Received: 15 December 2020 | Revised: 16 June 2021 | Accepted: 14 September 2021

DOI: 10.1111/lasr.12590

ARTICLE

Law & Society REVIEW

Kadijustiz in the ecclesiastical courts: Naming, blaming, reclaiming

Ido Shahar[1] | **Karin Carmit Yefet**[2]

[1]Department of Middle Eastern and Islamic Studies, University of Haifa, Haifa, Israel

[2]Faculty of Law, University of Haifa, Haifa, Israel

Correspondence
Ido Shahar, Department of Middle Eastern and Islamic Studies, University of Haifa, Haifa, Isarel.
Email: idoshah@gmail.com

Funding information
Israel Science Foundation, Grant/Award Number: 454/20

Abstract
The article analyzes Israel's ecclesiastical court system through the prism of Weberian theory to both empirical and theoretical ends. On the empirical level, it aims to illuminate a grossly understudied socio-legal arena—the communal Christian courts in the Middle-East. On the theoretical level, it seeks to reclaim the Weberian concept of *kadijustiz*, which refers to "formally irrational" legal systems. In recent decades, scholars have engaged in a process of "blaming" that discredited the conceptualization of Islamic law as *kadijustiz* and resulted in the concept's erasure from socio-legal theory. After renaming it to the more neutral and non-Orientalist *richterjustiz*, we employ this new-old concept to analyze Israel's ecclesiastical courts and demonstrate its theoretical and analytical merits. The article concludes with several theoretical propositions, which draw on the empirical case study and contribute to the refinement of Weberian theory.

INTRODUCTION

The term *kadijustiz* was coined by Richard Schmidt and popularized by Max Weber, who employed it to denote an irrational legal system that grants its judges unlimited judicial discretion.[1] Although he used the term to describe legal systems as diverse as Greek Attic Law, English Common Law, and the modern "popular justice" of juries (Weber, 1968, pp. 795, 1001, 1002), there is no doubt that Weber viewed Islamic law as the prototype of such an irrational system (Weber, 1968, p. 796; see also Gerber, 1994, p. 192n7; Rabb, 2015, p. 349). On his account, the *qadi*, the Islamic judge, is not bound by formal rules and procedures, but rather adjudicates according to ethical, religious, political or other considerations, guided primarily by his personal preferences and motivations. Weber thus perceived *kadijustiz* as emblematic of a legal system characterized by arbitrariness, unpredictability, and lack of transparency and uniformity—the very opposite of the essential pre-conditions required for modernization in general, and for the emergence of capitalism in particular. In other words, Weberian theory presents *kadijustiz* as the prototypical inverse of the rationalized, systematized, and formalized construct of "Western Law" (Johansen, 1999, pp. 47–51; Powers, 2002, pp. 1–2; Rabb, 2015; Turner, 1974a).

[1]Schmidt, 1908, p. 266. See also, Ibrahim, 2016, p. 803n12; Johansen, 1999, pp. 48-9n183.

Initially, the term *kadijustiz* gained broad currency among legal scholars and practitioners. As noted by Rabb (2015), it was employed not only by scholars from a diverse range of academic traditions—the sociology of law, comparative law, and the legal history of Islamic law—but also, and quite extensively, by judges in the American judicial system.[2] In recent decades, however, *kadijustiz* has been subjected to a considerable degree of scholarly opprobrium. Critics have argued, for example, that the scant and largely tendentious knowledge of Islamic law that was available to Weber misled him, giving rise to oversimplified and a-historic generalizations and to a fundamentally flawed conceptualization of the *qadi's* adjudication process (e.g., Gerber, 1994; Jennings, 1978, 1979; Johansen, 1999; Powers, 1994; Rosen, 1980, 1989). Contrary to Weber's premises, critics have contended cogently that the *qadi* does not adjudicate arbitrarily based on his personal whims, but rather according to a sound and well-defined set of rules and procedures. Furthermore, at least under Mamluk and Ottoman rule, a concerned party could file a complaint against the *qadi* if he was perceived to have acted wrongfully—for example, if he failed to follow the right procedure, accepted a bribe, or even if he neglected to adjudicate according to the prescribed rules of his school of jurisprudence (*madhhab*). The authorities, on their part, treated these complaints with all due severity, rebuked erring *qadi*s, and even dismissed them (see Gerber, 1994, pp. 156–171; Jennings, 1979; Rapoport, 2003, pp. 216–217).

Given the Orientalist connotations of the term *kadijustiz*, many have called for its wholesale rejection, stating that like other misguided Orientalist concepts such as *Oriental despotism* or *the sick man on the Bosporus*, it should be discarded (see, e.g., Agmon & Shahar, 2008, pp. 2–3; Powers, 2002; Quraishi, 2009; Rabb, 2015). Indeed, *kadijustiz* has become obsolete in the prevailing paradigm of Islamic law scholarship, and has been all but erased from socio-legal theory.

Heeding this critique, this article acknowledges that Weber was profoundly mistaken when he depicted Islamic law as *kadijustiz*. However, we submit that he was not mistaken in identifying the analytical plausibility of a judicial system that vests its judges with unlimited and unchecked discretionary powers. He was also not mistaken in predicting that such a judicial system would produce arbitrary, inconsistent, and unpredictable decisions. Notwithstanding the concept's empirical bankruptcy, the article argues that *kadijustiz* is still valid theoretically and valuable analytically. We thus propose to reclaim the analytical category of *kadijustiz*, albeit under a new and more neutral term stripped of any historical Orientalist baggage—*richterjustiz* (judge-justice).

The article develops this argument by applying the concept of *richterjustiz* to a judicial system very different from the *qadi*s' courts: the ecclesiastical courts in present-day Israel. These state-sanctioned communal-religious tribunals have been given sweeping jurisdictional powers in matters pertaining to the personal status of their respective community members. At the same time, however, the state that provides them with exclusive authority, as well as the Church that infuses them with normative legitimacy, have almost entirely refrained from engaging in effective regulation of their operation, whether financial, administrative, or judicial. We argue that this structural feature of the ecclesiastical courts in Israel, namely, their operation within an institutional and regulatory void, results in far-reaching and unchecked judicial discretion, which in turn leads to inconsistent and unpredictable decisions, favoritism, and even corruption.

Whereas Weber wrongfully attributed the development of *kadijustiz* to the inherent logic of Islamic law, we attribute *richterjustiz* to particular institutional circumstances that surround and structure the legal system. In the case of the Israeli ecclesiastical courts, we contend, *richterjustiz* has emerged because of the institutional void within which these courts operate.

[2]The most famous quote, of course, is from Justice Frankfurter, who noted: "This is a court of review, not a tribunal unbounded by rules. We do not sit like a kadi under a tree dispensing justice according to considerations of individual expediency" (*Terminiello v. Chicago*, 337 U.S. 1, 11 [1949]).

https://doi.org/10.1111/lasr.12590 Published online by Cambridge University Press

With this in mind, the article aims to achieve two goals. Empirically, we seek to shed light on a vastly understudied legal arena—the ecclesiastical courts in Israel—which have received scant academic attention to date (Abou Ramadan, 2000; Colbi, 1988, p. 152), and to provide a rare and unusual glimpse into their proceedings and procedures. As the article endeavors to show, the Israeli ecclesiastical court system presents itself as a paradigmatic example of the Weberian concept of *kadijustiz*, renamed *richterjustiz*: it fits these courts' *modus operandi* appositely, and is therefore particularly efficacious for analyzing them. Theoretically, the article seeks to shed new light on an old concept and to provide an empirical justification for reclaiming *kadijustiz* from its scholarly oblivion. Drawing on the insights garnered from our case study, the article offers propositions designed to enrich and refine Weber's theoretical conceptualization.

Methodologically, the article builds on data collected as part of an interdisciplinary research carried out in the years 2019–2020. This research combined participant observations in ecclesiastical courts; ethnographic interviews with both professionals (ecclesiastical judges and lawyers) and parties to matrimonial disputes handled by these courts; and textual analyses of court decisions and other related legal documents.

The article proceeds as follows. The first section discusses the concept of *kadijustiz*, situating it within the broader theoretical framework of Weber's sociology of law. The second section provides a brief overview of the ecclesiastical court system in Israel—its history, its organizational features, and the legal and political circumstances that generated the institutional void within which it operates today. After a brief methodological note, a Findings section presents the *modus operandi* of these courts, which is marked by inconsistency in procedures and decisions, unpredictability, lack of transparency and due process, favoritism, and even corruption. This is followed by a Discussion section that ties the article's empirical and theoretical arguments together, and proposes several theoretically and empirically informed insights into the phenomenon of *richterjustiz*.

INTRODUCING THE CONCEPT OF *KADIJUSTIZ*

Max Weber is widely considered one of the founding fathers of the sociology of law. Despite his immense influence on law and society scholarship, however, his impact on this field is somewhat elusive and inconsistent given that he never completed a full-fledged manuscript on the sociology of law (Hunt, 1981; Kennedy, 2003; Trubek, 1986). His most influential discussion of the subject of law was included in his monumental *Economy and Society* [*Wirtschaft und Gesellschaft: Grundriss der verstehenden Soziologie*] (1923–1924).[3] However, this book was published posthumously, and the part that Weber's widow, Marianne, entitled *The Sociology of Law* was in fact made up of excerpts she had gathered from various unfinished manuscripts (Weber, 1968, p. LXXXI). As a result, *The Sociology of Law* consists of loosely connected essays, which are themselves unfinished. The text as a whole presents a daunting challenge to scholars, for it is hard to grasp the underlying arguments linking its constituent parts and to understand how Weber's sociology of law fits into his overall body of work (Trubek, 1985, p. 920). Moreover, Weber's inconsistent and ambiguous terminology leaves room for different interpretations of key concepts and ideas (Kronman, 1983, p. 5; see also Kennedy, 2003). Given all these difficulties, a good command of the term *kadijustiz* cannot be attained unless we tackle—if only cursorily—the broader framework of Weber's sociological thinking.

Anthony Kronman, who penned the most authoritative intellectual biography of Max Weber, argues that "it would not be too far-fetched to describe the entire corpus of Weber's substantive writings as a sociology of modernity. The *Rechtssoziologie* (Sociology of Law) is only a part of this larger enterprise" (Kronman, 1983, p. 166). Indeed, Weber was preoccupied with the "riddle of modernity," namely, with essaying to comprehend what brought about modernity in the West, and

[3]An English translation and edition entitled *Economy and Society: An Outline of Interpretive Sociology* was published in 1968.

https://doi.org/10.1111/lasr.12590 Published online by Cambridge University Press

why it only came about in the West. His comparative studies of Western and non-Western legal systems, including his analysis of *kadijustiz*, were thus geared toward identifying the unique features of Western legal traditions that contributed to the rise of modernity in general, and of capitalism in particular (Trubek, 1985, p. 925).

Using his famous interpretative methodology, and moving back and forth between empirical case studies and analytical observations, between inductive thinking and deductive reasoning, Weber sought to identify different *ideal types* of legal systems (Burger, 1976; Eliaeson, 2000; Swedberg, 2018). He surmised that the "discerning element" of Western law, the unique feature that set it apart from other, non-Western legal systems and that enabled the emergence of modernity and capitalism, was its rationality. In other words, Weber contended that Western law underwent distinctive processes of rationalization that systematized, bureaucratized, and formalized it, thus making it more predictable—all crucial elements for the development of capitalist enterprise (Collins, 1980; Ewing, 1987; Kronman, 1983; Trubek, 1972; Turner, 1974b; Weber, 1968, pp. 813–845).

