



EXPECTATIONS
MICHAEL KARAYANNI

Michael Karayanni was born in Kafr-Yasif – a Palestinian-Arab village located in the Western Galilee in Israel. Today he lives in a mixed Palestinian-Jewish township that aspires for coexistence and equality called Wahat al Salam – Naveh Shalom (Oasis of Peace). After obtaining his undergraduate law degree at Bar-Ilan University and being admitted to the Israeli bar, he went on to pursue graduate studies in law in the United States, as well as in Israel. His academic base is the Hebrew University of Jerusalem where he is today the Bruce W. Wayne Professor of Law. Throughout his career there, he held a number of administrative positions, among them Academic Director of the Minerva Center for Human Rights, Director of the Sacher Institute for Legislative Research and Comparative Law, Founding Director of the Center of the Study of Multiculturalism and Diversity, and Dean of the Faculty of Law. He also held visiting positions at Georgetown Law Center, Melbourne Law School, Stanford Law School, Yale Law School, and the Institute for Advanced Study in Princeton. His work focuses on issues of private international law and interreligious law, civil procedure, and multiculturalism. Among his recent publications are *Conflicts in a Conflict: A Conflict of Laws Case Study on Israel and the Palestinian Territories* (OUP, 2014) and *A Multicultural Entrapment, Religion and State Among the Palestinian-Arabs in Israel* (CUP, 2020). – Address: Faculty of Law, The Hebrew University of Jerusalem, Mount Scopus, Jerusalem 91905, Israel.
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I came to Berlin with many expectations. Arriving after serving as Dean of the Faculty of Law at the Hebrew University made me anxious to restart my research and writing. In a

matter of days, I reconnected to chapter five of my six-chapter book and was done with the book by January. It took me about three years to write the first of this chapter five and a matter of months to complete the whole manuscript. The book dealt with my project at Wiko – redefining the religion-and-state conflict in Israel, this time from the point of view of minority religions, and more specifically from the perspective of my Palestinian-Arab community, rather than from the over-studied Jewish majority point of view. I will relate about this later on in more detail. But many other adjustments had us occupied after arriving, much beyond the research: my wife was adjusting to a new work environment – working via Zoom and online (half a year later the whole world would need to adjust as well); our nine-year-old son beginning third grade in an international school with all the associated challenges; and all of us adjusting to a new vibrant city. But probably, the greatest challenge of all, is that of defining myself – at least in a way that will not deceive my interlocutors. I say this also because of what seems to be a strong urge in people, especially when they are abroad or more specifically when meeting someone from another country, to determine the identity of that person. It's identity politics at its simple best. It is not my field of expertise that defines me, at least not at first, but the country I come from. But then what will this disclose on my part when I say that I come from Israel, and even if I add that I am a professor at the Hebrew University? Actually, I am Palestinian, I will immediately add. Ah! Really! Yes indeed, I will reply – I am part of what is today a rather large minority in Israel (21 %) – that was a majority a little over 70 years ago. At this stage, and if not interrupted by other interlocutors, the conversation about my identity can take a whole hour, how am I treated as a Palestinian in Israel and carry its passport, what about occupation, discrimination, where I live, and where I grew up, what languages I speak, is my wife also a Palestinian... Imagine needing to take so much time to explain who exactly are you, relative, say, to most of the other Fellows who came from France, local Germans, and even my other Israeli colleagues. This is by no means my experience just at Wiko; it is actually my experience almost every time I find myself in an international setting. I must confess that on a number of occasions I just let my identity pass in any order my companion or audience made out of me, maybe because I was tired of the effort and maybe because I was just enjoying my drink. The thing is that I always hoped that I could be as successful in passing as an ordinary Israeli when traveling out of Ben-Gurion Airport, but to no avail.

