

Marriage, the Family, and Security in Israel: The Paradox of the Liberal State  
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## ABSTRACT

This study offers an interpretation of political change in Israel through an examination of amendments to Israel's personal status laws (PSLs)—laws governing marriage, divorce, death, inheritance, and adoption. I found that separate ethno-religious groups, including Arab Muslims, non-Western Jews, and non-religious persons (including some secular Jews), do not enjoy equal access to the civil right of marriage and divorce that citizens commonly enjoy within other Western liberal nations. Marriage and divorce within Israel are only accessible through, and sanctioned by, religious institutions. I argue that Israel's PSLs reflect a significant paradox within liberalism, namely the inherent tension between the state's guarantee of religious rights versus the constitutional protection of citizens' civil rights.

My research begins within political theory, grounded in theories of liberalism, biopolitics, nationalism, and post-colonial studies. Part one traces the history of Israel from the late Ottoman period through the founding of the State in 1948, with consideration paid both to Israel's founders (and the political Zionisms they espoused) and to political Zionism's critics (including Hannah Arendt, Isaiah Berlin, and Judith Butler). I then turn to a examination of Israel's PSLs, asking what is at stake when a liberal, democratic nation bases its laws governing marriage and divorce upon religious law rather than developing civil laws governing these institutions.

Part two considers four legal arrangements caught in a crucial political paradox: laws and programs regulating the lives of women, laws outlawing polygynous marriages, changes in laws surrounding exogamous and cross-border marriages, and the treatment of Ethiopian Jews under the law. Each of these cases demonstrate the ways PSLs are used to address growing concerns over the security and national identity of the Jewish State. Through these four examples, Israel's concerns over national identity, citizenship, and security become manifest, and one important instance of the paradox of liberalism comes into focus. Ultimately, while Israel is unique as the world's only Jewish state, Israel becomes understandable as a liberal state experiencing many of the same anxieties and internal liberal problematics experienced by other states as well.

# Marriage, the Family, and Security in Israel: The Paradox of the Liberal State

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## PUBLIC ABSTRACT

This study begins with the concern that discrimination exists against particular ethno-religious groups in Israel, including Arab Muslims, non-Western Jews, and non-religious persons (including some secular Jews). Israel presents itself as Western, liberal, and democratic, but to date, Israeli citizens cannot get married or divorce in civil courts in Israel. This is the case in no other Western state.

I start by asking why Israel's founders chose to keep laws governing marriage, divorce, death, inheritance, and adoption, known collectively as personal status laws (PSLs), under the jurisdiction of religious courts rather than enumerating these laws within civil law codes. To address this question, I used methods found in political science, religious studies, and women's studies. What the research reveals is that while it is understandable that Israel would choose this legal arrangement, this choice points to larger political matters. I argue that the political anxieties reflected in Israel's PSLs signify a greater paradox within liberalism, namely the inherent tension between the state's guarantee of religious rights versus the constitutional protection of citizens' civil rights.

I explore this paradox by examining four cases. First, I explored PSLs and pronatalism governmental programs regulating the lives of women in Israel. Second, I analyzed laws outlawing polygyny and bigamy and how these laws changed religious practices for key ethno-religious groups in Israel. Third, I investigated political narratives around the Security Barrier and how marriage has been affected by the erection of this barrier. And finally, I analyzed the history of Ethiopian Jews within Israel, focusing on how much their community has changed since entering Israel.

Through these four cases, Israel's concerns over national identity, citizenship, and security are made clear, and we can begin to ask questions about the inherent paradox of liberal states. Ultimately, while Israel is unique as the world's only Jewish state, Israel can be compared to other Western, liberal, democratic states questioning its own challenges in balancing religion and the state.