Weber's discussions of the notion of "rationality," the central axis of his sociology of law, culminated in his famous four ideal types of legal reasoning: "substantively irrational," "formally irrational," "substantively rational," and "formally rational." A comprehensive discussion of this fourfold typology is beyond the scope of this article.[4] For our purposes, suffice it to provide succinct definitions of these four categories:

- *Substantively irrational law* is a system in which law-making (legislation) and law-finding (adjudication) are based on means that are not intellectually controllable, such as oracles, trials by ordeal, or sacred revelations.
- *Formally irrational law* is a system in which the administration of justice is not oriented toward general rules, but rather toward economic, religious, political, or some other considerations. *Kadijustiz*, as conceived by Weber, constitutes a paradigmatic example of such a system.
- *Substantively rational law* is a system in which ethical imperatives, political maxims, or utilitarian rules of expediency are developed into norms and general principles. According to Weber, many sacred laws, such as the Islamic *Shari'a*, the Jewish *Halakha*, and the Christian canon law, underwent processes of rationalization that rendered them substantively rational, at least to some extent (Weber, 1968, p. 616; see also Johansen, 1999, pp. 48–49).
- *Formally rational law* is a system in which the administration of justice is based on a systematic application of logical generalizations of abstract principles to the facts of the case. A good example at hand—in fact, the only example at hand, according to Weber—is Western law, and especially modern European continental law (Weber, 1968, pp. 720–728).

Weber used this fourfold typology as a framework for analyzing diverse legal traditions and for illuminating the linkages between legal reasoning, institutional arrangements, and the historical trajectories taken by different societies. Islamic law served as one among several legal systems in this broad comparative examination (e.g., Weber, 1968, pp. 691ff; 754ff; 818ff). In Weber's view, Islamic law was a system of sacred law that had not advanced a clear distinction between spheres of law (e.g., private and public law, criminal and civil law) nor a distinction between law, ethics, and ritual. In that sense, it was less inclined to formal rationalization than secular modern law (Johansen, 1999, p. 51). Furthermore, although *fiqh* (Islamic jurisprudence) underwent a certain degree of "substantial rationalization" and some of its concepts and principles were elaborated over time (Weber, 1968, p. 829), the "sacredness" of Islamic law, and the fact that the "gate of independent reasoning" (*bab*

[4]Given that Weber's use of this terminology is not entirely consistent, and that in some passages he seems to conflate different meanings of rationality (Kennedy, 2003; Kronman, 1983; Trubek, 1986), such a discussion would be both difficult and unnecessary for our purposes.
[5]The "gate of *ijtihad*," namely, the gate of independent reasoning, is an Islamic term referring to jurists' capacity to use reason for deducing new rules from sacred sources. Until recent decades, the common Western view on Islamic law was that the gate of *ijtihad* was closed at some point in the early medieval era (Rabb, 2009). Recent scholarship, however, led by such scholars as Hallaq (1984, 2001), indicates that although jurists' ability to establish new schools of law diminished after the tenth century, the gates of *ijtihad* have never been fully closed.

https://doi.org/10.1111/lasr.12590 Published online by Cambridge University Press

al-ijtihad) had purportedly been closed by the thirteenth or fourteenth century, meant that there was no systematic and consensual mechanism for the enactment of new laws (Weber, 1968, p. 819).[5]

Moreover, since *fiqh*, as conceived by Weber, was developed by jurists in isolation from the social world of laymen, it failed to incorporate practical norms related to the needs and requirements of day-do-day social and economic life. Even more important, while later generations of Islamic jurists enthusiastically promoted the substantive rationality of the *shari'a* (i.e., they managed to formulate general normative principles based on revealed sources), they failed to develop formal procedural rules instructing *qadi*s how to apply these principles to concrete cases and how to make logical and consistent decisions. Bereft of such formal tools of legal reasoning, *qadis* decided concrete cases not according to general binding rules or abstract normative *fiqh* principles, but according to their personal whims and inclinations—whether ethical, political, economic, or ideological. The lack of formal rationalization resulted, according to Weber, in a situation where *qadis* enjoyed extensive discretion, and in a judicial output that was anything but systematic, uniform, and predictable—hence the term *kadijustiz* (Weber, 1968, pp. 1115–1116).

Weber attributed these features of Islamic law to its dependence on revelation as its source; to the rigidity of its ostensibly unchanging sacred law; to its notions of religious authority; and to its supposed detachment from social and economic reality. As noted above, these arguments have been unanimously rejected by present-day scholars of Islamic law. Contrary to Weber's suppositions, the gate of *ijtihad* has never been fully closed; Islamic law did not freeze in the early middle ages (Hallaq, 1984, 2001); *fiqh* did not evolve apart from social reality, in a sort of "jurists' bubble," but rather in tandem with other social and political developments (Hoexter, 2007); and most important, officiating *qadi*s in *Shari'a* courts did not possess unlimited authority or unchecked discretionary powers. Even in pre-modern times, they were obliged to rule according to strict directives imposed by their schools of jurisprudence and were subjected to scrutiny by senior executives and jurists (Gerber, 1994; Powers, 2002).

We argue that although the term *kadijustiz* rests on erroneous empirical foundations, the idea that some legal systems are distinctive in allowing far-reaching discretion to judges is valuable for advancing our understanding of law, as is the effort to explain such systems. We therefore suggest to substitute the term *kadijustiz* with the term *richterjustiz*, and to reclaim Weber's observations regarding such systems and their characteristic unpredictability, neglect of due process, favoritism, corruption, lack of transparency, and overall inaccessibility of justice. These features, we contend, are all salient in the judicial regime prevailing in contemporary ecclesiastical courts in Israel. With this in mind, we shall now turn to presenting this vastly understudied court system. We will return to the concept of *richterjustiz* in the Discussion section, where we shall draw a comparison between Weber's conceptualization of the term and our own findings with respect to the ecclesiastical courts in Israel.

The ecclesiastical courts in Israel: Church, state, and the void between them

The Christian population in present-day Israel amounts to 177,000 people, about 2% of the entire country's population, and is further divided into two sub-groups: 77% are Arab-Palestinian Christians and 23% are non-Arab Christians.[6] This research focuses on the former group of Arabic-Speaking Christians, who by and large identify themselves as Palestinians (McGahern, 2011). Notably, among Arab-Palestinians who reside within the "Green line" and possess Israeli citizenship, Christians constitute a small minority, a mere 7.5% of the population alongside a majority of Muslims. This small community is indeed considered elitist in some respects (Shdema, 2012), but suffers

[6]Central Bureau of Statistics of Israel (2018) "Christmas 2018: Christians in Israel," https://www.cbs.gov.il/he/mediarelease/DocLib/2018/384/11_18_384b.pdf.

https://doi.org/10.1111/lasr.12590 Published online by Cambridge University Press

from double marginality as a religious minority within a marginalized ethno-national minority in the Jewish State (Dumper, 2002; Israeli, 2002, p. 39; Sa'ar, 1998; Tsimhoni, 2002).

The already small Palestinian-Christian community in Israel is further divided into more than a dozen religious communities, some of which include little more than several hundred members (Mansour, 2012). The British Mandate in Palestine, building on the Ottoman *millet* system,[7] recognized nine different Christian denominations: the Greek Orthodox, the Roman Catholic, the Greek Catholic (Melkite), the Maronite, the Armenian Catholic, the Armenian Orthodox (Gregorian), the Syriac Catholic, the Eastern Orthodox, the Syrian Orthodox, and the Chaldean Churches.[8] These denominations were granted religious and cultural autonomy, and their communal-ecclesiastical courts were given exclusive jurisdiction over matters pertaining to marriage and divorce/annulment, alimonies, and religious endowments.[9] After the establishment of the state of Israel, a governmental decree issued in 1970 included the Episcopal Evangelical Church in the list of recognized Christian denominations.

The domain of family law in contemporary Israel can be described as a personal status regime, that is, a legal-institutional arrangement that imbues communal-religious courts with jurisdiction in matters related to the personal status of their respective community members (Abou Ramadan, 2006, 2008; Blecher-Prigat & Zafran, 2017; Galanter & Krishnan, 2000; Halperin-Kaddari, 2004; Sezgin, 2004; Yefet, 2009, 2016; Zafran, 2013). These confessional tribunals are legally empowered to exercise their jurisdictional authority over all Israeli residents who belong to the respective faith by birth/baptism or conversion, either exclusively in matters of marriage and divorce or alongside civil family courts in other core family matters (Abou Ramadan, 1997, 2000; Amir, 2016, 2018; Edelman, 1994; Halperin-Kaddari, 2004; Hacker, 2012; Sezgin, 2004, 2010; Yefet, 2009, 2016; Zafran, 2013).

Remarkably, whereas in the case of the Jewish, Muslim, and Druze religious court systems the state of Israel acts as an overarching sovereign that funds, regulates, and intervenes in jurisdictional structures, judicial appointments, and internal affairs to ensure acceptable standards of due process and good governance (Goodman, 2009; Maoz, 1996, p. 357; Shifman, 1995, pp. 364–365), in the case of the ecclesiastical courts the state bowed to pressures exerted by the Holy See and ceded its authority in exchange for international legitimacy (Abou Ramadan, 1997; Bialer, 2005). Thus, the state does not intervene in the nomination of ecclesiastical judges,[10] in setting the courts' hierarchy and judicial review process, or in determining court fees, juridical rules and procedures, and the substantive codes that govern rulings. The state's hands-off approach also allows the ecclesiastical courts to eschew the publication of their state-enforced court decisions (Amir, 2014, 2016; Bialer, 2005; Karayanni, 2018).

Admittedly, the Israeli High Court of Justice (HCJ) may intervene in ecclesiastical courts' decisions on some limited grounds: if they exceed their jurisdiction, if they violate the principles of natural justice, or if they disregard legal provisions that are specifically applicable to religious tribunals (Abou Ramadan, 2000, p. 109). With that said, the HCJ will seldom intervene actively in ecclesiastical court rulings since such interventions are contingent upon the submission of a petition by involved parties, and since petitions of this kind to the HCJ are few and far between. Indeed, as noted by Batshon (2012), active intervention on the part of the HCJ in rulings of the ecclesiastical courts are extremely rare, and represent a reticent and "most circumspect" state policy toward the ecclesiastical courts (Colbi, 1988, p. 164).[11] The HCJ has acknowledged this "anomalous situation:"

[7]This British policy was presented as a simple continuation of the Ottoman millet system, but in fact included some significant changes (Agmon, 2017; Amir, 2016, 2018). On the Ottoman Millet system, see, Braude, 1982.

[8]Second addition to the Palestine Order in Council, 1922–1947.

[9]Articles 51 and 54 of the Palestine Order in Council.

[10]This rule is subject to one exception: the nomination of the Greek Orthodox patriarch requires affirmation by state authorities (Abou Ramadan, 2000; Katz & Kark, 2005, 2007).

