

January 16, 2015

Time for freedom of choice in Israel's marriage laws

By Steven Bayme

Some years back, a young recently-married woman lost her husband in a tragic car crash. Five years later she met someone who proposed to her, and the couple announced their engagement. What should have been an occasion for celebration, however, turned to sorrow when the couple's rabbi discovered additional details. The deceased husband had a younger brother, who was obligated either to marry his childless sister-in-law or perform *halizah*, a ritual freeing the two from the obligation to marry one another. The problem lay in the fact that her new fiancé was a kohen, a category forbidden halachically from marrying a woman who had performed the *halizah* ceremony. As troubling as this obscure law appears, it remains binding in the eyes of Orthodox halachic authorities. The rabbi involved fulfilled his duty by arguing that the marriage was forbidden, and the couple reluctantly broke their engagement. Of course, this was their own free and conscious decision. Separation of church and state in America enabled the rabbi to advocate a halachic position, but he could not enforce it. Had the couple decided to marry, they could have used a non-Orthodox rabbi or had recourse to a justice of the peace.

Unfortunately, in Israel, the same cannot be said. Had the incident occurred there, matters of personal status – marriage, divorce, conversion to Judaism – rest entirely under the jurisdiction of the Chief Rabbinate, which would have forbidden the marriage. The couple's sole recourse would have been journeying to Cyprus for a civil marriage, an option increasingly undertaken by thousands of Israeli couples, who either are not eligible to marry under Jewish religious law (a Kohen and a divorcee, a Kohen and a convert to Judaism, any Jew with the offspring of an adulterous relationship with a married woman) or who wish to bypass the Chief Rabbinate.

One fairly simple change in Israeli secular law would go far towards resolving this situation: introduction of civil marriage as a recognized alternative. Recently, under American Jewish Committee (AJC) auspices, a distinguished group of American Jewish organizations and individuals established the Jewish Religious Equality Coalition (J-REC) for the purpose of advocating freedom of choice in Israeli marriage and securing recognized alternatives to the jurisdiction of the Chief Rabbinate on personal status matters.

Unlike earlier efforts, this new coalition constitutes a very broad initiative comprising representatives of virtually all sectors of the American Jewish community. The Coalition is chaired by Dr. Dov Zakheim, former Under Secretary of Defense and a prominent Modern Orthodox leader. Rabbi David Ellenson, Chancellor of the Hebrew Union College and its past president, serves as vice-chair. The Coalition includes the current presidents of HUC, Jewish Theological Seminary, Reconstructionist Rabbinical College, and Yeshivat Chovevei Torah (YCT) as active members. Several "Open Orthodox" rabbis, alumni of YCT and, in at least one case, of Yeshiva University, have joined J-REC in the belief

that halachic principles must be upheld, but that Jewish law must be accepted voluntarily in personal status matters rather than imposed by coercive state power.

Under the religious status quo, the image of Judaism in the Jewish state suffers among many, as appearing incompatible with democratic principles of individual choice. American Jews, long accustomed to exercising personal freedom, become alienated by the absence of recognized alternatives to the Chief Rabbinate, weakening the essential ties between American Jewry and Israel. The special relationship between the United States and Israel has long been helped by a dedicated American Jewish community.

Decreased American Jewish attachment to Israel could undermine that pillar of the U.S.-Israel special relationship.

J-REC does not seek to abolish the Chief Rabbinate, but rather to create alternatives to it. In time, the Chief Rabbinate may evolve into an institution with moral authority, much like the aforementioned rabbi who was committed to halacha, but who used persuasion rather than *diktat* to urge his congregants to follow it. That transformation may take place only if the Chief Rabbinate becomes a convincing, rather than a coercive voice within Israeli society.

To be sure, powerful vested interests aim to preserve and perpetuate the status quo, no matter how anachronistic and offensive it may appear to many. Clearly it is time for American Jewry to voice our profound concerns on these issues – for the sake of the very image of Judaism in the Jewish state and, no less, for the unity of the Jewish people.

Steven Bayme serves as National Director, Contemporary Jewish Life, AJC.