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# SECULAR RIGHTS AND RELIGIOUS WRONGS? FAMILY LAW, RELIGION AND WOMEN IN ISRAEL

PASCALE FOURNIER,* PASCAL MCDOUGALL** & MERISSA LICHTSZTRAL***

INTRODUCTION
I. WHAT *CRITICAL* LEGAL PLURALIST APPROACH TO THE "FIELD"?
II. FAILURES OF THE CIVIL LAW
III. RELIGIOUS EMPOWERMENT: SANCTIONS AND THEIR LIMITS
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> *Even should civil marriage eventually be introduced into Israel as a possible option for all persons, in addition to religious marriage, the change will indeed be great symbolically, but the legal schizophrenia with all its complexities and difficulties will not disappear, and new problems will arise. . . . As long as our social reality is as complex and conflict-ridden as it is, the legal conflicts which it engenders will be our fate in the future as well.*[1]

## PROLOGUE

To the sound of a wailing Middle Eastern wind instrument and spoken Hebrew prayers, the movie fades in to main characters Meïr and Rivka's bedroom at dawn.[2] Amos Gitai's Cannes Festival–featured *Kadosh* then launches into a bleak portrait of life in Mea Sharim, an ultra-Orthodox neighborhood of Jerusalem.[3] The film depicts Rivka's decay as she is ostracized and repudiated by her husband on account of being infertile and is driven to isolation and despair by the men of her community.[4] The film also presents the

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1. Pinhas Shifman, *Family Law in Israel: The Struggle Between Religious and Secular Law*, 24 ISR. L. REV. 537, 551–52 (1990).

2. KADOSH (Kino International 1999).

3. *Id.*

4. *Id.*

arranged marriage and domestic violence suffered by Malka, Rivka's sister, leading to her ultimate exile from the Orthodox community.[5] The treatment of women by Israeli family law provokes in the viewer unrest, disgust, and revolt. Gitai's film, a powerful aesthetic tour de force, was acclaimed by critics outside of Israel.[6] *The Wall Street Journal* praised its depiction of "universal themes," yet characterized it as "foreign in the extreme, an austere and shocking portrait of daily life in Mea Shearim."[7] There is some startling truth in Gitai's presentation. But is this artist's gaze nevertheless deforming Jewish women's daily realities?

## INTRODUCTION

Israeli family law has been the object of much criticism for its treatment of women.[8] According to *halacha* (Jewish law),[9] a man holds all the power to grant his wife a religious divorce (the *get*).[10] If a Jewish woman is entitled to a *get* and has not received one due to her husband's refusal, she will be called an *agunah* (chained wife),[11] a status which entails several dire consequences. First, if the woman contracts a new civil marriage, the relationship is considered adulterous under Jewish law.[12] Therefore, an *agunah* is *never* permitted to religiously marry this other man. Second, any children born to a woman who has never received a *get* are labeled *mamzer*.[13] Such children are automatically excluded from Judaism: they are illegitimate, and may never marry anyone but another *mamzer*.[14]

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5. *Id.*

6. *See, e.g.*, Joe Morgenstern, *Review/Film: 'Erin Brockovich' Has Both Beauty and Brains—And That's Just the Script*, WALL ST. J., Mar. 17, 2000, at W1 (reviewing *Kadosh*).

7. *Id.*

8. *See, e.g.*, Carmel Shalev, *Women in Israel: Fighting Tradition*, *in* WOMEN'S RIGHTS HUMAN RIGHTS: INTERNATIONAL FEMINIST PERSPECTIVES 89, 92 (Julie Peters & Andrea Wolper eds., 1995) ("[S]ubstantive Jewish laws of marriage and divorce are pervaded by a double standard that is patently discriminatory."); Gila Stopler, *The Free Exercise of Discrimination: Religious Liberty, Civic Community and Women's Equality*, 10 WM. & MARY J. WOMEN & L. 459, 462 (2004) ("The close ties between religion and the state in Israel clearly violate women's rights to equality.").

9. This article focuses on Jewish law, but we acknowledge that Israel is a multinational and culturally diverse country, which comprises notable Muslim and Christian Arab populations, among others.

10. *See* Shifman, *supra* note 1, at 544–45.

11. *Id.* at 539.

12. *See* Gila Stopler, *Countenancing the Oppression of Women: How Liberals Tolerate Religious and Cultural Practices that Discriminate Against Women*, 12 COLUM. J. GENDER & L. 154, 171 n.76 (2003).

13. Shalev, *supra* note 8, at 92.

14. Isaac S. Shiloh, *Marriage and Divorce in Israel*, 5 ISR. L. REV. 479, 494 (1970); *see also* Shalev, *supra* note 8, at 92 ("Such a child may not marry a Jew, nor may her offspring for ten generations.").

Israel's family law regime, in large measure dating back to the Ottoman Millet system, confers jurisdiction over divorce and marriage to (religious) rabbinical courts.[15] Though Israel is not explicitly a theocratic Jewish state, but rather an ambiguous "Jewish state," religion nevertheless occupies a central place in Israeli life. As put by Martin Edelman: "Although Israel is a secular democracy, it proudly proclaims itself as the State of the Jewish people. What that means is far from clear. . . . There is no denying, however, that at times Orthodox Judaism functions in the Israeli polity as if it were the official state religion."[16]

Indeed, the divorce procedures, which are the focus of this article, are governed strictly by religious law.[17] There is no civil marriage of which to speak.[18] This has led many commentators of the *agunah* problem to argue that since Western Jews can ignore the (private) religious sphere and remarry within the civil sphere, they fare better than their Israeli counterparts.[19] This has also led many to advocate the introduction of civil marriage in Israel.[20] Likewise, the adoption

15. The Rabbinical Courts Jurisdictions (Marriage and Divorce) Law, 5713-1953, 7 LSI 139, No. 64 § 1 (1952–1953) (Isr.). The socio-legal heritage of the Ottoman and Mandate periods is often neglected in Zionist historiography. *See* Assaf Likhovski, *Between "Mandate" and "State": Re-thinking the Periodization of Israeli Legal History*, 19 J. ISRAELI HIST. 39, 44 (1998). *But see* Yoram Shachar, *The Dialectics of Zionism and Democracy in the Law of Mandatory Palestine*, *in* THE HISTORY OF LAW IN A MULTI-CULTURAL SOCIETY: ISRAEL 1917–1967, at 95–102 (Ron Harris et al. eds., 2002) (discussing the Mandate period). When the British set out to govern Palestine at the close of the First World War, this arrangement was maintained by article 53 of the Palestine Order-in-Council of 1922. Shiloh, *supra* note 14, at 483 & n.10. When the state of Israel was created in 1948, the "status quo" arrangement, Ben Gurion's compromise with religious parties and authorities, provided that the creation of the state would in no way compromise "the values and way of life of religious Jews." Hanna Lerner, *Entrenching the Status-Quo: Religion and State in Israel's Constitutional Proposals*, 16 CONSTELLATIONS 445, 447 (2009). This arrangement confirmed that "Orthodox courts would have jurisdiction in issues of personal law (particularly matters of marriage and divorce)." *Id.*

16. MARTIN EDELMAN, COURTS, POLITICS, AND CULTURE IN ISRAEL 3–4 (1994).

17. Shifman, *supra* note 1, at 538. That being said, certain ancillary areas of divorce law, such as custody and matrimonial property, are governed by civil law. *Id.*

18. A bill was passed in May 2010 to allow civil marriage for partners who are both labeled as "lacking a religion." HANNA LERNER, MAKING CONSTITUTIONS IN DEEPLY DIVIDED SOCIETIES 214 & n.16 (2011). However, it seems to apply to only a few Israelis. *Id.*

19. Marsha Freeman, *Women, Law, Religion, and Politics in Israel: A Human Rights Perspective*, *in* JEWISH FEMINISM IN ISRAEL: SOME CONTEMPORARY PERSPECTIVES 57, 66 (Kalpana Misra & Melanie S. Rich eds., 2003); *see also* SUSAN MOLLER OKIN, IS MULTICULTURALISM BAD FOR WOMEN? 16–17 (Joshua Cohen et al. eds., 1999) (describing how Western cultures have moved away from their "patriarchal pasts"); Stopler, *supra* note 12, at 171–72.

20. *See, e.g.*, Freeman, *supra* note 19, at 71 ("While many argue that interfaith marriage holds the seeds of destruction for the Jewish people, this argument is not as compelling with respect to Israel as it is with respect to the diaspora. . . . Those who want to remain entirely separate would always be able to do so."); Yuval Merin, *The Right to Family Life and Civil Marriage Under International Law and Its Implementation in the State of Israel*, 28 B.C. INT'L & COMP. L. REV. 79 *passim* (2005) (advocating for civil

of civil statutory regimes for some matters ancillary to divorce[21] has been interpreted by secularists as a sign of social and legal progress.[22] Under this narrative, the matters ruled by civil law are presented as having "been 'conquered' by the secular, substantive law which has replaced the religious law."[23]

The article will attempt to test out this claim and to comprehend Israeli women's condition by analyzing the operation of the *Sanctions Law*,[24] a religious legislation intended to address the plight of the *agunah*. Through field work and interviews with Israeli Jewish women, this article will attempt to assess the concrete impacts of religious and secular family law on women. Our field work in Israel[25] clearly suggests that religious women's interests are entwined, diffused and recast in manifold unexpected ways across the secular/religious divide, compromising any policy option that tries to exclude one or the other. Hence, the "religious" cannot be depicted as simply reflecting gender oppression. Rather, our interviews outline that women's experiences with both the civil and religious sphere are uneven, ever changing and conditioned by the complexities of intersecting legal orders.