[11]Even in the handful of occasions when the HCJ decided to intervene, its decisions aimed mostly to resolve the concrete issue at hand and not to set general and binding guidelines for future judicial or administrative policies. See, for example, H.C.J. 59/58 *Jadai v. The Ecclesiastical Court of the Melkite, Greek Catholic Archbishopric*, 12 P.D. 1812 (Dec. 18, 1958); H.C.J. 3238/06 *Yosef Suleiman v. Archbishop Sayyah* (Feb. 23, 2009).

https://doi.org/10.1111/lasr.12590 Published online by Cambridge University Press

> [T]here exists a judicial system [the ecclesiastical courts], the ruling of which is binding in the state of Israel, yet [the] legislature has not settled, even at the most basic level, the performance of this system, neither in its organizational nor in its functional aspects. […] Consequently, the task seems to be left almost entirely to the internal consideration of the authorities within the religious community (Suleiman v. Sayyah, 2009).

The state's strict non-interventionist approach is premised on a tacit underlying expectation that the ecclesiastical courts are to operate properly by virtue of internal regulation by the local Christian communities and by the church hierarchy. This expectation appears to be unrealistic, however, as neither the church nor the local communities can effectively regulate the functioning and administration of the ecclesiastical courts. For one thing, there is a growing rift between the Palestinian-Christian public in Israel and the ecclesiastical establishment (McGahern, 2011, pp. 80–81). This rift is nowhere more salient than in the Greek Orthodox community, where the communal tribunals are controlled by foreign Greek clergy who share neither the language nor the culture of their constituents, and who are alienated from the local Arab-Palestinian laity and resented by it (Abou Ramadan, 2008, p. 89; Amir, 2014, p. 63; Mack, 2012; Maggiolini, 2016; McGahern, 2011, pp. 42, 81; Tshimhoni, 1993, pp. 36–37; Vatikiotis, 1994). The longstanding tension between the clergy and the laity in the Palestinian Greek-Orthodox community has escalated in the past few decades following the decision of the Greek Orthodox Patriarchate to sell some real-estate properties to shady state elements (Katz & Kark, 2005, 2007). The sales were conducted without consulting the community, without transparency, and without serving the community's interests, giving rise to open criticism toward the clerical establishment (Katz & Kark, 2007, p. 392).

Moreover, while the Palestinian-Christian community has transformed in recent decades into a modernized, secularized, middle-class community, the ecclesiastical establishment has remained stagnant: conservative, patriarchal, and in the case of the Greek Orthodox community, also foreign (Mack, 2012). When appeals from the community for the "decolonization" of what is perceived as a Greek monopoly over the local church fell on deaf ears, many of the local laity have severed their ties with the Greek Orthodox clerical establishment. Nevertheless, they are still legally compelled to adjudicate their marital troubles in the ecclesiastical tribunals (Katz & Kark, 2005, 2007; Karayanni, 2018, pp. 846–849).

Indeed, the tension between clergy and laity is most apparent in relation to the ecclesiastical courts. Christians in Israel encounter these institutions mainly when they are faced with familial crises and are at their most vulnerable (Mack, 2012, p. 304). At such times, people usually seek support, due process, transparency, predictability, and confidence in the administration of justice. Unfortunately, as will be shown below, litigants' experience with the ecclesiastical judges is far removed from the Weberian ideal of a rational court system. One theme that loomed large in our interviews with lay informants who pursued legal remedy in the ecclesiastical courts was their feeling that these tribunals are estranged and detached from them and that they make a business out of broken hearts and a mockery out of religion (Kevorkian & Khsheiboun, 2015). To give just one example, Angeline,[12] an informant who went through a painful divorce process at one of the Greek Orthodox courts, contends that greed and flagrant indifference were the formative forces that shaped her encounter with the ecclesiastical judge:

> First of all, he didn't hear me and he didn't see me and he completely failed to understand my needs and my situation. […] It's like he was stuck in another era and had no understanding of my situation. He didn't care about my feelings, he just didn't care. He just took the money and issued a decision… And it hurt me. It hurt me that I approached a priest, and I expected him to make an effort to help me and he didn't.

[12]All names are pseudonyms. For details on the interviewees, see the Methodology section and Appendices S1 and S2.

https://doi.org/10.1111/lasr.12590 Published online by Cambridge University Press

> […] All they care about is money. Marriage — money, baptism — money, divorce — a lot of money. Everything is money, money, money (Interview No. 27, Angeline).[13]

Our interviewees further decried the fact that they have neither say nor influence in their own communal courts. This sentiment also pertained to the codes and procedures exercised by these courts, which are either archaic (as in the case of the Greek Orthodox code, which dates back to the reign of the Byzantine Empire in the 14th century)[14] or compiled by the church establishment abroad (as in the case of the Roman Catholic code, which was issued in 1983 by the Holy See, and of the Eastern Catholic code, which was issued by the Maronite and Melkite Patriarchates in Lebanon and affirmed by the Holy See in 1990). Moreover, some parts of these codes—the Greek-Orthodox procedural code, for example—are practically inaccessible to Arabic speakers. Finally, most Catholic appellate courts are located outside Israeli borders: for example, the Roman Rota—the Catholic Church's highest appellate tribunal—is in the Vatican, whereas the Maronite appellate court is in Lebanon, an enemy state which Israeli citizens are not allowed to enter. Many of our informants believe this absurd state of affairs epitomizes the inaccessibility of the ecclesiastical courts, as well as both the Church's and the state's renunciation of their duty to safeguard the basic rights of Israeli Christians.[15]

In all these respects, the ecclesiastical courts in present-day Israel function in a sort of regulatory and institutional void: the state is virtually absent from them, and apart from enforcing their rulings, it does not make its business to care about how they are run. The Church establishment is not only remote both geographically and culturally, but also conservative and outdated, and remains detached from the concrete needs, concerns and sensibilities of local communities. The communities, in turn, are not involved in the administration of the courts, as they have no authority or power to influence their operation. The lack of a united political and religious leadership representing the various Christian denominations further ensures that each individual denomination is weak and unable to resist either the Church or the State (Dumper, 2002).

This institutional void gives rise to a *richterjustiz* regime, whose hallmark is the unchecked and unbridled discretion accorded to ecclesiastical judges. Too much discretion, as predicted by Weber, produces a plethora of legal ills, which will be analyzed below.

Methodological note

This study is based on an interdisciplinary research project that combined semi-structured interviews, participant observation in court hearings, and textual analysis of legal documents pertaining to cases adjudicated by the ecclesiastical courts. These "triangulated" data sources allow us to examine multiple perspectives and serve to check the internal validity of the qualitative data (Anney, 2014) and to identify the dynamics and social meanings of a complex judicial system about which there is hardly any published data.

We conducted interviews during the years 2019–2020 with 97 research participants, 64 of them were laypeople, that is, Palestinian-Christians (42 women and 22 men) who were involved in divorce/annulment cases adjudicated by the ecclesiastical courts. The other 33 interviewees can be described as "professionals": 12 were ecclesiastical judges and court officials from the Roman Catholic, Melkite Catholic, Maronite, Anglican Episcopal, and Greek Orthodox churches; 19 were

[13]Many of our interviewees expressed similar views. See, for example, Interviews 7 (Marlin); 22 (Janet); 51 (Nadia).

[14]The code includes some outdated and bizarre articles, stating for example that a husband may divorce his wife if she bathes in the sea or in a swimming pool in the presence of strangers. By contrast, hitting one's wife with a whip or a wooden stick does not constitute a valid reason for divorce. See Goadby, 1926, pp. 134–135.

[15]See, e.g., Interview 33 (Noor); Interview 72 (Adv. Adam). The HCJ referred to this issue in two famous decisions: H.C.J. 59/58 *Jadai v. The Ecclesiastical Court of the Melkite, Greek Catholic Archbishopric*, 12 P.D. 1812 (Dec. 18, 1958); H.C.J. 3238/06 *Yosef Suleiman v. Archbishop Sayyah* (Feb. 13, 2009).

https://doi.org/10.1111/lasr.12590 Published online by Cambridge University Press

attorneys who regularly represent clients in the ecclesiastical courts; and two were experts specializing in the Christian community in Israel/Palestine.

Our sampling was carried out with a view to ensuring maximal variation in essential variables, so that our interviewees would represent different social and economic strata of the population as well as different age cohorts. Accordingly, we recruited participants through diverse methods, such as Facebook and Twitter advertisements, as well as through personal contacts and extended social networks including a research team of 10 Arab-Palestinian assistants, community leaders and activists, women's rights organizations, family law attorneys catering to the Christian community, and snowball referrals (for the methodological value of this method, see Biernacki & Waldorf, 1981).

The target population consisted of Palestinian-Christian citizens living in contrasting locales in Israel (urban versus rural locations; mixed Arab-Jewish cities versus predominantly Arab towns and all-Arab or all-Christian villages). Non-professional respondents divorced or separated in the ecclesiastical courts between the 1980s and 2019 (mean = 2009) and differed in a number of sociodemographic dimensions, thus producing a diverse group that significantly decreases any selection bias or possible sampling errors. The ages of the entire sample of lay interviewees ranged from 25 to 65 for the women (mean = 44.07) and 33 to 73 for the men (mean = 49.31). Apart from three respondents (two women and one man), all of our lay interviewees completed high school or vocational training, and a small majority (39 interviewees) had attained a BA or higher degrees. Almost all of the lay interviewees had full or part-time jobs or were retired at the time of the interview. Of these, half of the women (and roughly a third of the men) were employed as unskilled laborers in low-status jobs, and half of the women (and roughly two-thirds of the men) were employed in professional occupations.[16]

We used a semi-structured interview protocol consisting of open-ended questions and self-administered questionnaires to advance our phenomenological understanding of the experiences of Palestinian-Christians in Israel's ecclesiastical courts (Moustakas, 1994). In the absence of predetermined hypotheses, we adopted an inductive method of data analysis that would permit a holistic and in-depth interpretation of the findings (Strauss & Corbin, 1998). Indeed, qualitative analysis is particularly valuable when listening to the voices and concerns of target populations that have been silenced and marginalized in the sociological literature.

The interviews were conducted by both researchers in the language of the respondent's choice (usually in Hebrew and occasionally in Arabic or English), and typically lasted for 90 min, but occasionally well over 3 h. The overwhelming majority of the interviews were conducted face-to-face in venues selected by the participants, while others were conducted via telephone or Zoom to ensure the participants' privacy or due to the COVID-19 pandemic. Almost all interviews were recorded and fully transcribed; and content analysis was conducted according to the fundamentals and methodological steps prescribed by grounded theory (Glaser & Strauss, 2017; Strauss & Corbin, 1998). Field notes were taken verbatim during the interviews, and especially where permission for recording was not given. Personal names and data that may reveal the participants' identity were anonymized and replaced with pseudonyms. After reading each transcript in full several times, key themes were identified (e.g., different types of legal wrongs, various obstacles blocking access to justice, communal conceptions of the ecclesiastical courts etc.) and excerpts pertaining to these themes were extracted. These excerpts were then analyzed using a three-step inductive method, which allows central themes and key concepts to emerge from participants' responses rather than from preexisting categories, concepts, and theories (Charmaz, 2006).

Interestingly, while no incentives were offered for participation, many of the respondents made a point of explaining their willingness to cooperate with us, stating their wish to transform their personal predicaments into a sociopolitical concern and to impart visibility to the injustices of the Christian personal-status experience. While women specifically referred to "helping fellow women," some respondents mentioned their desire to "contribute to science" and to shatter the invisibility of

[16]For an elaborate description of our interviewee sample, see Appendices S1 and S2.

https://doi.org/10.1111/lasr.12590 Published online by Cambridge University Press

Palestinian-Christians in Israeli society. We strive to contribute to the fulfillment of their expectations.

