,26,29,31.
[52] Interviews 7,11,16,19,29.
[53] Interviews 3,26,37,12,16,31.
[54] Interviews 8,9,11,20,39.

for those occupying both secular and religious roles. Educational leader 28 recalled a phone call with an ultra-orthodox principal who sought advice on whether to report a case of parental abuse to the police. The principal repeatedly said: "Listen, I am the rabbi of the community; and I am the principal of the school. But I am also the rabbi of the community." Leader 28 recalled that the principal repeated this sentence several times, unable to determine which role should guide him through the decision. The contradicting obligations he faced were overwhelming: "On the one hand you wear the hat of a school principal and should follow very clear guidelines. On the other hand… I am also the leader of the community." But despite the added complexity and emotional difficulty, leaders believed that a religious person occupying senior civic roles is required of more, not less, legal compliance.[55] Educational leader 2 argued for religious dissent from military commandments, but withdrew his claim "at the officers' level [where] I find it more problematic… undermining the military might lead to the destruction of the state of Israel. A regiment commander has to take extra care not to undermine the military." In other words, while religious roles warrant stringent religious normativity, civic roles may justify withdrawal of religious normativity and compliance with the law.

(b) Sphere-Based Withdrawal

Sphere-based withdrawal is characterized by a distinction between the public and private spheres. Educational leaders used this distinction to limit religious normativity to the public sphere, while withdrawing it from the private sphere.

This form of withdrawal was one of the most common ways to redraw normative boundaries—over 46% of the educational leaders used it to reduce conflict between law and religion.[56] In so doing, they not only reshaped religious normativity, but they also reversed the typical liberal relationship between public and private. One of the fundamental assumptions in liberal democracies is that the public sphere ought to be secular and neutral, such that people of no faith and all faiths would feel equally comfortable as citizens of the state. Under this worldview, religious worship, norms, and culture belong in the private sphere.[57] For the religious educational leaders, this was exactly opposite: religion was not a private exercise of faith but a public enterprise. Therefore, they viewed the 'public sphere'—areas and institutions shared or used by community members—as a space that should reflect religious values and be organized according to religious norms. Inconsistencies between religious and civic norms, if any, belong in 'private,' behind closed doors, at home.

Sphere-based withdrawal thus showed a consistent pattern. Educational leaders suggested allowing individuals to violate religious normativity at home (in private) while holding them to religious standards outside (in public).[58] For example, if a principal faced a conflict between enforcing religious norms in school and complying with antidiscrimination law protecting pregnant workers, many educational leaders thought he should solve this conflict by granting the

[55] Interviews 2,26,27.
[56] Interviews 2,3,7,8,11,12,15,16,17,18,19,21,23,25,27,28,29,33,35.
[57] Frederick Mark Gedicks, 'Public Life and Hostility to Religion' (1992) 78 Virginia Law Review 671; Stolzenberg (n 4).
[58] The distinction highly resembles the Talmudic distinction between *tzin'aa* and *parrhesia*, yet only few educational leaders explicitly cited it.

unmarried teacher a leave of absence during the time that her pregnancy was visible and reinstate her afterwards.[59]

National-orthodox educational leaders withdrew religious normativity from the private sphere to condone same-sex relationships, unmarried pregnancies, improper dress code, desecration of Shabbat, and more. Often, they called these "discrete solutions," or "don't ask don't tell." Ultra-orthodox educational leaders withdrew religious normativity to legitimize the teaching and studying of common core subjects in after-school hours ("If you would transfer it to informal, after-school programs, it would pass," 28), and to justify private, discrete, collaboration with legal authorities. These behaviors could be tolerated in the private sphere, far from the public eye, but were illegitimate in the public religious domain.

The rationale for withdrawing religious normativity from the private sphere is best explained in the words of Educational leader 8, a national-orthodox school principle:

> One of the problems of religious education is that it sets very rigid standards and requires all members of the religious community to meet them. At the same time, we know that no one meets the maximal religious standards. Thus people are always in tension between literal [religious] law and their reality as it is… Some religious frameworks are not ready to admit this immanent contradiction or make a compromise. They say: 'we follow the literal meaning, and whoever doesn't do the same should leave.' … In contrast, the liberal worldview says that anyone can do whatever they want as long as they do not hurt others; there are no standards, surely not divine ones; and surely society cannot determine sexual standards.
>
> I am on a middle ground between these two worldviews: I do believe that divine law binds us. Yet I am very much aware that people will never fulfill everything that's in the law because they are only humans, and they are bound to sin. This is why I try to find the middle ground between these two poles, and the middle ground I established in this school is the distinction between behavior in *tzina'a* [private] and in *parrhesia* [public]. I want people to feel free to talk about their failures, if one can call them failures—their human failures, their problems and imperfections. And on the other hand, I am trying to keep the system religious and orthodox, and in any case I would not want people to wave these problems around in public.