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## **List of Abbreviations**

CEDAW	United Nations Committee on the Elimination of Discrimination against Women
DI	Donor Insemination
FGM	Female Genital Mutilation
HIV	Human Immunodeficiency Virus
IVF	In Vitro Fertilization
LAS	League of Arab States
MK	Minister of the Knesset
PSL	Personal Status Law
UDHR	<i>Universal Declaration of Human Rights</i>
UNRWA	United Nations Relief and Works Agency
WERD	Women's Equal Rights Law of 1951

## **List of Relevant Law**

1936	Criminal Code Ordinance of 1936, § 181
1948	Law and Administration Ordinance No. 1
1950	Age of Marriage Law
1950	Law of Return
1951	Equality of Women's Rights Law/ Women's Equal Rights Law (WERD)
1952	Nationality Law
1953	Rabbinical Jurisdiction (Marriage and Divorce) Law
1959	Penal Law Amendment (Bigamy) Law
1960	Adoption of Children Law
1962	Druze Religious Courts Law
1969	Jurisdiction in Matters of Dissolution of Marriage (Special Cases) Law
1981	Adoption of Children Law
1992	Basic Law: Freedom of Occupation
1992	Basic Law: Human Dignity and Liberty
1995	Rabbinical Courts Law (Enforcement of Divorce Judgments)
2003	The Citizenship and Entry into Israel Law (Temporary Provision)





## Introduction: The Paradox of Israeli Zionism

The founders of the State of Israel had to make decisions very early about the political nature of a Jewish state: What form of government would it have? Who would be allowed to immigrate? What would the relationship be between religion and the State? As an important region for Judaism, Christianity, and Islam (as well as smaller religious communities including the Druze and the Baha'i), any political entity in the area of Biblical Israel would have to reconcile itself to the fact that it would need to be open for religious pilgrims and local religious expression. In 1947, the land today known as Israel, Gaza, and the West Bank was home to 1.97 million individuals, numbering approximately 630,000 Jews, 143,000 Christians, and 1.181 million Muslims.<sup>1</sup> The liberally minded founders of Israel, first with their *Declaration of the Establishment of the State of Israel*, and then with the Basic Laws, began to craft a state that would be Jewish in nature, but under which practitioners of all faiths would be considered equal under the law.<sup>2</sup> Important for ensuring this equality was a series of personal status laws (PSLs) passed in the 1940s and 1950s, each of which served to define personal rights in areas including marriage, divorce, death, inheritance, and adoption. Thus, Israel was founded on something of a paradox: a liberal, Jewish state, the first and only of its kind, with sizeable Christian and Muslim minorities.

As Israel today is a multiconfessional society, laws governing personal status vary greatly among religious communities. As a starting point, the Knesset passed the Law and

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<sup>1</sup> Sergio DellaPergola, "Demography in Israel/Palestine: Trends, Prospects, Policy Implications," in *IUSSP XXIV General Population Conference* (Salvador de Bahia, Brazil 2001).

<sup>2</sup> Zeina Ghandour, "Religious Law in a Secular State: The Jurisdiction of the Shari'a Courts of Palestine and Israel," *Arab Law Quarterly* 5, no. 1 (1990): 30.

Administration Ordinance No. 1 in 1948, which formally incorporated the majority of the Ottoman *millet* system and British Mandatory Period laws into Israeli law. Under this system, members of each religious tradition recognized within Israel retained their own PSLs in the aforementioned areas of personal and family law. While this seems reasonable on the surface, as Hanna Lerner explains, this system required religious practitioners to register with a particular faith community.<sup>3</sup> Even today, to be nonaffiliated with a religion is not an option in Israel; every citizen's religion is printed on his or her passport. Those individuals living in Israel after 1948 who did not formally register with a church, synagogue, mosque, etc., had no protections under the law in personal status situations, because Israel's system of law does not include civil PSLs.<sup>4</sup> Civil marriage, for instance, has never been present within the Israeli legal system; to date, Israelis do not have the option, for instance, of marrying with a civil judge or justice of the peace..<sup>5</sup> This is important for two reasons. First, one must consider non-religious persons or persons living under interfaith familial structures within Israel—where an obvious religious court would not be easy to determine: what happens to those for whom a specific religious court is not obvious? Second, what of those individuals whose religious traditions are not formally recognized by the State of Israel? If a state that claims to both be liberal and to protect the religious lives of all of its citizens does not accept nonreligious persons, or nonreligiously

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<sup>3</sup> Hanna Lerner, "Critical Junctures, Religion, and Personal Status Regulations in Israel and India," *Law & Social Inquiry* 39, no. 2 (2014): 387.