Tales from the void: Informants' accounts of the ecclesiastical courts in Israel

This section presents the voices of laypeople and professionals who describe their personal experiences of encounters with and within the ecclesiastical courts in Israel. For the laypeople, these encounters took place in the context of personal matrimonial crisis and strife, that is, in the course of conflicts that arose between spouses and that could no longer be contained within the family. The "externalization" of these conflicts resulted in the filing of a claim by one of the spouses (or by both, by agreement) in their denominational ecclesiastical court. Once the claim is filed, a date is set for a hearing session. This is the beginning of a legal procedure that involves the litigants and/or their representatives, and that may include one or more court sessions. At times, the procedure extends to multiple sessions stretching over many months and even years. Peoples' experiences throughout this process formed the backbone of our interviews.

This section is structured thematically and covers the following topics: lack of transparency in the ecclesiastical courts; lack of uniformity; lack of due process, favoritism and unpredictability; and corruption. While this clear-cut thematic structure is analytically useful, these characteristics are in fact thoroughly interwoven in practice to form a paradigmatic system of *richterjustiz*.

Lack of transparency

One of the concerns that figured prominently in the accounts of attorneys appearing in Israel's ecclesiastical courts was the lack of access to the legal codes and case law that are applied in these courts (see also Batshon, 2012). In fact, all the relevant legal materials are unpublished, and obtaining them requires contacts with the key players in the field. As a result, newcomers to the field, who are not part of the "old boys' network," face a formidable barrier in their struggle to acquire the relevant professional knowledge. Advocate Teresa's story is revealing in this respect, as it demonstrates the extraordinary efforts that newcomers, and especially female lawyers, must invest to master the field:

> I obtained my sources in a very roundabout way, since no materials are readily available and ecclesiastical case law is never published. I have a relative – my husband's cousin – who works as a pilot for the Emirate airline. He has a Lebanese friend who works as an attorney. The pilot asked him [the Lebanese attorney] to obtain whatever sources he can in Lebanon, where they specialize in Maronite ecclesiastical law [...]. He [the husband's cousin] then took them with him from Lebanon to UAE. Then he flew his jet to Milan, where he went to a post office, packed the books and sent them to us in Israel [...] that's how I began studying the field (Interview 71, Adv. Teresa).

We, too, can attest personally to the travails associated with obtaining relevant materials—and case law in particular—which are sorely required in order to navigate the labyrinth of rules and procedures that govern the ecclesiastical courts.[17]

The lack of transparency is manifested also in the veil of secrecy that engulfs Catholic court proceedings. Take, for example, the attorneys' inability to review the court protocol or to receive answers to such basic procedural questions as which of the judges wrote the court's decision or whether there was any dissent among members of the judicial panel (Interviews 84, Judge James,

[17]In fact, one of our purposes in approaching lawyers working in the field was exactly this: to gain a basic and necessary understanding of the field and to obtain court decisions and other documents related to cases handled by these courts.

https://doi.org/10.1111/lasr.12590 Published online by Cambridge University Press

and 87—Judge Andrew). Furthermore, several lawyers stressed the extreme lengths to which the Catholic court of first instance is willing to go to avoid an appeal and a review of its decisions. Our informants described a recurring pattern, in which one of the Catholic courts pressures parties to accept "an annulment by consent" so as to avoid an appeal. As Adv. Teresa puts it,

> [T]he court pressures the parties to reach an agreement to an almost unimaginable extent. For example, they may ask that a petitioning husband pay compensation to prevent an appeal by the wife, or force a petitioning wife to forgo compensation to prevent an appeal by the husband [….] (Interview 71, Adv. Teresa).

There can be no doubt that this lack of transparency is not accidental: the ecclesiastic courts choose to keep their realm clandestine and hidden from any inquisitive eye. This remarkable capacity of the courts to keep basic legal facts confidential, withhold the publication of their decisions, or ensure that they remain unreviewable, attests both to their unchecked powers and to their sense of insecurity. They seem to fear that the entry of outsiders into the field may jeopardize their monopoly and curtail their far-reaching judicial discretion.

Lack of uniformity

Another recurrent concern voiced by the attorneys we interviewed was the lack of clear and uniform procedures in the Greek Orthodox courts.[18] As related by Adv. Adam, a lawyer who specializes in representing clients in religious courts,

> In the [Greek] Orthodox courts, there is no [clear] procedure, since the source of their law is Greek and has not been translated. They themselves don't know what sources to rely upon. Each court has its own procedure. Take for example the [Greek] Orthodox court in X, where I represent 99 percent of my Christian customers […] this court applies the civil procedure. I don't know on what basis, perhaps because the court secretary is a trained lawyer, so he decided to enact the civil procedure there. [In other Greek Orthodox courts] it's different […]. Imagine, for example, that I'd have to represent a client in a case handled by the [Greek] Orthodox court in Y, where I've never appeared before. I wouldn't know what to tell my client — not only about how the case will end, but also about how it will be conducted […] (Interview 72, Adv. Adam).

A judge presiding in one of the Greek Orthodox courts confirmed these comments:

> What are the procedures that apply in your court? […] Who decides what procedure applies?
>
> There are accepted rules and there is an accepted procedure.
>
> Byzantine procedure?
>
> Yes, Byzantine, but it's in Greek, and no one understands it…[19]

[18]See, for example, Interviews 66 (Maria); 71 (Teresa); 80 (Bishara).

[19]The interviewee is referring to the *Procedural Rules of the Ecclesiastical Courts*, ΟΔΗΓΙΑΙ ΠΕΡΙ ΤΟΥ ΠΩΣ ΔΕΙ ΔΙΑΓΕΣΘΑΙ ΤΑΣ ΕΚΑΣΤΟΤΕ ΕΜΠΙΠΤΟΥΣΑΣ ΔΙΑΦΟΡΑΣ ΕΝ ΤΟΙΣ ΕΚΚΛΗΣΙΑΣΤΙΚΟΙΣ ΚΑΙ ΜΙΚΤΟΙΣ ΕΚΚΛΗΣΙΑΣΤΙΚΟΙΣ ΔΙΚΑΣΤΗΡΙΟΙΣ ΤΟΥ ΚΛΙΜΑΤΟΣ ΤΟΥ ΟΙΚΟΥΜΕΝΙΚΟΥ ΘΡΟΝΟΥ, which were printed by the Patriarchate of Constantinople in Greek in 1899. The text has never been translated into any other language. See Mitsoulis (2016, p. 29n194).

https://doi.org/10.1111/lasr.12590 Published online by Cambridge University Press

So you don't apply it because it's inaccessible?

Yes. We know, for example, that in certain matters you need to postpone the hearing three times in order to approve a divorce, because this is prescribed by the Byzantine code. But I never read it.

So this is what you apply?

Yes. For example, [let's say] there's a husband and a wife, [and one of them] files a suit. The other party fails to arrive to the court on the day of the hearing, so we postpone the hearing and issue another summons. You need to present a [postal] delivery confirmation. The second time [round,] the other party is absent [and we postpone the hearing again]. It's only after the third round that we issue a decision *in absentia*. It's not like the civil courts, where they would issue a decision after the first absence.

[…]

So, you don't apply the civil procedure?

We mostly do.

Mostly? What does this mean?

I act, more or less, according to the civil procedure.

In what sense?

Evidence-wise. For example, there was this lawyer who started arguing that recordings [presented to the court by one of the parties] are illegal according to civil procedure, so we tried, more or less, to follow the civil rules of evidence.[20] […] I try to follow the civil procedure regarding affidavits [and] the interrogation [of witnesses], but just as the civil family court has broad discretion to deviate [from the procedure], so do I. So, if I recognize a good reason to deviate from the accepted procedure, I do so.

Can you give us an example?

If there's a deadline for submitting affidavits, and one party submits them, but the other party doesn't, I allow them some more time. I diverge from the civil procedure because it's important for me that I get to the truth of the matter […]. And another example: we concluded with the witnesses' testimonies, but then there is someone that we think it's important for us to hear, so we allow him to testify.

So you more or less follow the civil procedure, when you see fit to do so?

Yes. And if I fail to apply the civil procedure, can anyone reprimand me? Who can do this? I do as I see fit, and no one can tell me anything (Interview 88, Judge Nasser).

This long passage illustrates not only our own bewilderment as interviewers struggling to understand the chaotic system described by the interviewee, but also the nearly unlimited judicial

[20]One of our interviewees, Adv. Teresa, also spoke about this matter. See Interview 71.

https://doi.org/10.1111/lasr.12590 Published online by Cambridge University Press

discretion left to the ecclesiastical judges. The interviewee, a presiding judge at a Greek Orthodox court, admits that he has never read the Byzantine procedural law which he is obliged to follow, and that he is only partly conversant with its directives. Rather than apply this law systematically, he whimsically chooses when to apply certain elements of civil procedure, without any formally substantiated authority and only in his court. Other Greek Orthodox courts do not follow suit, but avail themselves of their own "private" procedures. As the respondent noted in another section of the interview, "it is well known that each court has its own procedure according to the discretion of the judges presiding in it."

The lack of uniformity between different Greek Orthodox courts finds expression not only in work procedures and rules of evidence, but also in the issue of court fees. To begin with, the ecclesiastical courts charge skyrocketing court fees for initiating legal proceedings—staggeringly higher, in fact, than those of any other religious tribunal, as well as those of the civil family court.[21] Moreover, the lack of uniform fees across the various ecclesiastical courts allows the courts to arbitrarily charge different fees for the same procedures without rhyme or reason. The fees charged by the Greek Orthodox courts in Northern Israel for filing a divorce suit, for example, are so dramatically different from one another, that one of the lawyers told us that she promotes a kind of "forum shopping" (Shahar, 2013) among her clients:

> I advise my clients to change their resident address to Haifa. I tell them, bring me a confirmation from the Home Office that they are residents of Haifa […] so they can go to the [Greek] Orthodox court in Acre, instead of going to the court in Nazareth. In Acre they will pay only 6,000 NIS [about $1,770], whereas in Nazareth they would pay 13,000 NIS [$3,835] (Interview 66, Adv. Maria).

This grossly unequal access to justice prompted one of our interviewees, Sylvia, to file a class action suit of over 2 million NIS against all the ecclesiastical courts in Israel.[22] In a testament to their sense of overarching institutional immunity, the ecclesiastical courts explicitly alerted the Israeli civil court that any adverse decision might "profoundly affect the relations between the State of Israel and the Holy See as well as various Israeli foreign interests in the international arena." In the hearing before the Israeli civil court, they further urged that "the issue is as volatile as a barrel of explosives. This is its fuse, and we must therefore handle it very cautiously…". As of October 2021, the case is still pending.