The article is divided as follows. Part I will describe our methodological approach, and Part II will come to terms with the failures and defects of the existing civil law in Israel, outlining that while in some situations civil law is indeed profitable to women, in others it fails to empower them. Specifically, poor access to justice in the civil realm, the loss of financial rights contained in the religious marriage contract, and the possibility for the husband to extort civil entitlements will be analyzed. Part III will turn to the religious law applicable to marriage and evaluate the *Sanctions Law*'s efficiency in addressing the plight of the *agunah*. Specifically, it will inquire

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marriage to ensure equality); *see also* Etta Bick, *Sectarian Party Politics in Israel: The Case of Yisrael Ba'Aliya, the Russian Immigrant Party*, *in* ISRAEL AT THE POLLS 1996, at 121, 137 (Daniel J. Elazar & Shmuel Sandler eds., 1996); Frances Raday, *Women in Law in Israel: A Study of the Relationship Between Professional Integration and Feminism*, 12 GA. ST. U. L. REV. 525, 551 (1996); Pinhas Shifman, *State Recognition of Religious Marriage: Symbols and Content*, 21 ISR. L. REV. 501, 501–06 (1986).

21. *See* discussion *infra* notes 48 and accompanying text.

22. *See* Shifman, *supra* note 1, at 538.

23. *Id.*

24. Rabbinical Tribunals (Implementation of Divorce Judgments) Law 5755-1995, ISRAEL'S COURTS OF LAW AND TRIBUNALS 114 (3d ed. 2005) [hereinafter Sanctions Law].

25. This project is part of Professor Fournier's wider socio-legal research project, entitled "Jewish and Muslim Women Negotiating Divorce in Western Europe and Canada," which examines the ways in which religious women navigate in the interplay of legal systems and religious norms in various multidimensional social and legal contexts. The research project includes formal interviews with Jewish and Muslim women in Canada, France, Germany and the United Kingdom.

into some of Jewish women's successes in empowering themselves through religious law. This part will end by assessing some of the *Sanctions Law*'s limits, as revealed by our field work. It will assess the ways in which the *Sanctions Law* sometimes remains unenforced and link this phenomenon with the indeterminacy of law, which makes it permeable to ideological preferences of the adjudicator. Through a socio-legal methodology that incorporates elements of critical legal pluralism and infuses them with insights from the critical legal studies analysis of the State, this article aims to contribute to better informed public policy discussions on the interactions between religious deviance and the normative gaze of state law.

## I. WHAT *CRITICAL* LEGAL PLURALIST APPROACH TO THE "FIELD"?

Our field work in Israel is based on interviews conducted with six women who were all once married according to Jewish law.[26] The women interviewed varied in their level of religious commitment, although all were practicing Jews. Most of the women labeled themselves as "traditional," meaning that they kept the basic Jewish commandments such as *kashrut* (Jewish dietary laws) and observed Sabbath. Two women were of the Orthodox denomination. Four women were already divorced and two were struggling to obtain their *get*. Four of these women had the *Sanctions Law* applied against their husbands by the rabbinical court, a process whereby their husbands were either put in jail, had their driver's licenses taken away, had their passports confiscated, and/or were disqualified from certain honors in the synagogue. The interviews lasted about one hour each and concerned demographics, religious background, the divorce, the civil legislation, and the religious *Sanctions Law*.[27]

We began looking for interview participants by contacting university professors as well as various organizations and centers established in Israel that help women, financially and otherwise, in legal matters pertaining to the process of obtaining a *get*, a method which was approved by application to the Research Ethics Committee of the University of Ottawa. We met with representatives from the following

26. This article focuses on Jewish women, but field research has been completed amongst Israeli Muslim women in the Fall of 2011 to complement the perspectives offered in this article. This research is funded by the Social Sciences and Humanities Research Council of Canada.

27. The interviews were conducted with a Hebrew–English translator. Four interviews were held in Hebrew with a translator who asked the questions under the supervision of Merissa Lichtsztral, who understands Hebrew, and two interviews were held in English in one-on-one conversations. Four of the interviews took place at coffee shops, while two women invited us to their homes to conduct the interview.

organizations[28]: Yad L'Isha,[29] Mavoi Satum,[30] the International Coalition for Agunah Rights[31] and the Ruth and Emmanuel Rackman Center for Advancement of Women's Status at Bar Ilan University.[32]

This article is influenced by the methodological and theoretical framework of critical legal pluralism.[33] It embraces a philosophical commitment to the subjective construction of law by legal subjects and its methodological commitment to "the field." Indeed, to grasp the complex condition of the Israeli *agunah* and the effectiveness of the *Sanctions Law*, the insights of legal pluralism are most useful. In recent decades, a deepened legal pluralism was developed, one which goes beyond pluralizing normativity and directly questions the very notion of positivity. The Canadian manifestation of this movement has been headed by Roderick A. Macdonald, the flag-bearer of critical legal pluralism. Critical legal pluralism understands the law as encompassing "how legal subjects understand themselves and the law."[34] For critical legal pluralists, "law arises from, belongs to, and responds to everyone,"[35] and one cannot only understand law through the ontological tools of "legal evangelicalism," which "breeds a reliance on the rituals, catechism, and creed of official institutions that focus on the word (especially on the definitive pronouncements of the *curia* that sits at the top of an institutional hierarchy)."[36] Legal subjects shape and produce law as much as Parliament does, through their

28. All of our interview participants were found through the help of representatives from these organizations. The assistance and kindness of these people to connect us with these women was greatly appreciated, and the project could not have been a success without them.

29. *About Yad L'Isha*, YAD L'ISHA, http://www.yadlaisha.org.il/page-eng.aspx?id=52 (last visited Feb. 13, 2012). Most of the women interviewed were extremely grateful to Yad L'Isha, which provided them with legal aid and the disposal of rabbinical court advocates who have significant expertise with the Sanctions Law.

30. MAVOI SATUM, http://www.mavoisatum.org/page6.html (last visited Feb. 13, 2012).

31. *About ICAR*, THE INT'L COALITION FOR AGUNAH RTS., http://www.icar.org.il/about-icar-our-mission.html (last visited Feb. 13, 2012).

32. *The Ruth and Emanuel Rackman Center for Advancement of Women's Status*, BAR-ILAN U., http://law.biu.ac.il/en/node/197 (last visited Feb. 13, 2012).

33. For a genealogy of legal pluralism, see John Griffiths, *What is Legal Pluralism?*, 24 J. LEGAL PLURALISM & UNOFFICIAL L. 1 *passim* (1986); Sally Engle Merry, *Legal Pluralism*, 22 LAW SOC'Y REV. 869 *passim* (1982); Franz von Benda-Beckmann & Keebet von Benda-Beckmann, *The Dynamics of Change and Continuity in Plural Legal Orders*, 53 J. LEGAL PLURALISM & UNOFFICIAL L. 1 *passim* (2006); *see also* Angela Campbell, *Wives' Tales: Reflecting on Research in Bountiful*, 23 CANADIAN J.L. & SOC'Y 121, 130–32 (2008) (applying a critical legal pluralist approach to the empirical study of polygamy).

34. Martha-Marie Kleinhans & Roderick A. Macdonald, *What is a* Critical *Legal Pluralism?*, 12 CANADIAN J.L. & SOC'Y 25, 36 (1997).

35. RODERICK ALEXANDER MACDONALD, LESSONS OF EVERYDAY LAW 8 (2002).

36. Roderick A. Macdonald, *Custom Made—For a Non-Chirographic Critical Legal Pluralism*, 26 CANADIAN J.L. & SOC'Y 301, 306 (2011).

constructive creativity and normative interpersonal interactions.[37] As put by Kleinhans and MacDonald:

> Legal subjects are not wholly determined; they possess a transformative capacity that enables them to produce legal knowledge and to fashion the very structures of law that contribute to constituting their legal subjectivity. This transformative capacity is directly connected to their substantive particularity. It endows legal subjects with a responsibility to participate in the multiple normative communities by which they recognize and create their own legal subjectivity.[38]

This outlook led us to analyze Israeli law through the eyes of *agunah* women. Indeed, our encounters underline "the relevance of first-person accounts . . . to the development of a fuller sense of the law."[39] With this methodological posture, we aim to go beyond conventional feminist accounts of the *agunah* problem[40] towards portraits of women moving through secular and religious divorces as social agents.[41]

Our own perspective, however, departs from the critical legal pluralism ethos and methodology as to the role of formal state law and adjudication. The present field work, as outlined above, borrows from critical legal pluralism methodology in handing the podium over to the legal subjects, the *agunot* women. This is not to say, however, that the State has lost all relevance to our socio-legal inquiry. State law retains a paramount role, not as a normative monopoly, but as a prime influence on legal subjectivity to which bargaining agents respond. Thus, the emphasis is on what agents do with state law and how the latter influences their subjectivity and bargaining possibilities. In this, we are inspired by scholarship in the vein of

37. For an empirical study of norm-generating everyday interactions, see PATRICIA EWICK & SUSAN S. SILBEY, THE COMMON PLACE OF LAW: STORIES FROM EVERYDAY LIFE (1998). *See also* Thomas R. Kearns & Austin Sarat, *Beyond the Great Divide: Forms of Legal Scholarship and Everyday Life*, *in* LAW IN EVERYDAY LIFE 21 *passim* (Austin Sarat & Thomas R. Kearns eds., 1993); Sally Engle Merry, *Everyday Understandings of the Law in Working-Class America*, 13 AM. ETHNOLOGIST 253 *passim* (1986); Austin Sarat, *". . . The Law is all Over": Power, Resistance and the Legal Consciousness of the Welfare Poor*, 2 YALE J.L. & HUMAN. 343, 344–45 (1990).

38. Kleinhans & Macdonald, *supra* note 34, at 38.

39. Angela Campbell, *Bountiful Voices*, 47 OSGOODE HALL L.J. 183, 191 (2009).

40. *See, e.g.*, Shalev, *supra* note 8, at 92–93 (describing the discriminatory nature of Jewish divorce and marriage law); Stopler, *supra* note 8, at 483–95.

