

Managing Family Justice in Diverse Societies

Edited by
Mavis Maclean
and
John Eekelaar

Oñati International Series in Law and Society
A SERIES PUBLISHED FOR THE OÑATI INSTITUTE
FOR THE SOCIOLOGY OF LAW



• H A R T •
PUBLISHING

OXFORD AND PORTLAND OREGON
2013

Published in the United Kingdom by Hart Publishing Ltd
16C Worcester Place, Oxford, OX1 2JW
Telephone: +44 (0)1865 517530
Fax: +44 (0)1865 510710
E-mail: mail@hartpub.co.uk
Website: <http://www.hartpub.co.uk>

Published in North America (US and Canada) by
Hart Publishing
c/o International Specialized Book Services
920 NE 58th Avenue, Suite 300
Portland, OR 97213-3786
USA
Tel: +1 503 287 3093 or toll-free: (1) 800 944 6190
Fax: +1 503 280 8832
E-mail: orders@isbs.com
Website: <http://www.isbs.com>

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British Library Cataloguing in Publication Data
Data Available

ISBN: 978-1-84946-400-0

Typeset by Hope Services (Abingdon) Ltd
Printed and bound in Great Britain by
MPG Books Group Ltd

*A 'Deviant' Solution:
The Israeli Agunah and the
Religious Sanctions Law*

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I INTRODUCTION

UNDER *HALACHA* (JEWISH law), a man holds all the power to grant his wife a religious divorce (the *get*). A Jewish woman who is refused a *get* by her husband will be called an *agunah* (chained wife), a status which precludes her from marrying another man religiously or to have legitimate children in the eyes of Jewish law, notwithstanding any civil divorce. In Israel and in various Western countries, this legal situation has given rise to extortion and manipulation of Jewish women on divorce (Yefet 2009: 447; Nichols 2007: 158), a tragic outcome referred to by some scholars as the 'plight of the *agunah*' (Breitowitz 1993).

Multicultural dilemmas spawned by such unequal religious rules are often framed in terms of the relation between the neutral, secular state, on the one hand, and the 'cultural'/religious law, on the other. Thus, the question often remains framed in terms of whether and how the state can manipulate and regulate religious norms to further universal goals of gender equality.¹ In our opinion, this ideological framework is inadequate.² To demonstrate this, rather than

* I am grateful for funding received to support this project from the Québec Bar Foundation, the Foundation for Legal Research, Borden Ladner Gervais, the Law Foundation of Ontario and the Social Sciences and Humanities Research Council of Canada. I thank Viviane Bartlett and Ashley Shaffer for their research assistance, Lechee Goldenberg for the transcription and translation of the interviews from Hebrew to English and I acknowledge the *William & Mary Journal of Women and the Law's* permission to reprint parts of previously published material.

¹ See, for instance, Benhabib (2002: 128); Stopler (2003); Okin (1999: 7); and Phillips (2005: 113).

² Indeed, the conception of the secular state as a neutral arbiter may need reconsideration. Courts and the state can and should be analysed as culturally/ideologically oriented institutions (Caughey (2009: 323); Althusser 1997: 127). Furthermore, state 'tolerance' and 'accommodation' have been exposed by many scholars to be based on euro-centric notions: see Beaman (2011) and

exposing Western state officials' ideological, contradictory and equally 'cultural' treatment of religious laws, something which was done in past work,³ this chapter will employ the reverse strategy of presenting the context of the non-Western, non-secular state of Israel. Israel's family law regime confers jurisdiction over divorce and marriage to (religious) rabbinical courts.⁴ The divorce procedures, which are the focus of this chapter, are governed by strictly religious law⁵ and there is no civil marriage to speak of.⁶ What is it that we can see once we have reversed the gaze inwards? Is secularisation⁷ of the state or implementation of the (Western-based) corpus of human rights⁸ a precondition for deviance to be controlled? What exactly can be referred to as 'deviance'? Is religious law 'patriarchal in nature' (Halperin-Kaddari, 2004: 227) and thus wholly unable to protect women against male deviant practices?