Lack of due process, favoritism, and unpredictability

A prominent theme that emerged from our interviews with both attorneys and clients, and occasionally even with judges, was that the ecclesiastical court system is foreign to any concept of due process. Indeed, interviewees' accounts were replete with stories about the violation of the right to a fair hearing or the rule against bias. For example, both Greek Orthodox and Catholic judges admitted to often hearing cases before an incomplete panel of judges—a flaw so fundamental that the Israeli Supreme Court (HCJ) ruled that it renders a decision wholly void rather than merely voidable.[23] Another example is a divorce case in which the court's Chief Justice deprived a defendant husband of an opportunity to be heard since the petitioner wife proved that he had converted to Islam (Interview 88, Judge Nasser). In another case, as avowed by Christopher, a well-connected attorney, the Greek Orthodox court refused to allow a woman to file a divorce suit and be granted access to the court, since she was

[21]For example, to file for divorce, a Jewish, Muslim, or Druze litigant would pay a fee ranging from 235 to 283 NIS (about $70). By contrast, Greek Orthodox litigants are forced to pay between 6000 and 13,000 NIS ($1700–$3835) for the same pleasure.

[22]C.A. (T.A.) 54,064–07-17 *Karkavi v. The Ecclesiastical Court of the Greek Orthodox Church and Others* (July 24, 2017). See also Interview 32 (Sylvia).

[23]H.C.J. 1555/05 *Levy v. Tel Aviv Regional Rabbinical Court* (July 16, 2009).

https://doi.org/10.1111/lasr.12590 Published online by Cambridge University Press

arguably "incontinent" and of sexual ill repute. Adv. Christopher, however, eventually managed to persuade the ecclesiastical judges to consider his client's divorce petition provided she never set foot in court and confined her voice to affidavits (Interview 78, Adv. Christopher).

The most frequent complaints about violations of the administration of justice, however, were raised with regard to the ecclesiastical judges' failure to serve as impartial and neutral decision makers, and especially their prejudicial attitudes toward female attorneys. While male attorneys often tended to speak about their friendship with clerics in positive terms, praising their "leniency," "flexibility," and willingness to "go an extra mile" toward the litigants (see, e.g., Interviews 65 [Adv. Salim], 76 [Adv. Peter], and 78 [Adv. Christopher]), the female attorneys raised grievances about favoritism and discrimination against them. Careen, a highly experienced attorney, declared emphatically:

> Unlike me or female attorneys in general, male attorneys can do as they please in the court. What they do or say is sacred. No one can say anything. [...]. But when I started speaking more forcefully in the court, they started hurting me and my livelihood.
>
> How do they hurt your livelihood?
>
> They try to dissuade clients from retaining me since I criticize them, and they make sure that all the cases are directed to their male attorney cronies […] (Interview 81, Adv. Careen).

Careen provided many stories that clinched the case for her bitter diatribe against the ecclesiastical courts, but two specific incidents forced her to suspend practicing as an attorney. One involved a threat by an ecclesiastical judge that she would be banned from appearing before the court until she writes a letter of apology. The second incident Careen recalls, this time implicating an ecclesiastical judge of a different denomination, was a court session in which she got into an argument with a well-connected male attorney who represented the husband. This male attorney called her a liar and threatened to "go ahead and slap" her if she did not shut her mouth:

> I told the ecclesiastical judges: "how can you possibly let something like this pass you by? I'm going to file a complaint against him with the Israel Bar Association and the police!"… This drove the judges mad, but at me, not at him! They threatened that they would reject any cases I submit if I did so… This event caused me to collapse and to break down mentally… If I reached a point at which a licensed attorney threatens me with violence and the judges not only fail to protect me but actually support him, then what more can be said?… (Interview 81, Adv. Careen).

Adv. Shirin also believes that there is no professional future for female attorneys who venture into what is an intractably androcentric setting and illuminates why women as a group are relegated to the margins in this system:

> The greatest problem is that the ecclesiastical courts work like a monopoly — there are crony attorneys, and the judges are clearly biased in their favor. The judges won't even project a façade of neutrality and are affected by their personal connections with the attorneys rather than engaging in the dispassionate examination of the case at hand. Of course, when I talk about crony attorneys, I mean male attorneys, since this [the ecclesiastical court system] is an avowedly masculine system […] (Interview 74, Adv. Shirin).

Adv. Shirin further criticizes the ecclesiastical courts scathingly for adjudicating cases in such a disordered, unsystematic, and arbitrary manner that it is absolutely impossible for her to predict how her cases will be resolved:

https://doi.org/10.1111/lasr.12590 Published online by Cambridge University Press

> I have no way of ensuring the desired outcome for my clients. The worst thing is that I simply don't trust the system. If I accept an annulment case, for example, and even if the grounds are sound, money is likely to change hands discreetly under the table, and then the proceedings can drag on endlessly. In the end, I will not get the result that I want, even if it's also the correct legal result […].[24]

> […] I decided that I will no longer involve myself in such [annulment] proceedings. I tell my clients: "look, I clearly have something to gain by accepting your case — the retainer is high — but since I have your best interests in mind, I advise you to contact one of my colleagues, the court-crony male attorneys as I call them, who can make sure the proceedings end quickly and assure the outcome you desire" (Interview 74, Adv. Shirin).

In this way, the absence of due process and the presence of favoritism yield unpredictability, or perhaps a kind of twisted predictability: a decision in favor of the party represented by a crony male attorney and against the party represented by an "opinionated" female attorney. Adv. Maria, who is one of the most senior attorneys in this field, echoes the same sentiments, explaining that she no longer represents clients in annulment cases because "I'm not one of the courts' favorites since I won't just let injustices go." The court thus habitually "penalized" Maria for her so-called insubordination by obliging her male clients to pay for an annulment and her female clients to forgo compensation. As far as Maria is concerned,

> [T]here is an outrageous lack of administrative oversight, judicial oversight, and judicial review of such matters as conflicts of interest and gratuitous conduct by ecclesiastical judges. There are no ethics, there are no ethical rules. That's bad at all levels — administrative as well as judicial. I believe this anarchy is the source of the system's ills (Interview 66, Adv. Maria)

Adv. Teresa concurs with Maria:

> We need a total overhaul, no less; we need supervision and oversight and limits to authority. [Ecclesiastical] judges are practically omnipotent, and you feel like you're facing someone who can dictate what you claim and say to the protocol, but [who is also] authorized not to do so. And he can humiliate you in your client's eyes. It is a very masculine institution, where [male participants] sometimes make revoltingly sexist jokes. And this is even before we mention the clear favoritism toward male attorneys […]. It's like a Persian bazaar with them […] (Interview 71, Adv. Teresa).

These candid quotes articulated by female attorneys painfully demonstrate the type of *richterjustiz* that is a hallmark of the ecclesiastical court system in Israel. These courts are thoroughly patriarchal courts that powerfully illustrate the consequences of a legal system that does not delimit—certainly not effectively—the authority of its judges. This eventually translates into what is perhaps the most poignant facet of an irrational legal system as conceived by Weber—patent corruption.[25]

[24]Note that this statement, as all the statements herein, is provided as it was related by the relevant speaker, and does not reflect or express our opinions.

[25]We would like to emphasize that we ourselves have not witnessed any form of corruption in the ecclesiastical courts, and we are merely bringing the accounts of some of our interviewees about their experiences in these courts.

https://doi.org/10.1111/lasr.12590 Published online by Cambridge University Press

Corruption

Remarkably, at least a quarter of our interviewees mentioned, in one form or another—based on personal experience or on rumors and hearsay—that "money exchanging hands" played an important role in procedures taking place in the ecclesiastical courts and in their decisions. Intriguingly, there is a clear gendered pattern to these stories: whereas quite a few of the male respondents admitted to having paid considerable sums of money to promote their cases,[26] female respondents typically expressed the suspicion that their ex-spouses bribed the judges or otherwise employed their connections in order to get favorable results.[27] Interestingly, no female interviewee admitted to having paid a bribe.[28]

An example of the female side of the story, one that betrays a common suspicion regarding illicit liaisons between judges, lawyers, and litigants voiced by many of our female interviewees, is provided by Sandra. A defendant in an annulment case filed by her husband in one of the ecclesiastical courts, Sandra recounts how the presiding judge "advised" her to replace her (outsider) female legal counsel with an insider male lawyer ("they are a mafia," she notes).[29] Sandra's court-recommended lawyer contacted her only once, to discuss his retainer, and offered to charge her only when she could pay. She was happy with the arrangement, until she realized that he had failed to return any of her subsequent calls. She relates how the court pressured her to assume marital fault as the guilty party by alluding to an ongoing court case that was still open despite being filed twenty years earlier, as a kind of veiled threat, and continues:

> I asked the judge, "What do you want me to do? I'll do anything you ask for, just please grant me an annulment." The judge told me, "Then say yes to anything your husband asks for"… and so I did. I lied (Interview 64, Sandra).

Notwithstanding that Sandra was "found" at fault, however, the court peculiarly obliged her husband to pay her compensation, funds that were apparently transferred directly to her malfunctioning lawyer:

> The judge decided that my ex-spouse must pay me 20,000 NIS (5,900$). I didn't get this money to this very day. Why? Because my lawyer took it.

He took it as an attorney's fee?

> I don't know. The case was concluded with me as the guilty party. The lawyer is a friend of the judge's; they must have had an agreement. I think my ex-spouse also knows the lawyer, and they agreed to do things this way. Me assuming the blame was important to my ex-spouse […].
>
> I'm trying to understand what you're saying, you think there was a conspiracy between the lawyer, the judge, and your ex-spouse?
>
> That is obvious. They didn't even bother to hide it.
>
> Please explain why do you think so?

[26]E.g., Interviews 11 (Aseel); 14 (Joseph); 24 (Walaa).
[27]E.g., Interviews 28 (Rita); 29 (Victoria); 64 (Sandra).
[28]One respondent, however, suspected that her aunt bribed the ecclesiastical judge (Interview 49 [Jane]).
[29]A similar story was related by Thomas (Interview 19).

https://doi.org/10.1111/lasr.12590 Published online by Cambridge University Press

> My ex-spouse's brother-in-law is a high-ranking priest, and he knows all the clerics […].
>
> So you think that your ex-spouse's brother-in-law intervened?
>
> Undoubtedly. Everything is related. I'll scratch your back and you'll scratch mine. They all know each other and do "favors" for one another. You can almost forget that we're talking about a church, which acts contrary to any of the church teachings (Interview 64, Sandra).

An example of the male side of the story, which features a typical account of making informal "donations" to either the judge or the church to influence the judicial process, is provided by Joseph. Joseph married a French woman in the Latin Catholic church in Israel, emigrated with her to France and obtained a divorce from a French civil court when the marriage went sour. Joseph then returned to Israel alone. A few years later, he met another woman and wanted to re-marry. The problem was, of course, that the Latin Catholic church still considered him married to his absentee ex-wife. He resolved this by a "divorce conversion" in the Greek Orthodox court, that is, by effectively converting both himself and his ex-wife and divorcing her in absentia.[30] As he recounts,

> I didn't even bother to go to the Latin Catholic court, because I knew there is no ground for annulment. Instead, I went straight to the [Greek] Orthodox court. You need to know who to approach, how to approach, what to offer, because if you don't pay the right price, they will make it hard for you.
>
> So you managed to get a conversion to the Greek Orthodox faith and a divorce for both of you, without her [the ex-wife] even being present?
>
> Yes, I talked to the right man, the right priest, the right assistant, and I also gave them a generous donation […]. He wrote a bogus minute, stating that she came here, and that they tried to bridge the gap between us, but realized that we are incompatible, and therefore unable to live together. I paid the usual sum of 12,000 NIS and a generous donation, in order for him to save me the trouble of bringing my ex-wife here (Interview 14, Joseph).[31]

Joseph encountered the Greek Orthodox court again when contemplating his second divorce. This time he made a generous "donation" not for the sake of the divorce but in order to validate a divorce agreement that exempts him from child support payments—an agreement that the civil family court found unconscionable and against public policy.[32]

While Joseph paid "generously" in order to achieve extraordinary legal remedies, George's case indicates how the exchange of money can be a mundane part of a routine divorce action in the ecclesiastical courts. His case also forcefully portrays the disappointment, disdain, and disgrace that our respondents felt following their encounter with their own communal courts. They felt, in a way, "violated" by the courts. George, who "lubricated" his way through to a quickie divorce, kept reiterating throughout the interview how ashamed he was at the "moral bankruptcy" of his divorce process in one of the Greek Orthodox courts:

[30]Lest it be unclear, both conversion to another faith and divorce are legal acts that require the applicant's presence. In the case of a "divorce conversion," the presence of both spouses is mandatory.