41. On the related topic of Muslim women's agency, see SUSAN F. HIRSCH, PRONOUNCING AND PERSEVERING: GENDER AND THE DISCOURSES OF DISPUTING IN AN AFRICAN ISLAMIC COURT (1998); Anna C. Korteweg, *The Sharia Debate in Ontario: Gender, Islam, and Representations of Muslim Women's Agency*, 22 GENDER & SOC'Y 434, 437–39 (2008).

left law and economics.[42] The present article also draws much inspiration from the law and economics of family life[43] to picture the micro-level power relations Israeli women must face.[44]

Although this article shifts the focus from state law to sovereign legal subjects, thereby borrowing from critical legal pluralism, the analysis remains on how state law structures contextual, micro-power bargains in light of the indeterminacy of law. This emphasis on the influence of the State on bargaining positions of legal agents should not be seen as a step back into "social-scientific" positivity.[45] Rather, it brings contextualization of legal subjects' agency and proper assessment of their concrete possibilities.[46] The analysis allows us to discuss the effects of both civil and religious laws on legal subjects.

Finally, it should be noted that our empirical work is not intended to bear sufficient objective representativeness and exhaustiveness to be labeled legal anthropology or ethnography. Our goal is to better illustrate and emphasize how *agunot* and their husbands play out the Israeli secular/religious divide, through a qualitative "story-telling" approach to socio-legal studies.[47] Our encounters

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42. For examples, see Duncan Kennedy, *Distributive and Paternalist Motives in Contract and Tort Law, with Special Reference to Compulsory Terms and Unequal Bargaining Power*, 41 MD. L. REV. 563 (1982); Frances E. Olsen, *The Family and the Market: A Study of Ideology and Legal Reform*, 96 HARV. L. REV. 1497 (1983).

43. For economic analyses of family life, see FRANCINE D. BLAU ET AL., THE ECONOMICS OF WOMEN, MEN, AND WORK (3d ed. 1998); Lloyd R. Cohen, *Marriage: The Long-Term Contract*, *in* THE LAW AND ECONOMICS OF MARRIAGE AND DIVORCE 10 (Antony W. Dnes & Robert Rowthorn eds., 2002); Robert A. Pollak, *Gary Becker's Contributions to Family and Household Economics*, 1 REV. ECON. HOUSEHOLD 111 (2003). For an analysis of legal realist-inspired law and economics and its relationship to feminist thought, see PRABHA KOTISWARAN, DANGEROUS SEX, INVISIBLE LABOR: SEX WORK AND THE LAW IN INDIA 185–211 (2011).

44. Our conception of power and freedom owes much to Duncan Kennedy, *The Stakes of Law, or Hale and Foucault!*, 15 LEGAL STUD. F. 327 (1991).

45. *See* Kleinhans & Macdonald, *supra* note 34, at 35.

46. As put by Duncan Kennedy:

> [W]e do not assume that the legal system as a whole deliberately decrees one thing or another . . . . Rather, we conceptualize the network as providing background rules that constitute the actors, by granting them all kinds of powers under all kinds of limitations, and then regulating interaction between actors by banning and permitting, encouraging and discouraging particular tactics of particular actors in particular circumstances.

Duncan Kennedy, *Legal Economics of U.S. Low Income Housing Markets in Light of "Informality" Analysis*, 4 J.L. SOC'Y 71, 80 (2002).

47. For examples of using a story-telling approach, see Campbell, *supra* note 33; Shauna Van Praagh, *Faith, Belonging, and the Protection of "Our" Children*, 17 WINDSOR Y.B. ACCESS JUST. 154 (1999) (interweaving stories with legal argument); Shauna Van Praagh, *The Education of Religious Children: Families, Communities and Constitutions*, 47 BUFF. L. REV. 1343 (1999); *see also* Jane B. Baron, *Resistance to Stories*, 67 S. CAL. L. REV. 255, 282 (1994) (arguing that storytelling plays an important role in advancing legal studies by provoking dialogue among groups typically not heard in legal scholarship); Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on*

with *agunot* women can shed some light on the agency and resistance deployed by religious women navigating law and religion in diverse contexts.

## II. FAILURES OF THE CIVIL LAW

In conducting field work in Israel, we sought to measure the impacts of secular laws on religious women and their interaction with religious law. This section presents our findings and evaluates the existing civil law's efficiency in empowering and granting women the equality which is denied to them under religious law.

While core matters, such as the divorce's actual enactment, are governed solely by religious law, secularists have been able to bring forth civil legislation in the key ancillary areas of custody and matrimonial property.[48] The 1962 Legal Capacity and Guardianship Law[49] deals with child custody and dictates how the decisions should be made "in the best interest of the [minor]," with both parents enjoying "equal responsibility" towards their children.[50] In 1974, the Spouses (Property) Relations Law[51] came into force and established a retroactive "community property rule" under which each spouse has an equal share in marital property.[52] This set aside the *halachic* rule according to which the husband retains total rights over his spouse's property.[53] As for the jurisdiction over these ancillary matters, section three of the Rabbinical Courts Jurisdiction (Marriage and Divorce) Law states: "Where a suit for divorce between Jews has been filed in a rabbinical court, whether by the wife or by the husband, a rabbinical court shall have exclusive jurisdiction in any matter connected with such suit, including maintenance for the wife and for the children of the couple."[54]

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*the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1, 33 n.96 (1990) ("A feminist alternative to this monologic approach to scholarship would entail conversation and translation, rather than observation and pronouncement.").

48. *See, e.g.*, Spouses (Property Relations) Law, 5733-1973, 27 LSI 313 (1972–1973) (Isr.) (establishing equality in control and division of marital property); Capacity and Guardianship Law, 572-1962, 16 LSI 106 (1961–1962) (Isr.) (granting both parents equal rights over their children). *But see* Family Law Amendment (Maintenance) Law, 5719-1959, 13 LSI 73, §§ 2(a), 3(a) (1958–1959) (Isr.) (stating that issues of child and spousal support are still governed by religious law).

49. Capacity and Guardianship Law, 5722-1962, 16 LSI 106, § 2(17) (1961–1962) (Isr.).

50. RUTH HALPERIN-KADDARI, WOMEN IN ISRAEL: A STATE OF THEIR OWN 249 (2004) (internal quotation marks omitted).

51. Spouses (Property Relations) Law, 573-1973, 27 LSI 313, § 2(5) (1972–1973) (Isr.).

52. HALPERIN-KADDARI, *supra* note 50, at 253 (internal quotation marks omitted).

53. *See id.* at 252.

54. Rabbinical Courts Jurisdiction (Marriage and Divorce) Law, 5713-1953, 7 LSI 139, No. 64, § 3 (1952–1953) (Isr.).

Thus, both civil and religious courts have potential jurisdiction to decide on any ancillary matters to a divorce, such as custody, maintenance and division of property. If the file is opened at the civil court before the actual divorce petition, the relevant ancillary claims will be heard separately from the main divorce action.[55] Civil courts are often considered to render decisions that are more sympathetic to women than those of rabbinical courts.[56] However, as Daphna Hacker convincingly argues, the ability for women to litigate before the civil courts is significantly hampered by poor access to justice in the civil realm, compared to less expensive and simpler procedures before the rabbinical courts.[57] Bogoch and Halperin-Kaddari likewise argue that the workings of the civil courts and legislation in Israel have occulted persisting imbalances and access to justice problems for women.[58] Our participants confirmed that litigation before civil courts represents a heavy financial burden and is often ineffective:

Participant #6:

> In the civil court, the property settlement dragged on for eight years. And in the end it was just thrown out, the whole thing. I'll get to that. But [it took] eight years of litigation, thousands and thousands and thousands of dollars. My parents helped me sometimes, I helped sometimes, I took loans sometimes. I'm still paying back the loans.

Participant #4:

> I opened the file with the civil court and we divided the property. Not that it has even happened yet, even today the house is still in limbo; he isn't moving anything. And that's it. Everyone went in their direction and nothing came from this division of property. It remained as is. Get a lawyer: that costs money. Bring a private

55. Margit Cohn, *Women, Religious Law and Religious Courts in Israel—The Jewish Case*, 27 RETFAERD 57, 64 (2004) ("[W]hile divorce proceedings can only be instigated in the religious court, in other issues there is a *choice* between the systems. Once one of the systems is chosen, the issue is 'captured' and cannot be decided by its brother-system, or rival-system.").

56. HALPERIN-KADDARI, *supra* note 50, at 233.

57. Daphna Hacker, *Religious Tribunals in Democratic States: Lessons from the Israeli Rabbinical Courts*, 27 J.L. & RELIGION (forthcoming 2011–2012), *available* at http://ssrn.com/abstract=1691671.

58. *See* Bryna Bogoch & Ruth Halperin-Kaddari, *Divorce Israeli Style: Professional Perceptions of Gender and Power in Mediated and Lawyer-Negotiated Divorces*, 28 L. & POL'Y 137, 141 (2006) ("Despite the fact that the family courts provide a more egalitarian forum for women, the power imbalance between men and women . . . was not remedied by the establishment of the family courts . . . .").

> investigator: that will take money from you. So I said: "I am not letting this happen anymore. I did it once and never again."

Participant #1:

> The [civil] family court wanted me to lower [the amount I was demanding] and they raised a stink. Nothing moved!

Furthermore, it should be noted that some of our participants did not view the civil courts as inherently favorable to women. They described how they felt equally miscarried by both religious and civil courts:

Participant #6:

> I can't even say that it's only the *beit din* and that the *beit hamishpat* [civil court] was wonderful. I also felt very, very, very frustrated by the *beit hamishpat*.

