

“Whose Child Are You?” Children’s Rights: Between Religion, Law and State

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Proposal for the International Law Conference on the Subject of
“Family Law in a Multi-Cultural Society: Civil Law and Religious Law in Matters of Personal
Status and Family”

In recent years, the field of children’s rights law has been extensively developed in various contexts. Religion is one of the factors influencing the fashioning of the legal system in various contexts. Conflict between the civil law and religious principles on questions involving children is not uncommon. Thus, for example, regarding the fundamental determination that the “best interest of the child” is to be the determinative consideration in the contexts of child custody, education, determination of paternity, adoption, educational punishment, etc. Even more complex questions arise cases in which each of the child’s parents is a member of a different religion, and the two religions “compete” with each other regarding the right to raise the child and to determine his future. Alongside the right of the parents, there is, of course, the question of the child’s autonomy in determining his future with respect to decisions having religious implications.

This issue also raises fundamental questions in the sphere of constitutional law regarding children’s freedom of religion and freedom from religion.

The carrying out of litigation involving these issues in both the civil and religious forums exacerbates the existing tension even more.

My lecture will seek to deal with the inherent tension between religion, law and the state in the context of children’s rights and their place in the family, both as a matter of the substantive law as well as on the level of the judicial authority – the forum in which the case is litigated.

The lecture will focus on the situation in Israel with comparisons to proposed arrangements in other countries and the possibility of implementing them in Israel.