[31]A very similar experience was described by Majd (Interview 42).

[32]Indeed, rubber-stamping avowedly unconscionable agreements was a concern repeatedly echoed by quite a few of the female attorneys we interviewed.

https://doi.org/10.1111/lasr.12590 Published online by Cambridge University Press

> My entire divorce process [...] was completed in a week and a half. And let me tell you a secret: why did it take me a week and a half? He [the Greek Orthodox judge] told me, "you would need to wait another three to six months for your turn," so I placed 2,000 USD in cash in his pocket and he said, "don't tell anyone about this, and don't tell even your wife" [...]. On the one hand, I was happy that I was done with the whole thing on the following day, a mere day later, but on the other hand, I didn't like the fact that I had to give him 2,000 USD!
>
> How did you know you had to offer him [the cash]?
>
> Other people told me that you could give them cash to get things done and close cases. I bribed him […] and I don't like it for one bit […]. You know what? I want to tell you that I'm relating this story to you and I'm sweating, because I'm ashamed.
>
> Ashamed of what?
>
> Ashamed of my divorce. The divorce process and procedure disgraced me. I'm ashamed that this is the way things are. I'm ashamed that I had to pay. I'm ashamed that the priest I go to in order to pray, who is a clergyman that everyone respects, is someone who can be bribed. I'm ashamed that you can apply pressure to get a divorce, meaning, anyone can get a divorce without a just cause […]. I'm ashamed that it happens so easily, in this fashion. What I want is that you'd [be able to] get a divorce if you deserve one, and would be refused a divorce if you don't deserve it. It's like going to Romania, buying a Ph.D. diploma and coming back. That's how I feel. I bought my divorce. It doesn't matter if I should get a divorce or not; I bought my divorce. I had to play the bribery card (Interview 13, George).

This long and charged excerpt provides a poignant illustration, in our view, of both the acrimony and the helplessness that many of our interviewees expressed with regard to the ecclesiastical courts.

DISCUSSION: FROM *KADIJUSTIZ* TO RICHTERJUSTIZ

This section seeks to link the theoretical framework with the empirical findings by outlining what we may learn from the comparison between Weber's erroneously conceived *kadijustiz* and the ecclesiastical *richterjustiz* in present-day Israel. More specifically, we address two interrelated questions: first, how do the empirical findings contribute to the elaboration of Weber's original theoretical construct? And second, how does the Weberian analytical category furnishes a deeper understanding of our empirical case study? Furthermore, based on this examination and in line with Weber's methodology, we propose some generalizations regarding the circumstances under which *richterjustiz* regimes may emerge. Indeed, substantiating solid generalizations requires a comparative study of the kind conducted by Weber, which is, of course, beyond the scope of this article. We will nonetheless hazard to suggest a few insights drawn from the analysis of the case study at hand.

Let us begin by noting that unlike Weber, who conceptualized *kadijustiz* as an outcome of the internal logic of Islamic law—that is, of a legal system grounded in a sacred law that did not develop formal-rational tools for law-making and law-finding—our explanation for the reign of *richterjustiz* in the ecclesiastical courts focuses on the under-regulation of these courts. In other words, while Weber focuses on the ideational level of analysis and on the mode of legal reasoning characterizing the legal system at hand, we focus on the institutional-organizational level of analysis. This shift of focus, in turn, yields different interpretive frameworks for the empirical phenomenon under investigation. It also yields a broader generalization: we do not limit the phenomenon of *richterjustiz* to

https://doi.org/10.1111/lasr.12590 Published online by Cambridge University Press

religious law or to non-Western archaic laws; rather, we contend that such a judicial regime may emerge in any legal field where institutional oversight is weak.

Along these lines, we argue that the primary reason for the emergence of *richterjustiz* in the ecclesiastical courts has not been the clerics' lack of proper judicial tools to produce systematic, predictable, and "rational" decisions, but rather the absence of an effective supervisory authority to contain their capacity to (ab)use their discretion. As we have shown above, the ecclesiastical courts operate in an institutional void that has been created by the absence of both the state and the church. The state neither funds the ecclesiastical courts nor intervenes in their substantive law, procedural rules, or mode of operation. The church establishments, on their part, are by and large geographically remote and organizationally detached from the courts "on the ground." Moreover, they are estranged from the local communities. These communities are small, divided, and powerless to bring about change in the ecclesiastical courts' functioning. Under these circumstances, the ecclesiastical courts—being detached from the state, from the church establishment, and from their local communities—can be said to be floating in a void, enjoying (or perhaps suffering from) almost unbounded freedom.

In addition to shifting the focus from the ideational level of analysis to the institutional one, our case study presents a shift from Weber's discussion of Islamic law, conceived as a non-Western, non-modern legal system, to an examination of a legal system that is located within a supposedly modern, democratic, and bureaucratic state. Since Weber's main theoretical concern was to explain the emergence of *kadijustiz* in the former, Islamic context, he did not theorize as to the circumstances under which similar legal regimes may evolve or survive within modern legal systems. Based on our case study, we seek to contribute to the refinement of the Weberian theoretical framework by formulating several propositions with regard to the emergence of *richterjustiz* within modern legal systems.

To begin, we reiterate our conclusion that the emergence of a *richterjustiz* regime in Israel's ecclesiastical courts is related to the state's reluctance to regulate this field, which is itself related to the marginal status of the Palestinian-Christian community in Israel as a religious minority within an ethno-national minority. Given this community's marginality, the state does not take special pains to regulate its courts and to enforce proper legal-rational bureaucratic norms on them. Our *first proposition* is therefore that (a) a *richterjustiz* regime is likely to emerge in legal systems that cater to marginalized ethnic, religious or racial minorities. This generalization is potentially relevant to broader fields of research, such as legal pluralism and multiculturalism, which deal with the coexistence of legal and cultural systems alongside and within the state apparatus.

This proposition begs, however, the following question: Muslims, too, constitute a marginalized minority in the Israeli state; how is it, then, that the *Shari'a* court system in the country is closely regulated and monitored by the state?[33] This comparative observation indicates that while *richterjustiz* is indeed more *likely* to emerge in legal systems that cater to minorities, as stated in our first proposition, it does not *necessarily* emerge under these circumstances. We suggest several partial explanations for the difference between the status of the *Shari'a* courts in Israel and that of the ecclesiastical courts, which lead to additional propositions.

First, the difference between the two court systems is rooted in historical circumstances and may be attributed, at least in part, to a historical path dependency. As aforementioned, Israel inherited its confessional structure from the British Mandate, which itself inherited it from the Ottoman Empire (Abou Ramadan, 1997, 2000; Amir, 2016, 2018; Sezgin, 2004, 2010; Yefet, 2009, 2016; Zafran, 2013). In the Ottoman period, *Shari'a* courts were considered state courts, and as such operated under the aegis of the state, whereas Christian denominational courts were regarded as religious-communal tribunals that had no official state powers. The latter thus enjoyed far-reaching autonomy. The British

[33]Indeed, the state's attitude toward the *Shari'a* courts is radically different from the one adopted toward the ecclesiastical courts: *Shari'a* courts are funded by the state; *qadi*s are nominated by a committee chosen by the Knesset (the Israeli parliament); and the rulings of the *Shari'a* courts are closely scrutinized by the HCJ (Abou-Ramadan 2008, 2015). All these forms of intervention are missing, as we have seen, in the case of the ecclesiastical courts.

https://doi.org/10.1111/lasr.12590 Published online by Cambridge University Press

Mandate, and the State of Israel that followed suit, accorded the ecclesiastical courts official powers but refrained from decreasing their autonomy, which remained almost completely intact. Historical continuity thus explains, at least partially, the different trajectories of the ecclesiastical and the *Shari'a* court systems.

Second, the state's different attitudes toward the two court systems may be related to the fact that the Jewish public tends to perceive the small Palestinian-Christian minority in Israel as less intimidating and less politically threatening than the Palestinian-Muslim minority. Consequently, state agencies are not particularly eager to monitor and supervise the Palestinian-Christian community (Landau, 1993, pp. 36–37; Zureik, 1979, p. 87). *Our second proposition*, therefore, adds a political dimension to the previous one: (b) a *richterjustiz* regime is likely to emerge in legal systems that cater to marginalized ethnic, religious or racial minorities that are deemed pacified and acquiescent by state authorities. By contrast, when a minority is regarded as threatening to the existing political order, the state is likely to adopt a much more interventionist approach.

Third, the Israeli state's hands-off approach toward the ecclesiastical courts stems not only from internal political considerations, but also from international considerations related to its relationship and agreements with the Holy See (Abou Ramadan, 1997, 2000; Karayanni, 2018; Mack, 2012). As far as the churches are concerned, any state involvement in the operation of the ecclesiastical courts is perceived as an unwelcome intervention in their internal affairs, and they are therefore quite adamant in resisting such encroachments onto their domain. Indeed, it appears that the very fear of antagonizing the church is sufficient to deter Israeli policymakers and civil judges from intervening in ecclesiastical court affairs (Abou Ramadan, 2000; Bialer, 2005; Yefet and Shahar, 2021).

The role played by the church in the case under investigation draws our attention to the fact that Israel's ecclesiastical courts operate in a context dominated by two, rather than one, institutional establishments: the Israeli legal system, on the one hand, and the church institutions on the other hand. Furthermore, it appears that the ecclesiastical courts are peripheral and neglected not only in the Israeli legal system, but also in the various church establishments. Situated in the Middle East, they are geographically and geopolitically remote from the institutional center at the Vatican; and situated in the Jewish state, they are geographically and geopolitically remote from the Maronite and Melkite patriarchates in Lebanon. They are literally "far from the eye, far from the heart" of these institutional centers, and they therefore suffer from institutional neglect on the part of church institutions as well. *Our third proposition* is therefore that (c) a *richterjustiz* regime is likely to emerge in courts that are geographically and/or geopolitically distant from the centers of the institutional system/s to which they belong. It is noteworthy that this proposition may be applicable also to courts that do not serve religious/ethnic minorities but rather the majority community in the state, but are nevertheless located in geographically remote and secluded areas. Even more broadly, we may assume that courts operating in states or areas characterized by "low-stateness" (Evans, 1997) may display some features of *richterjustiz* due to the lack of effective state supervision and to unchecked judicial discretion.