Educational leader 8 suggested a rule similar to don't ask, don't tell (DADT), which I term *tell the principal, don't tell students* (*tell, don't tell* or TDT for short). Like DADT, TDT tolerates private behavior and restricts public expression. But TDT relaxes the public prohibition as well: individuals (both students and teachers) may open up to their supervisors, who should respond with advice and support. TDT therefore creates islands of privacy within public spheres, allowing and encouraging private communication in these contexts. Through this mechanism, religious normativity is significantly restricted, essentially embodied only in the prohibition on 'telling' to students.[60]

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[59] In the actual pregnancy case, the national council for religious education made a similar suggestion, which was cited approvingly by the court. Yet the leaders often raised this solution independently. Notably, two educational leaders (12,15) raised this solution only to reject it, arguing that it is impractical.

[60] Similarly, one of Hartman-Halbertal Catholic teachers described a conversation in which her Bishop told her: "we can have the biggest argument you've ever had in your life. But when we go out there, it has to be a cheery 'aye-aye, sir' … we have to present a united front. We teach what the Church teaches." Hartman

Leader 8 and others used TDT to allow gay and pregnant teachers and students to approach their principals without fearing dismissal or expulsion, as long as they were respectful of the aforementioned normative boundaries—including restrictions on publicity, visibility, and discussion.[61] Some interviewees even made a secondary distinction with respect to gay individuals, suggesting that sexually *in*active gay teachers could actually tell students that they are gay and share their thoughts and feelings with them. "He can go ahead and say 'this is my sexual orientation, but I observe the Halakhah fully,'" said Educational leader 12. Leaders making this distinction went so far as to describe sexually inactive gay teachers as good role models, because they "cope" with the challenge and do not violate religious rules by acting on their sexual and romantic impulses. Hence, there is no need to hide their private identity from the public sphere.[62] This distinction also demonstrates a subtle interaction between sphere-based withdrawal and role-based withdrawal. Although the leaders expected all religious individuals, regardless of role, to observe religious norms in public, they were more concerned about the behavior and potential influence of role-bearers.

Alongside this interaction, the two forms of withdrawal share much in common. Primarily, they both operate by pulling religious normativity out of the periphery and upholding it to the core of religious life. As such, withdrawal untangles law and religion by designating zones where each can reign. It is therefore a territorial compromise, quieting conflict in zones that were 'evacuated' of religious claims. Yet it is also an assertion of religious superiority. Behaviors and identities that lawmakers seek to protect in public are cloaked, and behaviors that lawmakers seek to keep private are legitimized and normalized. This reversal of power is also what makes the overall effect of withdrawal harder to evaluate. If courts and lawmakers accept the narrower, consolidated claim for religious 'sovereignty' in religious public spheres, withdrawal may reduce the level of conflict overall. But if sovereignty remains disputed—if courts would insist on asserting legality in religious schools, for example, and would discredit the educational leaders' nuanced distinctions of role and sphere—conflict is likely to persist, albeit in a limited form.

III. Restraint

In addition to redefinition and withdrawal, religious educational leaders also approached conflict consciousness through a third mechanism that lessened the conflict—*Restraint*.

While leaders primarily applied withdrawal to religious normativity, they directed restraint primarily to lawmakers and legal agents. Restraint involves a claim for placing limitations on legality, and the shift from withdrawal to restraint reflects an interesting power dynamic. When educational leaders discuss withdrawal, they typically speak as potent decision-makers with the ability to spur change in their institutions. In contrast, when leaders discuss restraint, they typically think like subjects of the law, people in a position to call for change, and perhaps demand it, but not in the position to implement the change they view as necessary to reduce conflict. Perhaps for this reason, restraint appears as a more limited form of delineation than withdrawal. Instead of

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interprets the bishop to provide room for private disagreement while insisting on public agreement. "He did not want to silence her as an individual woman," she writes, "only as the teacher of Catholic girls." at 114.

[61] Notably, while many educational leaders suggested solutions along the lines of TDT, they were of different minds regarding the 'don't ask' component. Some supported the prohibition on asking (11,15), others thought schools should be entitled to ask (3,4,7,8).

[62] Interviews 8,11,12.

calling on legal agents to forgo legal claims, the educational leaders typically sought to moderate the enforcement of such claims.

This section discusses two claims for restraint: One seeks to restrain courts in imposing legal outcomes. The second seeks to restrain legal agents in exercising their discretion by requiring them to consult with religious leaders before applying secular law to religious communities.

(a) Restraining the Power to Impose Sanctions

When courts decide conflicts they often face a choice: they can impose the performance of the legal duty or substitute a monetary sanction for performance. Specific performance requires deviants to return things to how they were and fulfill the legal obligation as-is. Monetary sanctions, by contrast, require deviants to pay the fiscal worth of the harm they caused and/or a fine. A common argument—especially among economists—views the two sanctions as functionally equivalent and suggests that courts should favor damages, which are arguably better at preserving personal freedom.[63]

The religious interviewees largely reflected the assessment of economists, frequently claiming that courts should limit their decisions to monetary awards, rather than requiring performance.[64] They objected to performance, viewing it as "forcible coercion" (2,38), even when they supported the law in question. "The court is not the place to treat [racial segregation]," said Educational leader 12 in response to my question of whether the court should compel a segregating school to adopt an equal-opportunity admission policy. Similarly, Educational leader 1 rejected reinstating the pregnant unmarried teacher, saying: "I would not fire her to begin with, but now she can no longer fit in there." Although Educational leader 1 had expressed anger and dismay at the dismissal, she was reluctant to reverse it.

