Article

Religious Rights and Involuntary State Institutions in Democratic Countries: On Evenhandedness and Ecumenism in Militaries

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Abstract: Militaries present a difficult challenge for scholars interested in navigating the complex demands of religious liberty and religion-state relations. The reason is that the most familiar features of religion-state relations in liberal countries—governmental non-interference and the structure of religious associations as voluntary associations—are incompatible with the structure of militaries as involuntary organizations that are nonetheless highly important institutions in even liberal-democratic countries. How should scholars accustomed to the liberal framework going back to Locke, hence, theorize the desirable religious-institutional state of affairs within involuntary institutions such as militaries? As the governmental non-interference model is inadequate, the argument to be presented here is that the involuntary nature of militaries presents the liberal-minded theorist, with unusual dilemmas, and hence would make two models most adequate for a religious-institutional state of affairs within militaries: evenhandedness (or multiple establishments) and ecumenism, a somewhat unusual category.

Militaries present a difficult challenge for scholars interested in navigating the complex demands of religious liberty[1] and religion-state relations. The reason is that the most familiar features of religion-state relations in liberal[2] countries—governmental non-interference and the structure of religious associations as voluntary associations[3]—are incompatible with the structure of militaries

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1   Religious liberty, as central to liberal theory, law and countries, is recognized by many prominent scholars of liberalism, see: (Waldron 1987, p. 130; Rawls 1996, pp. 30, 291; Laborde 2017). Religious liberty is understood here as the ability, unconstrained by the government, to hold religious beliefs or none at all, to convert to a different religion or cease to believe, to associate with other like-minded religious individuals, and to be able to publicly practice one's religion, given usual public safety and other regulatory schemes (see, Rawls 1996, pp. 295–96; Evans 2001).

2   The word 'liberal' is used here to denote a Shklarian minimalist meaning, as she famously wrote: "Liberalism has only one overriding aim: to secure the political conditions that are necessary for the exercise of personal freedom. Every adult should be able to make as many effective decisions without fear or favor about as many aspects of her or his life as is compatible with the like freedom of every other adult. That belief is the original and only defensible meaning of liberalism" (Shklar and Rosenblum 1989, p. 21); see also Gaus et al., who wrote, in a similar liberal 'minimalist' manner: "The Fundamental Liberal Principle holds that restrictions on liberty must be justified" (Gaus et al., para. 1.1). This minimalist (although not uncontroversial) approach to liberalism is especially suitable to the interest of the current essay in total institutions, and see in the text.

3   See: Nussbaum (2008); Jobani and Perez (2017, chp. 5).

as inherently involuntary organizations,[4] yet highly important institutions in even liberal countries.[5] How should scholars accustomed to the liberal framework, going back to Locke (2010), hence theorize about the desirable religious-institutional state of affairs within involuntary institutions such as militaries? Notably, in recent years, liberal theorists who have analyzed general religion-state relations did not include a dedicated discussion of religions in militaries and this topic remains a blind spot in the liberal theory literature (see, Laborde 2017; Spinner-Halev 2000).[6] The argument to be presented here is that the involuntary nature of militaries presents the liberal-minded theorist with unusual dilemmas, and hence would point to two models as those most adequate for religious-military institutions: evenhandedness (or multiple establishments) and ecumenism, a somewhat unusual category to be discussed below. Note, however, that the constraints posed by the structure of militaries and the difficulties associated with the governmental provision of religious goods within a military context create difficult dilemmas even for the noted models of evenhandedness and ecumenism, or some combination of both. As I. Berlin argued, we live in a world in which conflict of values are inevitable[7] (in this case, military requirements, and the religious interests and rights of chaplains and soldiers), and the reader should not expect that the dilemmas to be presented will have straight-forward solutions.

The structure of this article is as follows: Section 1 presents the structure of militaries as involuntary institutions, and the implications of this particular structure to any attempt to theorize an adequate religious-institutional state of affairs or 'models' for militaries; emphasizing why the involuntariness of militaries rules-out the non-interference model (also known as the separation model). Section 2 presents three models of religion-state relations as are exercised by militaries in democratic countries: the religious-majoritarian approach (RMA), evenhandedness, and ecumenism. As such models are applications and modifications of general religion-state arrangements (or general approaches to religion as a whole), for each model, a succinct definition and discussion of the general model is followed by a description of its application to the military (and provides adequate examples). Section 3 critically analyzes the three models described in Section 2 from the perspective of a liberal institutional design that aims to uphold the basic religious liberties of both soldiers and chaplains; it points to the permissibility of two models: evenhandedness and ecumenism (while also pointing to the complex implications of adopting either of these two models) and indicates strong reservations vis-a-vis the RMA model. The final section, Section 4, aims to demonstrate the utility of the typology suggested via an analysis of a recent religion-state controversy that took place at the Israel Defense Force (IDF) regarding the burial of soldiers.

1. Militaries as Involuntary Institutions

A typical liberal-democratic theorist, court of law, or a policy maker, attempting to illustrate a satisfactory model of religion-state relations, such that would protect religious freedom and freedom of association in regular circumstances of a liberal society, would expectedly illustrate roughly the following model: individuals are free to join or form religious associations. These associations, with few exceptions, are free to handle themselves in any way they want, in the way of beliefs and practices (save

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[4] Here, involuntariness refers to the nature of the institution (the military). There might be variations between countries in which service is compulsory and those that are based on voluntary military service, in that the different entry point differs in terms of voluntariness. However (and this especially pertains to the U.S.) the wider economic inequalities of the general society influence the decision of individuals to join the military (Melin 2016). Given this background and the nature of militaries as a whole, the term 'involuntary organizations' seems appropriate.

[5] The terms liberal/liberal-democratic and democratic countries will be used here interchangeably, generally denoting democratic countries according to the polity scale (6 and above in this scale is defined as democratic; see: http://www.systemicpeace.org/polityproject.html).

[6] For a recent analysis of religion and militaries in the general political science literature, see Hassner (2016). However the current article deals with the distinct topic of religious liberty concerns of soldiers and chaplains, and so presents a different perspective.

[7] As he writes, "The world that we encounter in ordinary experience is one in which we are faced with choices between ends equally ultimate, and claims equally absolute, the realisation of some of which must inevitably involve the sacrifice of others" (Berlin 2002, pp. 213–14).

egregious violations of human rights).[8] Disagreements with regard to religious doctrines are settled by the freedom not to join or to leave such associations. The government does not fund, encourage or discourage such religious associations in any way and leaves them to the voluntary choices of individuals. This approach, which can be described as a model of non-interference, separation, or hands-off with regard to religion, is a familiar attribute of religion state relations in liberal countries, going back to Locke (2010), Jefferson [1785] (1984) and Madison (1785), galvanized in the *Everson* U.S. Supreme court decision,[9] and is practiced, most famously, with some modifications, in the U.S. and France (Nussbaum 2008; Robert 2003).[10]

This model, however, cannot be applied to the military. The reason is that militaries are non-voluntary institutions. The structure of the military, as succinctly explained by McConnell et al., simply does not leave private space for individuals to make voluntary choices with regard to religion: "What happens when the government is so pervasive and dominant a presence that there is little private space left for free exercise?" (McConnell et al. 2011, p. 296). In the military, a soldier's daily routine is structured, her/his movements are directed, and her/his freedom of movement, leisure time, access to non-military materials are all constrained by the necessities of military operations and structure, and the priority given to military needs over other interests and priorities. Furthermore, the importance of the military as an organization thus structured was clearly understood even by liberal figures such as Alexander Hamilton, as he wrote in the *Federalist* number 23: "The circumstances that endanger the safety of nations are infinite, and for this reason no constitutional shackles can wisely be imposed on the power to which the care of it is committed" (Hamilton 1787).