So far we have discussed several aspects of marginality of the ecclesiastical courts in Israel: the religious/ethnic marginality of the Palestinian-Christian minority in Israeli society; the political marginality of the Christian-Palestinian minority in the Israeli political sphere; and the geographical and geopolitical marginality of the ecclesiastical courts within the various church establishments. Further contemplation on the sources of this multifaceted marginality leads us to an additional, fourth proposition. It appears that the Israeli state's neglect of the ecclesiastical courts and their treatment by the church are not independent of one another. Rather, the church establishment resents and blocks potential interventions by the state, whereas state actors fear to trespass into the bounds of the church and are happy to relinquish their responsibility and authority over the ecclesiastical courts, implying that this is the church's role. *Our fourth proposition* is therefore that (d) a *richterjustiz* regime is likely to emerge in legal systems that operate under the aegis of two institutional establishments, where these establishments block one another from intervening in the system and/or prefer to exempt themselves from responsibility for the system, handing this responsibility to their

https://doi.org/10.1111/lasr.12590 Published online by Cambridge University Press

counterpart. Put differently, we may surmise that a court with two "institutional fathers," may very well end up as an "institutional orphan," prone to neglect and to the development of a *richterjustiz* regime.

Taken together, our propositions with regard to the institutional conditions that may contribute to the emergence of *richterjustiz* provide further elaboration and refinement of Weber's theoretical insights in this area, and help us reclaim a valuable old-new concept.

CONCLUSION

The history of *kadijustiz* may be thought of as a process of "naming, blaming, reclaiming." Weber coined the term *kadijustiz* to denote a formally irrational legal system, and soon afterwards the concept was enthusiastically seized by his acolytes in different sub-fields of law and society scholarship, including legal comparativists, legal sociologists, and students of Islamic law. Later generations of scholars, however, refuted and discredited the concept, turning from "naming" to "blaming." This "blaming" process resulted in the effective erasure of the term from socio-legal theory. This article has sought to "reclaim" the concept by shifting the focus from the concrete example of Islamic law (*kadijustiz*) to the more generic analytical construct of *richterjustiz*, by highlighting the theoretical value of this construct despite its discredited Orientalist origins, and by emphasizing the institutional dimensions of this phenomenon.[34]

In addition to demonstrating the validity and utility of *richterjustiz* as an analytical construct, the article has provided a pioneering analysis of Israel's ecclesiastical courts. This effort has revealed a legal system that accords almost unlimited discretion to its judges, and which is characterized by lack of uniformity, unpredictability and favoritism. As we have seen, under *richterjustiz* regime it is the weaker, underprivileged parties—in this case, mainly female lawyers and their clientele—which find themselves deprived of justice and discriminated against.[35]

The notion of *richterjustiz* thus helped us understand this largely uncharted empirical territory, whereas the empirical findings contributed to the concept's theoretical elaboration. By applying this methodology, the article followed Weber's own paradigmatic thinking about ideal types. Weber was well aware, of course, that his ideal types are not "real-types," i.e., that they do not exist in the real world. In the real world we may find systems, institutions, and bodies of law that exemplify some characteristics of one ideal type or another, but they are never "pure" or perfect. Ideal types therefore served Weber as analytical models that allowed him to conduct sophisticated and theoretically-informed investigations of concrete case studies. This is precisely what we have aspired to do in this article, hopefully in a manner that pays tribute to the forefather of the study of law and society.

ACKNOWLEDGMENTS

This research was supported by the Israel Science Foundation (Grant No. 454/20) and obtained IRB approval (No. 095/19). We are indebted to Tamar Parush, Ursula Wokoeck and Yuksel Sezgin for their valuable comments on earlier drafts of this article, as well as to the anonymous *LSR* reviewers for their helpful comments. We would also like to thank our devoted research assistants: Adv. Manar Abboud, the research coordinator, Jane Abd al-Malek, Areen Maroun, Linor Etlis, Manal Fares, Ghenwa Aslayeh, Monia Ghanem, Doreen Hazzan, Yara Rouhana, Shadi Alkara, Paula Abou Ghazaleh, and our editors, Nimrod Chiat, Omer Bejerano, and Shani Tsur. Last but not least, we owe a debt of gratitude to our interviewees who generously shared their stories with us.

[34]The rhetorical coupling of "naming, blaming, reclaiming", refers, of course to the seminal article by Felstiner, Abel and Sarat "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming…," *Law and Society Review* 15, no. 3/4 (1980/1): 631–654. For a somewhat similar pan on this coupling, see Kugle, 2001.

[35]The gendered aspects of the operation of Israel's ecclesiastical courts will be further developed in an article currently under preparation by the authors.

ORCID

Ido Shahar https://orcid.org/0000-0001-7944-6133

REFERENCES

Abou Ramadan, Moussa. 1997. "L'accord de 1997 entre Israël et le Saint-Siège: Quelles incidences pour les Palestiniens et le statut de Jérusalem?" *Monde Arabe Maghreb-Mashrek* 115: 161–80.

Abou Ramadan, Moussa. 2000. "La loi applicable à la minorité roum orthodoxe de l'état d'Israël." *Proche-Orient Chretien* 50: 105–27.

Abou Ramadan, Moussa. 2006. "The Shari'a in Israel: Islamicization, Israelization and Invented Islamic Law." *UCLA Journal of Islamic and Near Eastern Law* 5: 81–105.

Abou Ramadan, Moussa. 2008. "Notes on the Anomaly of the Shari'a Courts in Israel." *Islamic Law and Society* 15: 84–111.

Abou Ramadan, Moussa. 2015. "Islamic Legal Hybridity and Patriarchal Liberalism in the Shari'a Courts in Israel." *Journal of Levantine Studies* 4: 39–67.

Agmon, Iris. 2017. "There Are Judges in Jerusalem, there Were Legislators in Istanbul: On the History of the Law (Mistakenly) Called 'Ottoman Law of Family Rights'." *Mishpaha BaMishpat* 8: 125–61 (in Hebrew).

Agmon, Iris, and Ido Shahar. 2008. "Shifting Perspectives in the Study of Shari'a Courts: Methodologies and Paradigms." *Islamic Law and Society* 15(1): 1–19.

Amir, Gal. 2014. "The Religious Community Arrangement in Israeli Law as a Mechanism of Control and Ethnic Classification." *Politika: The Israeli Journal of Political Science & International Relations* 23: 46–72 (In Hebrew).

Amir, Gal. 2016. "What we Talk about when we Talk about the Millet." *Bar-Ilan Law Studies* 30: 677–708 (In Hebrew).

Amir, Gal. 2018. "1648 or 1948—No Room for Westphalia in the Middle East." *Journal of European History of Law* 9(1): 99–106.

Anney, Vicent N. 2014. "Ensuring the Quality of the Findings of Qualitative Research: Looking at Trustworthiness Criteria." *Journal of Emerging Trends in Educational Research and Policy Studies* 5(2): 272–81.

Biernacki, Patrick, and Dan Waldorf. 1981. "Snowball Sampling: Problems and Techniques of Chain Referral Sampling." *Sociological Methods & Research* 10(2): 141–63.

Batshon, Shirin. 2012. *Ecclesiastical Courts in Israel: A Gender-Responsive Analysis*. Haifa: Kayan-Feminist Organization. https://kayanfeminist.wordpress.com/2012/04/02/position-paper-ecclesiastical-courts-in-israel-a-gender-responsive-perspective/ (accessed October 25, 2021).

Bialer, Uri. 2005. *Cross on the Star of David: The Christian World in Israel's Foreign Policy, 1948–1967*. Bloomington: Indiana University Press.

Blecher-Prigat, Ayelet, and Ruth Zafran. 2017. "Evaluating 40 Years of Family Law Research." *Tel Aviv University Law Review* 40: 547–94 (In Hebrew).

Braude, Benjamin. 1982. "Foundation Myths of the Millet System." In *Christians and Jews in the Ottoman Empire: The Functioning of a Plural Society*, edited by Bernard Lewis and Benjamin Braude, 70–88. Leiden: Brill.

Burger, Thomas. 1976. *Max Weber's Theory of Concept Formation: History, Laws, and Ideal Types*. Durham, NC: Duke University Press.

CBS. 2018. *Christmas 2018: Christians in Israel*. Jerusalem: Central Bureau of Statistics. https://www.cbs.gov.il/he/mediarelease/DocLib/2018/384/11_18_384b.pdf (accessed October 21, 2021).

Charmaz, Kathy. 2006. *Constructing Grounded Theory: A Practical Guide through Qualitative Analysis*. London: Sage Publishing.

Colbi, Saul P. 1988. *A History of the Christian Presence in the Holy Land*. Lanham: University Press of America.

Collins, Randall. 1980. "Weber's Last Theory of Capitalism: A Systematization." *American Sociological Rev.* 45(6): 925–42.

Dumper, Michael. 2002. "The Christian Churches of Jerusalem in the Post-Oslo Period." *Journal of Palestine Studies* 31(2): 51–65.

Edelman, Martin. 1994. *Courts, Politics, and Culture in Israel*. Charlottesville: University of Virginia Press.

Eliaeson, Sven. 2000. "Max Weber's Methodology: An Ideal-Type." *Journal of the History of the Behavioral Sciences* 36(3): 241–63.

Evans, Peter. 1997. "The Eclipse of the State? Reflections on Stateness in an Era of Globalization." *World Politics* 50(1): 62–87.

Ewing, Sally. 1987. "Formal Justice and the Spirit of Capitalism: Max Weber's Sociology of Law." *Law & Society Review* 21(3): 487–512.

Felstiner, William L.F., Richard L. Abel, and Austin Sarat. 1980/1981. "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming…." *Law & Society Review* 15(3/4): 631–54.

Galanter, Marc, and Jayanth Krishnan. 2000. "Personal Law and Human Rights in India and Israel." *Israel Law Review* 34: 101–33.

Gerber, Haim. 1994. *State, Society, and Law in Islam: Ottoman Law in Comparative Perspective*. New York: SUNY Press.

Goadby, Frederic M. 1926. *International and Inter-Religious Private Law in Palestine*. Jerusalem: Hamadpis Press.

Goodman, Josh. 2009. "Divine Judgment: Judicial Review of Religious Legal Systems in India and Israel." *Hastings International and Comparative Law Review* 32: 477–528.