<sup>4</sup> *Ibid.*, 395-6.

<sup>5</sup> Silvie Fogiel-Bijau, "Why Won't There Be Civil Marriage Any Time Soon in Israel? Or: Personal Law—the Silenced Issue of the Israeli-Palestinian Conflict," *A Journal of Jewish Women's Studies & Gender Issues* 6, no. 1 (2004): 30.

affiliated persons, to marry or divorce, for instance, can that state still call itself a liberal democracy that values toleration and religious pluralism?

A series of laws superseding the inherited Ottoman *millet* and British Mandatory laws governing personal status in Israel were passed in Israel in the decade after its founding. The Knesset passed the first of these laws in 1951. Called the Women's Equal Rights Law (abbreviated in the literature as the WERD), this law gave women privileges in the fledgling state that superseded religious law: rights to property under marriage, equal custody of any children as part of said marriage, and equal representation in the Israeli Defense Forces. However, in spite of the seemingly positive nature of this law, concerns immediately arose that this law could lead toward discrimination against women, namely because it put the enforcement of PSLs under the jurisdiction of rabbinical courts, whose rulings on women's rights in marriage and as mothers are generally less than egalitarian.<sup>6</sup> The Rabbinical Jurisdiction (Marriage and Divorce) Law of 1953 followed the WERD; this law placed Jewish marriage under the sole jurisdiction of rabbinical courts and reaffirmed that civil marriage was not a part of the Israeli PSL code. The fact that this law passed in the Knesset is interesting in three ways: first, the law was passed by a Mapai party majority, a secular, socialist political party; second, because it does not account for the possibility of secular Jews in Israel; and third, because it takes away the possibility of civil marriage (especially Jewish civil marriage), within the Israeli legal system.<sup>7</sup>

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<sup>6</sup> Pnina Lahav, "The Status of Women in Israel-Myth and Reality," *American Journal of Comparative Law* 22 (1974): 117-18.

<sup>7</sup> Lerner, "Critical Junctures, Religion, and Personal Status Regulations in Israel and India," 397.

A third law passed in this initial wave of PSLs was the Penal Law Amendment (Bigamy) of 1959, which prescribed a five-year prison sentence for any man convicted of entering into bigamous relationships – relationships whereby a man knowingly marries a second wife – regardless of religious affiliation.<sup>8</sup> While this law would have obvious consequences for Muslims in Israel, given polygyny<sup>9</sup> is an legitimate form of marriage under Islamic law, it raised questions that bear on judicial interpretation within the Jewish context of marriage. While traditionally polygyny, the marriage of a man to more than one woman, had largely disappeared among European Jewish populations, the practice continued within predominately Arab Jewish populations through the founding of the State of Israel.<sup>10</sup> The 1959 Bigamy Law, which claimed to preserve the rights of women and structure of traditional families, was a key moment in shifting Israeli PSLs toward a narrow, predominately Ashkenazi<sup>11</sup> interpretation of Jewishness. Additionally, it reified the position of religious courts in matters that, in most Western, liberal nations, are left to civil courts and civil law.

When one looks more closely at some of Israel’s laws, questions arise as to how they were formulated and expanded in a state that claims to be liberal, democratic, and an active

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<sup>8</sup> Pinhas Shifman, "The English Law of Bigamy in a Multi-Confessional Society: The Israel Experience," *The American Journal of Comparative Law* 26, no. 1 (1978): 79.

<sup>9</sup> For the purposes of this dissertation, I will use the word “polygyny” to describe the marriage between one man and multiple women, rather than the less specific “polygamy,” which simply refers to the marriage of one person to multiple partners of the opposite sex. This differs from bigamy, which is the actual act of a man knowingly marrying a person when already married to someone else.

<sup>10</sup> Benjamin Acosta, "The Cultural Politics of Israel’s Mizrahim: From Marginalization toward Dominance," *Culture Critique* 2, no. 1 (2011): 1.