At the same time, many educational leaders were willing to pay monetary damages, even when they thought that the school was correct in the sanction it administered ("Let me tell you, as a principal I would dismiss her, and I would pay her compensations," 18). This was particularly striking in the pregnancy case, where often the educational leaders who most objected to antidiscrimination law as applied to the case were nevertheless willing to pay damages for violating it.[65] "Since the decision to dismiss her was right in principle, I would omit the mention of illegal dismissal from the decision," said Educational leader 16 in response to whether he would change anything in the decision, "but compensations… [sigh] this is tough. There might be emotional damage involved…" When I asked him if something could be right in principle, and at the same time yield a justified claim for compensation, he said, "Yes, yes, it could be. Such situations exist." Some educational leaders even proposed paying the teacher more than required by law: "even one more year of salary" (19), "with compound interest" (21), or "she deserves higher damages… maybe more than what she got" (15).

This is a striking pattern: People who support the law resist the reinstatement of legality (like Educational leader 1, they resist desegregation or reinstatement despite objecting to segregation/dismissal), while people who object to the law concede to paying a monetary award, and even consider going beyond the letter of the law, effectively affirming and supporting legal norms. What explains the preference for monetary sanctions over specific performance and the claim to restrain courts accordingly?

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[63] Richard A Posner, 'Economic Analysis of Law' <http://chicagounbound.uchicago.edu/books/77/> accessed 12 October 2014.

[64] Interviews 2,11,16,23,24,26,28,32,33,34,38,40.

[65] Interviews 2,16.

Underlying the demand for restraint are three related arguments. First, courts should avoid coercion because it might yield backlash, resentment, refute legal aims, and backslide internal processes of change.[66] This was mainly a concern for individuals who *wanted* religious society to change. Critical as they were of religious authorities, they also doubted the law's ability to promote social change. Change, they argued, could only come from within.[67] Educational leader 11 explained that, "coercing the school to employ [a gay teacher] is dangerous and wrong." Wrong to whom, I asked. "Wrong towards the homosexual community. This is the question of a slippery slope. It would bias people against homosexuals, yield anger and resentment… I also speak as a woman who encounters discrimination [inside religion] all the time; but I still prefer without question a gentle to a militant process. If a woman is ever to become a rabbi I want the public to accept her as such, and not that the court would place her there."

The second reason to avoid coercion, both as a remedy and as a compliance mechanism, was ineffectiveness. In the pregnancy case educational leaders believed that reinstatement would remedy nothing because, "who would want to go back to a workplace that doesn't want her?" (1, and similarly 3,5). Educational leader 1 explained, "If [the principal, the teachers, and the parents] do not accept her, then she cannot fit in." For similar reasons, the educational leaders also believed that to collectively arrest parents in the segregation case (for contempt of the court's desegregation order) was futile.[68] "Prison is an ineffective sanction in this case," explained Educational leader 38. "I believe that if [the court] would have imposed a monetary fine it could be much more effective. Prison merely means going in and becoming a public hero."

A better way to secure long-term compliance, suggested leader 38, is monetary sanctions. "Monetary sanctions are ineffective in the short term, because you can always find a crazy donor [who would sponsor you], but in the long term fines usually work." He explained that the segregating school had to shut down after one or two years, having lost its public funding and unable to sustain itself on contributions. "In general, undesirable phenomena are better rid through the pocket than through any other means," he concluded.

The third reason to exercise restraint and limit sanctions to monetary ones had to do with the appeal of monetary sanctions in and of themselves. Educational leader 18, a national-orthodox and a fervent critic of the court, explained that damages are merely natural consequences of behavior: "[the sanction] is not a punishment, it is an outcome; it is a consequence of acting against the state." Educational leader 16 also untangled paying damages from (literally) buying into legality. "What does it mean to accept a decision?", he asked. "Accept in the sense of signing the compensations check or accept the decision on its merits? [Writing a check] does not mean that the principal accepted the decision. He is obligated to pay damages. But it does not mean that he accepted their views, and between you and me, the latter is way more important for me." Evident in these comments is the view that money does not imply normativity and that monetary sanctions therefore have no normative weight.

The only problem with this conception of fines and damages is the mark of illegality that the court attaches to sanctions.[69] Religious objectors were willing to pay a "price" for their decisions, but they did not want the court to label them as law-breakers. In fact, they wished that the court would exercise restraint also in its choice of words and normative assertions. "I would omit the

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[66] Interviews 11,12,15,23,24,32,36.

