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Why Won't There Be Civil Marriage Any Time Soon in Israel?
Or: Personal Law--The Silenced Issue of the
Israeli-Palestinian Conflict

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Nashim: A Journal of Jewish Women's Studies & Gender Issues, Number
6, Fall 5764/2003, pp. 28-34 (Article)

Published by Indiana University Press

DOI: <https://doi.org/10.1353/nsh.2004.0004>

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of communication and support with Palestinians. Many joint organizations do still exist, even in the current environment.

And, more difficult, we need to support Israelis in making the concessions and compromises that will demonstrate their acceptance of the right of Palestinians to their own state.

Finally, American Jews need to stand up in the anti-war movement and let our support for Israel be known. Those who are against Israel are against peace. Only those who support both Israel's and Palestine's rights to national sovereignty can be helpful in the movement to resolve the violent conflict.

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Many of the statistics I quote here are from a survey made by a group called Search for Common Ground. Just the name of the group makes me sigh in relief: Israelis and Palestinians are at war, the loss of human life is devastating, but those of us who want peace must seriously search for common ground, and keep searching, and shout when we've found it.

* This essay is largely based on an address given at Temple Beth Israel (Reconstructionist) in Eugene, Oregon, on January 24, 2003.

WHY WON'T THERE BE CIVIL MARRIAGE ANY TIME SOON IN ISRAEL? OR: PERSONAL LAW—THE SILENCED ISSUE OF THE ISRAELI- PALESTINIAN CONFLICT

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I would like to argue that personal law—the body of law concerned with marriage, divorce, and personal status—is a silenced issue in Israel, precisely because of its centrality to the historical continuity that undergirds the collective memories of the two national groups, Jewish and Arab, that comprise Israel's population. Thus, in a situation of conflict, neither group wants a change in the existing state of affairs. Personal law is “nationalized”; that is, it is conscripted in the service of the national cause.

In the first portion of this essay, I shall bring examples of some things that we have come to take for granted in day-to-day practice in Israeli society, which typify the silencing of the issue of personal law in public discourse. In

the second part, I shall summarize briefly the significance of personal law to the human rights of Israel's citizens—particularly its female citizens. In the third part, I shall offer an explanation for these practices and for the silencing that keeps them in place. As I shall argue, the nationalization of the institution of the family¹ serves establishment interests for the principal ethnic-national groups constituting Israel's population—Jews, Moslems, Christians, and Druse—by maintaining the legal and cultural divisions between “them” and “us” that stand in the way of the formation of a true civil society.

Personal Law in Israel: A Silenced Issue

The silencing of the issue of personal law in Israel is all the more deafening because it occurs, first and foremost, within the institutions that represent the heart of “secular” Israeli democracy, namely, the media, the legal system, and the country's academic institutions.

The media: Each year, usually around the spring holiday of Lag Ba'omer—a traditional time for Jewish weddings—we are hit with news items about “the alarming rise in the divorce rate” and “the plunge in rates of marriage and birth.” These scary figures relate to Israel's Jewish population and originate with the Chief Rabbinate, which disseminates both the data and their interpretation. Mostly, the journalists merely “notify” the public about them, without subjecting them to critical analysis or opening up to debate the subordination of personal law to religious law in a country that calls itself democratic. There is usually no mention in these news items of the Arab population, and if there is, it relates to that population's birth rates in comparison with those of the Jews, reiterating the construction of the country's Arab citizens as a “demographic threat.”

The legal system: The discourse on civil law that has endeavored, in the last decade, to advance the cause of democracy and human rights in Israel has systematically overlooked the matter of personal law—except to note that a particular existing or proposed law does not or will not affect the status of existing personal status laws. Examples of this may be found in the “Basic Law of Human Dignity and Freedom” (1992) and in the amendment to the “Law of Equal Rights for Women” (1951) that was passed in the Knesset in 2000. It is also interesting to examine the meaning of the campaign for a “consensual constitution” that is being advanced in Israel's media to prepare

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the way for the enactment of a constitution. It seems rather clear to me that this “consensus” is geared to serve the interests of Orthodox, heterosexual, well-off Jewish men—at the expense of everyone else, that is, the majority of Israel’s citizens.

