

**Religious Justification, Elitist Outcome: Are Religious Schools Being  
Used to Avoid Integration?**

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I. Introduction

Ethnic, racial and socioeconomic segregation continues to challenge education administrators and legal scholars in many liberal countries. It seems that despite policy makers' efforts to promote integration, privileged parents who wish to avoid it, have different strategies at their disposal. Some exit the public school system and "go private"; others buy houses in the "right" neighborhoods; still others enroll their children in specialized classes and programs for gifted children that are typically socially homogeneous. The design and content of the legal rules that apply to education are a prime factor in determining which

strategies parents can choose in their pursuit of educational advantage and the ease with which they can pursue it.

This article aims to explore one such strategy that has not yet been sufficiently supported empirically: the resort to religious education. The research examines whether privileged parents use religious schools as a means to gain educational advantage, and exposes the legal framework that enables and incentivizes this practice.

The test case used to study the connection between religious schools and social segregation is that of Religious State Schools in Israel. Within the category of religious state schools in Israel, there are two kinds of schools – “regular” religious states schools, and *Torani* schools (literally meaning Biblical) that have a stricter religious character. This research checks whether, as anecdotal evidence suggests, *Torani* religious state schools are indeed socially segregated. More specifically, the research examines three hypotheses: that *Torani* schools enroll students from higher socioeconomic status (SES) than regular religious state schools; that they are less reflective of the population of the geographical area in which they are established; and that they are more likely to be established in areas of low SES, in which the regular religious state schools enroll high rates of disadvantaged students. The paper then highlights the intricate ways in which Education Law and policy in Israel enables *Torani* schools to become elitist schools, segregated along ethnicity and class rather than according to religion.

The conclusion of the paper is therefore when the legal framework is suitable, religious education can become a vehicle of social segregation and educational inequality.

## II. Theoretical Framework

The theoretical framework underpinning this study is threefold: the first consists of research concerning parental strategies for gaining educational advantage; the second concerns the abundant scholarship on the effects of segregation in education; and the third concerns the unexpected consequences of law and how legal regulation meant to realize one set of preferences ends up promoting other interests.

### a) Parental Strategies for Educational Advantage

This research joins a long line of research that examines the multiple ways in which middle and high class parents seek and acquire educational advantage for their children. Because of education's prominent role in securing advantages in life – access to higher education, to lucrative jobs and to desirable social status – middle class parents rightly identify education as a crucial arena in which their child must “get ahead” in order to succeed in life (Jonathan 1990). One aspect of this motivation involves ensuring that the student body is comprised of children with high academic abilities. The best-known practices for gaining educational

advantage are enrolling children to private schools (Chubb & Moe 1990), moving to the suburbs, where population is predominantly middle class (Clotfelter 2008), or buying a house in a catchment area with ‘good’ schools (Chubb & Moe 1990). Where catchment areas strictly determine school placement, housing prices are greatly influenced by the quality of neighborhood schools (Downes & Zabel 2002; Clapp et al. 2008), and the share of minority students in public schools is one of the most important factors affecting private school enrolment in a given area (Clotfelter 2006). Another strategy involves ability tracking within public schools, including classes for gifted children, that separate privileged children from their disadvantaged peers (Welner & Oaks, 1996). In the past few decades, since the proliferation of school choice reforms worldwide, research shows that advantaged groups also make use of choice programs and specialized schools in order to avoid attending integrated public schools (Minow 2011; Garcia 2010; James 2013 Clotfelter, 2006).<sup>1</sup>

The idea that religious education is being used as another means to generate educational advantage and to avoid social and racial integration has been suggested in the past. Catholic schools in France and several other countries in

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<sup>1</sup> We refer here only to choices parents have within the existing educational, social and legal frameworks. However parents can also influence decision makers and change these structures. Examples include placing pressure on school districts in zoning decisions, and demanding that schools create separate classes according to ability (Clotfelter 2006).

Europe have been accused of losing their religious nature and assuming an overt elitist character, enrolling mostly privileged students and small shares of immigrants and minorities, and offering higher academic standards (Meuret 2004; Dronkers 2004; Dronkers & Robert 2004).<sup>2</sup> Families enrolling in religious private schools in America in the post-Brown era were similarly accused of choosing religious schools in order to avoid mandatory racial integration (Duke note 1977). What started with a movement to private schools in general, quickly evolved into a preference for religious private schools when the US Supreme Court, in *Runyon v. McCary* (1976), ruled that racially discriminatory admission policies were not allowed in private schools, but that if there were *bona fide* religious arguments against racial integration, segregation would be permitted (Rotunda 1989). Recently, the same criticism is directed toward the new phenomenon of religious charter schools in America, public schools established by a religious, cultural or linguistic community. While established with the sincere intention of supplying these communities' educational needs, they also enable privileged religious and cultural groups to secure free advantageous education for their children and to avoid the challenges of integration in the public education (Harel Ben Shahr 2016). This study, however, is the first we know of to perform a comprehensive

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<sup>2</sup> The flourishing in Christian religious education in an era of secularization can also indicate that there is a change in the way Christian schools are being viewed in Europe (Lohmann 2011; Merry 2014)

empirical examination alongside the legal analysis of religious schools that create SES segregation.

#### b) Segregation in Education

There is abundant research to the effect that class and ethnic segregation has a negative impact on the education of children from disadvantaged backgrounds. The negative effect is explained by the importance of peer effects to the quality of education. According to these studies, learning in a class with bright and motivated peers, who cultivate academic aspirations and contribute their cultural capital, improves student achievement (Orfield & Lee 2005). Some researchers argue that taken alone, the peer group is the most important factor influencing educational outcome (Johnson, 2000; Zimmer & Toma 2000). This can explain, in part, why students' achievements are higher in private schools that 'cream' the highest achieving students from public schools and group them together (Lubienski & Lubienski 2014). Correspondingly, concentrating children with low abilities in one school causes negative peer effects that decrease their educational achievement even further (Lubienski & Lubienski 2014). This demonstrates why it is rational for privileged parents to try to choose for their children schools with high ability peers.

It is also well established that the academic attainment of students from affluent families is higher, on average, than that of students from low-income

families (Kahlenberg 2011; Rumberger & Palardy 2005; Rothstein 2004). The correlation between SES and educational achievement can be explained by multiple factors: students from poor backgrounds are less likely to have adequate health care and nutrition, they are more likely to be exposed to violence, family crisis and unrest, situations that impede their capacity for uninterrupted focus on learning. Their parents are less likely to be involved in their education, to be able to assist them with their homework as they are themselves less educated, and may be working multiple jobs or be otherwise preoccupied. Children from poor families typically own fewer books, have not been read to as much as their middle class counterparts, and their parents engage less with them in cognitive stimulating activities (Lareau 2003).

Moreover, in most societies, race and ethnicity correlates with SES, so that racial minorities are often also inflicted with poverty. As a result, racial and ethnic minorities that suffer from exclusion tend to have lower educational achievement. Additionally, students from racial and ethnic minorities often suffer further disadvantage caused by implicit bias and prejudice (Skiba et al. 2002; Knotek 2003). This is true also in Israeli society, in which ethnicity is correlated with

SES: The Arab-Palestinian minority and Mizrahi Jews are, on average, less well-off than Ashkenazi Jews (Ben-Rafael and Sharot 1991).<sup>3</sup>

As a result, segregating students according to SES (for example in cases of residential segregation) results in ethnic segregation, in segregation according to academic ability, and in negative peer effects. Moreover, sorting students according to academic ability (by testing, relying on prior achievements and other types of screening) unfairly benefits students from privileged families, and does not grant students from all social and ethnic groups an equal educational opportunity. It should also be mentioned that SES segregation may result from attending local schools, when residential segregation exists. These empirical findings have triggered discussions in the areas of educational philosophy, policy and law denouncing academic sorting and requiring social integration (Coleman 1966; Swift 2003; Anderson 2010; Orfield & Lee 2005; Ryan 2007; Jenkins-Robinson 2009).

In this paper we assume that education systems are morally required to promote educational justice.<sup>4</sup> In light of this commitment, the findings above suggest that segregation (academic, ethnic or SES) is morally undesirable and law

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<sup>3</sup> Mizrahi Jews are Jews who originated North Africa and the Middle East, as opposed to

Ashkenazi Jews who originated from Europe, Russia and America.

<sup>4</sup> The discussion of distributive justice in education suggests several possible principles of educational justice (Jencks 1988; Anderson 2007; Brighthouse 2011). All of these, however, show concern to the educational opportunities of children from disadvantaged groups, and therefore all are troubled by practices of segregation.



and education policy should aim to minimize it (for example, by prohibiting academic sorting, or creating catchment areas that include both high income and low income neighborhoods). However, we do not argue that educational equality is the only consideration an education system is required to take into account, and we concede that there may be cases in which other urgent considerations, such as parental rights, wellbeing of children or even financial limitations may override the need to promote equality. The desirable balance between these, sometimes conflicting, considerations must be determined in each case according to the relative weight of each.

#### c) The Unintended Consequences of Law

The third prong of the theoretical framework concerns the relations between legal regulation and parental behavior. Law's primary goal, on almost any account of law, is to direct human behavior (Tyler 1990; Suchman 1997). However, scholars have pointed out that legal regulation can have unintended consequences: sometimes soundly justified regulation does not bring about the desired results; sometimes it is even self-defeating (Hirschman 1991; Sunstein 1990).

Law's unintended effects are an inherent part of what the law is, therefore any attempt to delineate law's content involves examining social reality. This explains the integration between legal analysis and the social science research

undertaken in this paper. The case described in this paper shows how legal rules aimed at creating rights and entitlements of one kind, end up supporting a different set of interests altogether. More specifically, although religious rights of parents and communities are those explicitly protected by law (Macedo 2000; Galstone 1995; Carter 1997; Shiffrin 2002), it is elitist practices and class distinctions that flourish. The opportunity structure created by law, therefore, affects the strategies parents choose in order to realize their goals.

