

ANALYSIS

Will Orthodox Israelis' revolt against the chief rabbinate spur a domino effect?

An in-depth look at a year of shifting sands in the notorious historical status quo of religion and state in the Holy Land

BY AMANDA BORSCHHEL-DAN | December 27, 2015, 9:56 pm |

Chuck Davidson hopes to be arrested soon. He faces a possible two-year jail sentence for the crime of presiding over an unregistered marriage ceremony in Israel, but the Orthodox rabbi, an outspoken revolutionary for the cause of separating religion and state, believes his arrest will raise enough public outcry over Israel's "inflexible" state religious system to help "take down" the chief rabbinate.

Today, Davidson is one of very few Orthodox rabbis who are openly facilitating Israeli couples' "off-the-books" weddings. These ceremonies are considered illegal in the State of Israel, where all Jewish marriages must be approved and registered under the auspices of the chief rabbinate. And although the law has yet to be enforced, not only does the officiating rabbi face possible legal ramifications but so does the wedded couple.

"I want to bring exposure to the very notion of getting married Orthodox outside of the rabbinate," the American-born Davidson tells The Times of Israel. And he sees a real need for this option. He's observed an uptick in requests since being profiled this summer [on Israel's Channel 2 news](#), and says that in the past year, he's married dozens of couples, averaging at least one wedding a week.

For Davidson, a marketing specialist, overcoming his fear of reprisal entailed a risk vs. reward analysis. He decided that his personal risk was minimal, but "the reward for *am yisrael* [the People of Israel] is very, very high," says Davidson.

This year, after widespread disappointment among religion and state activists with the lack of reforms legislated by the short-lived 19th Knesset, a critical mass from a myriad of grassroots

Orthodox movements are employing alternative methods — in tandem with Liberal Jews, and alone — to bypass the state religious authorities.

In today's 20th Knesset, the ultra-Orthodox parties that prop up the chief rabbinate's long reach into everyday Jewish life are seeing an upwelling of religiously observant grassroots support for change, and vetoing anything that smacks of religious reform.

But with concerns over such factors as what makes for a kosher huppah, kashrut certification and — extremely controversially — the need for independent conversion courts, esteemed Israeli Modern Orthodox rabbis are increasingly taking a determined stand and creating alternative, yet 100% halachic, options for the same sacred services now only sanctioned through the rabbinate.

Today, the new poster child of religious civil disobedience wears a knitted kippa. And faced with a recalcitrant Knesset ever fearful of disturbing the tenuous status quo, the movement is employing a strategic shift away from legislation and toward the use of other big guns, including class action lawsuits.

A new battle begins, and its arena is the court of law.

When you can't take the law into your own hands, take 'em to court

Leading the Modern Orthodox charge in the de-monopolization of the chief rabbinate is Rabbi Seth Farber, the founder and head of Israeli NGO Itim. Since 2002, Itim has helped thousands of immigrants and Israelis with difficult personal status problems navigate the game of chutes and ladders that is the country's religious authority.

Working the system from the inside, Farber's team addresses a broad range of issues, including marriage, divorce, conversion, burial, adoption, who is a Jew, and the overlap of halacha and such technologies as IVF.

This year, seeing no prospect of progress through legislation, it has ramped up its efforts to create precedents through the court system, a tactic Liberal Judaism in Israel has employed for decades. And the rabbinate is on the defensive.

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"The ultra-Orthodox political factions, having been out of power for a number of years, have seized the opportunity [now that they're back in the government] to exercise both absolute control over the rabbinate and extend the rabbinate's reach because they are more fearful than ever of grassroots efforts," Farber told The Times of Israel.

"Because we [activists] were able to do so much, it's had the opposite reaction," says Farber, and propelled the

higher walls'

ultra-Orthodox parties to action. "It's the antithesis of the previous Knesset."

He says the ultra-Orthodox have noted "a groundswell of support for a major reform — small r — in the religious services, and because of that they want to put up higher walls."