[67] Interviews 11,12,15,23,24,28,32,33. See also Hartman-Halbertal (2003)'s feminist believers, who also sought change from within.

[68] Interviews 2,25,32,38.

[69] Interviews 15,18,19.

mention of illegal dismissal from the decision," said Educational leader 16. "If the court would have explicitly stated that this is not a fine, saying that it understands that these people acted without malice, then the distress [to the religious community] would be much less intense."

The emphasis on redrawing legality as non-punitive, and even non-normative, reveals an important dimension of the religious conflict consciousness. Religious objectors, despite their confrontation with the law (or even because of it) sought to be members in good standing in *both* the civic and the religious communities. They were willing to pay damages to earn this status, but they were also looking for further affirmation—or at least not blatant denial—from the court. The same applies for religious leaders who supported legality but rejected specific performance. Their standing in the civic community was affirmed by their compliance, but their standing in the religious community could have been jeopardized were they to support coercion of coreligionists. Hence they rejected specific enforcement and advocated for "gentler" processes of change. Judicial restraint in imposing sanctions, therefore, mitigated conflict for both religious groups.

(b) Restraining Administrative Discretion

Courts, by virtue of their power to interpret the law, decide cases, and impose sanctions, are important instruments of law and legality. Yet they are not the only such instruments. Administrative agencies, including the police and welfare authorities, execute and enforce the law on a daily basis, and their interaction with religious communities often involves considerable friction. The educational leaders directed claims for restraint towards administrative agencies, and they named a specific mechanism through which their legal discretion should be restrained: consultation with religious leaders. Ultra-orthodox interviewees in particular sought this form of restraint.

"There is law, there are rules, and there are institutions that developed in the realm of the law that have some cultural sensitivity," explained Educational leader 38. "Today, next to the welfare officers in Jerusalem and Bnei Brak [the two major ultra-orthodox concentrations in Israel] sits a rabbinical committee—next to them, not in their place," he emphasized. The rabbinical committee he described does not replace the social workers, but it restrains and delays their ability to initiate an investigation into cases of abuse, and it subjects this discretion to a prior rabbinical consultation. The educational leader, a manager of a big ultra-orthodox school chain, described the process:

> "[The principal] submits an official report to the welfare department and also reports to me, and I report to the person in charge at the Ministry of Education. We are very clear on their procedure now; it took time to build [compliance with] reporting duties. In any event, reporting runs in two parallel paths. The case does not immediately speed to investigation. It comes before a rabbinical committee. First of all, a rabbinical team [will look into it]… [The social welfare officer] receives discretion; in any event she has the discretion to decide whether to report to the police or not. Yet in exercising this discretion, [social welfare officers] will always consult the rabbinical team."

Despite being a relatively recent development, subjecting legal discretion to rabbinical consultation has already borne the fruit of increased compliance with the law. Today, as Educational leader 28 described, "people unequivocally say that an offender has to be handled according to the law. People have also come to realize that the offender endangers the community." Educational leader 33 also described his experience with rabbinical consultation as an effective means of reducing conflict and increasing overall compliance with the law:

> "It showed the community that social services are also capable of handling these matters. It cultivated real trust and everyone showed flexibility. The rabbi flexed his wish to keep all matters internal. The head of social services showed flexibility by giving the rabbi a veto right, as social workers entered the [abusive] home only once they had his agreement. Everyone showed flexibility. Would you want me to tell you this was all done according to strict law? I am not sure it was. It might not have been just, but it was wise."

Redrawing legality by restraining legal discretion reduces conflict between religion and law on multiple fronts. First, from a legal perspective, it cultivates trust in the law, secures the cooperation of religious communities, and fosters compliance with the law. Rabbis can also provide tools that expand the administrative toolkit, for instance by arranging for rehabilitation within the community (33). Social workers and police officers that form alliances with local rabbis can therefore improve their ability to fulfill their appointed goals[70].

From a religious perspective, when legal agents form alliances with rabbis, they provide them with a form of recognition that affirms their authority over their communities and reinforces their positions of power. The outcome is beneficial for the rabbis, yet it also answers the needs of many community members. The insularity and unique practices within ultra-orthodox communities—where the narrative of administrative restraint was most prevalent—place barriers to approaching agencies and hinder the ability to utilize public services.[71] When rabbis become involved in administrative processes, ordinary ultra-orthodox people feel that they are permitted to call the police. And when rabbis modify the administrative process through consultation, ordinary ultra-orthodox people can access social services more easily.

To understand the importance of rabbinical involvement in administrative processes and its potential influence, consider Educational leader 20's description of her relationship with her rabbi: "I have a rabbi and I closely follow him; I strictly follow everything he tells me, including in education. I have many questions regarding education, e.g. whether to launch a program that might damage the reputation of the school. And every question I've had, I've always asked him, every single question [with emphasis]. I know that my shoulders are broad, but his shoulders are even broader, and he can make these crucial decisions." The educational leaders used a special term to refer to such reliance on rabbinical opinion: *daat torah*, namely an opinion from the Torah, and they usually cited in addition the Jewish duty "to do everything you are told" (20). Educational leader 40 explained how he harnessed the undisputable authority of rabbis to establish a committee that adjudicates claims of ethnic discrimination in schools: "You come to these rabbis with the hardest questions, with issues concerning life and property [*dinei nefashot* and *dinei mamonot*]. You trust them? So trust them to decide whether your three-year-old daughter fits in this school or not. And if you don't trust them you don't belong here."