### III. Test Case: Religious State Education in Israel

Our test case concerns religious state education in Israel. The Israeli educational system is divided into state schools and non-state schools, both categories include both religious and non-religious schools. Some religious communities in Israel have opted out of state education altogether and maintain their own autonomous school systems. Non-state schools in Israel are licensed and recognized by the state and funded generously, although not to the same extent as state schools. They are also autonomous from state regulation in various aspects of curriculum, hiring teachers and admitting students. Ultra-orthodox Jewish schools for example, are almost always non-state schools (Maoz 2007) and

enjoy wide autonomy.<sup>5</sup> Church schools are also non-state schools, owned and run by churches, and are funded only partly by the state and local authorities.

Within the state education system, there are two systems of schools – general state schools that are secular, and religious state schools.<sup>6</sup> Religious state schools serve mostly the Zionist-orthodox community (“Dati Leumi”), and aim to offer both Jewish religious education and general secular education that enables full integration into modern society and the market economy (Gross 2003). Religious state schools are open to any child that wishes to attend them, and are required to accept all children, observant or not.<sup>7</sup> As a result, religious state

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<sup>5</sup> One category of Ultra-orthodox schools was recently exempt by legislation from teaching the core curriculum. See The 2008 Culturally Unique Schools Act.

<sup>6</sup> Children belonging to the Arab minority in Israel study mostly in segregated Arab speaking state schools located in Arab villages and towns. These schools are not organized in a separate unit within the ministry of education (as are religious state schools) and are part of the secular state school system. They are systematically disadvantaged both in terms of funding and resources and in terms of autonomy and control over curriculum (Neff 2004). Recently, another system of Jewish education was established within the state education system – integrating religious and secular students. This education system, however, is not offered country-wide, and state schools can transform into integrated schools depending on sufficient demand (The 1953 National Education Act)

<sup>7</sup> The 1953 Compulsory Education and National Education Regulations (Registration). However religious state schools are allowed to regulate behavior within schools, such as requiring boys to wear a headcap, mandating prayers, and assigning modesty-related dress codes.

schools often serve families that are traditionalist (“Masorti”) – are not strictly observant but feel a connection to Jewish tradition, and practice some religious rituals. In Israeli society these are typically families of lower SES and of *Mizrahi* ethnicity (Schwartzwald 1990; Meirovich 1999; Herman et al. 2014; The Israel Democracy Institute 2009).

In the past three decades there have been processes of change within the Zionist Orthodox community. Parts of the community have become more religiously devout and formed a sub-group within Zionist Orthodoxy called “Haredi Leumi”, or Ultra-Orthodox Zionism (Herman et al. 2014). As a part of this process, groups of parents that traditionally attended religious state schools gradually became dissatisfied with the moderate religious level of the religious state schools that were coeducational and did not, in their opinion, put enough emphasis on Jewish studies. Another process that contributed to the dissatisfaction of parents from the religious state schools, and is particularly relevant to our discussion, is that religious state schools served a large and growing portion of immigrant students that the religious state education system took it upon itself to integrate into Israeli Orthodoxy (Gross 2003). The large share of immigrant and underprivileged students affected both the quality of education in religious state schools and the religious atmosphere within the schools.

As a result, starting from the 1980s groups of Orthodox parents began to establish recognized, non-state schools that would, supposedly, better suit their religious needs. Starting with one network of schools called “Noam”, these rapidly developed into a plethora of different schools, all dubbed “Torani schools”, signifying their commitment to the teaching of the *Torah*, the Jewish Bible. In the first years, they were established as non-state schools, that were only partly funded and supervised by the state, and maintained autonomy in issues such as admission policy and curriculum. Along the years, some of these schools were incorporated into the religious state school system, and later new schools of this nature were established as state schools from the outset. Still other ordinary state religious schools underwent changes initiated by parents from within the school community, such as adopting gender separation and adding more religious content, finally also becoming *Torani* schools. Thus, *Torani* schools operate today with different legal and organizational status, bearing different names and affiliations, and varying in their characteristics and extent of religious strictness. Still, the schools popularly referred to as *Torani* schools, can be characterized as follows: They serve families of the religious Zionist community (Orthodox or Ultra-Orthodox); boys and girls study in separate classes in all stages of education; they have strict modesty-based dress codes and an enhanced religious curriculum; the school’s educational leadership is constituted of Rabbis.

Along the years there have been sporadic allegations against *Torani* schools that they were ethnically and socioeconomically segregated, that they preferred children from privileged backgrounds, and even that they intentionally discriminated against children on the basis of ethnicity (Gross 2003; Yablon 2009; Tebeka v. Ministry of Education, 2010; Michaeli 2012; Herman et al. 2014). Recently, two studies found a higher share of children from higher SES in *Torani* schools compared to regular religious state schools and a smaller share of children of Ethiopian origin, an extremely disadvantaged group, in *Torani* schools compared to regular religious state schools (Israel Bank 2014; Berger 2015).

#### IV. The Study

This study aims to examine whether *Torani* schools are indeed a vehicle for social segregation and educational inequality. In order to answer this question, the study examines the socioeconomic characteristics of *Torani* schools, and their dissemination in geographic areas with different socioeconomic composition, and compares it to regular religious state schools. If our hypothesis according to which privileged parents are inclined to choose *Torani* schools is correct, we expect that *Torani* schools will present higher rates of students from high SES and lower rates of students from low SES in relation to regular religious state schools, irrespective of the SES of the area in which the school is located. In other words, we would expect that students in *Torani* schools will be relatively privileged even

in underprivileged areas. Additionally, we expect *Torani* schools to be especially prevalent in areas with low SES, in which regular state schools are especially unattractive to privileged families due to presumed negative peer effects. While we are interested both in SES segregation and ethnic segregation, we did not have access to data concerning the ethnicity of students, and therefore our study examines only SES segregation. However, ethnicity and SES are strongly correlated in Israel, and therefore findings of SES segregation indicate the existence also of ethnic segregation.

To examine the abovementioned hypotheses we ran three tests:

1. We compared the SES composition in *Torani* schools and regular religious state schools, our hypothesis being that in *Torani* schools there would be a larger share of children from higher SES and a lower share of children from lower SES. This hypothesis was corroborated in previous research (The Israel Bank 2014; Berger 2015).
2. We examined the correlation between the socioeconomic composition of students in *Torani* schools and that of the general population in the geographic area in which the schools are located and compared it to the correlation between student composition and general population in regular religious state schools. If *Torani* schools are indeed socially segregated, we expect to find weaker correlations between the schools' composition and the general population characteristics than those between

regular religious state schools (that enroll all students in their area) and their geographical area.

3. We examined the distribution of *Torani* schools versus regular religious state schools in localities with different SES characteristics. We hypothesize that *Torani* schools will be more prevalent in areas with lower average SES, because privileged parents in poor localities are more motivated to extract their children from state schools than parents in wealthy localities, in which peer effects are positive within the regular state school system. To complement this test we also examined the distribution of new religious state schools (both *Torani* and non-*Torani*) established between the years 2000-2013, hypothesizing that more *Torani* schools were established in poor localities than in privileged ones.

- a) The population, Sources of Information, and Variables

The population of this study is religious state schools in Israel, including both regular religious state schools and *Torani* state schools. There is no formal institutional distinction between *Torani* and regular religious state schools in the Ministry of Education's (MoE) formal information. In order to distinguish between them we followed the indicator of gender separation, which is available for schools in the MoE database, and is one of the primary characteristics of *Torani* schools. We coded religious state schools in which all classes were gender



separated “*Torani*”, and coded religious state schools that some or all classes were coeducational “regular religious state schools”.<sup>8</sup>

As mentioned above, the study applies only to *Torani* schools that are state schools, despite the fact that there are also several non-state *Torani* schools. The reason these are not part of our study is that they are hard to track in the MoE database. More specifically, it is hard to distinguish *Torani* recognized schools from Ultra-orthodox schools that are also non-state, gender separated schools, but serve a different social category. Although non-state *Torani* schools are not a part of this study, it is reasonable to assume that the findings concerning the gap in SES between religious state schools and *Torani* schools is at least as large as the one between regular religious state schools and non-state *Torani* schools, because the characteristics that make *Torani* schools segregated, primarily tuition and selective admission policies, are even more extreme in non-state schools.<sup>9</sup>

Additionally, while we do not have any formal number of non-state *Torani* schools, the estimated number does not exceed 10% of all *Torani* schools (Berger 2015).

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<sup>8</sup> *Torani* schools include, therefore, both schools that were completely single sex (all boys or all girls) and coeducational schools in which all classes were separated. We classified a class as single sex when all students were of the same sex, or when in a class of 10 or above students there was 1 student of the opposite sex, under the assumption that this is due to a mistake in the MoE database.

<sup>9</sup> For a discussion of these characteristics, see *infra* part V.

The sample used for the study concerns fifth grade students from the religious state sector in the years 2012-2013. We assume that fifth grade students in a certain school reflect the SES characteristics of all students in a specific school.

The database consists of the integration of three sources of information:

1. Information concerning gender distribution within classes in schools in the religious state sector in the years 2012-2013. The information was collected from a MoE web-based system called: “Wide Perspectives – Education Numbers”.
2. Data concerning the shares of students from low/medium/high SES in each school. The information was derived from reports published by the MoE following the ‘Growth and Effectiveness Measures for Schools’, the Israeli National Standardized Student Assessment. The data refers to students who participated in the assessment in the years 2012 and 2013. This database has various limitations that induced us to remove some of the religious state schools from the sample used in the study. From the 416 religious state schools that operated in Israel in at least one of the years 2012-2013, the sample includes 332 ( $N = 332$ ), approximately 80% of the schools (for a detailed description see Appendix 1). As mentioned above, this database does not include data concerning ethnicity.