Two of the class action lawsuits Itim has spearheaded this year are over unjustifiably inflated fees charged by state religious institutions. In March the NGO won in a suit against four regional councils over fees for the ketuba, the writ of Jewish marriage. After the win, it was agreed that the rabbinate would symbolically refund one couple's NIS 630 fee, compensate for legal expenses, and desist from overcharging immediately — a move that is estimated will save the public some NIS 150,000 a year. A second case, with much higher stakes at NIS 32 million, has been filed and involves long-term overcharging of those who immersed at ritual baths in some 19 regions. It will be heard in March 2016.

Other lawsuits in the works include a Supreme Court case which began in July that pushes for a woman's right for autonomy in the ritual bath. In October, a suit was filed against the rabbinate for release of information concerning which Diaspora rabbis are acceptable for purposes of proof of Jewishness for marriage. It will be heard on January 6, 2016. And in November, Itim filed jointly with the Rackman Center to open up administrative positions in the rabbinical courts to women.

There are also ongoing cases in the Supreme Court circling the question of Jewish identity, including one addressing independent halachic conversion in Israel that was [heard in June](#). The court has yet to publish a decision in that case, which began in 2006 when Czech convert Martina Ragacova petitioned to have her Orthodox conversion recognized by the State of Israel. In 2011 she was joined by two other petitioners; their case was heard by nine Supreme Court judges this summer.

Ragacova, who lives in Prague today, became halachically Jewish after undergoing an Orthodox conversion in the ultra-Orthodox Israeli city of Bnei Brak through the prestigious religious court of Rabbi Nissim Kurelitz. Kurelitz has converted dozens of individuals in his private religious court who are today not recognized by the State of Israel as Jews, including the well-known case of [Mark Halawa](#), who was born to a Muslim father in Kuwait.

Her petition, which was brought by Itim alongside other organizations, is interesting in that there are two landmark issues at stake: The first asks whether those without the legal status of residents of Israel may convert in Israel and subsequently petition for citizenship. Currently, under the Law of Return, they cannot gain citizenship.

The second matter under discussion is whether Orthodox conversions in Israel that are completed through independent conversion courts outside of the state's Conversion Authority should be recognized by the Interior Ministry. (After a Supreme Court decision in 2002, Reform and Conservative conversions in Israel are recognized by the state, although the converts are not

viewed as Jewish by the chief rabbinate so they cannot legally marry, etc.)

It is this second issue, of domestic halachic conversion courts outside the rabbinate, that quickly became relevant in late summer with the [establishment of the independent Orthodox-run Giyur Kahalacha](#).

The facts are on the ground

The rabbinic Rubicon was publicly crossed this summer with the foundation of Giyur Kahalacha by Farber and a number of esteemed Modern Orthodox rabbis. To date, the constellation of independent courts has converted some 100 Israelis, mostly Former Soviet Union immigrants, many of whom are children.

The independent conversion courts are presided over by rabbinical luminaries such as Efrat Chief Rabbi Shlomo Riskin, Rabbi Nachum Rabinovitch from Ma'ale Adumim, Rabbi Haim Amsalem, Otniel's Rabbi Re'em HaCohen, and head of the Tzohar rabbinical movement Rabbi David Stav.

For many of these rabbis, the almost insurmountable stringency of the chief rabbinate's courts is a blight on the People of Israel. There are some 400,000 Israelis from the former Soviet Union who live "Jewish" lives but are barred from state life cycle services as Jews, including marriage and even burial.

These immigrants — and, as this problem now spans several decades, their children — serve in the IDF, work in all strata of society, and see themselves as Israelis. But while they are Jewish enough to become citizens, since there is no civil marriage in Israel and they are not recognized by the chief rabbinate they are forced to find alternative — or illegal — routes to forming families, making many of them feel like second-class citizens.

According to the [2015 Israel Religion and State Index](#) conducted by Israeli NGO [Hiddush](#): For Religious Freedom and Equality, some 64% of Israelis support the recognition of all forms of religious conversion, including Reform and Conservative. Among secular Jews, the majority of Israel's Jewish population, 90% support recognizing all forms of religious conversion (53% would also recognize secular conversion). Interestingly, among immigrants, the support was less, at 82%.

However, the Giyur Kahalacha initiative is, as Farber puts it, "the first frontal challenge to the rabbinate on conversion from the Orthodox community."

In opposition to the current arduous course available to potential converts through the Israeli chief rabbinate, it does not require a false piety or avowal of full religious observance. (The organization's Hebrew name carries the connotation of a "just" or "proper" conversion.) These rabbis see conversion as a significant start on the path to full and meaningful Jewish life, not its endgame.