When legal authorities restrain their discretion to make room for rabbinical opinion, they cede power to rabbis but also harness the rabbis' power. Notwithstanding the benefits associated with this trade-off, there are clearly dangers, too. In various cases, ceding power to rabbis—even temporarily—can delay crucial decisions and risk further damage, particularly when life is on the line. The interests of victims, who might see things differently than the rabbis, are potentially compromised.

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[70] Michael Lipsky, *Street-Level Bureaucracy, 30th Ann. Ed.: Dilemmas of the Individual in Public Service* (Russell Sage Foundation 2010); TR Tyler and YJ Huo, *Trust in the Law: Encouraging Public Cooperation with the Police and Courts*, vol 5 (Russell Sage Foundation Publications 2002).

[71] Interviews 13,23,33,28,41,42.

In addition, when legal agents bend the law, they eventually risk breaking it. Educational leader 33 described an episode when he persuaded the police to drop an obscenity complaint against a member of the community: "I think, even today, that it was the best solution and the police officers cooperated with me even though by doing that they were breaking the law themselves. [The police] frequently turn a blind eye to the ultra-orthodox community, and this is a good thing, even if the laws are not equally enforced. The law is not sufficiently sensitive to stigma in the ultra-orthodox society." This story demonstrates that when legal agents restrain their discretion to the point where it is consumed by religious discretion, legality fundamentally changes. What started as restraint becomes outright withdrawal of legality once the law ceases to apply to religious groups. The challenge, then, for restraint mechanisms is to reconcile the conflict between law and religion at the local level without compromising the rule of law more generally.

---- Table 3 about here ----

AFTERMATH

After five days in jail, Kim Davis returned defiant to her office. But things changed in her absence. First, her deputies assumed her role. "I don't really want to, but I will follow the law," said one deputy. "I'm a preacher's daughter, and this is the hardest thing I've ever done in my life".[72] Originally, Davis' deputies joined her in defying the law, but while she was in jail they began issuing marriage licenses (all but one deputy, Davis' son).

The second change that occurred had to do with the marriage license that Davis' office now issued. Instead of bearing Davis' name and title, it said "pursuant to federal court order." Davis told the media that "[U.S. District Judge David Bunning] indicated last week that he was willing to accept altered marriage licenses even though he was not certain of their validity," Davis said. "I, too, have great doubts whether the licenses issued under these conditions are even valid"[73]. The court order, however, reveals no such uncertainty. It states that the deputies have agreed under oath to issue the licenses and that the plaintiffs did not question the new licenses, and it orders that Davis shall not interfere, directly or indirectly, with their efforts.[74] Davis later clarified that she does not doubt the validity of the new licenses.

Notwithstanding the fact that Davis—unlike most of the educational leaders—is a committed religious objector and that her conflict was not implicated in an official religious responsibility (her only office being public), the compromise achieved in her conflict demonstrates key features of the model I established in this article. Therefore, in this last section, I apply the model to the case and show that the central features and dynamics of the solution achieved in the Davis case can be readily understood as acts of redefinition, withdrawal, and restraint.

The first striking fact about the compromise is the extensive redefinition efforts that Davis initiated after being released from jail. These efforts were not merely cognitive or rhetorical, but entirely practical. Davis altered the *text* of the marriage license in two significant ways. First, she omitted her name, thus escaping taint with same sex marriage (or "hell"). She could have left it at that, allowing her deputies to continue issuing the same license with a different signature. But

[72] Blinder & Lewis, *supra* note 1.
[73] Castillo, Mariano, & Kevin Conlon (2015) "Kim Davis stands ground, but same-sex couple get marriage license", *CNN*, 14 Sept., 2015.
[74] Miller v. Davis, No.0:15-cv-00044-DLB, Doc.89 (E.D.Ky. Sept. 8, 2015).

instead, she continued to redefine the very duty that conflicted with her beliefs, writing that the license is issued pursuant to a *court* order rather than the law. Shifting responsibility to the court allowed her to maintain her position that her actions are in fact *legal*, "protected under the First Amendment, the Kentucky Constitution, and in [*sic*] the Kentucky Religious Freedom Restoration Act." Hence, similar to the religious educational leaders in my study that objected the law, she used the "court" as a distancing mechanism that allowed her to place the blame for the conflict not with "law" but with another entity. And, despite her objection and dissent, she still sought to avoid being marked as deviant and emphasized that the judge "was willing to accept" her solution. Her claim that the modified licenses are potentially invalid similarly places her on the same footing as the objecting educational leaders in distinguishing "true law" from its mistaken application, for which the court is to blame. We see, then, the power of redefinition techniques in facilitating practical compromise, by enabling religious objectors to achieve cognitive consonance.