Militaries can be usefully classified as total institutions, as famously described by the sociologist E. Goffman: "A total institution may be defined as a place of residence and work where a large number of like-situated individuals, cut off from the wider society for an appreciable period of time, together lead an enclosed, formally administered round of life" (Goffman 1961, p. XVIII). The implication of this structure of the military is that the model of non-interference is inapplicable to the military. Put simply, applying the model of non-interference to the military means a de-facto denial of the capacity of soldiers to practice their religion. This was recognized in a famous U.S. court case; Katcoff v. Marsh, in which the judges had to decide whether the chaplaincy program of the U.S. army violates the non-establishment clause of the U.S. constitution and answered in the negative, commenting: "Pursuant to its Constitutional authority to raise and support armies, Congress has the power to make all laws necessary and proper to that end ... In exercising that power, Congress has provided for chaplains in an effort to allow all soldiers to worship however they choose, if they choose to do so at all. Given the obligations and restrictions imposed upon those in the military, Congress may constitutionally do no less. The Supreme Court recognized this ... when it stated in dictum that, in the military "the Government regulates the temporal and geographic environment of individuals to

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8　Note that there is a lively debate regarding the extent of autonomy granted to religious associations, from rules such as non-discrimination and other civil rights, and the U.S. Supreme Court has struggled with this contested topic. However, the current article merely presents the description above as a point of departure for the deliberations to follow, as the non-interference model is not applicable to militaries, and see in the text. (For scholarly debates on the topic of religious associations and exemptions from non-discrimination rules, see (Koppelman 2001; Perez and Stollman 2019; Shiffrin 2004); in the U.S. context *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission*, 565 U.S. 171 (2012) in which it was held that federal discrimination laws do not apply to religious organizations' selection of religious ministers (even though the person, Cheryl Perich, was a teacher, not quite a minister) is an often cited case, demonstrating the doctrine of religious associations' immunity from non-discrimination rules, in this case, a disability act.

9　See Everson v. Board of Education, 330 U.S. 1 (1947).

10　To state the obvious, the non-interference/separation model is not free of complex difficulties, such as cases of generally applicable laws that burden certain faiths, or cases of discrimination enacted by religious associations; however, the point of the description above is merely to generally illustrate the model, which is inapplicable to militaries. On such complexities, see (Barry 2002, chp. 2) (on generally applicable laws); Shorten (2019) (on discrimination in religious context).

a point that, unless it permits voluntary religious services to be conducted with the use of government facilities, military personnel would be unable to engage in the practice of their faiths" (p. 476).[11]

The conclusion reached is, therefore, that in order to keep the rights of soldiers to freedom of religion, that is, to be able to pray, attend religious houses of prayer, have access to religious prayer books and other religious materials, the military must, in some fashion, provide locations, time 'slices', adequate religious artifacts, and make religious clergy available to the soldiers.[12] Importantly, this structure of militaries has implications for the application of the minimalist liberal perspective (adopted in this article) vis-a-vis a satisfactory modeling of religious-military institutions. While the Shklarian perspective is focused on maintaining individual liberty and does not extend to liberal-egalitarian distributive formulations, in the military context, it would have egalitarian consequences, in the sense that if a given military will not equally protect the rights of soldiers to free religious practice, the result will be close to denying religious freedom—a result banned by even minimalist liberalism. This point is clearly explained by one important interpretive work of Shklar's minimalist liberal perspective: "If we put cruelty first, we would give up on using public power to perfect human character or to enforce creedal uniformity" (Whiteside 1999, p. 512; 'putting cruelty first' is central to Shklar's liberalism, see Shklar 1982). This egalitarian implication of Shklar's liberalism to the military context will have significant implications to the analysis of the three models in Sections 2 and 3.

The understanding that militaries must provide religious goods in some manner only means that the military cannot avoid being involved in the provision of religious services and goods. It does not, however, put forward a model of how a military that takes into account liberal standards of religious rights should conduct itself. Three such models will be presented in Section 2, to which we now turn.

2. Three Institutional-Religious Models within Militaries: Religious Majoritarian Approach, Evenhandedness and Ecumenism

Once we rule-out non-interference as a way for a given liberal minded country to answer to the religious rights and liberties of soldiers, we enter the complex institutional domain—how to design an institution that would answer to the religious interests of soldiers. Note that this institution, being positioned within militaries, must face important constraints, that is, it functions within a larger institution whose functionality (to protect the country) has claims to priority over other interests and rights. A reasonable way to move forward, therefore, is to examine three models[13] of the provision of religious services within militaries, as can be learned from concrete examples.[14] The goal here is not to provide a detailed, historical description of case-studies, rather, the description aims to elucidate from existing cases the main attributes of the noted models. Once these are in front of us, we will be able (in

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[11]　Notably, the approach adopted by the court that unless the government provides religious goods, religious liberty will be denied to soldiers, applies to a voluntary military force (the U.S. military, in this case). This means that the court rejected the notion that by agreeing to serve in the military, a soldier can be expected to waive her/his religious liberties. This approach would apply more forcefully in countries that enact conscription. The reasons for maintaining the religious interests of soldiers in both cases (conscription and voluntary based militaries) are varied, but for our needs, Levi's analysis of military service (which is not specific to religion) is useful in that it takes for granted that mistreating soldiers will be negatively correlated with their willingness to serve (Levi 1997, chp. 2).

[12]　This decision implies the need for a governmental funded program of religious goods, designed in some fashion. It does not provide a precise boundary to the limits of religious liberties to which soldiers are entitled. For example, the issue of soldiers' rights to wear religious attire is a point of controversy; in *Goldman v. Weinberger*, (475 U.S. 503 1986), for example, it was decided that Jewish soldiers could not wear a yarmulke while in service, although that decision was later reversed by an act of Congress (1988) (on this case see Fitzkee and Letendre 2007, pp. 62–70).

[13]　The names of the models chosen are not always the ones used by the noted countries and/or militaries. Here, a Dworkinian approach is adopted, in which a correct interpretation and understanding of a policy, law, or social institution lies in a proper description and analysis of the central and patterned aspects of that policy, law, or social institution. As Dworkin argues, in the context of law: "But the purposes in play are not (fundamentally) those of some author but of the interpreter. Roughly, constructive interpretation is a matter of imposing purpose on an object or practice in order to make of it the best possible example of the form or genre to which it is taken to belong (Dworkin 1986, p. 52)". Note that Dworkin's approach rules out attempting to ponder the mental status of the legislators (Marmor 2005, p. 126).