3. The data concerning the SES of the geographical area in which schools were located were derived from The Israel Central Bureau of Statistics (ICBS) publications regarding the socioeconomic characteristics of geographic units in Israel based on the last population census performed in Israel in 2008. The ICBS data concerning SES of geographical units is organized in two kinds of indexes: SES of local authorities; and SES of statistical areas.<sup>10</sup> The former examines the SES of all local authorities in Israel, and divides them into ten clusters according to SES. The index covers each and every school in the sample, however it refers to local authorities as a whole, assigning a single ranking to each, and cannot express differences in SES *within* local authorities. In major cities, such as Tel Aviv and Jerusalem the variance between different parts of the city can be substantial. The second index, SES of statistical areas, measures SES of smaller, more homogeneous units such as neighborhoods, and can therefore more accurately reflect upon the SES of the area in which schools are located. The ICBS divides statistical areas into 20 clusters according to SES. The downside of this index is that it is only available for urban concentrations with more than 10,000 residents, and therefore does not include all the schools in the original sample (N = 256). Most notably, it does not include schools in the West Bank settlements, in which

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<sup>10</sup> The variables used by ICBS in determining the SES indexes are listed in Appendix 2.

*Torani* schools abound. In order to make full use of the advantages of both measures, and to enhance the validity of the findings, we incorporate both indexes into the study, running the relevant tests twice. Additionally, we ran extra tests to ensure that both samples are representative (for a detailed description, see Appendix 3).

**Table 1: The Variables in the Study**

<b>Variable</b>	<b>Meaning</b>
<i>SchoolReligion</i>	An indicator variable used to distinguish between <i>Torani</i> (1) and regular religious state schools (0)
<i>LowSES</i>	The share of fifth grade students of low SES in the school (0-100%)
<i>MediumSES</i>	The share of fifth grade students of medium SES in the school (0-100%)
<i>HighSES</i>	The share of fifth grade students of high SES in the school (0-100%)
<i>LA-SES</i>	The SES cluster of the local authority in which the school is located (1-10)
<i>SA-SES</i>	The SES cluster of the statistical area in which the school is located (1-20)

b) Test 1 – Findings

The SES composition in *Torani* schools and regular religious state schools matched our expectations. An independent samples T-Test was conducted to compare the means of the share of low SES, medium SES and high SES students

in *Torani* schools and regular religious. The share of students from low SES attending *Torani* schools was significantly lower than the share of students from low SES attending regular religious state schools,  $T(267) = 6.24, P < 0.0001$ . The share of students from high SES attending *Torani* schools was significantly higher than their share in regular religious schools,  $T(328) = -3.54, P = 0.0002$ . No significant difference was found between the two types of schools with regard to the share of students from medium SES,  $T(325) = -1.23, P = 0.1096$ .

We repeated this test, restricting it only to settlements in which there was at least one school of each kind – *Torani* and regular religious state school – meaning that parents could choose between the two kinds of schools ( $N = 204$ ). The tendencies we found were compatible with the findings described above, and the differences in shares of students from low SES and high SES were significant.

Table 2 summarize the differences in SES composition between *Torani* schools and regular religious state schools.

**Table 2: Average share of students from low/medium/high SES in *Torani* schools and regular religious state schools**

	<b>Regular religious state schools</b>	<b>Torani Schools</b>
<i>N</i>	<i>174</i>	<i>158</i>
<i>LowSES</i>	<i>26.0%</i>	<i>11.6%</i>
<i>MediumSES</i>	<i>45.3%</i>	<i>48.4%</i>
<i>HighSES</i>	<i>28.7%</i>	<i>40.0%</i>
<i>Total</i>	<i>100%</i>	<i>100%</i>

Using Cohen's *d*, we measured the effect size of the difference between *Torani* and regular religious state schools in shares of students from different SES. The effects size for the share of students from low SES was high ( $d = 0.70$ ), and for students for high SES were moderate ( $d = 0.39$ ). Only small effect sizes were measured between the two kinds of schools concerning the share of students from medium SES ( $d = 0.13$ ).

c) Test 2 – Findings

The comparison between the rate of children from low SES in *Torani* schools and the SES composition of their geographical surroundings matched our hypothesis. The correlation between the rate of students from low SES in *Torani* schools and in the geographical surrounding was significantly lower than the

correlation between the rate of children from low SES in regular religious state schools and the SES of the geographical surroundings. We compared the two sets of correlations using Fisher's Z transformation and a significant difference was found when we checked both variables of local SES: SES of the local authority (*LA-SES*),  $Z = -3.09$ ,  $P\text{-value} = 0.0010$ ; and SES of the statistical area (*SA-SES*),  $Z = -2.60$ ,  $P\text{-value} = 0.0047$ .

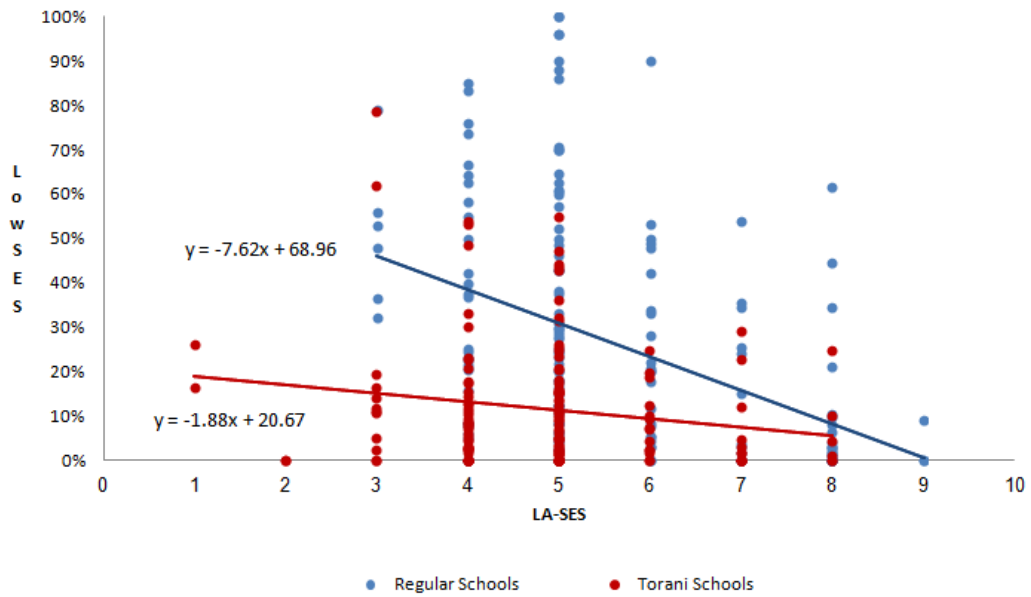
Table 3 and Diagrams 1 and 2 show the differences between *Torani* and regular religious state schools regarding the correlation between students from low SES in schools and the geographical surroundings.

**Table 3: Spearman's correlation coefficient between SES of the geographic area of the school and the share of low SES students in school, in Torani and regular religious state schools**

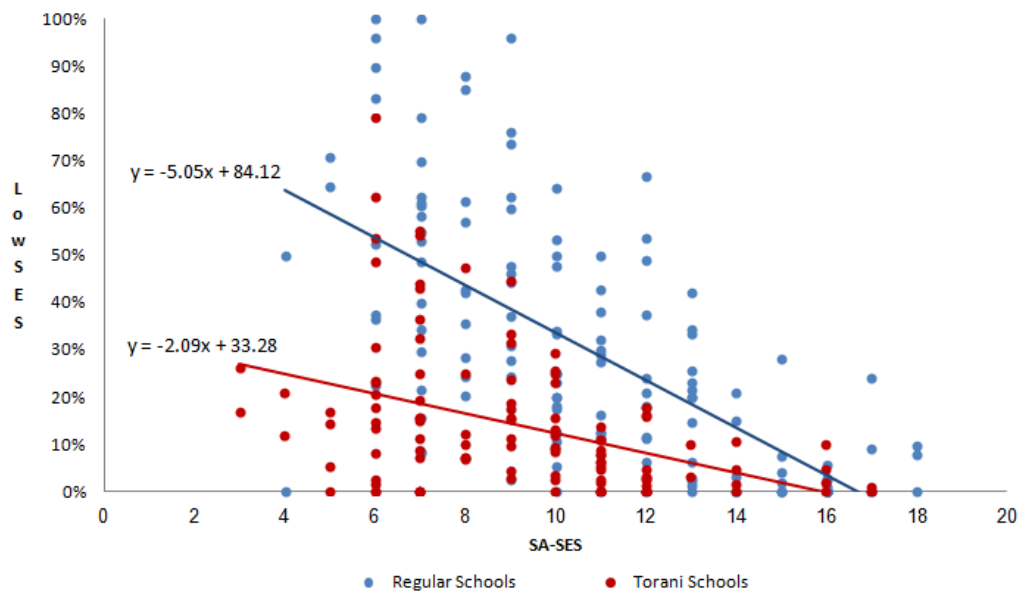
	<i>LA-SES</i>		<i>SA-SES</i>	
	<i>Regular Schools</i>	<i>Torani Schools</i>	<i>Regular Schools</i>	<i>Torani Schools</i>
<i>N</i>	174	158	139	117
<i>Spearman's rho</i>	-0.45**	-0.15*	-0.68**	-0.46**

\* $P \leq 0.1$  \*\* $P \leq 0.0001$

**Diagram 1: Rate of Children from Low SES in Torani and Regular Schools, According to the SES of the Local Authority (LA-SES)**



**Diagram 2: Rate of Children from Low SES in Torani and Regular Schools, According to the SES of the Statistical Area (SA-SES)**





## d) Test 3 – Findings

The examination of the geographical dissemination of *Torani* schools shows that, as we expected, they are more prevalent in low SES local authorities and low SES statistical areas. Tables 4 and 5 show the distribution of *Torani* schools in localities according to their SES.