Participant #1:

> It was very difficult for me in the rabbinical courts, but also in the civil courts, which is where I did the division [of property] . . . . Both courts tortured me quite a bit really. Our system doesn't have a clue what is going on!

Our participants also expressed dissatisfaction with the judicial process before the rabbinical courts, but found that the existing legal aid services specifically dedicated to litigation in rabbinical courts greatly helped. Additionally, the possibility of retaining the services of a rabbinical advocate, an expert of Jewish law who generally commands a lower fee than a regular lawyer but who can only appear before the rabbinical court, no doubt renders the religious sphere more attractive than the civil sphere for some women.[59]

Participant #3:

> The rabbinical court put out a warrant to arrest him and then the police didn't do anything with it, for more than a year the police did nothing. They didn't arrest him and then they decided to close the case . . . . Only when I was represented by Yad La'Isha [did things move in the right direction]. First of all, Yad La'Isha immediately spoke to the police and asked that he be arrested. It

59. *See* SYLVIA MANDELBAUM & MOSHE KOENIG, DIVORCE YOUR LAWYER 13–14 (1985).

> didn't take a long time, maybe two weeks and then the police all of a sudden found him and arrested him . . . .

Participant #2:

> I went to Yad La'Isha, and there are women there who are amazing and ready to help. It's better than any well-known attorney or lawyer!

A basic cost-benefit analysis may thus direct a woman towards a rabbinical court instead of a civil court. The claim that civil courts and legislation systematically make women better off may thus need to be reexamined.

Another important issue is the enforcement of the financial provisions of the *ketubah*, the Jewish marriage contract so central to the marriage celebration.[60] The *ketubah* is often presented as a protection for the wife, as it proclaims that the husband will pay his wife a sum of money if he divorces her for no good reason or if he dies.[61] According to the literature, the rabbinical court may enforce the amount stated in the *ketubah*, while the civil court usually does not.[62] Thus, civil courts may deprive the woman of her *ketubah*'s financial advantage in order to replace it with the benefits granted by civil legislation. Some judicial actors explained to us that rabbinical courts have no integrated approach to the enforcement of the *ketubah* and its interaction with other legal rules pertaining to financial matters. This leaves the door open to much strategizing on the part of women to invoke Jewish law in addition to civil law, options which were not available to them before the civil courts:

Robyn Shames:

> In general . . . division of property is supposed to be according to civil law, whether it is decided in the civil or rabbinical court. If

60. Linda S. Kahan, Note, *Jewish Divorce and Secular Courts: The Promise of* Avitzur, 73 GEO. L.J. 193, 193 & n.2 (1984). The financial provisions contained in the *ketubah* are enforceable in Israel but not in Western countries such as the United States. Jonathan Reiss & Michael J. Broyde, *Prenuptial Agreements in Talmudic, Medieval, and Modern Jewish Thought*, *in* MARRIAGE, SEX, AND FAMILY IN JUDAISM 192, 202–03 (Michael J. Broyde & Michael Ausubel eds., 2005).

61. Susan Metzger Weiss, *Sign at Your Own Risk: The "RCA" Prenuptial May Prejudice the Fairness of Your Future Divorce Settlement*, 6 CARDOZO WOMEN'S L.J. 49, 54 (1999). The *ketubah* includes various provisions such as the husband's requirements towards his wife to provide her with adequate food, clothing, shelter and regular intercourse. LOUIS M. EPSTEIN, THE JEWISH MARRIAGE CONTRACT: A STUDY IN THE STATUS OF THE WOMAN IN JEWISH LAW 54 (2005).

62. *See* HALPERIN-KADDARI, *supra* note 50, at 252.

> the woman received half of the property she does not receive her *ketubah* in addition. In practice, it is hard to really say in general what actually happens in the rabbinical courts as some judges will only implement Jewish Law on division of property, and here the *ketubah* does play a part. In addition, even if the rabbinical court does decide according to Jewish Law, it depends on the circumstances if they give the woman her *ketubah* (they won't if she is unfaithful) or even part of it (they sometimes decide that the amount written is exaggerated).[63]

The secular/religious divide and the dual jurisdiction thus create a prism through which elements of Jewish law and civil law travel from one court to the other, deformed and adapted by the judges according to ideology and by the parties according to their own strategic needs.[64] Interestingly, only Participant #3 knew what a *ketubah* contained. The other women dismissed it as a mere ritual or as an unenforceable religious artifact. Is the emancipatory power and beauty of the civil legislation marginalizing the *ketubah* document and depriving women of advantageous strategic avenues?

One thing is apparent: the intersection of religious and secular law allows the husband to impose conditions on the divorce. The *get* is thus sometimes used as an extortion tool for economic gains, to the detriment of the wife, in order to pay less alimony or child support.[65] If a Jewish woman cannot grant the *get* on her own initiative,[66] she may refuse her husband's *get*, which will prevent rabbinical authorities from dissolving the marriage contract.[67] Jewish women may refuse consent to the *get* for reasons related to the best interests of their children, to extract further concessions from the husband or for pecuniary incentives.[68] However, this bargaining tool is of limited

63. E-mail from Robyn Shames, Dir., Int'l Coal. for Agunah Rights (Mar. 8, 2011) (on file with author).

64. This finding echoes Professor Fournier's research on *mahr*, the Islamic dower, and its treatment by Western courts, which presented radically diverging treatment of this religious institution depending on the context and the philosophical inclinations of the judge adjudicating a given dispute. One of the implications is that religious institutions can have many diverging effects for women's empowerment and that they cannot be reduced to systematic punishing forces. *See* Pascale Fournier, *Flirting with God in Western Secular Courts: Mahr in the West*, 24 INT'L J.L. POL'Y & FAM. 67, 67 (2010); Pascale Fournier, *In the (Canadian) Shadow of Islamic Law: Translating* Mahr *as a Bargaining Endowment*, 44 OSGOODE HALL L.J. 649, 675–76 (2006).

65. Bogoch & Halperin-Kaddari, *supra* note 58, at 140.

66. It is "regarded as against . . . the spirit of the [Jewish] law" for a wife to be able to dismiss her husband by granting him the *get*. M. MIELZINER, THE JEWISH LAW OF MARRIAGE AND DIVORCE IN ANCIENT AND MODERN TIMES, AND ITS RELATION TO THE LAW OF THE STATE 118 (1987).

67. Bogoch & Halperin-Kaddari, *supra* note 58, at 140.

68. Although little evidence exists with regard to the frequency at which this bargaining power is used by women, a study issued by the Chief Rabbinate of the State of

use to women since husbands can, in practice, remarry without the *get*.[69] Inversely, if a Jewish man refuses to grant the *get*, the wife is left with very little religious recourse.[70] Hence, "the opportunit[y] for strategic behavior in civil divorce proceedings"[71] is remarkable, making the *get* an ideal tool for blackmail.[72] Lisa Fishbayn writes that "[t]he power men enjoy under Jewish law to withhold a *get* is of concern to civil law because this power becomes an effective bargaining endowment in the resolution of civil family law disputes."[73] It is estimated that close to 100,000 divorced women in Israel were victims of *get* extortion during their divorce process.[74]

Susan Weiss, the director of the Women's Center for Justice in Jerusalem, wrote about a woman whose parents paid their son-in-law $100,000 for a *get*.[75] Rabbinical court advocate Rivkah Lubitch wrote about a woman whose husband would agree to divorce her only if she dropped all of her civil court files (maintenance and property

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Israel reports that within divorce proceedings commenced from 2005 to 2007, "some 180 women [were] 'chained' to their husbands, while a slightly higher amount of men [were] 'chained' to their wives." Hillel Fendel, *Rabbinate Stats: 180 Women, 185 Men 'Chained' by Spouses*, ISR. NAT'L NEWS (Aug. 23, 2007, 2:10 PM), http://www.israelnationalnews.com/News/News.aspx/123472. In nearly 350 divorce cases that were active as of 2005, 19% of the cases continue to be unresolved because of the man's refusal to grant a *get*, while 20% of the cases showed that women failed to cooperate with the divorce proceedings. *Id.* Among the reasons cited for this "divorce blackmail" were the negotiation of custody agreements and spousal support. *Id.*

69. Bogoch & Halperin-Kaddari, *supra* note 58, at 140.

70. *Id.*

71. Ann Laquer Estin, *Unofficial Family Law*, 94 IOWA L. REV. 449, 464 (2009).

72. Joel Nichols notes several examples from the United States:

> [O]ne recalcitrant husband agreed to issue a *get* only after receiving $15,000 and a promise that his former wife would not press assault charges against him after he broke her leg. Other examples include a woman who mortgaged her house for $120,000 to pay the amount demanded by her husband for issuance of a *get*, a woman who was forced to drop charges against her husband for sexually abusing their daughter so that she might obtain a *get*, and the increasing demands of a recalcitrant husband who asked for $100,000 (which he received), then $1 million, and then his wife's father's pension—in addition to demanding full custody of the children.

Joel A. Nichols, *Multi-Tiered Marriage: Ideas and Influences from New York and Louisiana to the International Community*, 40 VAND. J. TRANSNAT'L L. 135, 158 (2007) (footnotes omitted); *see also* David M. Cobin, *Jewish Divorce and the Recalcitrant Husband—Refusal to Give a* Get *as Intentional Infliction of Emotional Distress*, 4 J.L. & RELIGION 405, 415–16, 418–21 (1986) (providing an example of a husband withholding the *get* to extort concessions from his wife).

73. Lisa Fishbayn, *Gender, Multiculturalism and Dialogue: The Case of Jewish Divorce*, 21 CAN. J.L. & JURISPRUDENCE 71, 85 (2008).