The chapter will attempt to comprehend Israeli women's condition by analysing, through socio-legal fieldwork and interviews with Israeli Jewish women, the operation of the Sanctions Law,⁹ a religious legislation intended to address the plight of the *agunah*. This legislation, which grants rabbinical courts the power to accompany certain divorce compulsion orders with sanctions to ensure compliance by the husband, is considered by many Israeli *agunah* women as a helpful, albeit imperfect, legal instrument. The perspectives provided by the women will serve to demonstrate that religious subjects are not waiting for the benevolent watch of a secular state or a Declaration of Human Rights to make their own lives better.¹⁰ Instead, they are struggling on a daily basis to shape and influence religious institutions from the inside, a strategy which, for Israel's state law as much as for 'unofficial' Jewish laws of the diaspora, can often prove more effective than labelling religious institutions as acceptably 'diverse' and

Brown (2006). Finally, American legal realism has long demonstrated that 'non-intervention' by the state can always be seen to be some form of indirect regulation and background rule-setting (Hale, 1923). Thus, multiculturalism's (and 'cultural voluntarism's') invocation of group autonomy obscures rather than clarifies the distributive impacts of state policies. For more on this with regards to Islamic law, see Fournier (2010a). These social realities, which should inform state policies, are too often occulted by Western law's 'methodological nationalism' (Shah 2009: 73).

³ With regard to the legal treatment of Islamic family law, see Fournier (2010b). For the legal treatment of 'crimes of honour,' see Fournier, McDougall and Dekker (2012).

⁴ s 1 The Rabbinical Courts Jurisdictions (Marriage and Divorce) Law, 5713-1953, Law Book of the State of Israel; Navot (2007: 21).

⁵ That being said, certain ancillary areas of divorce law such as custody and matrimonial property are governed by civil law and adjudicated by civil courts (Shifman 1990: 538).

⁶ A Bill was passed in May 2010 to allow civil marriage for partners who are both considered as 'lacking a religion'. However, it seems to apply to only a few Israelis (Lerner 2011: 214).

⁷ As argued in the context of Israel by Marsha Freeman (2003: 71) and Yuval (2005). Also see positions presented by Raday (1996b: 551) and Shifman (1986).

⁸ See Stopler (2004) and Shalev (1995: 93).

⁹ Rabbinical Courts Law (Enforcement of Divorce Judgments) 5755-1995, Law Book of the State of Israel [*Sanctions Law*].

¹⁰ Human rights could even be shown to be counter-productive to the cause of minority women. While falling outside the purview of this chapter, a critique of the 'complex and contradictory nature of the human rights terrain' and of its 'dark sides' is necessary (Kapur 2006: 687). Also see Mutua (2001).

others as inevitably 'deviant'. What Israeli women reveal is that diverse practices can be turned by adjudicators and parties into deviance, but that the reverse is also true: deviant practices can be manipulated from the inside and changed for the better, flying in the face of an a priori categorisation.

II SANCTIONING DIVORCE: EMPOWERMENT THROUGH RELIGION

This chapter 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 denominations of Judaism.¹¹ 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 marieth 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.

This passage was interpreted as bestowing the exclusive privilege to divorce on the husband (Kaplan 2004: 61). Moreover, the words 'if she find no favor 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 (Kaplan 2004: 61; Bitton 2009: 117–18). This requirement was repeated throughout the centuries by religious scholars and has become an undefeatable condition for a valid divorce.