A subtle yet crucial component of the Davis compromise involves withdrawal, in a directly similar format to the one discussed by the religious educational leaders. Davis was held in contempt and jailed because she refused to issue marriage licenses, directly or through her deputies. But after her release she agreed not to prevent her deputies from issuing marriage licenses to gay couples. Remarkably, then, the escalation of the conflict encouraged Davis to adopt a *role-based* withdrawal: "I am forced to fashion a remedy that reconciles my conscience with Judge Bunning's order," she told reporters outside the courthouse. "I love my deputy clerks and I hate that they have been caught in the middle. If any of them feels that they must issue an unauthorized license to avoid being thrown in jail, I understand their tough choice and I will take no action against them."

By withdrawing religious normativity from her deputies—relieving them from the requirement to follow her beliefs—Davis practically solved the conflict. The analogy to the teacher/student withdrawal is striking. The educational leaders and the clerk, professed agents of religious normativity, reduced conflict with the law by withdrawing religious normativity from those whom they viewed as subjects, rather than agents, of religious normativity. While Davis did not initiate this compromise, her statements indicate that she was able to accept that her deputies would continue to issue marriage licenses. Being able to redefine the conflict and stand firm on narrower 'sovereign' religious grounds enabled Davis to come to terms with her legal obligations and end the conflict, to the general satisfaction of gay couples, the court, and state officials.[75]

The case also surfaces interesting, yet underdeveloped, elements of restraint. Davis sought restraint by repeatedly asking for a religious accommodation, first from the court and then from the Kentucky legislator. Clearly, these requests were not initially granted. Under federal law, the court had the power to impose fines, imprisonment, or both on Davis, once it found her in contempt of the court (18 U.S.C. § 401). As the court placed Davis in custody, the potential consequences of substituting confinement for fines remained obscured. Notably, plaintiffs asked to fine Davis, not to imprison her, but the judge believed that fines would not bring about compliance. Was he right?

One specific concern that Judge Bunning reportedly noted in the courtroom is that others might raise money to pay the penalty on Davis' behalf. Some educational leaders made similar comments regarding monetary sanctions, but in general they believed in the power of fines to bring about compliance. This raises an interesting question: Were courts (or agencies) to accommodate

[75] Cheves, John (2015) "Kim Davis allows deputy to issue 'unauthorized' marriage license to Lexington couple," Kentucky.Com, 14 Sept., 2015.

the religious demand at a milder level of legality (monetary sanctions in lieu of compliance), would it reconcile conflict or create a cascade of second-order problems?

At least when it comes to substituting monetary sanctions for performance, there are reasons to suspect that restraint would not reconcile conflict. Substantial evidence indicates that monetary sanctions often have the opposite effect: they reduce intrinsic commitments to norms by making norms appear as ordinary transactions.[76] Indeed, many religious objectors referred to monetary penalties as simple prices (e.g. "this is not a punishment, this is an outcome"). In such cases, noncompliance might transform into a commodity that people can purchase, and the negative impact of judicial restraint would outweigh its advantages.

Yet monetary penalties are not the only way to restrain legality. While Judge Bunning imprisoned Davis until she complied with the law, he also decided to release her after a short five days in jail without another attempt to secure her compliance. Instead, the judge placed the burden of compliance on other individuals—the deputies—effectively releasing Davis from the need to issue marriage licenses herself. This belated form of restraint towards Davis, which expands the examples in my data, raises a host of interesting questions. First, was it effective? The conflict does seem to have worn off, but is it due to the (post hoc) judicial restraint or to the (original) lack thereof? As Davis apparently refused to accept a withdrawal solution prior to her imprisonment, but accepted it afterwards, *lack of restraint* seems to play a determinative role in the outcome. Indeed, Davis' acts of both redefinition and withdrawal followed punishment, raising deep questions about the role of punishment—albeit short and symbolic—in enabling compromise (the Davis case, in that sense, joins the Immanuel case, in which compromise was only achieved after segregating parents were sent to jail in contempt of the court, what became a highly criticized and controversial judicial decision). In the present case, given that the court was willing to allow Davis some narrow zone of disobedience in any event, it appears that restraint, too, played an important role in the eventual compromise and further facilitated acts of redefinition and withdrawal.