Glaser, Barney G., and Anselm L. Strauss. 2017. *The Discovery of Grounded Theory: Strategies for Qualitative Research*. Oxon, London: Routledge.

https://doi.org/10.1111/lasr.12590 Published online by Cambridge University Press

Halperin-Kaddari, Ruth. 2004. *Women in Israel: A State of their Own*. Philadelphia, PA: University of Pennsylvania Press.
Hacker, Daphna. 2012. "Religious Tribunals in Democratic States: Lessons from the Israeli Rabbinical Courts." *Journal of Law and Religion* 27(1): 59–81.
Hallaq, Wael B. 1984. "Was the Gate of *Ijtihad* Closed?" *International Journal of Middle East Studies* 16(1): 3–41.
Hallaq, Wael B. 2001. *Authority, Continuity and Change in Islamic Law*. Cambridge: Cambridge University Press.
Hoexter, Miriam. 2007. "Qadi, Mufti and Ruler: Their Roles in the Development of Islamic Law." In *Law, Custom and Statute in the Muslim World*, edited by Ron Shaham, 67–85. Leiden: Brill.
Hunt, Alan. 1981. "Dichotomy and Contradiction in the Sociology of Law." *British Journal of Law and Society* 8(1): 47–78.
Ibrahim, Ahmed Fekry, and McGill University. 2016. "Rethinking the Taqlīd Hegemony: An Institutional, Longue-Durée Approach." *American Oriental Society* 136(4): 801–16.
Israeli, Raphael. 2002. *Green Crescent over Nazareth: The Displacement of Christians by Muslims in the Holy Land*. London: Frank Cass.
Jennings, Ronald C. 1978. "Kadi, Court, and Legal Procedure in 17th C. Ottoman Kayseri: The Kadi and the Legal System." *Studia Islamica* 48: 133–72.
Jennings, Ronald C. 1979. "Limitations of the Judicial Powers of the Kadi in 17th Ottoman Kayseri." *Studia Islamica* 50: 151–84.
Johansen, Baber. 1999. *Contingency in a Sacred Law: Legal and Ethical Norms in the Muslim Fiqh*. Leiden: Brill.
Karayanni, Michael M. 2018. "Multiculturalism as Covering: On the Accommodation of Minority Religions in Israel." *The American Journal of Comparative Law* 66(4): 831–75.
Katz, Itamar, and Ruth Kark. 2005. "The Greek Orthodox Patriarchate of Jerusalem and its Congregation: Dissent over Real Estate." *International Journal of Middle East Studies* 37(4): 509–32.
Katz, Itamar, and Ruth Kark. 2007. "The Church and Landed Property: The Greek Orthodox Patriarchate of Jerusalem." *Middle Eastern Studies* 43(3): 383–408.
Kennedy, Duncan. 2003. "The Disenchantment of Logically Formal Legal Rationality, or Max Weber's Sociology in the Genealogy of the Contemporary Mode of Western Legal Thought." *Hastings Law Journal* 55: 1031–76.
Kevorkian, Nadera Shalhoub, and Sana Khsheiboun. 2015. "Going to the Ecclesiastical Courts for Protection and Access to Justice: An Indigenous Feminist Reading." Mada Al-Carmel. http://mada-research.org/wp-content/uploads/2015/ (accessed October 14, 2021) (in Arabic).
Kronman, Anthony T. 1983. *Max Weber*. Stanford: Stanford University Press.
Kugle, Alan Scott. 2001. "Framed, Blamed and Renamed: The Recasting of Islamic Jurisprudence in Colonial South Asia." *Modern Asian Studies* 35(2): 257–313.
Landau, Jacob M. 1993. *The Arab Minority in Israel, 1967–1991: Political Aspects*. Oxford: Oxford University Press.
Mack, Merav. 2012. "Christian Palestinian Communities in Israel: Tensions between Laity, Clergy and State." In *Sacred Space in Israel and Palestine: Religion and Politics*, edited by Marshall J. Breger, et al., 284–310. Milton Park, Abingdon: Routledge.
Maggiolini, Paolo. 2016. "Religion and Nationalism: Palestinian Christians and Religious Leadership in the Midst of the Israeli-Palestinian Conflict." In *The Struggle to Define A Nation: Rethinking Nationalism in the Contemporary Islamic World*, edited by Marco Demichelis and Paolo Magglioni, 126–42. Piscataway, NJ: Gorgias Press.
Mansour, Johnny. 2012. *Arab Christians in Israel: Facts, Figures and Trends*. Bethlehem: Diyar.
Maoz, Asher. 1996. "Religious Human Rights in the State of Israel." In *Religious Human Rights in Global Perspective: Legal Perspective*, edited by John Witte, Jr. and Johan D. Vyver, 349–89. The Hague: M. Nijhoff.
McGahern, Una. 2011. *Palestinian Christians in Israel: State Attitudes towards Non-Muslims in a Jewish State*. London: Routledge.
Mitsoulis, Nifon. 2016. "The Grounds for Divorce in the Byzantine Period and Nowadays in Israel, in Accordance with the Orthodox Ecclesiastical Law—Theory and Practice." Ph.D. diss., Department of Law, Bar Ilan University (in Hebrew).
Moustakas, Clark E. 1994. *Phenomenological Research Methods*. Thousand Oaks, California: Sage Publications.
Powers, David S. 1994. "Kadijustiz or Qadī-Justice? A Paternity Dispute from Fourteenth-Century Morocco." *Islamic Law and Society* 1(3): 332–66.
Powers, David S. 2002. *Law, Society and Culture in the Maghrib, 1300–1500*. Cambridge: Cambridge University Press.
Quraishi, Asifa. 2009. "On Fallibility and Finality: Why Thinking like a Qadi Helps me Understand American Constitutional Law." *Michigan State Law Review* 2(summer): 339–60.
Rabb, Intisar A. 2009. "Ijtihād." In *The Oxford Encyclopedia of the Islamic World*, edited by John L. Esposito. Oxford: Oxford University Press. http://www.oxfordislamicstudies.com/article/opr/t236/e0354 (accessed December 14, 2020).
Rabb, Intisar A. 2015. "Against Kadijustiz: On the Negative Citation of Foreign Law." *Suffolk University Law Review* 48: 343–77.
Rapoport, Yossef. 2003. "Legal Diversity in the Age of Taqlid: The Four Chief Qadis under the Mamluks." *Islamic Law and Society* 10(2): 210–28.
Rosen, Lawrence. 1980. "Equity and Discretion in a Modern Islamic Legal System." *Law and Society Review* 15(2): 217–45.
Rosen, Lawrence. 1989. *The Anthropology of Justice: Law as Culture in Islamic Society*. Cambridge: Cambridge University Press.

Sa'ar, Amalia. 1998. "Carefully on the Margins: Christian Palestinians in Haifa between Nation and State." *American Ethnologist* 25(2): 215–39.
Schmidt, Richard. 1908. *Zeitschrift fur Politik*, Vol 1. Baden-Baden: Nomos Verlagsgesellschaft mbH.
Sezgin, Yuksel. 2004. "Theorizing Formal Pluralism: Quantification of Legal Pluralism for Spatio - Temporal Analysis." *The Journal of Legal Pluralism and Unofficial Law* 36: 101–18.
Sezgin, Yuksel. 2010. "The Israeli Millet System: Examining Legal Pluralism through Lenses of Nation-Building and Human Rights." *Israel Law Review* 43(3): 631–54.
Shahar, Ido. 2013. "Forum Shopping between Civil and Shari'a Courts." In *Religion in Disputes: Pervasiveness of Religious Normativity in Disputing Processes*, edited by Franz von Benda-Beckmann, et al., 147–64. London: Palgrave MacMillan.
Shdema, Ilan. 2012. "The Role of Socio-Economic Factors in Changing Relations between Muslim and Christian Arabs in Israel between 1967 and 2010." *Islam and Christian–Muslim Relations* 23(4): 515–30.
Shifman, Pinhas. 1995. *Family Law in Israel*, 2nd ed. Jerusalem: The Hebrew University.
Strauss, Anselm Leonard, and Juliet Corbin. 1998. *Basics of Qualitative Research: Grounded Theory Procedures and Techniques*. Thousand Oaks: Sage Publications.
Swedberg, Richard. 2018. "How to Use Max Weber's Ideal Type in Sociological Analysis." *Journal of Classical Sociology* 18(3): 181–96.
Trubek, David M. 1972. "Max Weber on Law and the Rise of Capitalism." *Wisconsin Law Review* 20(3): 720–53.
Trubek, David M. 1985. "Reconstructing Max Weber's Sociology of Law." *Stanford Law Review* 37: 919–37.
Trubek, David M. 1986. "Max Weber's Tragic Modernism and the Study of Law in Society." *Law & Society Review* 20(4): 573–604.
Tshimhoni, Daphne. 1993. *The Christian Communities in Jerusalem and the West Bank since 1948, an Historical*. New York, Praeger: Social and Political Study.
Tsimhoni, Daphne. 2002. "The Christians in Israel: Aspects of Integration and the Search for Identity of a Minority within a Minority." In *Middle Eastern Minorities and Diaspora*, edited by Moshe Ma'oz and Gabriel Sheffer, 124–52. Brighton, England: Sussex Academic Press.
Turner, Bryan S. 1974a. *Weber and Islam*. London: Routledge and Kegan Paul.
Turner, Bryan S. 1974b. "Islam, Capitalism and the Weber Theses." *The British Journal of Sociology* 25(2): 230–43.
Vatikiotis, Panayiotis J. 1994. "The Greek Orthodox Patriarchate of Jerusalem between Hellenism and Arabism." *Middle Eastern Studies* 20(4): 916–29.
Weber, Max. 1968. *Economy and Society: An Outline of Interpretive Sociology*. Berkley and LA: University of California Press.
Yefet, Karin C. 2009. "Unchaining the Agunot: Enlisting the Israeli Constitution in the Service of Women's Marital Freedom." *Yale Journal of Law and Feminism* 20: 102–63.
Yefet, Karin C. 2016. "Israeli Family Law as a Civil-Religious Hybrid: A Cautionary Tale of Fatal Attraction." *University of Illinois Law Review* 2016(4): 1505–34.
Yefet, Karin C., and Ido Shahar. 2021. "Divorced from Citizenship: Palestinian-Christian Women between the Church and the Jewish State." *Law and Social Inquiry*, (Forthcoming) .
Zafran, Ruth. 2013. "The Jurisdiction Race Is Alive and Kicking—Religious Courts Gain Power over Civil Family Courts." *Hebrew University Law Review* 43: 571–630.
Zureik, Elia. 1979. *The Palestinians in Israel: A Study in Internal Colonialism*. London: Routledge.

CASES CITED

Terminiello v. City of Chicago, 337 U.S. 1, 11 (1949).
H.C.J. 59/58 Jadai v. The Ecclesiastical Court of the Melkite, Greek Catholic Archbishop, 12 P.D. 1812 (Dec. 18, 1958) (Isr.).
H.C.J. 3238/06 Suleiman v. Archbishop Paul Siach (published in Nevo Legal Database, Feb. 23, 2009) (Isr.).
C.A. (T.A.) 54064-07-17 *Karkavi v. The Ecclesiastical Court of the Greek Orthodox Church and Others* (published in Nevo Legal Database, July 24, 2017) (Isr.).
H.C.J. 1555/05 Levy v. Tel Aviv Regional Rabbinical Court (published in Nevo Legal Database, July 16, 2009) (Isr.).

SUPPORTING INFORMATION

Additional supporting information may be found in the online version of the article at the publisher's website.

AUTHOR BIOGRAPHIES

Ido Shahar is a senior lecturer at the Department of Middle Eastern and Islamic Studies, the University of Haifa. He is trained both as an historian and as an anthropologist, and his research

https://doi.org/10.1111/lasr.12590 Published online by Cambridge University Press

combines these two disciplines, focusing especially on the Palestinian-Arab minority in Israel and on the legal sphere in Muslim societies.

Karin Carmit Yefet is a senior lecturer at the University of Haifa, Faculty of Law and a member of both the Israel Young Academy and the Global Young Academy. Yefet earned her LL.M. and J.S.D from Yale Law School as a Fulbright and Fischman Fellow and her LLB (summa cum laude, valedictorian) and LLM (summa cum laude) from Bar-Ilan University. Her scholarship on feminist legal theory and family law focuses on the impact of religion on various dimensions of women's legal status from feminist, comparative, and constitutional perspectives.

How to cite this article: Shahar, Ido, and Karin Carmit Yefet. 2022. "*Kadijustiz* in the ecclesiastical courts: Naming, blaming, reclaiming." *Law & Society Review* 56(1): 53–77. https://doi.org/10.1111/lasr.12590