74. LERNER, *supra* note 18, at 213 n.12; Karin Carmit Yefet, Comment, *Unchaining the* Agunot*: Enlisting the Israeli Constitution in the Service of Women's Marital Freedom*, 20 YALE J.L. & FEMINISM 441, 447 (2009).

75. *The Problem and Our Solutions*, CENTER FOR WOMEN'S JUST., *available at* http://www.cwj.org.il/the-problem-and-our-solutions (last visited Feb. 13, 2012).

division).[76] In one case reported by Yefet, a man refused to give his wife a *get* unless she paid him the money she received as war reparations for being a Holocaust survivor, a demand of high symbolic value in Israel.[77] Men "can also validly condition their consent upon non-monetary criteria, even restraining their wives' most basic and private affairs by controlling, for example, what they can eat or wear."[78] Our interview participants also reported having to renounce civil entitlements such as alimony, matrimonial property, and even the custody of their children in order to negotiate the granting of a religious divorce:

Participant #1:

> [A]fter some time he told the children "Look, okay, I want to give your mother a *get* but the condition is that I keep my assets." So I relinquished my rights in his businesses.

Participant #3:

> It was very difficult at the rabbinate, every few years he [the husband] would ask, demand all kinds of things . . . . He had all kinds of claims: "I want the child, I want the boy to go to school here." They always delayed the hearing because of one claim or another unjustified reasons [sic] and it went on for years, for years! . . . He said that [he would give the *get*] if I agreed to this and that, and it was something different all the time.

This possibility of blackmailing and extortion across the religious/secular divide makes for bargaining strategies on the part of the spouses that circumvent the civil custody and property entitlements of the other. While in some situations it undeniably favors the women, in others the civil law can be detrimental or useless to Jewish Israeli women. Thus, while the availability of civil regimes of divorce should be supported, the tales of our Jewish women participants indicate that critical attention to the concrete impacts of civil and religious law needs to be maintained. They also belie the assumption that *halacha* is autonomous and wholly separate from civil law. Rather, they expose both spheres as intertwined in the battlefield where husband and wife play out their antagonisms in the shadowy areas between

76. Rivkah Lubitch, *Find the Husband*, Y NET NEWS JEWISH WORLD (June 13, 2010, 4:16 PM), http://www.ynetnews.com/articles/0,7340,L-3903363,00.html.

77. Yefet, *supra* note 74, at 447.

78. *Id.* (footnote omitted).

religious and secular law.[79] Would this situation be any different under a (hypothetical) totally secularized system? The importance of the *agunah* problem in Western secular states such as Canada[80] and the United States seems to indicate that the secular/religious entanglement which produces the *agunah* problem would not disappear merely because of official state disavowal.[81] Religion may well be here to stay.

## III. RELIGIOUS EMPOWERMENT: SANCTIONS AND THEIR LIMITS

This section presents a portrait of the religious sphere of family law and Israeli women's navigation through the contradictory forces which shape the patriarchal structures that they inhabit. It starts by presenting "the classical Jewish law of divorce, general rules which are followed with more or less rigidity by various denomination [sic] of Judaism."[82] The authority to divorce in Jewish law is found in the Torah at verse 24:1 in the book of Deuteronomy which states that:

> When a man taketh a wife, and marrieth her, then it cometh to pass, if she find no favour in his eyes, because he hath found some unseemly thing in her, that he writeth her a bill of divorcement, and giveth it in her hand, and sendeth her out of his house.[83]

This passage was interpreted as bestowing the exclusive privilege to divorce on the husband.[84] Moreover, the words "if she find no favor

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79. Furthermore, as reported by Dov Frimer, the entitlement to a *get* under Jewish law may influence the availability of maintenance under civil law. Dov Frimer, *Israel Civil Courts and Rabbinical Courts Under One Roof*, 24 ISR. L. REV. 553, 558 (1990).

80. On the importance of the *agunah* problem in Canadian society, see the Supreme Court of Canada judgement of *Bruker v. Marcovitz*, [2007] 3 S.C.R. 607 (Can.). *See also* Pascale Fournier, Halacha*, the 'Jewish State' and the Canadian* Agunah*: Comparative Law at the Intersection of Religious and Secular Orders*, J. LEGAL PLURALISM 5 (forthcoming 2012) [hereinafter Fournier, Halacha, *the 'Jewish State' and the Canadian* Agunah]. On the importance of Islamic law in secular Western legal systems, see Pascale Fournier, *Borders and Crossroads: Comparative Perspectives on Minorities and Conflicts of Laws*, 25 EMORY INT'L L. REV. 987 (2011).

81. *See* Fournier, Halacha, *the 'Jewish State' and the Canadian* Agunah, *supra* note 80, at 19–20.

82. *Id.* at 4. For a competing interpretation of the *agunah* problem, see Rachel Sara Rosenthal, *Of Pearls and Fish: An Analysis of Jewish Legal Texts on Sexuality and Their Significance for Contemporary American Jewish Movements*, 15 COLUM. J. GENDER & L. 485, 520–23 (2006).

83. *Deuteronomy* 24:1; *see also* Rosenthal, *supra* note 82, at 517 (explaining that, based on the language of the man "tak[ing]" the wife, "rabbis interpret that action to mean that only a man can affect the kiddushin at the beginning of the marriage").

84. Yehiel S. Kaplan, *Enforcement of Divorce Judgments by Imprisonment: Principles of Jewish Law*, *in* 15 JEWISH L. ANN. 57, 61 (2004).

in his eyes" were interpreted by medieval rabbinical scholars to imply that a divorce must be offered out of the complete free will of the husband.[85] This requirement was repeated throughout the centuries by religious scholars and has become an undefeatable condition for a valid divorce.[86]

Jewish divorces are "executed by the granting of a writ of divorce (called a *Get*), on behalf of the man to the woman."[87] For *gets* to be valid, a rabbinical court (*beth din*, pl. *batei din*) "must oversee the divorce process."[88] The *beth din* is unable to enact the divorce independent of the man's consent, which is "the *sine qua non* of the entire process."[89] A wife, on the other hand, may refuse her husband's *get*, but her bargaining power is severely hampered by a set of rules relating to her marriage status which essentially do not apply to men.[90] For instance, should a woman enter into a relationship before having obtained a *get* from her husband, she would be considered "a rebellious wife" and receive none of the sum agreed upon in her *ketubah*.[91] In that case, even after a potential Jewish divorce, she will not be allowed to marry her partner under Jewish law or remarry her ex-husband.[92] Any children she may bear with her new partner would be considered a *mamzer* (pl. *mamzerim*, bastard children) and be "effectively excluded from organized Judaism."[93] The *mamzer* status continues on for generations down the line and *mamzerim* are only permitted to marry each other.[94]

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85. *Id.* at 61 & n.11; *accord* Yifat Bitton, *Public Hierarchy and Private Harm: Tort Law as a Remedy for Gender Inequality in Israeli Family Law*, *in* (RE)INTERPRETATIONS: THE SHAPES OF JUSTICE IN WOMEN'S EXPERIENCE 115, 117–18 (Lisa Dresdner & Laurel S. Peterson eds., 2009) ("As women wait passively for their husbands to issue them the *get*, and release them from being both their symbolic and actual captives, women sustain immeasurable harm to their social and economic status, feelings, dignity, and much more, by being unable to free themselves from their marital status and its entailed confinements.").

86. Bitton, *supra* note 85, at 126–27.

87. *See* Fournier, Halacha, *the 'Jewish State' and the Canadian* Agunah, *supra* note 80, at 4.

88. *Id.* The rabbinical court is composed of three Jewish judges (*dayanim*). *Id.*

89. Michael S. Berger & Deborah E. Lipstadt, *Women in Judaism from the Perspective of Human Rights*, *in* HUMAN RIGHTS IN JUDAISM: CULTURAL, RELIGIOUS, AND POLITICAL PERSPECTIVES 77, 99 (Michael J. Broyde & John Witte Jr. eds., 1998).

90. *See id.* at 100.

91. Cohn, *supra* note 55, at 68.

92. *Id.*

93. Nichols, *supra* note 72, at 155.

94. *See* Cohn, *supra* note 55, at 68 ("Any children with her lover, conceived while married to another, would be considered '*mamzerin*'—a pariah status that entails exclusion from the proper Jewish community, and leaves such second-rate people the right to only marry between themselves and remain pariahs for ten generations."); *see also* John D. Rayner, *The Gender Issue in Jewish Divorce*, *in* GENDER ISSUES IN JEWISH LAW: ESSAYS AND RESPONSA 33, 43 (Walter Jacob & Moshe Zemer eds., 2001).

Men, on the other hand, are not subject to these consequences.[95] Indeed, a man's marriage with another woman in the absence of a *get* is halachically valid and that man's children are legitimate.[96] He is not considered to have committed adultery, but merely to have contravened a rabbinical decree prescribing monogamy.[97] He can marry his adulterous lover, have legitimate children with her, and even receive a permit from an Israeli rabbinical court to remarry if his wife refuses to accept the *get*.[98]

Whether it is the husband who is withholding the *get* or the woman who is refusing it, the rabbinical court can only order the parties to divorce on very specific halachic grounds and may not enact the divorce itself.[99] If there are no grounds for divorce, there is nothing short of an agreement of the spouses that can dissolve the marriage.[100] Oftentimes, if the wife is subject to physical or verbal abuse by her husband or if the husband is impotent, sterile, or fails to provide maintenance, a divorce order may be granted.[101] Inversely, the husband can claim the compulsion of *get* acceptance by a rabbinical court if he proves that he has reasons to suspect his wife of being adulterous or if she leads him to transgress Jewish law.[102] Although the rabbinical court judges do not often issue orders to compel or obligate the giving of the *get*, when they do, the 1995 *Sanctions Law* allows them to issue sanctions and a variety of restrictive orders upon a recalcitrant spouse.[103] The power of the community to use indirect pressure to influence a husband to issue a bill of divorce, which in the past was done through ostracism and excommunication,[104] is now said to be translated into legislation by allowing the courts to withhold certain benefits of the husband.[105] For instance, the law allows for the imposition of restrictions on the right to leave the country,

95. Nichols, *supra* note 72, at 155.

96. *Id.*

97. *Id.*

98. Yefet, *supra* note 74, at 447 & n.28 (citing a Supreme Court of Israel decision "where the rabbinical court granted a remarriage permit to a husband over his wife's objection, that the rabbinical court enjoy[ed] a broad discretion to grant permits and that it [could] do so in order to compel a wife to accept the *get*").