"I think the whole Giyur Kahalacha movement really highlights the complete failure of the rabbinate to recognize a modern Israel," Farber told The Times of Israel in a recent conversation. Although the state has marked 20 years since the massive FSU aliyah, there's "a greater sense in the last 10 years of the rabbinate putting their heads in the sand."

You are what you eat

Elsewhere, in the somewhat less-controversial realm of kosher eating, [2015 saw a victory](#) for businesses holding independent certification. In a May opinion to the High Court, Attorney General Yehuda Weinstein said the government would no longer fine kosher establishments who use supervision outside of the rabbinate, and would cancel existing fines.

In addition to an extant Conservative certification, Jerusalem Municipality member Rabbi Aaron Leibowitz's community-based "[Hasgaha Pratiit](#)" (Private Certification) has taken up the gauntlet in 2015 and spread to several cities across the country.

This is unsurprising. According to Hiddush's [2015 Israel Religion and State Index](#), 73% of Israeli Jews favor ending the rabbinate's monopoly on kashrut supervision. Some 49% favor opening the kashrut certification market to competition among professionals representing all Jewish denominations, while 24% prefer only allowing Orthodox kashrut supervisors.

Strikingly, the report states, "The growing rift between the rabbinate and the Zionist Orthodox community was expressed by a majority of Zionist Orthodox respondents (53%) that favor breaking the rabbinate's monopoly."

Back in May, Leibowitz told The Times of Israel that Weinstein's ruling shows "that a lot of people are doing what we're doing. That's what has the rabbinate in a flurry. The rabbinate has been presenting us as illegal, and we just received our own certification. It's a huge chink in the armor of the rabbinate, and of course the Haredim and religious Zionists will fight it in the Knesset, so that we're placed outside the law."

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His supervision is based on a cooperative effort between knowledgeable volunteers, largely women, and the kitchen staff at the participating restaurants, cafes and hotels. Leibowitz's initiative has seen its downs this year, with a Jerusalem branch of a well-known cafe chain recently pulling out of the program, but also many ups, as established rabbis increasingly endorse it.

Just this week, Rabbi Oren Duvdevani, who holds international certification on the halacha of kashrut, and Rabbi Meir Lichtenstein of Beit Shemesh's Congregation Ohel Yonah approved of Leibowitz's kashrut certification,

clearing its use for their congregants.

The businesses in the independent kashrut court case were represented by the Israel Religious Action Center (IRAC), which is the public and legal advocacy arm of the Reform movement.

For Gilad Kariv, head of Israel's Reform movement and a long-time crusader for religious freedom in Israel, these independent kashrut and conversion initiatives are "helpful if they embrace the notion of not fixing the monopoly but rather canceling the monopoly."

'We Israelis understand that the American model of separation of Church and State is not relevant to a Jewish state'

"We Israelis understand that the American model of separation of church and state is not relevant to a Jewish state. But we see no reason why religious bodies should be part of the legislative or judicial branches... It's fine if the government chooses to support religious bodies, but it should support all streams and communities."

Kariv and others believe that if the critical grassroots mass of those seeking independent avenues for marriage, conversion and kashrut continues, increased official recognition and government support for all streams of Judaism is inevitable.

Taking it one step further, in August, [Dr. Shuki Friedman from the Israel Democracy Institute](#) wrote in an op-ed published in Haaretz that "the trend towards privatization of religious services heralds not only the death of the rabbinate – it creates a de-facto separation between religion and the state. The less relevant the rabbinate and the official and established religious services it provides, the more significant the separation between religion and the state. And if that is the actual situation, in the end the legislators will have no choice but to recognize it by means of legislation as well."

But of course there has been much public backlash to this privatization as well.

[In August](#), Education Minister Naftali Bennett, the head of the National Religious party Jewish Home, criticized the establishment of Giyur Kahalacha, saying that unless there is one centralized conversion authority, "we will have more and more partisan authorities, and the Jewish state as such will be destroyed. We did not come to be a Jewish state in the Land of Israel so that we have shtetls of different communities."

Or did we?

How did we get where we are today?