The analysis of the solution achieved in Davis' conflict shows that the compromise's building blocks are redefinition, withdrawal, and restraint. These features enabled Davis to redraw the boundaries between her legal and religious commitments, even after her dissent and jail punishment, and allowed her to eventually comply with narrower versions of both. Even more importantly, while redefinition, withdrawal and restraint played a dominant role for Davis, they also facilitated the compromise between law and religion at an institutional and general level, enabling the court to craft a lasting relief for the couples harmed by Davis' disobedience and to release her deputies from the obligation to follow beliefs that they did not share with the same forcefulness. Indeed, no party saw its claims answered in full. Davis has won a personal freedom to distance herself from gay marriage, but she was not able to impose her beliefs as public policy. Gay couples were able to marry in Rowan County, but they did not receive the same licenses as heterosexual couples, as Davis was not signed on theirs. But the material interests of all parties were safeguarded, and a balance was struck. This compromise, as well as the many others I discussed in this article around the inclusion of gay and unmarried pregnant individuals, teaching curriculums, and other issues, invite lawmakers, courts, and lawyers, as well as religious objectors themselves, to think imaginatively and creatively about the resources they currently have to

[76] Samuel Bowles and Sandra Polanía-Reyes, 'Economic Incentives and Social Preferences: Substitutes or Complements?' (2012) 50 Journal of Economic Literature 368; Uri Gneezy, Stephan Meier and Pedro Rey-Biel, 'When and Why Incentives (Don't) Work to Modify Behavior' (2011) 25 The Journal of Economic Perspectives 191; Uri Gneezy and Aldo Rustichini, 'Fine Is a Price, A' (2000) 29 Journal of Legal Studies 1.

advance compromises between law and religion and reduce the intensity of this incredibly important and divisive conflict.

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Conflicts between law and religion can be agonizing for religious individuals, harmful for third parties, and divisive for society as a whole. Indeed, they are one of the most enduring and pervasive forms of social conflict. This article presented new evidence on how leaders in religious communities perceive, navigate and resolve these conflicts on various levels. Furthermore, this article offers a new framework to understand these conflicts, by defining and examining their dynamics, from the cognitive dissonance that conflict entails to the nuanced ways in which key stakeholders seek to resolve it.

The discourse on conflicts between law and religion typically assumes that religious individuals would see the conflict in black and white terms and engage it with fervent piety. Contrary to these predictions, most of the religious leaders in this study—across levels of piety and ideological positions—demonstrate conflict aversion. Rather than defying or obeying the law, religious individuals in key normative positions are primarily occupied with redrawing the boundaries of law and religion to reduce and avoid conflict. They redefine the meaning of these normative systems to claim that they are, after all, not in conflict. They withdraw religious normativity to reduce its conflict with legality. And they seek to restrain legality to reduce its conflict with religion.

Beyond insight into the lived experiences of individuals, my findings reveal the institutional mechanisms of conflict reduction and reconciliation—mechanisms that are already at work. The detailed cases throughout the article demonstrate the practical usefulness of these mechanisms, as well as some of their limitations. The analysis of the Davis case further confirms the explanatory power of the model as well as its practical usefulness in reducing conflict between law and religion. Despite the apparent differences in role and dilemma between the state-elected county clerk and the religious educational leaders, reading the case through the prism of redefinition, withdrawal, and restraint elucidates under-explored aspects of the case and suggests that this framework can help mitigate conflicts between law and religion, even beyond the realm of education.

TABLES

Table 1: Sample Summary Statistics

Gender	Male	58% (24/41)
	Female	42% (17/41)
Teaching Experience	Mean: 19.7 years	
Religious Affiliation	National-Orthodox	58% (24/41, 2 Haredi-Le'umi)
	Ultra-Orthodox	42% (17/41, 4 Litai, 5 Hassidi (Karlin, Slonim, Gur, Viznitz, Zilberberg), 3 Sephardic, 5 n/a)
Institution	Secondary Education	41% (17/41)
	Higher Religious Education	14% (6/41)
	Administration	10% (4/41)
	School + Administration	14% (6/41)
	Youth movements / Community Education	10% (4/41)
	Primary Education / Other	10% (4/41)
Gender Mixture in Institutions	All-boys	29% (12/41)
	All-girls	27% (11/41)
	All-boys, All-girls	24% (10/41)
	Mixed	14% (6/41)
	Not provided	4% (2/41)

Table 2: Conflict Experience and General Attitudes

Reported an experience of conflict between law and religion	Overall	73% (30/41)
	National-Orthodox	63% (15/24)
	Ultra-Orthodox	88% (15/17)
Supported the decision to dismiss/segregate in the case's circumstances	Overall	
	- Support	41% (17/41)
	- Did not support	54% (22/41)
	National-Orthodox	
	- Support	38% (9/24)
	- Did not support	62% (15/24)
	Ultra-Orthodox	
	- Support	47% (8/17)
	- Did not support	41% (7/17)

Table 3: Common Schemas

Redefinition	Of religion	44% (18/41)
	Of law	22% (9/41)
Withdrawal	Sphere-Based	46% (19/41)
	Role-Based	39% (16/41)
Restraint	Sanctions	34% (14/41)
	Discretion	27% (11/41)

Table note: Numbers do not sum up to 100% because some interviewees raised more than one solution. Solutions are ordered according to popularity.

METHODOLOGICAL APPENDIX

I. Participants

The interview sample included 41 religious educational leaders representing a wide range of teaching positions, religious affiliations, and career stages (Table 1 summarizes the sample). Due to the relatively high insularity of the religious populations participating in the study, and the sensitive topics that were meant to come up in the discussion, I made initial recruitment through various referents, unrelated to me and independent from each other. Chain-referral sampling was then used to build up the sample, overcoming barriers of trust and access[77].