99. *See id.* at 442–43 ("The judicial act of divorce is not constitutive, but merely declarative—the rabbinical court can merely declare that the husband must divorce his wife, and in limited instances, can apply coercive measures in hopes of persuading the husband to grant the divorce.").

100. David L. Lieber et al., *Divorce*, *in* ENCYCLOPAEDIA JUDAICA 712 (Fred Skolnik & Michael Berenbaum eds., 2d ed. 2007).

101. *Id.* at 712–13.

102. *Id.*; *see* Irwin H. Haut, *Divorce in Jewish Law and Life*, *in* 5 STUDIES IN JEWISH JURISPRUDENCE 19 (1983) (describing the schools of thought on the grounds for divorce).

103. Lieber et al., *supra* note 100, at 718.

104. *Id.*

105. *Id.*

obtain an Israeli passport, maintain a driver's license, work in a profession regulated by law or operate a business requiring a license or legal permit, open or maintain a bank account, etc.[106] Section 3 of the *Sanctions Law* even allows for imprisonment to compel compliance with a divorce order.[107] The period of imprisonment that a rabbinical court may impose is limited to five years, a term that may be extended by the court as long as the total term does not exceed ten years.[108] Another section of the *Sanctions Law* goes as far as to allow the rabbinical court to impose certain sanctions upon a husband who may already be serving a jail sentence.[109]

The Israeli rabbinical courts ordered the issuing of sanctions seventy-three times in 2008; twenty arrest warrants were issued, and private investigators were hired by the courts thirty-six times to locate men who had disappeared in Israel or abroad to avoid giving their wives a *get*.[110] Further statistics show that the *Sanctions Law* was used several times in 2006,[111] and between 1995 and 1998, 106 legal procedures resulted in forty-three divorces.[112] Professor Einhorn argued that the *Sanctions Law* "has encouraged Jewish spouses domiciled also in foreign countries to apply for a Jewish divorce in the Israeli rabbinical courts."[113] On its face, the response of the Israeli State thus seems to bring at least some solution to the plight of the *agunah*. Most of our participants confirmed that indeed the *Sanctions Law* brought some empowerment to them. They had had recourse to several of the sanctions available under the *Sanctions Law* and found that some were ineffective, but through trial and error they found remedies that had the desired effect and successfully disciplined their husbands.

Participant #2:

> At the beginning I asked for alimony. . . . We sued him and the National Insurance Institute paid because of course he has no money and it didn't bother him because he wasn't paying. And

106. Kaplan, *supra* note 84, at 123.
107. Sanctions Law, *supra* note 24, § 3.
108. *Id.* § 3(b).
109. *Id.* § 2(7).
110. ADMINISTRATION OF THE RABBINICAL COURTS: YEARLY SUMMARY 2008 (Hebrew), http://www.rbc.gov.il/statistics/2008/2008.pdf.
111. *See* Nissan Ratzlav-Katz, *Statistics Dispel Claims of 'Thousands of Israeli Agunot*,' ISR. NAT'L NEWS (June 27, 2007, 1:45 AM), http://www.israelnationalnews.com/News/News.aspx/122884 (reporting that the court used sanctions in 41 cases).
112. Gail Lichtman, *No Exit: Jerusalem Organizations Are Working to Ease the Plight of "Agunot," Women Denied Divorce*, JERUSALEM MAG. (Jan. 2000), *available at* http://www.israelect.com/Come-and-Hear/editor/agunot/legalaid/index.html.
113. TALIA EINHORN, PRIVATE INTERNATIONAL LAW IN ISRAEL 214 (2009).

> then he still didn't want to [give the *get*]. Afterwards, we applied for an exit delay from the country, but he doesn't have the money to drive into town, so what do you think he is going to do abroad? So that neither [worked]. Afterwards I realized what would really shake him up would be his driver's license. He has a handicap, because of the alcohol: it damaged his leg. It led to necrosis in his hip bone. . . . And after he had a very difficult surgery and it was hard for him to walk, so he needed a car, so I told my rabbinical advocate: "I think that we should ask to take his driver's license." She was skeptical, and I told her: "No, I know him." . . . We sent in a request for sanctions and they actually took his license and then he started going wild. He appealed to the high rabbinical court in Jerusalem and we went. And there the rabbis were even more determined, like "No, you won't get your license back until you give her a *get*, you are obligated to give her a *get*!"

Participant #5:

> They took away his passport. But between me and you, if he wants to leave the country through Sinai, he's going to be able to leave, okay, and that's not a secret. So they took away his driver's license, and that's something he's fighting about now. He wants back his driver's license!

Participant #3:

> He was in prison for four months, and every time they brought him from prison to the rabbinical court he said "No, I'm not ready, you can arrest me forever." . . . So they brought him back to prison again and then back to court again and again and again. He thought "that's the way it is," and the last time they said "okay, we won't give you any date for court, you'll remain arrested until you say 'I want' [to give the *get*]" and it didn't take a long time (laughter). . . . [He agreed to give the *get*] because he had no choice, because if he didn't agree he would have continued sitting in prison. And then one day they brought him and they convinced him and he gave the *get* through much suffering. You could really see that the man was suffering, but at the end he gave it because he understood that he would stay in prison.

The *Sanctions Law* thus left some room for empowerment for those women who were able to play out the Israeli legal system to their advantage. Furthermore, the women we interviewed gave us some fascinating insights into the personal empowerment they experienced while sanctioning their husbands. The *get* refusal and the

disciplinary practices actually allowed some women to gain an autonomy they could not otherwise have enjoyed.

Participant #3:

> When he was in jail [for *get* refusal] he was constantly contacting me by phone. . . . It went on for months and he kept on harassing me on the phone and begged and begged but I knew that it was in vain because there was no way that I would give in until I achieved what I wanted to achieve.

Participant #6:

> The empowerment, the process of empowerment that I went through, from when I was emotionally abused and tolerating that, to taking responsibility for my life and leaving him . . . opening up my own post office box and changing my bank account. All these little teeny things which were necessary, gave me the belief that somebody's helping me, that God wanted me to do this. If I hadn't been divorced, I'd still be living in that neighborhood and I would not be the same person. . . . I am absolutely a new person, absolutely a new person. I still have scars inside, I still have bandages. I was abused and there are still scars, but most of the time I can cover them up and I feel empowered. And I will not let anybody step on me ever again.

Our participants thus indicated that some forms of empowerment resulted from the welcoming and disciplinary power of the religious sphere. The *Sanctions Law* remains, however, deeply flawed. For one, the rabbinical courts have been very reluctant to issue orders compelling divorce.[114] Only a small number of these compulsion decrees are issued each year.[115] Furthermore, "[e]ven when men are commanded to divorce, the court seldom applies the coercive measures that it was legislatively authorized to use in 1995."[116] As a result, the *Sanctions Law* is quite often unenforced.[117] For our participants, the

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114. Lichtman, *supra* note 112 ("We have used sanctions, including jail, in more than 200 cases since 1995.").

115. Ayelet Blecher-Prigat & Benjamin Shmueli, *The Interplay Between Tort Law and Religious Family Law: The Israeli Case*, 26 ARIZ. J. INT'L & COMP. L. 279, 282 (2009).

116. Yefet, *supra* note 74, at 448 (footnote omitted).

117. *See, e.g.*, Jessica Davidson Miller, *The History of the* Agunah *in America: A Clash of Religious Law and Social Progress*, 19 WOMEN'S RTS. L. REP. 1, 14 (1997) ("[W]omen's groups still complain that the problem of the *agunah* is not treated with sufficient gravity."); Erica R. Clinton, Note, *Chains of Marriage: Israeli Women's Fight for Freedom*, 3 J. GENDER RACE & JUST. 283, 306 (1999) ("The *Knesset* . . . enacted a statute that allows the rabbinical courts to give the divorce case to the civil courts who can then imprison the

unenforceability of the sanctions stemmed from judicial actors and the police in charge of executing the ordinances rendered under the *Sanctions Law*:

Participant #3:

> It is a very difficult process, a very difficult process. . . . Every time, it was prolonged for another reason. It went on and they threatened him with arrest and he said "Please go ahead and arrest me." Then the rabbinical court put out a warrant to arrest him and the police didn't do anything with it. For more than a year the police did nothing, they didn't arrest him and then the rabbinical court decided to close the case.

Participant #6:

> [We got] the *chiyuv get* and once we got that, the *toen rabbani* [rabbinical advocate] said "okay, now it's just a matter of time." And then they said something like "if he doesn't give you a *get* in 30 days, he'll be arrested." Now, they had already put out a court order that he had to come at one o'clock, because since he had skipped some of these hearings. . . . What happened? The police went and looked for him, he wasn't there. I told them to look at his sister's house, I told them to look at his brother's house, everywhere they went to look, he wasn't there. He ended up showing up anyways. What did I learn from that? I can't count on the police that they're going to find him. Court order, shmourt order! . . . I can sit at home and hold this nice piece of paper and have it framed on the wall, and he's going to still do whatever he wants.