**Table 4: The distribution of Torani and regular religious state schools in Local Authorities according to the LA-SES**

	N	1-3	4-5	6-7	8-10
<i>Regular Schools</i>	174	3.4%	56.3%	21.8%	18.4%
<i>Torani Schools</i>	158	10.1%	69.6%	16.5%	3.8%

**Table 5: The distribution of Torani and regular religious state schools in Statistical Areas according to the SA-SES**

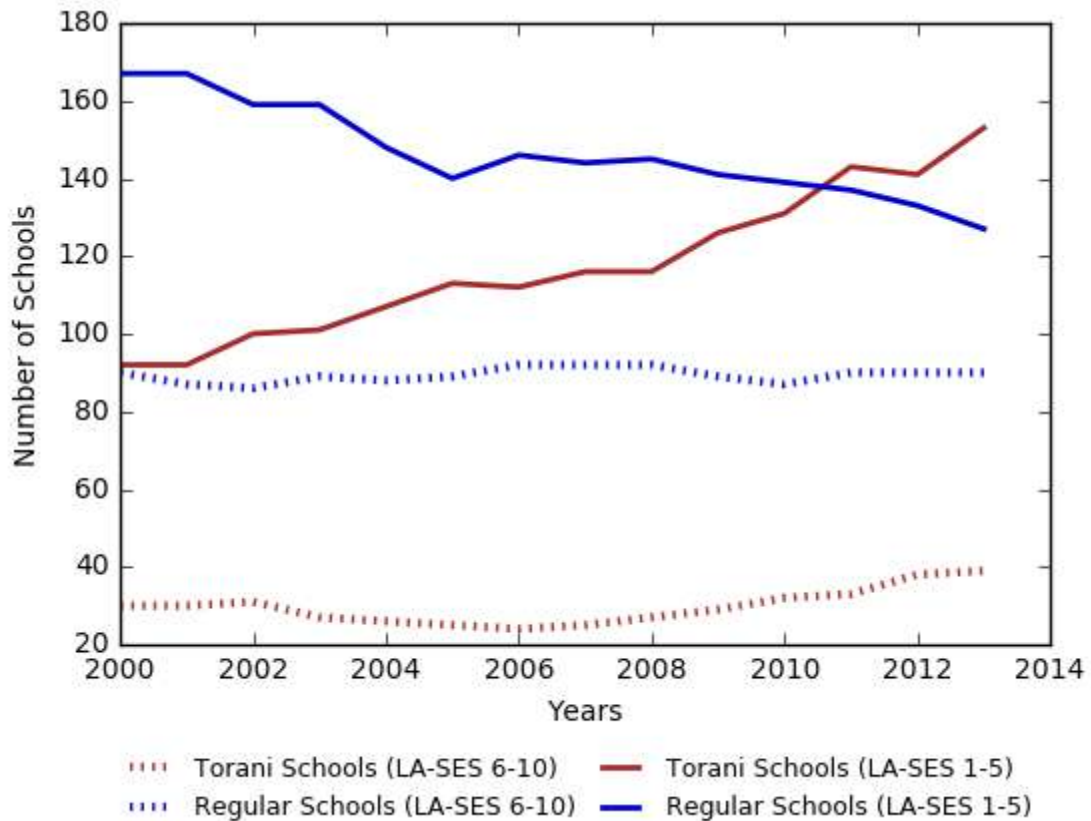
	N	1-6	7-10	11-14	15-20
<i>Regular Schools</i>	139	8.6%	41.0%	33.1%	17.3%
<i>Torani Schools</i>	117	20.5%	43.6%	29.9%	6.0%

We performed Chi square test to check whether the differences in the distributions of the schools (*Torani* v. regular religious state schools) are

significant. Significant differences were found in both cases: the distribution in Local Authorities,  $\chi^2(3) = 24.56$ ,  $P < 0.0001$ , and the distribution in Statistical Areas,  $\chi^2(3) = 13.36$ ,  $P = 0.0039$ . The findings show that the demand for *Torani* schools is not synchronized with high SES, and is influenced by the SES of the area, being especially popular in areas of low SES.

Moreover, examining the rate of new religious state schools established between the years 2000-2013 shows that while the number of regular religious state schools has stayed stable, and even declined, there has been an upsurge in new *Torani* schools established. What is even more interesting is that the new *Torani* schools have been established predominantly in localities from low SES.

**Diagram 3: Number of Torani and Regular Schools, According to the SES of the Local Authority (LA-SES), 2000-2013)**



## V. Discussion

The findings of the first two tests presented above show that *Torani* schools serve a higher share of students from higher SES, and a lower share than students from low SES than regular religious state schools, irrespective of the SES of the area in which the school is located. This raises concerns as to the whether they conform to the goals of social integration and equal opportunity. Regular religious state schools, and the students who attend them, are disadvantaged by this disparity, because they are required to serve a larger share of students from low SES who are typically lower achievers, more expensive to educate, and may cause

negative peer effects (Kahlenberg 2011; Rumberger & Palardy 2005; Rothstein 2004).

The second test shows that *Torani* schools not only teach a smaller share of students from low SES, but also that *Torani* schools do not reflect the SES of the area in which they are located, and their student body is composed of significantly wealthier students. This means, simply put, that *Torani* schools create creaming. Instead of appealing equally to students of all SES, *Torani* schools attract and enroll the wealthier students in the area, leaving the more disadvantaged students in the regular religious state schools. It is widely accepted that creaming is a negative phenomenon that is destructive to schools, and therefore a target for education law and policy regulation.

One might argue that these findings do not entail that privileged parents are attracted to *Torani* schools but rather that the religious community that seeks education in *Torani* schools also happens to be characterized by high SES.<sup>11</sup> The third test disproves this explanation.

The third test shows a higher tendency to establish *Torani* schools in areas of low SES. *Torani* schools have proliferated since the year 2000, predominantly in areas of low SES. This might seem surprising, given that *Torani* schools serve higher shares of high SES students. This finding, therefore, shows that the

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<sup>11</sup> It is definitely plausible that certain sub-communities share, in addition to religious characteristics, also socioeconomic characteristics.

preference toward attending *Torani* schools is not uniform in all levels of the area's SES. High SES families are more likely to send their children to *Torani* schools when they live in low SES areas than when they live in areas of high SES. This can be explained by the fact that in areas of low SES regular state schools, that reflect the population, serve predominantly children from underprivileged families, and the peer effects in them are expected to be negative. Therefore, privileged parents are especially likely to seek segregative alternatives to regular state schools in these areas, and it is not surprising that the demand for *Torani* schools is particularly high. In areas of high SES, on the other hand, regular state schools that reflect the population serve students of higher SES and higher achievers. Accordingly the peer effects in regular religious state schools are likely to be positive, and the motivation for seeking alternatives for state schools declines.<sup>12</sup> Underprivileged students in areas of low SES are unlikely to be able to

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<sup>12</sup> Another relevant social process that helps explain these finding is that in the past two decades, organized groups of young, privileged Ultra-Orthodox Zionist families have moved to peripheral towns in an ideological social movement aimed at socially and religiously empowering these towns. In some of these cases, despite the fact that the group tried to socially integrate into the local community, once children reached the age of formal schooling, parents were unwilling to enroll their children to local religious state schools, that, in their view, compromised the education of their children, and *Torani* schools were established (Herman et al. 2014). An alternative explanation for the relative unpopularity of *Torani* schools in areas of high SES, could be that high SES families send their children to other kinds of creaming schools such as private elitist schools,

access *Torani* schools because of several direct and indirect barriers that will be described shortly.

Due to the correlation between SES and ethnicity in Israel, the findings also suggest that *Torani* schools are also segregated along ethnicity.

Admittedly, the study conducted here cannot offer any definitive insights as to the actual motivations that direct parental decision-making. It does not shed light on whether parents actually choosing *Torani* schools do so because of the schools' religious nature or because they seek elitist and segregated education (or, what is also quite possible – a combination of both).<sup>13</sup> In terms of education policy and law, the *de facto* segregation and creaming that the study uncovers suffices to justify state intervention, regardless of the motivations that drive them. However, the tests, and especially the third test, also suggest, in our view, that the motivations for creating *Torani* schools, at least in areas of low SES, are

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including non-state *Torani* schools. However this can only be part of the explanation, because there are only a handful of non-state *Torani* schools operating. As to other elitist schools, religious families in Israel rarely enroll their children in non-religious schools. Therefore, in the absence of *Torani* schools, it is safe to assume that these children attend regular religious state schools.

<sup>13</sup> Yablon (2009) conducted a qualitative study using interviews in order to examine parental motivations in choosing between regular religious state schools and *Torani* schools, and found that religious motivations were secondary to considerations of gaining educational advantage. However Yablon's study has a crucial shortcoming because it interviews parents in the state system with regard to the choice of non-state *Torani* schools.

predominantly elitist. The fact that *Torani* schools are especially prevalent in low SES areas indicates that the dissatisfaction with local state schools and the negative peer effects within them motivates parents in many cases to establish and choose *Torani* schools.

Another question that this research leaves unanswered is whether the choice of *Torani* schools does indeed result in educational advantage.<sup>14</sup> A study performed failed to find indication of higher success rates for *Torani* schools in the national assessment (Berger 2015). However, although clearly educational achievements such as scores in national assessments or matriculation exams are an important manifestation of educational success (and easiest to check), cultural and social capital, as well as capabilities learnt at school and the prestige it bestows on its alumni may be just as important an instrumental benefit for students in elitist schools. This is especially pertinent in schools that as a matter of pedagogical or religious values place special emphasis on learning things that are not evaluated in national assessments, such as religious studies.