[14]　This contextual methodology assumes the importance of examining existing institutions in order to move forward with the evaluative task of institution-design (see: Carens 2000; Perez and Fox 2018; Modood and Thompson 2018).

Section 3 below) to evaluate such diverse arrangements vis-a-vis the standards of protecting religion interests and rights, while keeping in mind the special functionality constraints of militaries.

Before we present the models, four important points require a brief mention: *first*, there are two 'sides' to such arrangements: the soldiers receiving such religious services and those granting them, typically members of the clergy in the civil society, chaplains in militaries. For a model to be satisfactory, the religious rights and interests of both sides must be safeguarded to a reasonable standard. *Second*, models, as they are commonly used, are parsimonious and isolated approximations of a given piece of 'targeted' reality (Frigg and Hartmann 2017). As such, they suggest approximations—Weberian idealizations—of complex cases or historical events (Weber [1904] 1949, p. 90). While the models to be introduced are anchored in real-life examples, they should not be expected to represent or to cover each and every detail of a real-life religion-state institution within a given military. Rather, by choosing to emphasize some attributes over others, a model reflects the significant, representative attributes of particular cases. The parsimonious nature of models, in turn, enables classification as well as the analysis of numerous cases. *Third*, the models to be defined and examined in the context of militaries are rarely stand-alone institutions. Typically, they are derived from more general models of religion or religion-state relations. Each model to be presented in the Sections 2.1–2.3, therefore, will be preceded by a succinct explanation with regard to the general model from which the military-specific model is derived, or from which it is sourced. *Lastly*, note that the goal of the current section is to present the models. A critical evaluation of the models will be presented in Section 3.

2.1. Religious Majoritarian Approach (RMA)

2.1.1. RMA as a General Religion-State Relations Model

Majorities or their representatives in certain democratic countries and locations who are identified with particular religions, at times, aim to shape, in various ways, the religion-state relations and institutions in their countries in manners that demonstrate the dominance of their religion vis-a-vis other faiths. It is suggested to term this phenomenon as the religious-majoritarian approach (RMA). The RMA adopts, as its point of departure, the claim that there are substantial majorities in some countries (or states in federal countries) that share religious understandings which, typically, reflect long standing traditions.[15] Such majorities, the RMA argues, can legitimately use governmental acts and policies to advance their religious traditions, as long as such policies do not violate the rights of minority groups (or non-observant members of these majority groups).[16] This non-violation of the rights of minority faiths is usually grounded in the ability of members of minority faiths to freely associate and practice their religions in the civil society. In such scenarios, each minority faith will fund its own activities while conducting itself without governmental interference (as we shall see in Section 3 below, this practice/solution in inapplicable in a military context). Recently, RMA style views have gained wide legal recognition from leading courts such as the European Court of Human Rights (ECtHR)[17] and received scholarly justification from important political and legal theorists such as Miller (2016a; 2016b, pp. 145–49; 2019) and Laborde (2012, 2013). Interestingly, the RMA treats

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[15] The religious majoritarian approach, as its name hints, emphasizes the religious aspects of the noted phenomena rather than its cultural or national aspects. This choice of terms reflects the political and legal cases at hand which are distinctly within the religious sphere: the minarets (Swiss—a successful popular initiative in Switzerland to prevent the construction of minarets on mosques, 2009), the crucifix (Italy, 'Lautsi'—a case brought before the European Court of Human Rights, which, in 2011, ruled that the requirement in Italian law that crucifixes be displayed in classrooms of schools does not violate the European Convention on Human Rights), are two prominent examples; see Miller (2016a—for a qualified justification of this approach); Thompson (2019) for a critique of this approach.

[16] Major RMA supporters include Miller (2016a, 2016b, 2017) and Weiler (2012, 2017). RMA supporters have somewhat different versions of what exactly is the majoritarian line or threshold that RMA policies should not cross or violate—that is, as it would violate minority rights; Miller speaks of equal treatment of all citizens (Miller 2016a, p. 441); Weiler speaks of non-discrimination as a standard that should be respected towards all citizens (Weiler 2013, p. 766). This nuanced point cannot be further analyzed here, see Section 3, in the context of total institutions.

[17] See: Lautsi vs. Italy (2011), Application no. 30814/06. ECHR. On this case, see Temperman (2012); Perez (2015).

religion-state institutions as a topic to be determined by majority vote, (Weiler 2012, 2013). Typically, the RMA connects majoritarian preferences to the accumulation of multi-generational traditions in the sense that such preferences are grounded in long-standing customs, traditions and a given heritage.[18]

The RMA can be defined as being characterized by the following four elements:[19] (i) A particular religion receives some form of public support from the state which can take various forms: official recognition as the state religion, financial support, symbolic recognition, public dominance in public spaces, etc.[20] (ii) The religion that receives this public support is well defined and differs significantly enough in creed and/or practice to be distinct from other religions or other denominations of the same religion. (iii) Members of the supported religion enjoy some advantage that is not shared by all citizens, whether it is expressed in financial, symbolic, or other forms. These advantages make adherence to the supported majority religion more attractive and often less expensive (socially and financially) than adherence to non-supported religions. (iv) The supported religion is seen as an essential part of the state and there is strong identification of the state with this particular religion. The RMA, as can be expected, encountered substantial criticism from political scientists and legal scholars, suggesting that its inherent inegalitarianism is illegitimate and that its empirical assertions regarding past traditions and shared understandings are a-historical if not out-right fabricated.[21] As we shall see, such critiques are magnified in a military context, to which we now turn.

2.1.2. RMA as a Military Religion-State Institution

What would an RMA-type arrangement within the military look like? In simple terms, it would mean that the religious interests of soldiers belonging to the dominant religion will be answered by the military, and the interests of soldiers belonging to other religions or denominations will be either privatized, in the sense that soldiers will have to rely on the resources of the civil society to answer their religious needs, rely on their own resources (or the good will of friends, colleagues etc.), or alternatively, that the needs of such soldiers will be answered via the canopy of the dominant religion, this can include chaplains, usage of prayer rooms, etc. The latter will depend on the religious practices of soldiers belonging to minority faiths being compatible to some degree with the dominant religion, and obviously on the good will of the existing religious framework.

A recent article describing the chaplaincy at the Swiss military describes, *mutatis mutandis*, a situation 'on the ground' quite similar to the RMA 'within military' model: "the Christian chaplaincy has, until now, only rejected the idea of involving Muslim chaplains ... One argument of the Swiss Army Chaplaincy is that Christian chaplains care competently for all officers and soldiers" (Inniger et al. 2017, p. 2). A second example for the 'within military' RMA can be found at the Israel Defense Force (IDF), as described by Cohen et al.: "the IDF's chaplaincy, although officially committed to providing services for all personnel irrespective of religious affiliation, consists almost entirely of rabbis and their

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18　See, for example, in the U.S. Supreme Court decision of *The American Legion v. American Humanist Association*, No. 17-1717, 588 U.S. ___ (2019), in which it was decided that the governmental-funded placement and maintenance of the Bladensburg Cross (placed on public land) is not a violation of the establishment clause; Justice Kavanaugh in his concurring opinion (p.4, italics added) effectively demonstrated the point at hand: "The practice of displaying *religious* memorials, particularly religious war memorials, on public land is not coercive and is rooted in history and tradition. The Bladensburg Cross does not violate the Establishment Clause".