I must admit that I cannot complain much about identity politics – this is my bread and butter in my academic work. My mother discipline is private international law. I have

long regarded this field of law to be the constitutional law of private law. It deals with private disputes in and about the whole spectrum of private law (torts, contracts, property, family relations, and a bit more) every time the dispute or the underlying legal relationship is connected to more than one country (usually independent sovereign countries, but it can also be states and provinces within a federal system). This multijurisdictional character makes us ask such basic questions as: which country can adjudicate the dispute and based on what contacts: nationality, domicile, residence, presence, the place of the act, the place of damage, the locus of the property; and what if the contact is fortuitous under the circumstances or, worse, what if two courts in two different countries want to adjudicate the same dispute at the same time, i.e., in parallel or subsequently, after the first has rendered a final judgment. On many occasions, such disputes also require the court to choose between the laws of the different connected states, making it necessary to make choice-of-law calculations and assess the regulatory and normative interests of the norms in conflict. Actually, this is why we call this same discipline the conflict of laws. Of course, these different assessments pertaining to jurisdiction, judgments, and choice of law are more than occasionally rich with national policies, sovereign territorial interests, the expectations of the parties, and in broad terms a genre of identity politics. In a considerable number of countries in the world, including Israel, such conflicts can be of an intra-state nature. That so not because the country is a federation of a sort. But because local subjects happen to belong to different religions, and depending on their religious identity they come under the jurisdiction of their respective religious community and are governed by their respective religious community norms. Today, this is unheard of in Western countries. Making the case even more unusual is that a person cannot choose his or her religious identity, at least not at first, and in most cases not even in the “end”. Religious communities are entrusted with making the choice instead and determining who is a member and who is not. In the Middle East, it was the Ottomans who organized this order in what became known as the *millet* system, and for various reasons depending on the locality, it was adopted by many Middle Eastern legal orders. The areas in which this *millet* system operates today are usually those of marriage, divorce, and other matters of family law, sometimes exclusively and sometime in parallel to civil territorial courts and norms. Though intricacies of this system can be highly complicated, in its essence it is not much different from the kind of problems that we deal with in private international law. Once again, we are in the business of determining jurisdiction and choosing the norms that were fixed in relations to persons, but because of their personal religious identity

rather than their affiliation with a territory. This is why the course I teach at the Hebrew University is actually called Private International Law and Interreligious Law.

So, identity is everywhere in my work. And if that were not enough, consider this: what if we look at this reality of private international law and interreligious law not in terms of the regular formal legal rules, but through the lens of legal theory and identity politics, namely multiculturalism (legal pluralism, liberalism, group rights, legal relativism, communitarianism, constitutional theory, nationalism and secularism, colonialism, and more). Actually, to experiment with multiculturalism and all it represents, you cannot find more raw materials than those offered by the field of private international law and certainly interreligious law. My work during my year at Wiko was to deal with Israel's rather complicated and unusual constitutional entanglement between religion and state, it's still-operating *millet* system, and the theory and practice of multiculturalism. It all culminated in my book – *A Multicultural Entrapment: Religion and State Among the Palestinian-Arab Minority in Israel*. In the book, I not only give a detailed description of how the *millet* operates in today's Israel, I also try to make assessments about why Israel's religion-and-state conflict is centered so much on the Jewish majority, when in many other places in the world it is dominated by minority religions. What are the ramifications of perceiving the religious *millets* as multicultural jurisdictions and what are the ramifications of not perceiving them as such?

But my encounter with my identity, or rather with my identity as perceived by others, has a genealogy. I described how the conversation usually starts or can abruptly end. Still to describe, however, is how the conversation ends after it has taken its full course – certainly, after ten months of intense interaction, the pandemic notwithstanding. We somehow become (for better or worse, to be completely objective) just Michael (Mikhail – OK!), Felix, David, Zaid, Achille, Zhiyi, Nicole, Lynae, Efraín, Dror... And when that happens I often lament not attending medical school (Alastair any chance?) – I know that would have made my mother happy.