## VI. Legal Regulation of Religious Schools

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<sup>14</sup> MoE data concerning the correlation between SES and scores in the Israeli national assessment, shows a positive correlation between high SES and success, however this does not pertain to *Torani* schools in particular (MoE 2013).

The findings of the empirical study suggest that *Torani* schools in Israel have become a popular educational option for privileged families seeking to exit regular state schools. This tendency is especially strong in areas in which the average SES is low, making the negative effect that *Torani* schools have on regular religious state schools all the more severe.

We now argue that the legal regulation concerning the establishment and operation of religious schools in Israel plays a crucial role in enabling these processes, and that similar legal regulation elsewhere may have similar effects. The law creates and frames the different educational options that parents have, assigning different costs and gains to different options, and thus shaping their preferences. Israeli education law is designed in a way that makes *Torani* schools an especially attractive educational option even when parents lack a strong religious motivation. And while we do not claim that all parents choosing *Torani* schools do so based on elitist motivations, we do argue that the law makes *Torani* schools especially compelling for parents that are motivated, even partly, by the pursuit of educational advantage.<sup>15</sup>

This ‘legal opportunity structure’ stems from the special status that religious education enjoys in Israeli law. All liberal democracies protect parents’ rights to direct the upbringing of their children, especially the religious, spiritual and moral

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<sup>15</sup> Choices in education (as is the case in other realms) can be, and typically are, comprised of multiple considerations: religious affiliation and educational quality are only two of them.



aspects thereof (Macedo 2000; Kymlicka 1995). Parents are allowed to establish and enroll their children in religious schools, or to prevent their children from being subject to unwanted religious indoctrination (Galstone 1995; Carter 1997; Shiffrin 2002). This right receives different forms of protection in different countries. In some, religious education is completely privatized, and does not receive public funding (DeGroff 2003), whereas in others, it is publicly funded and regulated (Wolf & Macedo 2004). Israel's Education Law grants a strong protection to parents' interest in controlling the religious upbringing of their children (*Rubinstein v. The Knesset* 2014), that is manifested in various different provisions, such as the establishment of the state religious education, a parallel system of religious state schools operating throughout the country;<sup>16</sup> generous financial support for non-state schools that enjoy educational autonomy and control over curricula (*Rubinstein v. Knesset* 2014),<sup>17</sup> staff and student assignment and other aspects of school operation.<sup>18</sup> Even within the state sector,

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<sup>16</sup> It should be noted that there are only Jewish religious state schools. Religious schools belonging to other religions are all non-state schools.

<sup>17</sup> Schools of the two largest Ultra-Orthodox networks are fully funded by the state. Others receive between 55% and 75% of the funding that state schools receive (The Budget Principles Act; The 1953 National Education Regulations (Recognized Institutions); Maoz 2007)

<sup>18</sup> Although they are not allowed to discriminate students, a practice prohibited in all schools in Israel. The 2008 Culturally Unique Schools Act; The 1969 Supervision Over Schools Act; The 2000 Students' Rights Act.

Jewish religious schools enjoy preferential funding (MoE 2015), they set their own behavior codes and have some control over the content of learning. Within the category of religious state schools, however, we proceed to show that *Torani* schools are treated differently than regular religious state schools and are allowed freedoms that other state schools do not enjoy. This special protection is crucial, we argue, to the ability of *Torani* schools to become a vehicle for social exclusion and segregation.

There are three main categories in which the legal rules that apply to *Torani* schools differ, de facto, from those that apply to regular religious state schools causing the effects described above: the establishment of new schools; school funding; and student admission.<sup>19</sup> We now proceed to elaborate on each of the three and explain why these differences create an opportunity for these schools to become havens for educational advantage and social stratification.

a) Establishing a *Torani* School

The decision to establish new state schools is within the discretion of the MoE and involve considering the needs of each locality – the expected growth of population and the capacity of existing schools. As a rule, when an existing

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<sup>19</sup> These aren't the only legal differences. They are also often allowed to choose their staff, which grants them important benefits. The three specified above are the merely the most influential in terms of segregation.

school can sufficiently absorb and serve all potential students, a new state school is not authorized. Moreover, when a new school is established, measures are routinely taken in order to ensure that students are distributed evenly between the new school and any existing school in its vicinity.

These general considerations do not apply in the same way to *Torani* schools. *Torani* schools are not seen as equivalent to other religious state schools, but rather as an educational option that is distinct from that of regular religious state schools. As a result, the considerations that prompt the establishment of a *Torani* school are not limited to growth of population and issues of capacity and focus instead on the question whether a sufficient number of parents are interested in this educational option (MoE 2002).<sup>20</sup> *Torani* schools, therefore, are authorized in cases in which absent a religious justification the school would not be established.

This practice, of granting special weight to religious justifications in establishing schools is well-established legal doctrine in Israeli law, and the right to choose a school according to parents' way of life has been highlighted by courts time and again (Perry-Hazan 2013). To give one example, in 2001, the Tel Aviv District Court struck down the MoE's decision to close the *Atid* school, a

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<sup>20</sup> These considerations are also involved in the establishment of other kinds of Magnet Schools, causing similar problems, however the right to religious education is granted stronger protection than the right to specialized education that is not religion-related.

newly established non-state school identified with the Scientology movement. Based on numerous inspections, the MoE concluded that the school was not supplying satisfactory education to its students, and after the school failed to improve, a closing order was issued. The court accepted the MoE's opinion according to which the school was inadequate in educational terms, however decided to allow the school to go on operating, stating that only rarely can the parental right to direct their children's education be restricted.

This case demonstrates the importance courts assign to faith-based schools in realizing the parental right to direct the upbringing of their children that overrides other considerations.<sup>21</sup>

#### b) Funding

The second difference in the legal regulation of *Torani* schools in comparison to that of regular religious state schools concerns their advantageous funding. *Torani* schools offer their students enhanced Jewish studies and supplemental activities in addition to the full curriculum taught in all state schools. Additionally, these schools often employ ancillary staff such as Rabbis that are meant to strengthen the spiritual leadership of schools. These 'extras', that

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<sup>21</sup> Another notable expression of this is the legislative exemption for Ultra-Orthodox schools from teaching the core curriculum (2008), that were upheld by the Supreme Court (*Rubinstein v. The Knesset*, 2014).

are inherent characteristics of *Torani* schools, require additional resources. These resources are accumulated both by receiving excessive public funding and by charging payments from parents. For example, in a contract between a *Torani* network and the MoE signed in 1995, the MoE states that it will make an effort to obtain further teaching hours for religious studies and for employing Rabbis in the *Torani* schools, in order to support their unique curriculum.<sup>22</sup> Additionally, the contract states that the separation between boys and girls will be preserved (and funded) even if it cannot be justified in terms of class sizes.<sup>23</sup> Therefore, despite the fact that *Torani* schools do not have different legal and institutional status compared to regular religious state schools, decision makers are likely to regard their special needs as justifying excessive support.

Moreover, the restrictions that apply to regular state schools concerning parents' payments do not apply to *Torani* schools, and alternative regulations allow schools choosing additional Jewish religious educational programs to charge more than ten times the amount stated in the general regulations (MoE 2014). The possibility to charge extensive payments from parents in *Torani* schools have several effects: First, they make it possible for these schools to offer an enhanced educational service to their students. These funds go to additional learning hours, educational programs and staff, all of which help make these

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<sup>22</sup> Section 11. On file (in Hebrew) with the authors.

<sup>23</sup> Section 10.

schools “better” in some sense, and more attractive than regular religious state schools. Privileged parents are often eager to invest private funds to enhance their children’s education and *Torani* schools, as opposed to regular religious state schools, allow them to do so. At the same time, allowing these schools to charge high payments from parents is likely to discourage disadvantaged families from enlisting and to make them attractive exclusively to families from higher SES. Although *Torani* schools are not allowed to condition enrollment on paying these fees, and even when they offer scholarships for students from families that cannot afford the payments, merely charging them can deter disadvantaged families from applying. Moreover, the regulations allow schools to exclude non-paying students from some of the privately funded programs, making it even more likely that low SES parents will be deterred from enlisting their children to *Torani* schools.

c) Student Admission

The third category in which the legal regulation of *Torani* schools differs from that of regular religious state schools concerns student admission. As mentioned above, any child, whether observant or not, can enlist to the local religious state school, according to their choice. While religious state schools may regulate behavior within the school, students’ conduct outside the school is not subject to school control. *Torani* schools have different practices. First, *Torani* schools that transformed from non-state schools into state schools often preserve

the same enrollment policies they had before becoming state schools. Sometimes, this is even formalized in agreements signed between the *Torani* schools and the MoE when incorporating them into the state education system. For example, an agreement between the MoE and “Morasha” *Torani* School in 2010, grants the school exclusive control over admission, stating that “New students will not be directed by the Jerusalem Education Authority without the agreement of the school”.<sup>24</sup>

*Torani* state schools are often established as magnet schools that are not linked to a certain catchment area. State magnet schools are, as a matter of law, supposed to apply open enrollment policy, and when the demand exceeds the places in the school a lottery should be drawn (MoE 2011). Still, in many *Torani* schools around the country, enrollment involves interviewing the student and their parents, a practice not permitted in the regulations, but overlooked by the authorities. The schools may claim that the interview is merely a means to “get to know” the student, and to orient the student and family to their special religious mission. However, as the interviews take place prior to assignment decisions, they sometimes result in the schools dissuading “unsuitable” students from enlisting.

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<sup>24</sup> Although the agreement reasserts the legislated duty of *Torani* schools not to discriminate according to ethnic or socioeconomic reasons, the agreement allows rejecting students on “educational and religious” grounds. See section 5 agreement between “Morasha” *Torani* School in Jerusalem and the MoE, 2010 (on file with authors) [Hebrew].