19　See Whelan (1990) for an early discussion of the characteristics of established and endorsed churches models and Fox (2015) for a wide overview of religion-state models.

20　Here, there is an interesting debate in the relevant case law (both in 'Lautsi' and in the 'American Legion' cases) whether the Cross is a religious symbol or a 'cultural' symbol. For the purposes of this article, the approach of the ECtHR in the *Lautsi* case that it is a religious Christian symbol ("The Court further considers that the crucifix is above all a religious symbol"; *Lautsi*, para. 66, majority decision), and that of the U.S. Supreme Court in the *American Legion* decision ("the cross is undoubtedly a Christian symbol"; Syllabus, para. D, majority opinion written by Justice Alito)—also identifying it as a religious symbol (although it might also have other meanings), is the most adequate interpretation for the content of the actual cases. Regardless of other meanings that might be attributed to the crucifix or the cross, it is surely a religious symbol of the Christian faith. Hence, the case law fits the RMA model and analysis, that the correct unit of analysis is that the phenomenon at hand regards religion, not culture.

21　See Thompson (2019), Schragger and Schwartzman (2019).

assistants. Indeed, it is officially designated the 'military rabbinate' (in Hebrew: *rabbanut tzeva'it*)" (Cohen et al. 2016, pp. 65–66). Similarly, to the approach indicated at the Swiss army, it is assumed (at times in cooperation with non-military religious associations and clergy) that Jewish chaplains will be able to provide adequate services to non-Jewish soldiers. As a website the IDF created for high school students, soon to be soldiers, explains: "the military rabbinate is in charge of answering the religious needs of IDF soldiers belonging to all religions".[22]

An important note about the RMA is that one should not confuse lack of legal rights with the frequency in which requests of soldiers belonging to minority faiths are respected or granted.[23] There is evidence, for example, of Jewish chaplains assisting Muslim soldiers in dietary requests, of Christian chaplains assisting Muslim soldiers and many other variations in different militaries.[24] The important point regarding the RMA is not that the result will always be that the religious rights of soldiers belonging to minority faiths will not be respected, but rather that protecting their religious needs will become a matter of benevolence, of the good will of a given commander (or other military persons in charge), rather than as a matter of respecting their legal rights.

2.2. Evenhandedness

2.2.1. Evenhandedness as a General Religion-State Relations Model

The evenhandedness approach prioritizes treating all of the state's citizens with equal concern and respect. In this sense, it is similar to the non-interference approach, however, unlike the non-interference approach, this model does not adopt a *hands-off policy* with regard to religion. Rather, evenhandedness adopts a *hands-on policy* in which governmental resources are allocated to different religious denominations and groups without providing preference to any one specific group. In American political history, 'evenhandedness' has been known, *mutatis mutandis,* by other names such as 'non-preferentialism' and 'general or multiple establishments'. This approach was proposed in 18th century Virginia and, famously, defeated by Madison (1785). Laycock aptly summarizes the meaning of non-preferentialism, as he writes: "that the framers of the religion clause intended a specific meaning with respect to the [. . .] establishment clause: government may not prefer one religion over others, but it may aid all religions evenhandedly" (Laycock 1986, p. 877). In the same vein, Levy describes the non-preferentialist argument that the establishment clause of the first amendment to the U.S. constitution "prove an intent to impose upon the national government merely a ban against aiding an exclusive or preferential establishment, which results in their conclusion that government assistance to religion generally, without a hint of discrimination, would not violate the establishment clause" (Levy 1994, p. 113).[25]

In recent years, even-handedness as a model for religion-state relations has won a certain revival, as scholars in political science such as Carens (2000) and Laborde (2017) have suggested various ways in which this hands-on model can be implemented. While not without a fair share of objections (Jobani and Perez 2017, chp. 4), this model is implemented in democratic countries (Belgium for example[26]) and has won impressive re-articulation from the noted senior scholars.

22　See: https://www.mitgaisim.idf.il/%D7%9B%D7%AA%D7%91%D7%95%D7%AA/%D7%A8%D7%90%D7%A9%D7%99/%D7%96%D7%9B%D7%95%D7%99%D7%95%D7%AA-%D7%95%D7%97%D7%95%D7%91%D7%95%D7%AA/%D7%9E%D7%99%D7%93%D7%A2-%D7%91%D7%A2%D7%A0%D7%99%D7%99%D7%A0%D7%99-%D7%93%D7%AA/#/; See also Rosman-Stollman (2008).

23　Notably, religious-institutional arrangements within the military 'shape-back' religion-state relations within the society at large, given the importance of the military as a central institution; this applies forcefully in RMA models, given the prominence given to one distinct faith, but also in other models. On this 'shape-back' phenomenon see Stahl (2017).

24　See Wildhack (2005).

25　Both Laycock and Levy strongly reject non-preferentialism; see Levy (1994) and Curry (1987) for a detailed analysis of the entire Madisonian-nonpreferentialist debate.

26　See: Franken and Loobuyck (2012).

2.2.2. Even-Handedness as a Military Religion-State Institution

What would an even-handed type arrangement within the military look like? In simple terms, it would be similar to a multiple establishment arrangement—within a military framework. This means that the military would recognize (most likely following similar recognition pattern within the general government-civil framework)[27] certain religions and/or denominations. The recognized religious groups and denominations will have appointed chaplains, and will be allocated religious goods, materials, and so on. While this does not mean that soldiers belonging to non-recognized religions will be unable to approach chaplains, or (say) request time for prayer, it does mean that in such cases, their religious needs will not be *institutionally* recognized and met as legal rights, and it does mean that the given chaplain will not belong to their religion or denomination, and these are important differences. The difference between recognized and non-recognized religions was well explained by Michalowski: "In Europe, chaplaincy posts are not equally distributed across religious denominations. The different groups compete for the largest number of posts because larger military chaplaincy services have more impact on the military institution and more possibilities of action while very small military chaplaincies are constrained to delivering a target-group specific service" (Michalowski 2015, p. 50).

This is what a generously constructed even-handed arrangement looks like, as explained by Van Vilsteren, the Chief of chaplains at the Dutch military: "Above all, the Dutch military chaplaincy is pluralistic. It exists in six autonomous services: the Jewish, Protestant, Catholic, the secular humanistic, the Hindu and the Islamic Chaplaincy service. The autonomy is expressed not only in terms of the substance of the respective convictions, but it is also expressed in the structural autonomy of different services inside the military." (Van Vilsteren 2016, p. 4). This short description raises two interesting points. First, the wide level of religious recognition in the Dutch military (not all even-handed military religious-institutional arrangements are so pluralistic), and second, that even under this admirable pluralism, not all religions and denominations are included.[28]

2.3. Ecumenism

2.3.1. Ecumenism: A General Description

Ecumenism is not a recognized modern-democratic religion-state arrangement, as it does not have the institutional real-life examples that non-interference, evenhandedness or RMA demonstrate. However, it is an important category in the institutional-religious arrangements within militaries, and hence merits a succinct explanation as a general approach to religion. The essence of this approach was recently explained as follows: "Ecumenism' has come to denote today an openness toward all faith traditions and backgrounds, including Muslims and Jews in the Abrahamic ensemble, as well as 'world religions' such as Buddhism, Confucianism, Daoism, Hinduism, and others, but it began life as a variety of Christian globalism, seeking to make an inter-confessional 'church' of all 'nations, races, and classes' a robust force in world politics, culture, and society" (Engel et al. 2018, p. 158). The Christian understanding of ecumenism was well explained by Fitzgerald: "The ecumenical movement is the quest of Orthodox, Roman Catholic, Anglican, Old Catholic, and most Protestant churches for reconciliation, and the restoration of their visible unity in faith, sacramental life, and witness in the world" (Fitzgerald 2004, p. 1). Therefore, the ecumenism model attempts to bring together believers from different denominations and even religions by minimizing differences and reaching compromises regarding a wide variety of complicated religious issues such as beliefs, doctrines, practices and the like. Indeed, the term originated from the Greek word *oikoumenē*, meaning "the whole inhabited world".