A Jewish divorce is executed by the granting of a writ of divorce (the *get*) on behalf of the man to the woman. For the *get* to be valid, a rabbinical court or *Beth Din* (pl *Batei Din*) composed of three Jewish judges (*Dayanim*) must oversee the divorce process. However, the *Beth Din* cannot enact the divorce itself, as the 'man's consent [is] the *sine qua non* of the entire process' (Berger and Lipstadt 1998: 99). 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. For instance, if a woman enters into a relationship before having obtained a *get* from her husband, she will be considered 'adulterous' and she will not be allowed, even after an eventual Jewish divorce, to marry her partner under Jewish law or remarry her ex-husband (Cohn 2004: 66). Any child she may bear with her partner is considered a *mamzer* (pl *mamzerim*, bastard children) and is 'effectively excluded from Judaism' (Nichols 2007: 155). The *mamzer* status continues on for generations down the line and *mamzerim* are only permitted to marry each other (Rayner 2001: 43). Men, on the other hand, are not subject to these consequences. Indeed, a man's marriage with another woman in the absence of a *get* is halachically valid and

¹¹ For competing religious interpretations of the *agunah* problem, see Rosenthal (2006: 521).

that man's children are legitimate. He is not considered to have committed adultery, but merely to have contravened to a rabbinical decree prescribing monogamy (Nichols, 2007: 155). 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*.¹²

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. If there are no grounds for divorce, there is nothing short of an agreement of the spouses that can dissolve the marriage. Oftentimes, if the wife is subject to physical or verbal abuse by her husband, if the husband is impotent or sterile or if he fails to provide maintenance, an order to divorce may be granted (Lieber, Schereschewsky and Drori 2007: 712–13). Inversely, the husband can claim the compulsion of *get* acceptance if he proves that he has reasons to suspect his wife of being adulterous or if she leads him to transgress Jewish law (Lieber, Schereschewsky and Drori 2007: 712–13; Haut 1983). Although the rabbinical court judges do not often issue orders compelling or obligating the giving and receiving of a *get*,¹³ when they do, the 1995 Sanctions Law allows them to issue sanctions and a variety of restrictive orders on a recalcitrant spouse. The power of the community to use indirect pressure to influence a 'deviant' husband to issue a bill of divorce – which in the past was done through ostracism and excommunication – is now said to be translated into legislation by allowing the courts to withhold certain benefits from the husband (Halperin-Kaddari 2004: 238–39). For instance, the law allows for the imposition of restrictions on the right to leave the country, obtain an Israeli passport, maintain a driver's licence, work in a profession regulated by law or operate a business requiring a licence or legal permit, open or maintain a bank account, etc (Kaplan 2004: 123). Section 3 of the Law even allows for imprisonment to compel compliance with a divorce order. 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.¹⁴ A further section of the Law goes as far as to allow the rabbinical court to impose sanctions on a husband who may already be serving a jail sentence.¹⁵

The Israeli rabbinical courts ordered the issuing of sanctions 73 times in 2008: 20 arrest warrants were issued and private investigators were hired by the courts 36 times to locate recalcitrant husbands who had disappeared in Israel or

¹² Yefet (2009: 447) quotes a Supreme Court of Israel decision which held, 'in a case where the rabbinical court granted a remarriage permit to a husband over his wife's objection, that the rabbinical court enjoys a broad discretion to grant permits and that it may do so in order to compel a wife to accept the *get*'.

¹³ A rabbinical court may order *kfiat get* (a compulsion decree), which means that a party is 'compelled to give or accept a *get*', or *chiyuv get*, where a rabbinical court declares that there is 'an obligation to realize a *get*' (Blecher-Prigat and Shmueli 2009: 282–83).

¹⁴ Sanctions Law, above (n 9) s 3(b).

¹⁵ *ibid*, s 2(7).

abroad.¹⁶ Further statistics show that the Sanctions Law was used several times in 2006,¹⁷ and that between 1995 and 1998, 106 legal procedures resulted effectively in 43 divorces.¹⁸ Professor Einhorn argues that the Sanctions Law has 'encouraged Jewish spouses to apply for a Jewish divorce in the Israeli rabbinical courts' (2009: 214). On its face, the response of the Israeli State thus seems to bring at least some solution to the plight of the *agunah*. We sought to measure how this plays out for Israeli women in practice.