The unenforceability of the sanctions were also said to stem from the rabbis themselves. In fact, the participants indicated that hearings at the rabbinical courts were delayed because the rabbis were reticent and unsympathetic to the women's plight:

Participant #4:

> Q: Were there other sanctions against him other than putting him in prison?
>
> A: We started all of them but they [the rabbis] actually didn't want to do them [the sanctions]. You see, I learned the rabbinical court's ways. . . . They start something but they don't follow it all

husband until he agrees to the *get*. . . . The rabbinical courts have refused, however, to utilize this resource." (footnotes omitted)).

> the way through to the end. It's like they feel . . . it's not comfortable for them to hurt people. . . . It was a waste of time, they applied sanctions, they brought notes to his synagogue so that he won't be [allowed to be] a cantor, but they didn't hang them; they told me to hang them. Why should I go into a men's synagogue and hang the notes? The men from the synagogue would kill me! What is this logic?

Participant #5:

> I don't think that the rabbis do their job the way they should. We go into a hearing and we're invited for 10:30, and we go in at like 12:30 and at one o'clock, when they have to go home, they put on their coat and their hat and they say "okay, we've heard enough and we'll send you a decision in the mail." . . . The rabbis wait a long time until they actually go ahead and give you an arrest warrant.

These testimonies echo the view of scholars for whom the rabbinical courts' reluctance to issue orders compelling divorce stems from the fear that applying sanctions upon the recalcitrant husband will render the eventual giving of the *get* invalid due to force or undue pressure.[118] Rabbis are said to be very careful when dealing with the breakdown of a marriage, because a *get* that is given forcibly, or because a man *felt* pressured to do so, will be rendered invalid (a "*get meuseh*").[119] Robyn Shames also explained that rabbis would encourage women to settle, by saying to the women "pay him what he wants, you see what type of person he is, just pay him what he wants."[120] She also described the conception of rabbis she encountered; for them, women will only hurt themselves by refusing the conditions men put forth in order to grant them a *get*, sometimes becoming "*get* refusers" in the eyes of the court.[121] A rabbi's ideological and personal inclinations may thus influence the adjudicative process.

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118. *See, e.g.*, Blecher-Prigat & Shmueli, *supra* note 115, at 283 ("[T]he sum must not be too large or else it will be considered a fine that renders the *get* void."); *see also* Talia Einhorn, *Jewish Divorce in the International Arena*, *in* PRIVATE INTERNATIONAL LAW IN THE INTERNATIONAL ARENA 135, 151 (Jürgen Basedow et al. eds., 2000); Pinhas Shifman, *The Status of Women in Israeli Family Law—The Case for Reform*, *in* DEVELOPMENTS IN AUSTRIAN AND ISRAELI PRIVATE LAW 245, 245 (Herbert Hausmaninger et al. eds., 1999).

119. Bitton, *supra* note 85, at 117–18; Kaplan, *supra* note 84, at 61; Yefet, *supra* note 74, at 446 ("If forced, the *get* is invalid, and grave consequences ensue for a woman and her children born after the invalid *get* was obtained." (footnotes omitted)).

120. Interview with Robyn Shames, Dir., Int'l Coal. for Agunah Rights (Mar. 16, 2011).

121. *Id.*; *see also* Blecher-Prigat & Shmueli, *supra* note 115, at 283 ("[I]f the husband agrees to give the wife a *get* with conditions, . . . no justification exists to apply decrees against him in the eyes of the religious courts. If the wife refuses to accept the conditions set by her husband, it is she who prevents the realization of the *get*." (footnotes omitted)).

Accordingly, the religious composition of Israeli courts was always the object of much academic interest. Scholars have described the "monopoly" Orthodox groups enjoy over family law in Israel.[122] Moreover, Orthodox rabbis are considered to form the majority of rabbinical court judges in the country[123] and are said to be partial to the arguments of the husband.[124] Some participants have indicated that the verdicts issued by the rabbinical courts are inconsistent and depend on the backgrounds, personalities and religious ideologies of the judges.

Participant #1:

> I don't know what their [the rabbinical courts'] process is. I just don't understand it and I was always mad at them until the end. . . . It was very hard because they did not see the importance of it [getting the *get*].

Participant #2:

> I would talk and the rabbis would ignore me. They would only use his arguments and what he said; they only care about what the man wants not what the woman wants. They treated me like I wasn't even there. Then I said: "I came to ask to be free, not for money or anything, just to be free." . . . When the rabbis saw that I have a rabbinical advocate and that I am determined, that I want [a divorce] and that I am doing everything to get it, then they were easier.

Joanne Zack-Pakes[125]:

> Once in a while we will get a rabbinical court that has guts, that will put the pressure on the guy. But it is unpredictable, there's nothing uniform in the decision making. It's all based on whim

122. Frances Raday, *Religion, Multiculturalism and Equality: The Israeli Case*, 25 ISR. Y.B. ON HUM. RTS. 193, 214 (1996). On the importance of Orthodox Judaism with regards to other religious denominations in Israel, see ASHER COHEN & BERNARD SUSSER, ISRAEL AND THE POLITICS OF JEWISH IDENTITY: THE SECULAR-RELIGIOUS IMPASSE 121–22 (2000).

123. PATRICIA J. WOODS, JUDICIAL POWER AND NATIONAL POLITICS: COURTS AND GENDER IN THE RELIGIOUS-SECULAR CONFLICT IN ISRAEL xvi (2008); *see also* Ruth Halperin-Kaddari, *Women, Religion and Multiculturalism in Israel*, 5 UCLA J. INT'L L. & FOREIGN AFF. 339, 348 (2000) (describing Israel's rabbinical courts as "exclusively Orthodox").

124. HALPERIN-KADDARI, *supra* note 50, at 233; *see also* Clinton, *supra* note 117, at 307 ("The rabbinical courts have tried to appear concerned for the women that come before their tribunal, yet they are unwilling to enact any real solution to the problem of the *agunah*.").

125. Social worker at the Mavoi Satum organization.

> and which three judges are sitting and half the time there aren't even three judges there so they can't make a decision. They show up late for work, they leave early from work. . . . There is nothing uniform about the rabbinical courts, one rabbi is rigid, one is not rigid.

As a result of this phenomenon, lawyers and rabbinical advocates will strategize to bring their clients in front of judges who they deem more lenient. Participants had often wanted a particular rabbi to adjudicate their divorce petition because of these perceived ideological, religious or personal inclinations.

Participant #1:

> We needed to go to the high rabbinical court. And only there was I saved, because we had there Rabbi Lazare[126] who worked with my boss, and he came to a lot of the hearings. I called him many times and asked him to help.

Participant #6:

> Everybody knew, even I knew that I needed to be in [Rabbi] Rav Feldman's[127] group, the panel with the three of them. . . . Now in the *beit hadin hagadol* [high rabbinical court], there was only one *dayan*, one of those rabbis who would understand. . . . So we knew that we needed to get to Rav Shmuel Feldman.[128]

Participant #4:

> I have to say, in the rabbinical court it didn't go through at first. . . . He sued me at the high rabbinical court, because he was against this rabbinical court here. He came to Jerusalem, in front of Rabbi Nissan[129] and two others. So then I arrived with my lawyer and his lawyer came alone. He says to him: "Where is your client?" He says, "he couldn't make it," so he says "okay, so tell him you have to give a *get* and we'll be done with this story." . . . And I said "Wow we reached these guys! Wow! This is going to be something! Like finally something in my favor, they really went in my favor!"

Even though participants did experience frustration at the leniency manifested by the rabbinical court towards their husbands,

126. Fictitious name.
127. Fictitious name.
128. Fictitious name.
129. Fictitious name.

the existence of a legal right to sanctions and the community-based nature of the rabbinical courts allowed some of them to personally put pressure on the rabbis:

Participant #1:

> I am even crying now, it was a really sad process, because every Monday and Thursday I would go to the rabbinical court. . . . He would not come and they would treat him with forgiveness. Because of my connections I was able to get the cell number of the rabbinical court judge and every time I would nag him, call him. I told him: "What do you want me to do? You tell me not to sin, how can I not sin?"

Likewise, and notwithstanding widespread complaints that rabbis are overly sympathetic to men, some participants were able to play out their image against that of their husband's to successfully influence the rabbis. According to Halperin-Kaddari, the religious courts, when rendering decisions, will put more emphasis on moral and religious questions than do the civil courts.[130] Their application of the law and appreciation of the facts may be tainted by their religious perspective.[131] For instance, Ariel Rosen-Zvi indicates that the rabbinical court will likely favor the "more religious" parent for custody purposes.[132] Exploiting the perception that the rabbis had of their personal ethics and situation could constitute a fertile strategic avenue for many religious women, as some of our participants demonstrated:

Participant #6:

> Watching him in action yelling at the judges, . . . that was what convinced them that I needed a *get*. . . . I mean also, I'm this together lady, and when they saw him ranting and raving they didn't like him. . . . So then, at one point, towards the end, we finally got a *chiyuv* [order that the *get* be given].

Participant #2:

> Three rabbis were sitting at the *beit din*, and I said "When you go to sleep, think that I am your daughter. Would you relate to your daughter like you are acting to me?" I don't know if it did

130. *See* HALPERIN-KADDARI, *supra* note 50, at 250 ("Rabbinical courts do not abide by the law's directives if these conflict with the courts' religious convictions.").

131. *See id.* at 227.

132. Ariel Rosen-Zvi, *Forum Shopping Between Religious and Secular Courts (and Its Impact on the Legal System)*, 9 TEL AVIV U. STUD. L. 347, 352 (1989).

> anything to them but the next time, they changed, they decided they had to give me a *get*. They treated me like a human.