Academia: It’s amazing to see the extent to which Israel’s Zionist and post-Zionist academics can debate the subject of Israeli democracy in the context of occupation and war, the army and militarism, the courts, the neo-liberal economy, and so on, without relating to the central institution upon which the country’s “ethnic democracy”² or “theodemocracy”³ or “ethnocracy”⁴ rests, namely, the family. The more daring among them, apart from one or two who have subjected the issue to a deeper analysis, talk about “religious coercion,” thus dismissing the whole issue of the institution of the family together with the human rights of Israel’s women—and sometimes those of the men. They thus become victims of the same myth that they themselves perpetuate, according to which Israel is a secular state, and the “problem” is merely that of the “coercion” of the secular majority by a religious minority.

Personal Law and the Human Rights of Women—A Brief Reminder

Personal law in Israel, according to the Law of the Rabbinic Courts (1953) and the Law of the Druse Religious Courts (1962), is regulated and adjudicated exclusively by the Jewish, Moslem, Christian, and Druse religious courts. No comparable state of affairs exists in any other liberal democratic country, because all the world’s “enlightened” states provide for civil marriage and divorce. This is hardly a trivial matter in the constitution of a democracy.

The legitimization of constructing married women as the property of their husbands—which emerges from our well-developed word-laundering mechanisms as the principle of women’s “different but equal status”—lies at the bottom of Israel’s personal law. As a result, a married Jewish woman cannot be divorced without her husband’s consent—not even if she is one of the 200,000 battered women who manage to survive daily in our society, or if she is one of the “chained” women (*agunot*) who have lived separately from their husbands for years without being able to remarry. The situation is slightly different for Moslem and Druse women, since the *Kadi* can compel

a husband to accept divorce; women who belong to the Catholic community, on the other hand, can never get divorced at all. The only way to change the religious court to which a couple's members are subject is for both to convert officially to a different faith.

The principle that a woman belongs to her husband also dictates and buttresses the rules of modesty, which relegate women, in the main, to the private sphere, allowing them to speak and/or appear in public only under male supervision. It also explains the tragic status of the *mamzer* (the child of a married Jewish woman by a man who is not her husband), the Moslem *talaq* (a husband unilaterally divorces his wife by pronouncing the irrevocable *talaq* three times in the presence of witnesses, after which the process is completed in a court of Islamic law⁵) and the divorced or widowed Druse woman, who can never remarry.

In other words, the personal law is a system of norms and values that permits the regimentation of a woman's body and sexuality and subordinates her to the authority of her husband and his family, while negating her most basic human rights. Furthermore, that law upholds and reproduces racist forms of thinking that are taken for granted in Israeli culture. For example, the status of *mamzer*—which applies to a child born to a woman still “chained” to her former husband after years of separation—is passed down to one's descendants for ten generations. A male *mamzer* can marry only a female *mamzer* or convert, not a “kosher” Jewish woman—whose “kosherness” is first of all genetic. Finally, couples whose members do not officially belong to the same religious group are unable to marry in the State of Israel. Thus, the laws of personal status give absolute sanctification to the separation of the various ethno-religious groups from one another, to the division between “them” and “us.” Whoever said that “love hath no country”?

Sometimes those who don't see and don't wish to see invoke the magic formula of “multiculturalism” to explain away the peculiar considerations that underlie this strange situation. But I ask them, and ourselves, how one can talk about multiculturalism when individuals have no choice regarding the ethno-religious and gender distinctions under which the coercion of the religious authorities is enforced, in flagrant violation of their civil and human rights.

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The “Nationalization” of the Institution of the Family—The Utilization of the Law of Personal Status in the Creation of “National Identity,” or: Personal Law as a Channel of National Collective Memory

An explanation seems needed for the silencing of this issue and for our acceptance of the relegation of personal law to the control of the various religious establishments, considering the consequent ongoing, institutionalized injury to human rights. I do not accept the centrality of the “religious coercion” argument. It seems to me that some findings of the sociology of religion can provide us with a better idea of the forces that are at work here. First of all, based on Durkheim’s theories,⁶ it may be argued that personal law, and religion in general, form the basis of the collective identity of each ethno-religious group. Religious symbols, norms, rituals, and laws constitute a basis for group solidarity, enabling each group to differentiate those who “belong” from those who do not, and to exclude the latter. A book published in 2001 by Eliezer Ben-Raphael⁷ cites the responses given to David Ben-Gurion in 1958 by fifty Jewish thinkers on the subject of the Law of Return and intermarriage. The author gives a comprehensive explanation for why the Jews in the State of Israel should refrain from adopting accepted democratic precepts with regard to matters of marriage and divorce.