And even if the schools genuinely try to allude only to religious criteria in the interviews, there is no guarantee that other considerations such as academic ability or cultural capital won't play a role, especially when demand for places in the schools is high. Additionally, the abovementioned fact of tuition charged in *Torani* schools affects the composition of the applicant pool, so that it is likely to be comprised mostly of families from higher SES.

The analysis performed above leads to the following general observation: Although *Torani* religious state schools are not a formal category in education law and policy, they have become, de facto, a separate school system, with its own legal framework. This policy is brought about without explicit debate concerning whether the differences in the religious community justifies creating two different school systems, in light of the social, financial, and pedagogical outcomes that this emerging separation may bring about.<sup>25</sup>

The separate education system created *de-facto* by the three categories of legal regulation offers an explanation to the findings of the empirical study. According to the analysis, legal regulation of religious schools and the advantages it confers on faith-based schools has allowed *Torani* schools to transform into elitist segregative schools. This outcome was not intended by law. The legal rules

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<sup>25</sup> This redundancy is especially troubling in light of the fact that Arab state schools in Israel that serve the Arab Palestinian minority in Israel and teach in Arabic are not organized in a separate system of its own, and are a part of the secular state system.



explicitly aim to facilitate and support religious rights of parents and communities, and by no means to worsen educational inequality and SES segregation. Indeed, education law explicitly aims to promote social integration and equality of opportunity. Nonetheless, the framework created in order to facilitate religious education has had the unexpected effect of allowing other kinds of motivations to enter. Parents seeking segregated education and schools comprised of students from privileged backgrounds are incentivized to pursue these ends through religious education. The “prices” attached to this option, namely attending a religious school that does not suit one’s way of life, effectively limits the class of parents that might be able to choose this option: only parents that are Zionist-Orthodox are likely to find this option beneficial all things considered.<sup>26</sup> And indeed, *Torani* schools do not cream students from secular state schools, only from religious state schools.

In addition to the practical appeal of choosing *Torani* schools, parents are likely to frame their preference for *Torani* schools in religious terms also because of the positive moral evaluation that this choice entails. The special weight law grants religious education accrues positive normative evaluation (and self-evaluation) on parents that choose segregated education for their children based on their religious identity, whereas parents whose educational preferences include

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<sup>26</sup> Although similar arguments can be made concerning schools with unique educational agenda such as democratic schools, Anthroposophic school, etc.

the desire that their children to study with children who are “like them” are condemned as elitist and even racist. As a result, although the social consequences of establishing *Torani* schools are negative in much the same way as private elitist schools, the former are morally encouraged.

The question of how these processes came about, and why the MoE allows them to go on, is intriguing. At least partly, lack of awareness and challenges of governance are to blame. However, these reasons cannot fully account for the lack of regulatory action, especially in recent years since numerous complaints have been made against these schools, and studies have been conducted that substantiate these concerns.

A comprehensive explanation of the social, legal and political powers behind these processes requires further work, and will have to wait for another day. Suffice for now to say that these educational processes can be explained also by political pressures within the national-orthodox community and the political party that represents the community. For many years, the Minister of Education was a member of the National Orthodox political party, resulting also in a high representation for this religious constituency in the MoE bureaucrats. It seems plausible that giving *Torani* schools special treatment served as a means to maintain unity within the National-Orthodox community and party, and to prevent the emerging Ultra-Orthodox Zionism sub-community from drifting closer to Ultra-Orthodoxy.

Be that as it may, the lesson to be learnt from *Torani* schools in Israel is compelling. The legal protection of religious education, by granting religious schools advantage over regular public schools, creates an opportunity structure that encourages advantage seeking parents to turn to religious schools.

d) Reforming The Regulation of Religious Education

In light of the consolidation of the two parts of the argument – that religious schools such as *Torani* schools may become socioeconomically segregated and create creaming; and that law is responsible for these processes, at least partly – restructuring legal regulation of religious education is called for.

Naturally, each education system is unique and complex, and any attempt to give general guidelines is bound to lack the required sensitivity to local contingencies. We will, therefore, merely state some of the more general conclusions that stem from the previous discussion.

In order to contend with the inequality caused by religious schools such as *Torani* schools, the advantages they enjoy have to be neutralized, so that advantage-seeking parents will not be able to use religious arguments in order to seek educational advantage. Excessive funding and parents' payments have to be restricted and student selection must be disallowed, (both explicit payments and selection and other practices to that effect: requests for donations; interviews and acquaintance meetings prior to formal enrollment). These two characteristics are

the main means of excluding disadvantaged students from schools in general, and therefore equalizing them is expected to promote integration.

There may be cases, however, in which despite adopting such measures, schools may remain unequal and segregated. Research shows that choice programs, even when they include only options of free education and no selection often result in social segregation, because of the disparities in the quality of parental decision making (Fuller & Elmore 1996; Green 2005; Lauder & Hughes 1999; Whitty 1997). Children from disadvantaged families often do not make use of school choice reforms and attend the default local school they are assigned to. Privileged parents, on the other hand, are better educational choosers, and are also more likely to be assigned the school of their choice.

As a result, the responsibility for protecting disadvantaged students and the public schools must remain with educational decision makers. When confronted with a decision whether to authorize a new religious school, they should be required to consider the effect that establishing and operating it may have on other schools in the area. The examination should not be limited to the composition of students within the religious school itself, but also focus on the effect the school has on neighboring schools. When religious schools cause, or are likely to cause, social segregation and creaming, they should be required to adjust their policies, or be denied the power to make admission decisions. If no effective measures can be devised in order to prevent these processes, authorizers must

consider rejecting applications for establishing religious schools altogether because of the damage they inflict on regular state schools and students who attend them.

This suggestion may seem quite radical. Obviously it entails the loss of what many people view as valuable educational options. For some, the fact that the educational option consists in religious education makes this restriction especially problematic. There are also substantial differences between preventing the establishment of new schools and closing operating schools, as the latter involves possible harm to children already learning in the school. While these are weighty considerations, the negative effect that religious schools such as *Torani* schools have for public education is also significant. Decision makers need to weigh these negative consequences against the importance of religious schools for religious parents and communities. There may be cases in which the harm in terms of inequality is small, and the school realizes an essential part of parents' religious rights. However, when religious schools are relatively similar to public schools, and do not offer an education exceedingly distinct from them, as is the case in *Torani* schools, the weight this justification should be given is relatively weak (Harel Ben Shahr 2015).

Several examples of provisions that condition the establishment and operation of schools on maintaining SES integration and reflective student composition can be found. One such example is found within Israeli Education

Law itself, in the rules that apply to non-state schools. The MoE is authorized to reduce recognized schools' funding and to deny their recognition if the social composition of the student body does not reflect that of the local authority or if they cause harm to state schools by creaming students.<sup>27</sup>

Ideally, of course, state schools such as *Torani* schools we have studied, do not require such regulation. The public administration of state schools entails control over their establishment, student enrollment and funding, and this control is supposed to ensure integration and diversity directly rather than through funding incentives and conditions for recognition. This, unfortunately, is not the case with *Torani* schools because they receive special treatment, and regulations that apply to regular state schools apply only partly to them. Therefore, attention must be drawn to the processes these schools cause and specific regulation must be designed accordingly.

A similar example of legal regulation concerns some of the US states' charter legislation. Delaware, for example, requires charter school authorizers, when considering a charter application, to “also consider the potential positive and negative impact of the proposed new school... on the schools and the community from which the charter school's new students will likely be drawn... determining whether the proposed new school or expansion is contrary to the best

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<sup>27</sup> 1953 National Education Regulations (Recognized institutions) as amended in 2008, 2009.

interests of the community to be served, *including both those students likely to attend the charter school and those students likely to attend traditional public schools in the community*” (Harel Ben Shahar 2016). Similar provisions, though less detailed, exist also in Connecticut, Colorado and Arkansas (Harel Ben Shahar 2016).

An important trait of these provisions is that they do not create a sweeping prohibition of unique educational options. They require a case-by-case examination of schools, and only when schools indeed create undesirable social processes, they are restricted. This, in our view, constitutes a desirable balance between the parental interest in religious education and educational choice, and the need to ensure equal educational opportunity.

While we call for adopting legal rules along these lines, we realize that the supremacy that courts currently consign to the parental rights to religious education is likely to hinder substantial reform. Therefore, a wider normative debate is imperative, aimed at delineating the limits and boundaries of parents’ rights in education. While this mission exceeds the scope of this article, the discussion herein may inform such a debate, by highlighting the substantial non-religious motivations that are involved in religious choices in education, and the social stratification that follows.

## VII. Conclusion

There are several different strategies that privileged parents can employ in order to seek educational advantage for their children. Choosing a religious school is perhaps not the most straightforward strategy, but this paper shows that when ‘the price is right’, religious education can transform into a mechanism for creating segregated schools. This argument holds implications that transcend the Israeli context, and transcend the context of religious education altogether. It shows that the educational arms race is a powerful driving force that continuously shapes and transforms the educational preferences of individuals. Law is one of the primary social institutions that affect the strategies that parents are able to use in pursuit of their goals. Decision makers, therefore, must be especially mindful when regulating education in order ensure it promotes the exact aims it sets out to accomplish and avoids unintended outcomes.

### **Appendix 1**

The data concerning fifth grade students of low, medium and high SES is based on information collected in the ‘Growth and Effectiveness Measures for Schools’, the Israel National Standardized Student Assessment. This source was chosen, despite shortcomings that will be described hereinafter, because it is the only formal and reliable indicator of student SES in schools. Until 2013 schools in Israel participated in the National Standardized Student Assessment once every



two years, each being tested in two subjects: Hebrew and Mathematics, or English and Science. Within two years, therefore, all schools in Israel are tested, albeit in two of the four subjects. We examined students that were tested in Science and Hebrew (one of each pair of subjects), thus covering all schools. We could equally have chosen Mathematics and English, the corresponding subjects. In order to maximize the sample, our study includes schools that participated in the assessment in one of the two years 2012-2013 ( $N = 416$ ).