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27 This process is never smooth and problem free, and raises many questions, including how are the recognized religious groups selected? How are their needs measured and funded? What is the process in which new groups can become eligible to enter the recognized cohort? This contested process can be counted as a disadvantage of the even-handed model. See Jelen (2010, chp. 1).

28 See: Michalowski (2015).

The ecumenical model, especially in its modern, 20th century version, is hence a quasi-unification process undertaken by individuals and religious movements and denominations, and is not usually counted as a legitimate religion-state model in democratic countries, as if enforced by civil or secular authorities, it might seem to violate important principles of freedom of conscience and religion.

2.3.2. Ecumenism as a Military Religion-State Institution

What would an ecumenical-type arrangement within the military look like? Put simply, it would mean that chaplains would provide religious and spiritual services to all soldiers, regardless of their own faiths, and that soldiers, from their perspective, will have their religious needs provided by non-specific religious/denominational chaplains. Here is a typical description from the U.S. military perspective: "The military wants its chaplains to serve the religious needs of all its members, within limits. In other words, they are expected to bracket their own religious particularity in service of other people's religious particularities" (Hansen 2012, p. 119). In practice, this means that in an Ecumenical arrangement, as exists in the U.S. military, chaplains are supposed to serve the religious needs of all soldiers with two exceptions: soldiers asking for a specific religious or denominational support (which is not always feasible or possible), or in cases in which the service demanded is incompatible with the religion or denomination to which the chaplain belongs. Hansen well demonstrates both points; here are the words of one chaplain at the U.S. military, describing the first exception (as brought by Hansen): "I think the role of chaplain could be nondenominational completely, in that you really don't care what denomination a person is when they walk into your office, to do your job. *Unless they're looking for particular sacramental act of some sort.* (Southern Baptist)" (Hansen 2012, p. 124, italics added). And here is the second exception (Hansen p. 126, italics added): "For some chaplains, cooperation means putting the free exercise rights of individual sailors and marines above interests that the churches might have, such as doctrinal purity or maintaining membership numbers. *A Lutheran should not be expected to do anything that is contrary to Lutheran teachings* but routinely is expected to help others do non-Lutheran things".

Scholars examining ecumenical arrangements at militaries (typically focusing on the U.S. variant of this model) usually approach them from two differing perspectives or classifications. The first, which can be titled 'social ecumenism', was suggested by E. Rosman-Stollman, as follows: "chaplains are entrusted with the general spiritual well-being of the troops, whether or not they have the same religious affiliation." (Rosman-Stollman 2014, p. 35). In this version of the ecumenic model, chaplains function as community leaders, social workers, or simply as good friends (all very important functions that soldiers, faced with a possible injury or even death, at times serving far away from home-certainly need), but not quite as members of the clergy. This might resolve any tensions that clergy might have when asked to provide religious services to members of other religious groups (see Section 3), but seems to defeat the purpose of having clergy in the first place. The second version of the ecumenic model, that can be titled 'religious ecumenism' maintains the religious dimensions of the functions of chaplains more forcefully, yet subjects the chaplains to the religious views of each individual soldier, as explained by Hansen: "Cooperation thus means accepting the religious commitments of sailors and marines and helping them follow up on them" (Hansen 2012, p. 126). This version maintains the religious functions of the chaplaincy, however, it transforms chaplains to providers of religious services. What this means is that religious soldiers of diverse religious belonging will have access to religious clergy (thus emphasizing the 'demand side' of religious activity) performing their chosen religious rituals and practices. However, this ecumenical approach treats the chaplains (the 'supply side') as mere providers of services, while neglecting their identities as members of specific religions or denominations.

3. RMA, Even-Handedness and Ecumenism: A Liberal Balance Sheet

The goal of this section is to evaluate the three models of RMA, evenhandedness and ecumenism according to the standards of liberal political theory.[29] Put differently, if we wish to design an institution that would provide religious goods and services within militaries and insist that this institution would safeguard the rights to freedom of conscience and the freedom of religion of both soldiers and chaplains, which model would seem most adequate? Now, any answer to this kind of question should take into account two factors: existing institutions are important, in so far as they can point us to patterns of solutions created in order to answer such challenges,[30] and second, that a diversity of solutions to this institutional design problem will be permissible according to the liberal standards themselves.[31] However, while bearing in mind these two points, the suggested contextual-pluralist approach does not mean that all solutions to this institutional design challenge will be permissible or equally successful. With these preliminaries in mind, let us begin with the evaluation of the RMA.

3.1. RMA

The RMA, as indicated in Section 2, means that the chaplains assigned will belong to the dominant religion and the religious needs of soldiers belonging to the dominant religion will be answered as a matter of recognized military regulations. There will be no chaplains belonging to minority faiths (as indicated in the Swiss example described in Section 2 above), and the religious needs of non-majority faiths will be answered only as a matter of courtesy or benevolence by the chaplains and the overall framework to include prayer rooms, time slots, dietary needs and so on. While this does not necessarily mean that the religious needs of soldiers of minority faiths will not be answered, it does mean that they will not rise to the level of a recognized legal right.

Now, RMA, in various versions, is a well-known model of religion state relations in democratic countries.[32] However, its inherent religious inegalitarianism is mitigated as in regular circumstances in civil societies, individual believers can establish their own religious associations, employ clergy, purchase religious artifacts and prayer books and so on. This mitigating factor does not exist in institutions where the government's presence is pervasive or within 'total institutions' such as the military, simply because soldiers do not have at their disposal a private non-governmental sphere to establish and conduct their own religious activities (as explained in Section 1 above). This makes the structure of the RMA simply inadequate or even impermissible in militaries. As religious soldiers not included within the canopy of the relevant RMA might face situations in which they are unable to maintain their religious faith in any practical sense, while soldiers belonging to the dominant religion will be able to do so (and see the example to be discussed in Section 4 below). This situation is dangerously close to governmental directly imposed religious-based discrimination, banned in any EU or US context.[33]

3.2. Evenhandedness

An even-handed type arrangement within the military, as described in Section 2 above, is similar to a multiple establishment arrangement. In such an arrangement, the military provides chaplains and other religious necessities to all recognized religious communities. While there are different ways to design such an arrangement (according to the number of believers, their locations, budgeting of needs vs. one-size fits all budgeting, etc.), the advantages of the model are its egalitarian tendencies[34]