Secondly, in a situation of conflict, personal law, under the banner of “cultural differences,” inscribes clear boundaries between the different ethno-religious groups. These forestall any possibility for secularizing the institution of the family and establishing a true civil society in Israel.

Thirdly, among the Moslems and Druse, the laws of marriage and divorce also serve as a crucial normative-cultural mechanism for holding back westernization—a precious symbolic weapon in an age of globalization that fosters the erasure of boundaries.

Finally, to invoke an expression used by Daniele Hervieu-Leger,⁸ personal law serves as a central link in the process of establishing collective memory and passing it on from one generation to the next. Collective memory is what explains our connection with the past and imbues the present and future with meaning in relation to that past. In this context, personal law, for each national-religious group, becomes a central mechanism for the transmission of belonging and identification with the collective. It functions to connect the personal with the collective, and thus to create avenues for identification and belonging at the emotional and cultural levels. In other words, personal law

constitutes a principal mode of intergenerational transmission of collective memory, as that memory is formulated by the hegemonic establishment of each ethno-religious group in its own interest.

Conclusion

I have endeavored to explain why this legal situation persists, injurious as it is to the human rights of Israel's citizens, and notwithstanding its reproduction of racist patterns of thought. The reason for it is not religious coercion—which, if anything, plays a secondary role—but, rather, that most of Israel's citizens, both Jewish and Arab, in conformity with the hegemonic discourse, see the personal law as a crucial mechanism in the maintenance of their collective identity and the transmission of collective memory to future generations. These are of critical importance to both groups in a society in which the conflict between them remains unresolved.

This state of affairs explains why there is no broad-based social movement of struggle against the control of marriage and divorce by the religious establishments, even after the arrival in the country of 800,000 immigrants from the former Soviet Union whose Jewishness rests on ethnic rather than halakhic grounds, generating innumerable problems regarding their eligibility for Orthodox Jewish marriage. It also explains why Reform and Conservative weddings are not recognized in Israel: the argument given against this each time the matter arises is that “it will divide the people” (*not* the faith!).

The persistence of this situation demonstrates the extent to which individual Israelis do not see themselves as being entitled to choose among different elements of faith and belief. The latter process, which Hervieu-Leger refers to as *bricolage* (patchwork), is indicative of the individualization of religion and religious identity that has taken place in the West in the postmodern age. In Israel, religion and religious issues are understood only in collective terms, and individual choice is viewed as a threat to the collective—a clear-cut expression of religion's mostly fundamentalist cast in this country.

Two further points bring us up to the present, that is, to the Al-Aqsa Intifada. First, in light of this analysis, how should we relate to Ehud Barak's declared intention to bring about a “civil revolution,” with a consequent change in the legal situation? Either he was dissembling, or he didn't really understand—or maybe both together (it could be that the same thing

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happened in his negotiations with the Palestinians). Secondly, in a time of war, clearly, personal law will be impressed all the more into the service of maintaining the identity and boundaries of the collective. Nor can there be any doubt that the ethnic-religious discourse will prevail over any kind of civic discourse. Many people see this as an effective barrier against assimilation with Israel's numerous foreign workers as well. However, we must not lose sight of the fact that Israel's personal law makes for division and estrangement between Israel's different populations and places a formidable obstacle before the formation of a civil society, now or at any time in the future. Whoever hopes for the emergence of a different kind of society here, one that does not institutionalize the infraction of human rights, must keep on trying to raise these issues to public awareness and to create an alternative discourse centering around the human rights of every one of Israel's citizens.

Notes

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4. O. Yiftachel, "Ethnocracy: The Politics of Judaizing Israel/Palestine," *Constellations*, 6/3 (1999).
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