Our fieldwork in Israel is based on interviews¹⁹ conducted with six women who were all once married according to Jewish law.²⁰ The women interviewed varied in their level of religious commitment, although all were practising Jews. 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 licences taken away, had their passports confiscated and/or were disqualified from certain honours in the synagogue.²¹ 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 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.

¹⁶ Administration of the Rabbinical Courts: Yearly Summary 2008 (Hebrew), available at: www.rbc.gov.il/statistics/2008/2008.pdf.

¹⁷ Nissan Ratzlav-Katz, Statistics Dispel Claims of Thousands of Israeli Agunot, Israel National News (27 June 2007), available at: www.israelnationalnews.com/News/News.aspx/122884#.

¹⁸ Gail Lichtman, 'No Exit: Jerusalem organizations are working to ease the plight of "agunot", women denied divorce' *Jerusalem Magazine* (January 2000), available at: www.legalaid.org.il/noexit.htm.

¹⁹ The interviews lasted about one hour each and concerned demographics, religious background, the divorce, the civil legislation and the religious Sanctions Law. Four interviews were held in Hebrew with a Hebrew-English 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.

²⁰ This chapter 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. Field research has been completed among Israeli Muslim women in early 2012 to complement the perspectives offered in this chapter. This research is funded by the Social Sciences and Humanities Research Council of Canada.

²¹ We began looking for interview participants by contacting university professors and various organisations and centres established in Israel which help women, financially and otherwise, in legal matter 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 organization: Yad L'Isha, Mavoi Satum, the International Coalition for Agunah Rights and the Ruth and Emmanuel Rackman Center for Advancement of Women's Studies at Bar Ilan University. All of our interview participants were found through the help of representatives from these organisations. 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.

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 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 realised 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, and he needed a car, so I told my rabbinical advocate: 'I think that we should ask to take his driver's licence'. She was sceptical, and I told her: 'No, I know him'. [. . .] We sent in a request for sanctions and they actually took his licence 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 licence back until you give her a *get*, you are obligated to give her a *get*!'

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 'Ok 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, it is instructive to compare the rabbinical courts and Israeli civil courts, which have concurrent jurisdiction over ancillary matters such as property division and custody.²² Civil courts are sometimes said to render decisions that are more sympathetic to women than those of rabbinical courts (Halperin-Kaddari 2004: 233). 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 (2012: 16). Bogoch and Halperin-Kaddari (2006) likewise argue that the workings of the civil courts and legislation in Israel have occulted persisting imbalances and access to justice problems for women. Our participants confirmed that litigating ancillary claims before civil courts represents a heavy financial burden and is often ineffective.

²² If the file is opened at the civil court before the actual divorce petition in the rabbinical court, the relevant ancillary claims will be heard separately from the main divorce action which remains before the rabbinical court (Cohn 2004: 62).

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 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 favourable 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 was also felt very, very, very frustrated by the *beit hamishpat*, the secular court.

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 religious judicial process, but found that the existing legal aid services specifically dedicated to litigation in rabbinical courts greatly helped. Also, 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 (Mandelbaum and Koenig 1985: 13–14), no doubt renders the religious sphere more attractive than the civil sphere for *some* women.

Participant 3:

Only when I was represented by Yad L'Isha [did things move in the right direction]. First of all Yad L'Isha immediately spoke to the police and ask that he be arrested. It 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 L'Isha, and there are women there who are amazing and ready to help. It's better than any well-known attorney or lawyer!

Thus, a basic cost/benefits analysis may thus direct the woman towards a rabbinical court instead of a civil court. 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 neighbourhood 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 disciplinary power of the religious sphere. This empirical finding serves to demonstrate that the solution can often come from within the religious realm. The Sanctions Law remains, however, deeply flawed, as our participants have indicated. This next section will explore the Law's insufficiencies and its impact on women.