Schools that were inactive in one of these years or that their gender-separation policy changed in the course of these years were excluded from the sample (34 schools, about 8%). The sample was further reduced because MoE reports on the National Assessments do not include data concerning newly established schools that do not have students in the fifth grade; schools in which only a small number of students were tested; or schools in which the integrity of the test was breached. In order to ensure that the sample was representative of the school, we also removed from our sample schools in which less than 10 students or less than 80% of the students in a class participated in the test. Finally, we were left with 332 schools in our study ( $N = 332$ ), that constitute approximately 80% of the religious state schools that operated in one of the two years 2012-2013.

The Ministry of Education, in the data derived from the national assessment divided of students into low, medium, and high SES according to the

“Strauss index”, an index that integrates data concerning an individual and data at the school level, as depicted in the table:

**Table 6: Strauss Index Variables**

<b>Type of variable</b>	<b>Variable</b>	<b>Weight</b>
<i>Individual</i>	Parent education	40%
	Country of birth and immigration from developing countries	20%
<i>School level</i>	Income per capita	20%
	Geographical periphery	20%

## **Appendix 2**

The ICBS data used in this study concerning the SES of the geographical area of the school is based on the analysis of the last population census performed in Israel in 2008, and is formed by an integration of 16 regional social and economical factors:<sup>28</sup>

### **Demography**

1. Age median
2. Dependency ratio
3. Average number of persons per household

### **Schooling and Education**

<sup>28</sup> [http://www.cbs.gov.il/publications13/1530/pdf/tab01\\_01.pdf](http://www.cbs.gov.il/publications13/1530/pdf/tab01_01.pdf)

1. Average years of schooling, of aged 25-54
2. Percent of Academic degree holders, of aged 25-54
3. Percent of workers in academic or managerial occupations

#### **Employment and Benefits**

1. Percent of wage and income earners, of aged 15 and over
2. Percent of women aged 25-54 not in civilian labor force
3. Percent of wage and income earners above twice the average wage
4. Percent of sub-minimum wage earners
5. Percent of recipients of income support and income supplement to old age pension

#### **Standard of living**

1. Average monthly income per standard person
2. Average number of vehicles at household disposal per aged 18 and over
3. Average number of rooms per person in household
4. Average number of bathrooms per person in household
5. Percent of households with PC and internet access

#### **Appendix 3**

In order to test whether the sample we used was representative, we used Chi-square goodness of fit test to verify that there are no significant differences

between the distribution of the sample and the total school population concerning several parameters: the distribution of *Torani* and regular schools; distribution of LA according to SES; and distribution to geographical regions (Jerusalem; Haifa; Northern; Southern; Tel Aviv; Central; Judea and Samaria).

The tests were run with regard to the population of the school in the two years of the study (2012-2013). The differences in distribution of the schools' population in these two years are small and do not affect the goodness of fit test of the samples. Therefore we present here only the results for the year 2013.

The tests show that there are no significant differences between the sample (N = 332) and the population in terms of the distribution of *Torani* and regular religious state schools  $\chi^2(1) = 0.06$ , P = 0.8134, distribution of local authorities with different SES characteristics  $\chi^2(3) = 0.52$ , P = 0.9147, and distribution into different geographical regions,  $\chi^2(6) = 2.86$ , P = 0.8263. Further, there are no significant differences in the distribution of *Torani* schools in the sample to local authorities with different SES characteristics,  $\chi^2(3) = 0.13$ , P = 0.9885 and different geographical regions,  $\chi^2(6) = 0.57$ , P = 0.9969, compared to the population of *Torani* schools in the year 2013.

Additionally, there are no significant differences in the distribution of regular religious state schools in the sample to local authorities with different SES characteristics,  $\chi^2(3) = 0.51$ , P = 0.9174, and to geographic regions,  $\chi^2(6) = 3.98$ ,

$P = 0.6789$ , compared with the population of regular religious state schools in the year 2013.

The sample of schools that the index of statistical areas applies to them ( $N = 256$ ), while it is not significantly different from the population with regard to the distribution of *Torani* and regular schools,  $\chi^2(1) = 0.16$ ,  $P = 0.6908$ , and the distribution to local authorities with different SES characteristics  $\chi^2(3) = 1.06$ ,  $P = 0.7877$ , it is, however, significantly different with regard to the distribution of geographical regions,  $\chi^2(6) = 16.56$ ,  $P = 0.0110$ . The reason for this, as shown in table 9, is the small number of schools in the Judea and Samaria area that appear in this SA index. Most of the settlements in this area are smaller therefore they are not included in this index. Despite this, significant differences were not found in the distribution of *Torani* schools in the sample for local authorities with different SES characteristics,  $\chi^2(3) = 0.90$ ,  $P = 0.8242$ , and geographical regions,  $\chi^2(6) = 9.52$ ,  $P = 0.1466$ , compared to the population of *Torani* school in the year 2103. Additionally, there are no significant differences in the distribution of regular religious state schools in the sample to local authorities with different SES characteristics,  $\chi^2(3) = 1.30$ ,  $P = 0.7286$ , and to geographical regions,  $\chi^2(6) = 10.17$ ,  $P = 0.1177$ , in comparison to the population of regular religious state schools in the year 2013.

Tables 7-9 summarize the relation between the distribution of the samples and the distribution of the schools' population in 2013, regarding the following

parameters: distribution of schools into *Torani* and regular religious state schools;  
distribution of local authorities according to different SES characteristics and  
distribution to geographical regions.

**Table 7: Distribution of Schools into Regular and *Torani* schools in samples and school's population in 2013**

	N	<i>Regular Schools (%)</i>	<i>Torani Schools (%)</i>
Religious state schools 2013	409	53.1%	46.9%
Research sample	332	52.4%	47.6%
Research sample with <i>SA-SES</i>	256	54.3%	45.7%

**Table 8: Distribution of Regular religious state schools and *Torani* schools to Local Authorities according to SES in samples and MoE database**

	N	<i>LA-SES 1-3 (%)</i>	<i>LA-SES 4-5 (%)</i>	<i>LA-SES 6-7 (%)</i>	<i>LA-SES 8-10 (%)</i>
Religious state schools 2013	409	7.3%	61.1%	19.3%	12.2%
Research sample	332	6.6%	62.7%	19.3%	11.4%
Research sample with <i>SA-SES</i>	256	7.4%	61.7%	17.2%	13.7%
<i>Torani Schools</i> 2013	192	10.9%	68.8%	16.7%	3.6%
<i>Torani Schools</i> - Research sample	158	10.1%	69.6%	16.5%	3.8%
<i>Torani Schools</i> - Research sample with <i>SA-SES</i>	117	12.0%	66.7%	16.2%	5.1%
<i>Regular Schools</i> 2013	217	4.1%	54.4%	21.7%	19.8%
<i>Regular Schools</i> - Research sample	174	3.4%	56.3%	21.8%	18.4%
<i>Regular Schools</i> - Research sample with <i>SA-SES</i>	139	3.6%	57.6%	18.0%	20.9%

**Table 9: Distribution of regular religious state schools and *Torani* schools to geographical regions in Samples and school's population in 2013**

	N	Jerusalem	Northern	Haifa	Central	Tel Aviv	Southern	Judea and Samaria
Religious state schools 2013	409	11.5%	13.4%	8.1%	23.5%	8.6%	19.3%	15.6%
Research sample	332	11.1%	12.7%	6.9%	25.9%	7.2%	21.1%	15.1%
Research sample with SA-SES	256	12.9%	10.5%	7.8%	30.1%	9.0%	21.5%	8.2%
<i>Torani Schools</i> 2013	192	15.6%	10.9%	4.2%	19.3%	6.8%	17.2%	26.0%
<i>Torani Schools</i> Research sample	158	16.5%	9.5%	3.8%	20.3%	7.0%	17.7%	25.3%
<i>Torani Schools</i> Research sample with SA-SES	117	20.5%	10.3%	5.1%	23.1%	8.5%	17.9%	14.5%
<i>Regular Schools</i> 2013	217	7.8%	15.7%	11.5%	27.2%	10.1%	21.2%	6.5%
<i>Regular Schools</i> Research sample	174	6.3%	15.5%	9.8%	31.0%	7.5%	24.1%	5.7%
<i>Regular Schools</i> Research sample with SA-SES	139	6.5%	10.8%	10.1%	36.0%	9.4%	24.5%	2.9%

**REFERENCES:**

The 1953 National Education Act

The 2008 Culturally Unique Schools Act

Administrative Appeal (Tel Aviv Jaffa) 10-12-52641 *Ministry of Education v. Education for Leadership*. 2011.

Administrative Appeal (Tel Aviv) 1294/01 *Atid School v. Ministry of Education*. 2001.

Elizabeth Anderson, Elizabeth. 2007. Fair Opportunity in Education: A Democratic Equality Perspective. *Ethics* 117:595

Anderson, Elizabeth. 2010. *The Imperative of Integration*. Princeton: Princeton University Press.

Ben-Rafael, Eliezer and Sharot, Stephen. 1991. *Ethnicity, Religion and Class in Israeli Society*. Cambridge: Cambridge University Press.

Berger, Eyal. 2015 *The Religious Public Education In Israel: Status Report, Tendencies and Achievements* (Ne'emanei Torah Va'Avodah) [Hebrew].

Brighouse, Harry. 2011. Educational Equality and School Reform, in *Educational Equality*, (Graham Haydon, ed.) Continuum Publishing.

Carter, Stephen. L. 2014. Parents, Religion, and the Schools: Reflections on Pierce, 70 Years Later. *Seton Hall L. Rev.* 27:1194.