II. Design

A semi-structured interview instrument was developed to identify the key conflicts, considerations, and strategies used by the educational leaders to cope with conflicts between law and religion in their field. Most interviews were recorded and transcribed following participant approval. Some interviewees, however, opted not to be recorded; in these cases, I transcribed their comments in real time. Interviewee consent was given verbally and each interviewee was informed on the confidentiality of their response[78] I supplemented the interview data by collecting documents and publications issued by religious schools and their administrations, and by closely following religious newspapers and websites.

Each interview consisted of two parts. The first part explored whether participants had personally experienced tension between competing normative commitments throughout their career. As the stories unfolded, I asked the educational leaders to describe the origin of these tensions, their choices, and the reasoning behind these choices. I then proceeded to probe participants' intuitions regarding two recent cases that contrasted the religious freedom of schools with Israeli antidiscrimination law by reading excerpts from the court decisions aloud to the participants. Each case took place in either a national- or an ultra-orthodox school (the two communities from which educational leaders were drawn). As such, the cases were directly relevant to this study and were used to allow the educational leaders to engage in real-time deliberation and reflection on pertinent conflicts.

The first case (*the pregnancy case*) took place in a national-orthodox setting and was raised with national-orthodox interviewees. At issue was the dismissal of a teacher from a national-orthodox all-girls school (*ulpana*, the girls-equivalent of a yeshiva high school) for entering unmarried pregnancy at the age of 40 from an IVF treatment.[79] The teacher argued that her dismissal was discriminatory and sued the school. The school justified the dismissal on religious grounds, asserting that the teacher could no longer serve as a role model for her students after conceiving out of wedlock. In 2013, the court decided that the dismissal violated the Equal Opportunities in the Workplace Act, which prohibits differential treatment based on sex,

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[77] Patrick Biernacki and Dan Waldorf, 'Snowball Sampling: Problems and Techniques of Chain Referral Sampling' (1981) 10 *Sociological methods & research* 141; Janice Penrod and others, 'A Discussion of Chain Referral as a Method of Sampling Hard-to-Reach Populations' (2003) 14 *Journal of Transcultural Nursing* 100.

[78] The study was approved by the Harvard IRB (#F24214-101) and by the Israeli Ministry of Education (file 7693(y)/827).

[79] RLC 12137/09 (Tel Aviv) *Plonit v. Almonit* [2013] Nevo (Hebrew).

pregnancy, and related conditions. The court considered the school's religious justification, but found it insufficient, awarding the teacher substantial damages.

The second case (*the segregation case*) took place in an ultra-orthodox setting and was raised with ultra-orthodox interviewees. Known as the *Immanuel* case, it handled the separation of an ultra-orthodox all-girls school into a mostly Ashkenazi school (a high status ethnic group in the ultra-orthodox society) and a mostly Sephardic school (a low status ethnic group in the ultra-orthodox society).[80] A group of Sephardic parents represented by an impact litigation group argued that the school was divided for racist reasons and demanded its desegregation. The school maintained that students from the two populations differed on religious rather than ethnic grounds—requiring separate institutions—and denied the accusation of racism. The court eventually decided that the separation was an illegal, ethnicity-based segregation and ordered its reversal. The case soon turned into a milestone, as the ultra-orthodox society fervently demonstrated against the decision and parents of Ashkenazi students collectively refused to send their daughters to the desegregated school. The school then re-segregated, its government funding was rescinded, and it ultimately shut down. I primarily discussed this case with ultra-orthodox interviewees, but time and flow permitting I also probed the reactions of national-orthodox interviewees to the case, following the discussion of the pregnancy case, to test their response to a conflict that took place within a different religious society.

III. Qualitative Analysis

I used grounded theory to code and develop themes in the process of analyzing the interview transcripts. This approach has been widely used in similar studies.[81] Through iterative reading of a subset of the interviews, I developed a code list to characterize common themes and factors that appeared to influence the educational leaders' decision-making processes and measures they deemed legitimate (or illegitimate) for the resolution of the conflict. I coded all transcripts into a complete list of codes, which I continued to refine through iterative readings.

[80] HCJ 1067/08 *Noar KeHalacha Association v. Ministry of Education* [2010], English translation available at: http://elyon1.court.gov.il/files_eng/08/670/010/o24/08010670.o24.htm

[81] Kathy Charmaz, *Constructing Grounded Theory* (Sage 2006); Tova Hartman Halbertal, *Appropriately Subversive: Modern Mothers in Traditional Religions* (Harvard University Press 2002); Hadar Aviram, 'When the Saints Go Marching In: Legal Consciousness and Prison Experiences of Conscientious Objectors to Military Service in Israel' in Laura-Beth Nielsen and Ben Fleury-Steiner (eds), *The New Civil Rights Research* (Dartmouth-Ashgate, 2005).