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[29] On liberal political theory see Waldron (1987); Shklar and Rosenblum (1989); Kymlicka (2002, chp. 3).
[30] Following the contextual approach of the current article, see Hamlin (2017).
[31] On this pluralist view in liberal political theory, see Carens (2000).
[32] Usually named established or endorsed church, see Miller (2019); Fox (2015).
[33] See Evans (2001) (Europe); Laborde (2017, pp. 28–29) (U.S.).
[34] Note that in the military context, as explained in Section 1 above, denying soldiers the provision of religious goods comes close to governmental sanctioned violation of religious liberty, banned even in minimalist versions of liberalism.

and its attempt to maintain the core religious rights of both soldiers and chaplains (via the model's multiple-establishment attribute). The model's egalitarian tendencies find explicit expression in that there is an attempt to provide institutional 'cover' to most if not all reasonably represented religious groups within a given military. While no governmental planned social service can reach and 'cover' all intended 'clientele', the impressive example from the Dutch military (upon its 6 recognized religious groups) serves as an adequate example of the ways in which militaries can be expected to provide soldiers from diverse religious backgrounds with the ability to maintain their faiths while in service, including religious artifacts, prayer rooms, and the presence of a chaplain from their own faith group.

An additional important aspect and advantage of even-handed military models has to do with the multiple establishment aspect of such models. This attribute has important implications for chaplains, as follows: while chaplains are certainly expected to help members of other religions and denominations, their main religious responsibility in even-handed models is to provide religious services to the members of their own religious groups. This means that the chaplains' religious interests are respected. This is an important point that requires a brief explanation.

In modern societies, we are accustomed to the difference between a private persona and a public persona, as explained by D. North and his colleagues: "we define a person as composing two interrelated parts: an internal individual persona and an external social persona. The development of impersonal relationships has to do with social persona ... Impersonality arises as social personas become standardized" (North et al. 2009, p. 33). This distinction is almost obvious in modern societies; there is the private self (a parent, a friend, etc.), and there is the professional self (teacher, shop owner). A hallmark of modern societies is that the professional self is typified by impersonal interactions. A person is hired for a job following her/his professional traits, not private traits. Confusing the two 'selves' is a hallmark of premodern societies.[35] Here are North et al. again, describing situations in which there are basically no social personas: "A predominance of social relationships organized along personal lines, including privileges, social hierarchies, laws that are enforced unequally, insecure property rights, and a pervasive sense that not all individuals were created or are equal" (North et al. 2009, p. 12).

Why is this well-known distinction important for our analysis of religious institutions in militaries? The reason is that chaplains constitute an unusual case in which the private, personal persona have important implications for the social or public persona. Unlike other roles in the military (engineer, pilot, medical doctor), in which the private attributes of the person entering this role are rarely important for fulfilling the social or public role they occupy in the military,[36] for chaplains there is such a connection. The reason is that a chaplain is a member of the clergy in uniform. While a soldier, s/he is not only a soldier, s/he is also, perhaps predominantly so, a member of a given religion belonging to the clergy class or 'level'.

Now, being a clergy of a given religious denomination is not only an occupation, it is an expression of one's most important, private, even intimate, values and convictions. Such personal values find an expression, therefore, in the public, occupational, social life of the member of the clergy. As the member of the clergy joins the military and becomes a chaplain, s/he maintains the same religious value commitments that s/he had prior to becoming a soldier. This is (to conclude our short detour) the reason why maintaining the boundaries that are part and parcel of the multiple establishment or even-handed model is an advantage of this model. The even-handed model avoids scenarios in which chaplains are requested to provide religious services that are in tension or even contradict their religious beliefs, a scenario that would be considered by liberal theory as a violation of their core

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35   The terms 'premodern' and 'modern' are of the author; North et al. (2009) use a different set of terms.
36   Robert Merton, in a classic article describing the disconnection between private traits and social/public roles in modern bureaucratic systems wrote the following: "The assignment of roles occurs on the basis of technical qualifications which are ascertained through formalized, impersonal procedures" (Merton 1940, p. 561).

religious-based rights.[37] As we shall see, this advantage[38] is not shared by the ecumenism model to which we now turn.

3.3. Ecumenism

Within an ecumenism-type arrangement at a given military, as described in Section 2 above, chaplains are expected to provide services to all soldiers, regardless of their religious identities. Ecumenism in the military, as noted, can be further categorized to ecumenism as a social service ('social ecumenism'), in which chaplains conduct themselves more as social workers and less as providers of religious services, or ecumenism as a religious service ('religious ecumenism'), in which chaplains provide religious services to all. In this subsection, we shall evaluate these two options according to liberal commitments to freedom of religion and conscience.

Social ecumenism does not raise problems of freedom of conscience or religion, in that it does not involve such 'deep' issues. Social ecumenism, however, does raise a different concern, that it does not seem to provide religious services at all. Examined from this perspective, it seems that social ecumenism changes the roles of chaplains, almost to defeat the purpose of having them in the first place. If indeed having clergy serve in the military is deemed important for military goals and in order to protect the rights of soldiers to freedom of conscience and religion, then social ecumenism does not achieve this goal.

Moving to religious ecumenism, here, we encounter a different scenario and set of difficulties. In religious ecumenism, chaplains are expected to provide religious services to all soldiers.[39] This expectation means that chaplains will provide religious services not quite according to their beliefs, in at least two ways; to begin, their sermons, rituals and overall approach would not be structured according to the chaplain's own religious commitments, rather, they would be prepared in a way accessible to a wide diversity of religious beliefs. Second, and following, divisive religious doctrines, and especially attempts at proselytizing, will be discouraged or even banned activities for chaplains.

Such limitations levied on chaplains raise concerns that these are illegitimate limitations placed on the free exercise of religion that would not be legitimate in civil society surroundings. Here, we need to proceed carefully. To begin, not all limitations placed on activities of chaplains in the military should be counted as illegitimate. Militaries will face troubling, destabilizing situations if, for example, chaplains attempt to proselytize soldiers of other faiths.[40] Indeed, functioning militaries require cohesiveness and unity, and these qualities are incompatible with pure freedom of religion. Once we set aside such clear-cut divisive religious acts and speech, we enter a much more uncertain territory. Chaplains in ecumenical models, such as within the U.S. military example, are expected to provide sermons that will bring together many different soldiers, arriving from different religious and ethical backgrounds. Such an expectation seems reasonable, as it is not difficult to locate within almost any religious doctrine such resources that would be compatible, or provide inspiration for such goals. Moving further,

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[37] Hansen, describing cases in which chaplains are faced with expectations to serve soldiers outside of their own denominations within the U.S. military, describes such scenarios in the following way: "some boundaries are harder to negotiate than others" (Hansen 2012, p. 127).

[38] Notably, the evenhanded model might bring about an increase in the number of chaplains, as compared to the ecumenism model.