Thus, the major flaw of the *Sanctions Law* is its indeterminacy and its permeability to ideological manipulation.[133] However, as we have seen, in some cases this phenomenon can be exploited by the women to manipulate religious law in their favor. Finally, we leave the last word to our participants, which indicated that despite the inequalities and defects of religious law, the latter was an indispensable ingredient to any solution to the *agunah* problem which cannot be ignored:

Participant #4:

> I am a woman who believes, and I believe that these rabbinical judges have a job to do in this world. They have a job and it isn't an easy one. . . . I believe in the *Torah* of Moses, I believe that if it came down that way then it needs to stay that way and not to change it every Monday and Thursday, . . . but they [the rabbis] should make some better decisions.

Participant #5:

> I mean most of the secular world doesn't even care about the *get*: "*Get* or no *get*, I'll do whatever I want." That's something that I can't do. I mean, I'll be kicked out of my community in no time.

Participant #6:

> I think that there's ways to implement the *halacha* that aren't being done. We don't have to throw away our *halacha*! There are problems with the *halacha*, I had terrible issues with that. But what kept me going was that I'm trying to not throw away the *halacha*. . . . The problem is the way people use *halacha*!

## CONCLUSION

Far from representing victims in need of saving, Israeli religious women deploy power, agency and resistance on a daily basis, subverting existing disciplinary mechanisms. Unexpectedly, both the secular and the religious spheres show a potential to produce differentiated

133. This is not to suggest, of course, that religious law is indeterminate whereas secular law is not. For the application of the indeterminacy thesis in Western systems, see DUNCAN KENNEDY, A CRITIQUE OF ADJUDICATION (FIN DE SIÈCLE) 4 (1997). *See also* Mark Tushnet, *Defending the Indeterminacy Thesis*, 16 QUINNIPIAC L. REV. 339, 341–45 (1996) (explaining the indeterminancy thesis).

bargaining endowments.[134] Furthermore, despite its numerous flaws and shortcomings, the very existence of the (religious) *Sanctions Law* seems to indicate that Israeli women have attained some form of long-fought-for empowerment.[135] Our field work on the workings of this law in fact supports Susan Weiss's view that "[*h*]*alakhah* is not a collection of harsh and uniform rules, but rather embraces various and contradictory voices [and that t]he outcome of a given legal case depends upon the rabbinical authority consulted, the 'facts' he deems worthy of emphasis, and the voices he chooses to heed."[136]

Indeed, Jewish law does not seem to be a homogeneous body of oppressive rules but an open-ended toolbox which is used in various contradictory ways by different rabbis. The growing mass of feminist Jewish scholarship[137] is interesting in this regard, contradicting as it does the claim that equality is at odds with the tenets of Jewish faith.[138] It also indicates that our interview participants were right to take on their rabbis in the hope of tilting their adjudication in their favor. Moreover, what we gather from the experiences of the women interviewed is that the introduction of civil jurisdiction over certain

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134. For thorough exploration of this idea in the Canadian context, see Pascale Fournier, *Calculating Claims: Jewish and Muslim Women Navigating Religion, Economics and Law in Canada*, 8 INT'L J.L. CONTEXT (forthcoming 2012).

135. *See, e.g.*, HALPERIN-KADDARI, *supra* note 50, at 238 (describing the 1995 Sanctions Law as "[a] major step forward with regard to the *agunah* problem").

136. Susan Weiss, *Israeli Divorce Law: The Maldistribution of Power, its Abuses, and the "Status" of Jewish Women*, *in* MEN AND WOMEN: GENDER, JUDAISM AND DEMOCRACY 53, 63 (Rachel Elior ed., 2004). For a similar argument, see Philippa Strum, *Women and the Politics of Religion in Israel*, 11 HUM. RTS. Q. 483, 496 (1989) ("The problem is not *halacha*, . . . but who interprets it." (internal quotation marks omitted)).

137. *See, e.g.*, NAOMI GRAETZ, UNLOCKING THE GARDEN: A FEMINIST JEWISH LOOK AT THE BIBLE, MIDRASH AND GOD 4 (2005) ("[S]ince feminism is inseparable from our religious orientation and is viewed as part of our concepts of spirituality and holiness, its teachings must be integrated. We bring to the texts questions from our time and seek to uncover meanings . . . that relate to these questions."); TAMAR ROSS, EXPANDING THE PALACE OF TORAH: ORTHODOXY AND FEMINISM xvi–xvii (2004) ("[F]eminism need not be seen as a threat to traditional Judaism . . . ."); Esther Fuchs, *Jewish Feminist Scholarship: A Critical Perspective*, *in* 14 STUDIES IN JEWISH CIVILIZATION 225, 225 (Leonard J. Greenspoon et al. eds., 2003) (describing feminist Jewish scholarship as being "a new field of study"); Judith Hauptman, *Feminist Perspectives on Rabbinic Texts*, *in* FEMINIST PERSPECTIVES ON JEWISH STUDIES 40, 43 (Lynn Davidman & Shelly Tenenbaum eds., 1994) ("[T]here has been an explosion in the number of recently published popular works on feminism and Judaism."); Norma Baumel Joseph, *Jewish Law and Gender*, *in* 2 ENCYCLOPEDIA OF WOMEN AND RELIGION IN NORTH AMERICA 576, 588 (Rosemary Skinner Keller & Rosemary Radford Ruether eds., 2005) ("Since the legal system was established as a responsive one, much of [Jewish law's] content can be addressed in today's language and terms, using women's experience to pry it open."); *see also* LAURA LEVITT, JEWS AND FEMINISM: THE AMBIVALENT SEARCH FOR HOME 128 (1997); ISAAC SASSOON, THE STATUS OF WOMEN IN JEWISH TRADITION (2011).

138. This echoes Professor Fournier's findings with regard to Canadian Jewish and Muslim women. *See* Fournier, *supra* note 134, at 18.

matters does not systematically amount to empowerment of women. As we have seen, civil courts may be less accessible than religious courts, may deprive the woman of her *ketubah*, and are not impervious to *get* extortion fostered by religious law. This should not be taken to suggest that the religious sphere is somehow more empowering to women, or even that it should be respected as a form of "identity." Rather, it indicates that any approach to marriage should account for our finding that in some social contexts, religion can prove to be just as empowering as the civil law. If allowing civil marriage may indeed be useful for women, the concrete impacts of given policies need not be taken for granted.

Our field work also invites us to abandon the secularist conception of the "religious community as an association that members join and quit at will,"[139] and favor instead conceptions of "agency . . . embedded in religion."[140] Thus, exit the figure of Amos Gitai's character Malka, the young Orthodox woman who fled her community to join Yaakov, the romantic gypsy rocker in the film *Kadosh*. Instead, this article has attempted to depict the multiple voices of real Jewish women struggling daily to make sense of an already constrained social and relational environment. With this in mind, it is interesting to note that some scholarship on the *agunah* problem has rightly focused on interpretations of religious texts to bring solutions to the problem,[141] acknowledging the importance of religious belonging and not ceding to the temptation of secularist militancy. This should not, however, imply any reification of the boundaries between civil law and religion. Any policy response should acknowledge religious subjects' multiple webs of identity and belonging, from the synagogue to the movie theatre, across multiple *spatial* layers of identity.[142] By restoring the importance of the religious sphere for Israeli women, we have attempted to redraw a "map [which] ends up showing us that the very form, purpose and effectiveness of boundaries are always dynamic."[143]

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139. Richard J. Moon, Bruker v. Marcovitz*: Divorce and the Marriage of Law and Religion*, 42 SUP. CT. L. REV. 37, 62 (2008).

140. See Korteweg, *supra* note 41, at 444, for a discussion on Muslim women's agency.

141. *See, e.g.*, Marc Feldman, *Jewish Women and Secular Courts: Helping a Jewish Woman Obtain a* Get, 5 BERKELEY WOMEN'S L.J. 139, 167–69 (1990) (suggesting that the ideal solution would be to use "a conditional agency arrangement for delivery of a *get*"); Clinton, *supra* note 117, at 287–88 ("For purposes of finding a solution to the problem of *agunah*, legislative enactments . . . are the most useful." (footnote omitted)).

142. *See* Davina Cooper, *Talmudic Territory? Space, Law and Modernist Discourse*, 23 J.L. & SOC'Y 529 *passim* (1996). On the geography of legal systems' (and communities') boundaries, see Boaventura de Sousa Santos, *Law: A Map of Misreading. Toward a Postmodern Conception of Law*, 14 J.L. & SOC'Y 279, 290 (1987).

143. Shauna Van Praagh, *The Chutzpah of Chasidism*, 11 CAN. J.L. & SOC'Y 193, 214 (1996).

This new "map" of Israeli women's multiple identities can be captured by the metaphoric figure of the old city of Jerusalem:

> [T]he old city of Jerusalem, with its quarters and walls and, on the Haram itself, its intimately protruding and abutting world views, endlessly intersected and traversed by a still incomprehensible human history, offers up a good metaphor for an alternative place to begin mapping the space at the intersection of several world views, some historical, some secular, some religious.[144]

Therefore, the walls of the old city may be a more apt metaphor for Jewish Israeli women's encounter with civil and religious laws than *Kadosh*'s sealed-off Mea Sharim community. This geography of legal pluralism[145] may be the key to refining our understanding of Jewish Israeli women's daily struggles, far from simplistic narratives of secular freedom and religious tyranny. For legal scholars to be able to capture these complex social realities, expanding socio-legal field work amongst and inside religious communities seems indispensable. Perhaps we can thus develop a new fruitful approach to this over-theorized yet under-researched area of law, a new approach which takes into account the complexity of religious women's multiple layers of constraint and freedom, piety and rebelliousness, oppression and resistance.

144. Susan Drummond, *Prolegomenon to a Pedestrian Cartography of Mixed Legal Jurisdictions: The Case of Israel/Palestine*, 50 MCGILL L.J. 899, 947 (2005).

145. *See* Desmond Manderson, *Interstices: New Work on Legal Spaces*, 9 L. TEXT CULTURE 1, 1 (2005).