Back in June 1947, as a UN fact-finding mission toured Mandatory Palestine to assess the need for support of a Jewish state, David Ben-Gurion, then head of the Jewish Agency Executive,

wrote a letter to the head of the ultra-Orthodox World Agudat Israel organization to calm his fears of a secular government in the Holy Land.

Now serving as the basis of the religious status quo agreement in Israel, the letter is interpreted as giving Orthodox Judaism oversight over family law such as marriage and divorce, affirming Shabbat as the day of rest, obligating the Israeli government to maintain a kosher kitchen under Orthodox supervision in institutional buildings, and giving educational autonomy to the numerous Jewish denominations' schools.

And, although in the 1940s few if any Israelis could have foreseen a situation in which even those Israelis who are eligible for marriage through the rabbinate — unlike the almost half a million inelegible former Soviet Union Jews who entered via the Law of Return — would choose a different route to marriage, one has to wonder, what really was secular Ben-Gurion's intention?

In his [1947 letter to the ultra-Orthodox World Agudat Israel](#), Ben-Gurion also states that “full equal rights for all citizens and the absence of coercion or discrimination in religious matters must be guaranteed in advance.”

And on marital affairs, a prescient Ben-Gurion writes, “All members of the Executive recognize the serious nature of the problem and the great difficulties involved. All bodies represented by the Jewish Agency Executive will do all that can be done to satisfy the needs of the religiously observant in this matter and prevent a rift in the Jewish people.”

However, perhaps following in the Jewish tradition of dual — and sometimes dueling — systems of Oral and Written Law, Israel has no true constitution that clearly spells out its stand on religion and state. In practice, the Declaration of Independence serves as a foundational document, a series of Basic Laws as amendments, and Supreme Court cases as precedents.

On the issue of religion and state, the Declaration of Independence proclaims: “The State of Israel will be open for Jewish immigration and for the Ingathering of the Exiles; it will foster the development of the country for the benefit of all its inhabitants; it will be based on freedom, justice and peace as envisaged by the prophets of Israel; **it will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex; it will guarantee freedom of religion, conscience**, language, education and culture; it will safeguard the Holy Places of all religions; and it will be faithful to the principles of the Charter of the United Nations.”

Based on the 1947 letter, the 1948 declaration and an already existing rabbinate that was put in place during the Ottoman Empire as an administrative body for the Jews in the Holy Land (and then tweaked during the British Mandate), the chief rabbinate of the State of Israel was born.

By 1954, the rabbinate wrote itself ordinances delineating its authority and the election of its membership, and clearly perceived itself as the supreme religious authority of the Jewish state.

Later, as spelled out in 1980's [Chief Rabbinate of Israel Law](#), it was codified that the only Judaism that is authorized to preside over Jewish Israelis is Orthodoxy.

However, until the Ottoman Empire created the convenient Jewish religious administrative post, a chief rabbinate had never existed in Jewish history.

"The institution of the chief rabbinate is not an indigenous Jewish institution," says Israeli Reform Rabbi Uri Regev, the founding head of Hiddush.

Regev says the rabbinate sees itself as "above the law" and the ultimate authority on all religious matters. But the lawyer and legal scholar claims that conversion was not originally officially part of the rabbinate's purview, calling it "glaring in its absence."

"We're in an ironic state of affairs now with the establishment of Giyur Kahalacha, which is more tolerant, inclusive, and lenient," says Regev, adding that many of the Religious Zionist rabbis who founded the conversion program, including Efrat's Riskin, Tzohar's Stav and head of NGO Itim Farber, are now the focus of "the ire of the chief rabbinate."

It is also perhaps ironic that, unlike the 500 adults and children (many brought to Israel through adoption) who annually convert through the Reform or Conservative movements in Israel, those who chose to become Jews via the new independent conversion court will not be listed as Jewish in the national registry in the Interior Ministry.

According to Regev, the new conversion court has unintentionally created "chaos" in terms of personal Jewish status. The only way to rectify the situation and have the halachic converts accepted as Jews, he says, is for Israel to "do away with the monopoly of the chief rabbinate."

Is civil marriage on the horizon?

Zionist Union MK Ksenia Svetlova says the status quo is a vague political spectrum of give and take that is "meant to create compromise for the sake of coexistence."