[39] Note that the discussion of religious ecumenism is focused on the rights of chaplains. The reason is that they are supposed to provide the noted services, and hence the burden of balancing loyalty to their religious beliefs with the expectation (within military contexts) to act in an ecumenical manner is placed on their shoulders. Soldiers, however, are not placed in such an uncomfortable position, and are merely receiving ecumenical religious services, which are hardly objectional (one can imagine a scenario in which a given soldier finds ecumenical services inappropriate, but in such a scenario this soldier can avoid attending such a service, and request a specific chaplain—belonging to her/his religion. Admittedly, answering to such a request will not always be feasible).

[40] The noted objection to proselytism applies in other models as well. However, only in the ecumenism model chaplains are expected to meet and provide services to all soldiers, and hence, the discussion of this ban pertains more forcefully to this model.

it is arguably reasonable, to ask from chaplains to avoid discussing certain topics. Avoiding a topic, does not signify agreement, rather it is simply a choice to avoid discussing it in certain circumstances.[41]

Where, however, these kinds of requests from chaplains reach their legitimate limits even taking into account the military context, and arguably become violations of religious liberty, is when demands are made from chaplains to limit their religious speech where such limits are not required in order to promote or protect legitimate military goals (such as maintaining group cohesiveness), and/or when chaplains are requested to actively act in ways that contravene their religious beliefs.[42] One way to explain this difficulty is to point to a helpful distinction made by legal theorist M. Dan-Cohen between detached and undetached roles. As he writes, "When I fully identify with a role, when the role distance, to further exploit the spatial metaphor, is down to zero, I enact the role "transparently"—that is, without an explicit awareness of the role's requirements and the fact that I fulfill them. By contrast, the presence of role distance is marked by self-consciousness: by an explicit awareness that I engage in playacting; that I enact a certain role by responding to its requirements and expectations" (Dan-Cohen 2002, p. 14).

In detached roles, the person acting a role is separated from her role in the sense that one's internal persona is easily separated from the role. A university professor grading statistics exams is playing a role, and her religious beliefs are not involved in grading a student's level of understanding of a Likert scale. However, the same person is undetached when done grading, she picks her children from school and enters the role of a parent. Being a member of the clergy, even during one's military service as a chaplain, means that this distinction between detached roles and undetached roles is inapplicable. The reason is that one's religious beliefs are always undetached from one's self so to speak, and being a member of the clergy means that one's occupation expresses one's private values, and hence detachment between one's occupation and one's private self is not possible. This analogy hopefully clarifies why ecumenism might bring about clashes between the strict structure of militaries and freedom of religion, as K. Greenawalt wrote: "we face here . . . genuine conflict of possible military need and maximum religious freedom" (Greenawalt 2008, p. 213).

Indeed, a case exemplifying such a scenario presented itself to the U.S. District Court for the District of Columbia—in the 1997 case of Rigdon v. Perry, in which Rigdon, a Roman Catholic chaplain at the rank of Lieutenant Colonel in the U.S. Air force, petitioned against a ban, enacted by an Air Force Judge Advocate General, prohibiting chaplains from participating in a 'postcard campaign' enacted by the Catholic church of the U.S. aiming to encourage parishioners and believers to send postcards to members of Congress, asking them to overturn the veto that then president Clinton placed on the so-called Partial Birth Abortion Ban Act.[43] The court reached a clear-cut decision in favor of the rights to the free exercise of religion of the chaplain and heavily criticizing the Air-Force attempt to limit the noted freedom as follows: "What we have here is the government's attempt to override the

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41 Indeed, Holmes (1997) suggested the well-known category of gag rules. Gag rules are used in order to avoid social instability created by speech/actions that severely offend a specific group's feelings or obstruct their interests. Hence, 'gag rules' prevent—either legally or through informal social norms—individuals from speaking or acting in a certain way. The term 'gag rule' has been used to describe a range of prohibitions from precluding prosecution after a certain temporal point, to avoiding topics entirely—such as slavery in the U.S.—during certain periods, to excluding religion from some institutional contexts.

42 The notion that would-be chaplains know in advance the chaplaincy framework of the U.S. military, and hence can be expected to provide consent to the ecumenical model is arguably not a persuasive position, given three considerations: the unequal social circumstances in which a decision to enlist takes place (Melin 2016); the typical lack of rational connection between limitations put on the free exercise of religion of chaplains and military needs and functions (as argued by the court in Rigdon vs. Perry, and see in the text); finally, the importance attributed to freedom of religion, while not quite absolute, creates significant barriers to any attempt by institutions to argue that it was waived (even when grounded in presumed consent) (see, McConnell 1999).

43 The details of this procedure cannot enter this article, but generally are a part of the abortion controversy in the U.S. The law itself was eventually passed by Congress in 2003, and was deemed constitutional by the U.S. Supreme Court in 2007 in *Gonzales v. Carhart*, 550 U.S. 124 (2007).

Constitution and the laws of the land by a directive that clearly interferes with military chaplains' free exercise and free speech rights, as well as those of their congregants" (p. 165).

The point to be learned from the Rigdon v. Perry example, however, goes beyond the details of the particular case, and is to point to the inherent difficulty in the ecumenical model. Put simply, once it is expected that chaplains will provide services that will be accepted by all soldiers, will not be divisive, and (further) will meet military expectations about contributing to cohesiveness and functionality of units, it is to be expected that the religious speech and practices of chaplains will be constrained and that as in a snowball effect, this would have important implications for hiring of future chaplains, promotions of employed ones and so on.

While collisions between the religious obligations of chaplains and the expectations of the military from them to maintain a divisive-free environment also exist in the even-handed model (see Section 3.2 above), each chaplain in this model is expected to chiefly conduct herself/himself as the religious clergy of her/his own congregation, not so in the ecumenical model. Indeed, Rigdon's mentioning the Catholic church's objections to abortions to an exclusive audience of Catholic soldiers would hardly raise any commotion. The danger of collision is therefore more forcefully present in the ecumenical model. This consideration should be counted as a significant disadvantage of the military religious-ecumenical model.

4. The Models in Practice—Burial of Soldiers at the Israel Defense Force

The models examined in Sections 2 and 3 aim to elucidate the many details involved in describing religious-institutional arrangements at militaries within different countries, into parsimonious approximations, with clear cut structures, advantages and disadvantages. As such, it is of interest to see if they can assist us in analyzing concrete cases. For this goal, it is suggested to examine a shift (or at least, a step toward a shift) between two models: RMA and evenhandedness within the IDF, as took place in a recent controversy regarding the burial of soldiers. This case, because it demonstrates a step towards a change from the RMA model towards a more even-handed model, provides a natural experiment with regard to the merits and demerits of each model and is especially useful in the attempt to evaluate two of the three models discussed in Sections 2 and 3.

Fallen soldiers at the IDF are entitled to an official military burial. This is an important ceremony, central to the country's civil religion, and expresses the debt the country owes to the bereaved families.[44] Now, as can be expected, military funerals have an important religious element. The choice of the religions eligible for conducting such ceremonies, how the ceremony is structured, and the chaplains (or invited clergy) that can conduct such ceremonies are hence highly important given the centrality of fallen soldiers and bereaved families to the society at large. Finally, the religions that are recognized in the context of such ceremonies receive much social prestige, as they receive the governments' approval that they can act as the government's representative or proxy in one of the most important parts of a given country's civil religion.