III INDETERMINACY, RABBINICAL RELUCTANCE AND THE VAGARIES OF ADJUDICATION

The literature has abundantly described the shortcomings of the Sanctions Law. For one, the rabbinical courts have been very reluctant to issue orders to compel the *get*. Only a small number of these compulsion decrees are issued each year (Blecher-Prigat and Shmueli 2009: 282). Furthermore, '[e]ven when men are commanded to divorce, the court seldom applies the coercive measures that it was legislatively authorised to use in 1995' (Yefet 2009: 448). As a result, the Sanctions Law is quite often un-enforced (Miller 1997: 14; Clinton 2000: 306).

For our participants, the unenforceability of the sanctions resulted in part from the actions of 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 'Ok, 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 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 still going to do whatever he wants.

The unenforceability of the sanctions were also said to result 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 besides 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 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 'Ok, 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 views of scholars for whom the rabbinical courts' reluctance to issue orders compelling divorce stems from the fear that applying

sanctions on the recalcitrant husband will render the eventual giving of the *get* invalid due to force or undue pressure (Blecher-Prigat and Shmueli 2009: 283; Einhorn 2000: 151; Shifman 1999: 245). Rabbis are said to be very careful because a *get* that is given forcibly or under pressure will be rendered invalid (a '*get* meuseh') (Yefet 2009: 446; Bitton 2009: 117–18; Kaplan 2004: 61). Robyn Shames²³ also explained that some rabbis encourage women to settle by telling them 'pay him what he wants, you see what type of person he is, just pay him what he wants'. She also described the conceptions 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. A rabbi's ideological and personal inclinations may thus influence the adjudicative process. Accordingly, the religious composition of Israeli courts was always the object of much academic interest. Scholars have described the 'monopoly' (Raday 1996a: 214)²⁴ that Orthodox groups enjoy over family law in Israel. Moreover, Orthodox rabbis are considered to form the majority of rabbinical court judges in the country (Woods 2008: xvi; Halperin-Kaddari 2000–01: 348) and are said to be partial to the arguments of the husband (Halperin-Kaddari 2004: 233; Clinton 2000: 306). Some participants have indicated that the verdicts issued by the rabbinical courts are indeed 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:²⁵

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 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,

²³ Director of the International Coalition for Agunah Rights, an international affiliation of groups advocating for the empowerment of *agunah* women. See: www.icar.org.il.

²⁴ On the importance of Orthodox Judaism with regard to other religious denominations in Israel, see Cohen and Susser (2000: 121).

²⁵ Social worker at Mavoi Satum, a Jerusalem-based organisation which provides assistance and legal aid to *agunah* women. See: www.mavoisatum.org.

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 strategise to bring their clients in front of judges 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 in their favour.

Participant 1:

We needed to go to the high rabbinical court. And only there was I saved, because we had there rabbi Lazare²⁶ 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's²⁷ group, the panel with the three of them. [. . .] Now in the *beit hadin bagadol* (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.²⁸

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 Nissan²⁹ 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 'Ok 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 favour, they really went in my favour!'

Even though participants did experience frustration at the leniency manifested by the rabbinical court towards their husbands, the existence of a legal right to sanctions and the community-based nature of the rabbinical courts allowed some of them to personally 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

²⁶ Fictitious name.

²⁷ *ibid.*

²⁸ *ibid.*

²⁹ *ibid.*

emphasis on moral and religious questions than do the civil courts and their application of the law may be tainted by their religious perspective (2004: 250). Moreover, Ariel Rosen-Zvi indicates that the rabbinical court will likely favour the ‘more religious’ parent for custody purposes (1989: 352). Exploiting the perception that the rabbis had of their personal ethics and situation could constitute a fertile strategic avenue for many religious women, as evidenced by our participants’ testimonies.

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 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.³⁰ However, as we have seen, in some cases this phenomenon can be exploited by the women to manipulate religious law in their favour. Focusing on ‘the moment of instability, the choice available at the moment of decision’ (Rittich 2000: 929) and the way it plays out for real Jewish women involved in divorce proceedings teaches us that the Sanctions Law can be empowering to women, at least as often as it serves to disempower them.