Chubb, John E. & Moe, Terry M. 1990. *Politics, Markets & America's*



*Schools*. Brookings Institute Press.

Clapp, John M., Nanda, Anupam, & Ross, Stephen L. 2008. Which School Attributes Matter? The Influence of School District Performance and Demographic Composition on Property Values. *Journal of Urban Economics* 63:451.

Clotfelter, Charles T. 2006. *After Brown: The Rise and Retreat of School Desegregation*. Princeton: Princeton University Press.

Coursen-Neff, Zama. 2004. Discrimination against Palestinian Arab Children in the Israeli Educational System. *N.Y.U. J. Int'l. L. & Pol.* 36:749.

DeGroff, Eric. A. 2003. State Regulation of Nonpublic Schools: Does the Tie Still Bind? *B.Y.U. Educ & L. J.* 2003:363.

Downes, Thomas A. & Zabel, Jeffrey E. 2002. The Impact of School Characteristics on House Prices: Chicago 1987-1991. *Journal of Urban Economics* 52:1.

Dronkers, Jaap. 2004. Do Public and Religious Schools Really Differ? Assessing the European Evidence. In *Educating Citizens: International Perspectives on Civic Values and School Choice*, ed. Patrick J. Wolf and Stephen Macedo. Washington DC: Brookings Institution Press.

Dronkers, Jaap & Robert, Peter. 2004 Has Educational Sector any Impact on School Effectiveness in Hungary? A Comparison of the Public and the Newly Established Religious Grammar Schools. *European Societies* 6:205.

Fuller, Bruce & Elmore, Richard F. 1996. *Who Chooses Who Loses? Culture, Institutions & The Unequal Effects of School Choice*. New York: Columbia University, Teachers College Press.

Galstone, William. 1995. Two concepts of Liberalism. *Ethics* 105:516.

Garcia, D. R. (2010) "Charter schools Challenging Traditional Notions of segregation", in Lubienski & Weitzel, eds *The Charter School Experiment: Expectations; Evidence and Implications*. Harvard Education Press.

Green, Christopher. 2005. *The Privatization of State Education: Public Partners, Private Dealings*. London & New York: Routledge.

Gross, Zehavit. 2003. State Religious Education in Israel: Between Tradition and Modernity. *Prospects* 33(2):149.

Harel Ben Shahaar, Tammy. 2015. Distributive Justice in Education and Conflicting Interests: Not (Remotely) As Bad As You Think. *Journal of Philosophy of Education* 49:491.

Harel Ben Shahaar, Tammy. 2016. Race Class and Religion: Creaming and Cropping in Religious Charter Schools. *Columbia Journal of Race and Law* 7:1

The Israel Democracy Institute and Avihai Foundation. 2009. *Israeli Jews a Portrait: Beliefs and Tradition and Values of Jews in Israel*.

James, Osamudia. 2013. Opt-Out Education: School Choice as Racial Subordination. *Iowa L.R.*

Jencks, Christopher. 1988. Whom Must We Treat Equally for Educational Opportunity to be Equal. *Ethics* 98:518 (1988)

Jenkins Robinson, K. 2009. The Constitutional Future of Race-Neutral Efforts to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools. *B.C.L. Rev.* 50:277 (2009)

Johnson, Kirk A. 2000. *The Peer Effect On Academic Achievement Among Public Elementary School Students*. Heritage foundation.

Jonathan, Ruth. 1990. State Education Service or Prisoners Dilemma: The Hidden Hand As Source of Education Policy. *British Journal of Educational Studies* 38:116

Kahlenberg, Richard. D. 2001. *All Together Now: Creating Middle-Class Schools Through Public School Choice*. Brookings Institution.

Knotek, Steve. 2003. Bias in Problem Solving and the Social Process of Student Study Teams: A Qualitative Investigation. *The journal of Special Education* 37: 2

Kymlicka, William. 1995 *Multicultural Citizenship*. Oxford: Oxford University Press.

Lareau, Annette. 2003. *Unequal Childhoods*. Berkely, LA, London: University of California Press.

Lauder, Hugh. and Hughes, David. 1999. *Trading in Futures: Why Markets in Education don't Work*. Buckingham: Open University Press.

Lohmann, Henning. 2011. *Private school Attendance in a Differentiated Educational System: Recent Developments in Germany* (paper presented at ISA spring Meeting).

Lubienski, Christopher. A. & Lubienski, Sarah T. 2014. *The Public School Advantage: Why Public Schools Outperform Private Schools*. Chicago: University of Chicago Press.

Maoz, Asher. 2007. *Religious Education in Israel*. Tel Aviv University Working Paper 44.

Macedo, Stephen. 2000. *Diversity and Distrust: Civic Education in a Multicultural Democracy*. Cambridge, MA: Harvard University Press.

Meirovich, H. W. (1999), *The Shaping of Masorti Judaism in Israel*.

Merry, Michael. S. 2014. The Conundrum of Religious Schools in Twenty-First Century Europe. *Comparative Education* 51:133.

Meuret, Denis. 2004. School Choice and its Regulation in France In *Educating Citizens: International Perspectives on Civic Values and School Choice*, ed. in Patrick .J Wolf and Stephen Macedo. Washington DC: Brookings Institution Press.

Michaeli, Nir. 2012. Privatization of the Education System. In *Privatization Policy in Israel: State Responsibility and the Borderline Between*

*Private and Public*, ed. Yitzhak Gal-Nur, Amir Paz-Fuchs and Nomika Zion. Van Leer Press. [Hebrew]

Ministry of Education. 2002. *The Report on Unique Schools and School Choice*. [Hebrew]

Ministry of Education. 2014. *Circular 74/12(a) Parents' Payments for Additional Torani Curriculum in Religious State Schools*. [Hebrew]

Ministry of Education. 2011. *Circular 3.1-40 Update of the Regulations for the Committee on Unique Schools and Choice Areas and Experiment for Expanding Choice Areas in Local Authorities* [Hebrew].

Ministry of Education. 2013. *Growth and Effectiveness Measures for Schools, the National Standardized Student Assessment 2013* [Hebrew].

Ministry of Education. 2015. *Transparency in Education Budget – Main Findings* [Hebrew].

Minow, Martha. 2011. Confronting The Seduction of Choice: Law, Education and American Pluralism. *Yale L.J.* 120:814

Note (1977): Section 1981 After *Runyon v. McCrary*: The Free Exercise Right of Private Sectarian Schools to Deny Admission to Blacks on Account of Race. *Duke L.J.* 1977:1219.

Perry Hazan, Lotem. 2013. The right to Education in a Constitutional Revolution Era. *Law and Business* 16:151 [Hebrew]

Herman, Tamar. et. al. 2014. *Religious? National! The Religious Zionist Sector* 2014. Jerusalem: The Israel Democracy Institute [Hebrew]

Hirschman, Albert O. 1991. *The Rhetoric of Reaction: Perversity, Futility, Jeopardy*. Cambridge, MA: Harvard University Press.

Orfield, Gary and Lee, Chugmei .2005. *Why Segregation Matters: Poverty And Educational Inequality*. The Civil Rights Project, Harvard University.

Peller, Garry. 1985. The Metaphysics of American Law. *Cal.L.Rev.* 73:1151.

Rothstein, Richard. 2004. *Class And Schools: Using Social, Economic and Educational Reform to Close the Black-White Educational Gap*. Economic Policy Institute.

Rotunda, Ronald D. 1989. Runyon v. McCary and the Mosaic of State Action. *Washington.U.L.Rev.* 67:47.

HCJ 3752/10 *Rubinstein v. The Knesset* (2014).

Runyon v. McCary 427 US 160 (1976).

Rumberger, Russell W. and Palardy Gregory J. 2005. Does Segregation Still Matter? The Impact of Student Composition on Academic Achievement in High School. *Tchrs.C.Rec* 107:1999.

Ryan, James E. .2007. The Supreme Court and Voluntary Integration. *Harv. L. Rev.* 121:131.

Schwartzwald, Yosef. 1990. *The Religious State Education: Reality and Research*. Ramat Gan, Israel: Bar Ilan University Press. [Hebrew]

Shiffrin, Steven H. 2002. Children and Education: Tensions Within the Parent-Child-State Triad: The First Amendment and the Socialization of Children: Compulsory Public Education and Vouchers. *Cornell J. L. & Pub. Pol'y* 11:503.

Shir, Zvi. 2014. *Gender Separation in Elementary Religious State Schools* (Israel Bank, Research Division).

Skiba, Russell J., et al. 2002. The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment. *Urban Review* 34:317.

Sunstein, Cass R. 1990. Paradoxes of the Regulatory State. *University of Chicago L. Rev.* 57: 407

Swift, Adam. 2003. *How Not To Be A Hypocrite: School Choice For The Morally Perplexed Parent*. London: Routledge.

Suchman, Mark C. 1997. On Beyond Interest: Rational Normative and Cognitive Perspectives in the Social Scientific Study of the Law. *Wis. L. Rev.* 1997:475.

H CJ 7426/08 *Tebeka v. Town of Petah Tikva* (2010).

Tyler, Tom R. 1990. *Why People Obey the Law*. Princeton: Princeton University Press.

Welner, K. & Oakes, J. (1996) (Li) ability grouping: The new susceptibility of school tracking systems to legal challenges, *Harvard Educational Review* 66:451.

Whitty, Geoff. 1997. Creating Quasi-Markets in Education: A Review of Research on Parental choice and School Autonomy in Three Countries. *Review of Research in Education* 22:3.

Yablon, Yaacov B. 2009. Privatization of Religious Public Education in Israel: Enhancing Parents' Educational Goals or Fostering Segregation. *International Journal of Inclusive Education* 13:539.

Zimmer, Ron W. & Toma, Eugenia F. 2000. Peer Effects in Private and Public Schools Across Countries. *Journal Of Policy Analysis & Management* 19:75.