Therefore, it is not surprising that in a military that adopts an RMA model (see Section 2.1 above), funerals of soldiers were conducted (up to 2019) in one of two ways: military-religious funerals conducted by a Jewish-Orthodox rabbi and according to Jewish-Orthodox practices and customs, or a civil burial with no formal military aspects.[45] This reality faced challenges, chief among them a petition brought to the Israeli Supreme Court in 2017 by the NGO *Hiddush* (Hebrew for 'renewal') which strives to bring about changes to the religion-state arrangements in Israel towards a more

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[44] On Israel's civil religion, see Liebman et al. (1983); Israel's general religion-state relations model is complex, but by and large is a mixture of the Millet system with some liberal attributes, see Barak-Erez (2008); Laborde (2017).

[45] The funerals of non-Jewish soldiers are usually conducted by a civil clergy of the relevant religion, in a full and formal military apparatus (on religious diversity within the IDF see Rosman 2016).

pluralist framework.[46] This is the description of the petition from Hiddush's website: "In 2017, *Hiddush* petitioned the Court to require that IDF's regulations be amended to permit full military burials that allow for the worldviews and ways of life of fallen IDF soldiers and their families that may prefer secular or non-Orthodox burials".[47] The Israeli Supreme Court, following some back and forth between Hiddush and the IDF, reached the decision to allow military religious-burial ceremonies that are not only Orthodox Jewish; and hence created a more inclusive framework that includes other forms of Jewish-burial ceremonies to be conducted as military burials (reform, conservative and so on); furthermore, the court also included non-religious formal military burials—to be conducted in a secular-Jewish, non-religious manner. The following short paragraph from the Supreme Court decision clearly marks the change (italics added; translation from the Hebrew is taken from Hiddush website, yet checked against the original decision in Hebrew): "*The situation as of today* is that while maintaining the structure of the military ceremony and its state trappings, it is possible for the family of a fallen IDF soldier to hold the [military] funeral in a manner that matches his lifestyle and faith. The respondent's counsel has further made it very clear in answering the questions posed to him that it is possible to hold a ceremony in a military cemetery without religious elements."[48]

This case can be helpful in demonstrating the usefulness of the models introduced. Religious-military burials conducted exclusively in a Jewish-Orthodox manner, leave out a large proportion of Israeli society (in which Jewish-Orthodoxy is a minority), which demonstrates the inherent inegalitarianism of RMA models. It is interesting to see that this inegalitarianism received a legal remedy via the Israel Supreme Court. This legal, court sanctioned recognition of the legal impermissibility of the RMA can be explained via the pervasive governmental presence in militaries, as explained in Section 1 above, which intensified the inegalitarian nature of the RMA.

Moving forward, the even-handed reality of the new policy also helps to demonstrate the advantages and limits of this approach. To begin, in an army with a large Jewish majority, a move towards a more inclusive Jewish framework is an egalitarian step. It serves to further protect the religious and freedom of conscience rights of soldiers, now to include reform, conservative and secular Jews, not only Orthodox Jews.[49] It also indicates to the society at large, the legal, political and social legitimacy of such newly recognized groups. The new step, as important as it might be, also helps to demonstrate the limitations of this version of the even-handed approach, in that not all soldiers in the IDF are included in this new expansion. Most clearly, non-Jewish soldiers are not included in the Supreme Court decision. This does not mean that non-Jewish soldiers do not receive religious services while at the IDF, but it does mean that the IDF does not officially recognize their religious needs via employment by the military of non-Jewish chaplains.[50] As was discussed in Section 3 above and is well demonstrated in the IDF example, even-handed models are never fully inclusive, which is the model's tradeoff with the ecumenical model (which, in turn, suffers from insufficient protection of chaplains' religious rights).

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[46] In its website *Hiddush*, in the first answer about its goals at the FAQ section, it is written as follows: "We deeply believe that nothing will do more good for Judaism than freedom of religion and the liberation of Judaism from the chains of politics and religious coercion. We do not see in the *Haredim* (Jewish Ultra-Orthodox - the author) the exclusive representatives of Judaism, but only one version of it. There are many kinds of Judaism, including Reform, Conservative and Secular. They are no less legitimate, and we won't let anyone take away our right to be Jews in our own way", available at: http://hiddush.org/faq.aspx?aid=1486.

[47] See http://hiddush.org/article-23326-0-Groundbreaking_IDF_to_allow_Reform_rabbis_to_conduct_military_funerals.aspx.

[48] See http://hiddush.org/article-23337-0-The_Supreme_Court_ruling_on_pluralistic_IDF_burial.aspx/HCJ. Hiddush v. IDF 3458/17. (2019). Para. 6.

[49] Interestingly, the ecumenical option, in which Orthodox rabbis acting as chaplains at the IDF were to be ordered to lead non-Orthodox burials, was not considered or asked for.

[50] In 2004, MK Ran Cohen attempted to pass legislation that would mandate the appointment of non-Jewish chaplains at the IDF at the Knesset (Israeli Parliament) following the death of several Bedouin (Muslim) soldiers and certain difficulties involved in the religious aspects of their military funerals. The legislation was never completed however. (see: Alon 2004; Wagner 2005).

5. Conclusions

This article attempted to fill a lacuna in the political theory literature regarding religion-state relations by defining and examining three models of religious-institutional arrangements within militaries: the religious-majoritarian approach, evenhandedness and ecumenism. Militaries pose a difficult challenge for liberal political theory, as they are total institutions, where the presence of the government is pervasive, and the well-known Lockean approach delegating religious beliefs and practices to the private, voluntary sphere is therefore inapplicable. The question raised therefore is as follows: once the government is pervasively present, what models can be adopted if the goal is to enable the exercise of religion by soldiers, yet without compelling chaplains to violate their religious beliefs? Of the three models examined, the RMA model is the least adequate as it involves strong preferential treatment of the majority religion by the government, which, in total institutions, comes close to governmental active discrimination against minority faiths (indeed, this egregious inegalitarianism was demonstrated via the case-study of the burial of IDF soldiers in Section 4); evenhandedness and ecumenism, while imperfect, attempt to protect the religious interests and rights of soldiers, however, evenhandedness is inegalitarian (which has severe implications in the context of militaries) as even in its attempt to be inclusive, it leaves unrecognized some religious groups; ecumenism faces a different challenge (in its religious-ecumenism variant), in that it comes close to compelling chaplains to contravene their religious beliefs. An intriguing thought is whether it is possible to combine the models in order to better meet liberal standards of safeguarding freedom of conscience and religion. One option, is to have an evenhanded model, in which chaplains also provide services to soldiers belonging to other denominations, but only to those most close to the chaplains' own denominations. In such a way, evenhandedness is combined with ecumenism, however, ecumenism is constrained in ways that would minimize potential violations of the rights of chaplains. To summarize, while no framework for religious-institutional arrangements within militaries would guarantee the religious rights of all involved, evenhandedness and ecumenism (perhaps combined in some manner) seem most adequate according to liberal standards; reaching these conclusions is, at the very least, a first step in what will surely be a much more extended future conversation.

Conflicts of Interest: The authors declare no conflict of interest.

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