In conversation with The Times of Israel this week she says, however, that the distance between the ultra-Orthodox and the secular/National Religious camps has grown. Each side has now lost the understanding of why the status quo exists at all.

As bill after bill on such issues as civil marriage or conversion are vetoed or not even brought to the Knesset floor, Svetlova says secular, Reform and Conservative Jews are losing hope.

The freshman MK says her party, alongside other like-minded parties, persists in bringing these bills to the Knesset because "it has to be on the agenda. They have to know we're not giving up," she says, adding that another civil marriage bill is set to make its debut in the coming months.

Civil marriage, says the Russian-born former journalist, is the “most important” legislation she is working on for her community. But while initially optimistic she could make a difference ahead of the elections, in seeing that even those few legislative steps forward affirmed in the previous “secular” Knesset have been reversed, she is aware of how difficult it would be to get anything passed today.

Indeed, even in the past, when so-called religious reforms were passed, often there were hidden clauses clipping non-rabbinate authority. Take for instance 2013’s lauded Tzohar Law allowing couples to register their marriages outside of their residential district. In that law there is a much overlooked clause that reinforces the 19th century Ottoman Penal Code’s ban on non-state sanctioned marriage, reiterating the potential two-year sentence against “rogue” rabbis.

This implied threat caused many previously active Orthodox officiants to cease performing ceremonies or go deep underground. Which is why wedding rabbi Davidson believes that the next avenue for change on this issue can only be found through the Supreme Court. And for his case to be addressed there, he must be arrested, he says.

There are solid indications that the public supports de-monopolizing the rabbinate, most especially in regards to marriage. According to the Hiddush [2015 Israel Religion and State Index](#), 70% of secular Jews and 67% of immigrants would prefer to have a non-Orthodox wedding. Some 37% said they would prefer an unsanctioned marriage in Israel, or to live as common law spouses, instead of entering the rabbinate’s doors.

[A 2014 poll conducted by the Israel Democracy Institute](#) targeting Israel’s Modern Orthodox found that 52% of the national-religious community opposes instituting civil marriage and 24% supports it only for those not entitled to marry through the chief rabbinate. A further 21% favors instituting civil marriage “for all who prefer it.”

These findings are indicative of a change in public perception of the rabbinate, causing many to wonder if perhaps it is time to change its purview as well.

Working to create the best shade of gray possible

Every Knesset is loath to legislate on controversial religious matters. For religion and state activists, however, since the 19th Knesset’s coalition was formed without ultra-Orthodox parties, that short-lived government is seen as a missed opportunity as many had what turned out to be false hopes that burning issues would finally be addressed and rectified.

“They weren’t, and it’s not surprising,” Kulanu MK Rachel Azaria tells The Times of Israel this week.

Azaria believes that today’s fragmented Israeli society is not yet “ripe” for change on a legislative level. With such an explosive topic, “you have to be very careful not to force anything on anyone,”

says Azaria, who is herself religiously observant and a long-time activist for religious institutional reform.

She feels that instead of lobbying for laws in the Knesset, activists should focus on grassroots efforts to raise awareness of the problems and persuade the public to vote with them in mind. To date, most secular Israelis vote based on security or economic issues.

After having worked on these issues during her stint in the Jerusalem Municipality, she predicts that change will come first to the less contentious kashrut regulations and commerce on Shabbat, and only later to Jewish status issues such as conversion and marriage.

She credits, for example, recent successes in the realms of kashrut and Shabbat commerce to the rhetoric tying the issues to the economy. With kashrut, she says, activists have managed to create a different language, framing the hefty cost of the syndicate providing the rabbinate's oversight as "the price we pay for the monopoly." Likewise for Shabbat commerce.

'The world is not black and white'

However, in her role as a politician, Azaria says she can't always work within the rubric of "what is right." In politics, she says, it's about what you can actually accomplish in the political arena while working as part of a team.

"The world is not black and white," says Azaria. In politics, it's about "working to create the best shade of gray possible."

Only once the broader Israeli society comprehends that tweaks can be made to the status quo — without resulting in religious coercion or increased secularization — will change take place.

"I'm optimistic that if you work long term and set goals — and know how to work within reality and not get upset by it — you can make a difference," she says.