IV CONCLUSION

This chapter has depicted the concrete impacts of a *religious* solution to the ‘deviant’ Jewish rules which create the *agunah* problem. By assessing the experiences of Jewish women navigating divorce in Israel, we have come across instances of legal subjects exercising ‘agency embedded in religion’.³¹ The religious sphere has shown a potential to produce differentiated bargaining endowments for women in various situations.³² 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. Our fieldwork on the workings of this law in fact supports Susan Weiss’s view that

³⁰ This is not to suggest, of course, that religious law is indeterminate whereas secular law is determinate. For the application of the indeterminacy thesis in Western systems, see Kennedy (1997: 133); Tushnet (1996).

³¹ See, on the topic of Muslim women’s agency, Korteweg (2008).

³² For thorough exploration of this idea in the Canadian context, see Fournier (2012).

[h]alakhah is not a collection of harsh and uniform rules, but rather embraces various and contradictory voices [and that the] outcome of a given case depends upon the rabbinical authority consulted, the 'facts' he deems worthy of emphasis, and the voices he chooses to heed (2004: 63).³³

Indeed, just as Islamic law cannot be considered as an inherent violation of gender equality (Fournier 2010b; Korteweg and Selby 2012), 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 scholarship³⁴ is interesting in this regard, contradicting as it does the claim that equality is at odds with the tenets of Jewish faith.³⁵ Thus, rather than seeing religion as the problem and law as the solution, lawyers and policymakers must, as this chapter has done, inquire into religion's 'complex and contradictory' potential uses (Cesari 2005: 92).

Given this indeterminacy, our interview participants were right to take on their rabbis in the hope of tilting adjudication in their favour, rather than seeking disavowal of their religion from a secular institution or human rights officials. This should not be taken to suggest that the religious sphere is somehow systematically more favourable 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 empowering. Uncovering the concrete *distributive* implications of both secular and religious norms through socio-legal fieldwork should thus inform the research agenda. Adopting this methodological posture, especially in a non-secular, non-Western context, evidences that we can do without extensive theorising on the ways in which the state should control religious practices.³⁶ Indeed, 'constructive interaction' (Krivenko 2009: 5) between religious/'cultural' norms and international (and national) human rights is already happening, right before our eyes. The messy interactions of 'religion-at-law' (Jukier and Van Praagh 2008: 388) which take place both in secular and religious states can help unearth creative solutions to religious/cultural 'deviance'. This kind of 'adaptation policy',³⁷ whereby religious law is allowed to continue to coexist with and to be influenced by (inter)national human rights is probably the best way forward, rather than a pick-and-choose approach to religion which takes for granted the state's ability to act as a 'replacement for the socio-religious legal order' (Shah 2010: 139). Such an approach is inappropriate if it presumes of state policy's impacts on the ground, which our fieldwork has shown to be ethereal, ever-changing and profoundly contradictory. This chapter has argued that rather than looking for predictable and stable answers on which practices they

³³ For a similar argument see Strum (1989: 496).

³⁴ eg, Sassoon (2011: 119); Fuchs (2009: 1); Graetz (2005: 3); Ross (2004); Joseph (2005: 3) and Hauptman (1994: 40). For a critical account of this kind of work see Fuchs (2003: 225) and Levitt (1997: 91).

³⁵ This echoes Fournier's findings on Islamic law and Muslim women, see Fournier (2012).

³⁶ See generally Nichols (2011).

³⁷ Pearl and Menski (1998: 83). See also Fishbayn (2008).

should deem deviant and which practices they should embrace, policymakers around the globe need to look further into law's inconsistency and unpredictability. This will allow them to start taking stock of both religious and state law's many uneven 'openings for creativity and invention in reshaping the social world' (Ewick and Silbey 1995: 222).

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