<sup>11</sup> Jews who had lived under predominately Christian rule, primarily of European descent (especially Germany and Eastern Europe).

protector of human rights.<sup>12</sup> The common thread through these PSLs is that they are publicized as ensuring the rights of citizens under the law on the one hand, but on the other hand often have unintended consequences that limit the personal rights of some citizens. If proscribed inequality exists in Israel, and these inequalities can be traced back to certain decisions made early in the foundations of the Israeli state, why do Israeli politicians (amongst others in positions of power) remain committed to these laws and policies that infringe upon the protected rights of some citizens? Furthermore, what roles do the structure and laws of Israel play in perpetuating systems of inequality and illiberalism that we see in Israel today?

This dissertation situates itself among ongoing inquiries over rights and security in Israel, using Judith Butler's *Parting Ways: Jewishness and the Critique of Zionism* as a model for understanding the unusual political situation of the Jewish state today.<sup>13</sup> Butler's work "establish[es] a Jewish perspective that is non-Zionist" while simultaneously understanding that a rigorous critique of Zionism must necessarily come from "a departure from Jewishness as an exclusionary framework for thinking both ethics and politics."<sup>14</sup> While Jewish thought provides many normative and ethical positions from which one can critique political Zionism, Butler believes other resources, including "the classical Greek tradition, the French Enlightenment, and the decolonization struggles of the twentieth century" have a role in fully understanding political Zionism and in understanding its flaws.<sup>15</sup>

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<sup>12</sup> "Basic Law: The Knesset," (<http://knesset.gov.il>: Knesset, 1958); "Basic Law: Human Dignity and Liberty," (<http://knesset.gov.il>: Knesset, 1992); "The Declaration of the Establishment of the State of Israel," (State of Israel, 1948).

<sup>13</sup> Judith Butler, *Parting Ways: Jewishness and the Critique of Zionism*, New Directions in Critical Theory (New York: Columbia University Press, 2012), 1.

<sup>14</sup> *Ibid.*, 2.

<sup>15</sup> *Ibid.*

Butler's research in *Parting Ways* provides two key methodological tools: a new method for critiquing political Zionism while avoiding accusations of antisemitism; and a critique of Israel as a colonial power.<sup>16</sup> With regard to avoiding antisemitism, invoking Arendt, Butler explains that "neither Judaism nor Jewishness necessarily leads to the embrace of Zionism."<sup>17</sup> In other words, Judaism and Jewishness need to be separated from Zionism before a full critique of Zionism can occur. Regarding Israel as a colonial power, Butler views the expansion of Israeli settlements into the West Bank, for instance, as an example of settler colonialism. This settler colonial model extends, according to Butler, even into the days prior to the founding of the State. She states: "[T]he experiments in socialism that characterized the kibbutz movement were an integral part of the settler colonial project, which means that in Israel socialism was understood to be compatible with colonial subjugation and expansion."<sup>18</sup> By framing Israel's political Zionism as a project of colonialism, Butler addresses a new way in which Zionism can be critiqued from outside of Judaism itself, including from within (post)-colonial studies.

Using Butler's critiques of Israel and political Zionism both from outside Judaism and Jewishness and as a colonial power, this dissertation explores the changing nature of political rights in Israel, from its founding through the present day, analyzing PSLs as a one of the main means through which Israel pursues its colonial Zionist project. What will be explored, through two historical theoretical chapters and four case studies, is the inherent paradox present in the idea of forming a Jewish (or religious), *liberal* state. I will explore certain laws present in the Israel legal system—supported by sections of the Israeli

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<sup>16</sup> Ibid., 116-19; 213.

<sup>17</sup> Ibid., 117.

<sup>18</sup> Ibid., 19.

population—that have created situations of inequality amongst otherwise full citizens of the state., asking what key decisions early on in the makeup of the Zionist vision helped to set Israel down the path it is currently traversing? For instance, Butler explains:

What Arendt objects to in the nation-state is nationalism and its consequence: the forced exile of those nationalities that are not recognized as the one nation expressed by the state. Given that modern state house increasing numbers of nationalities, the conceit of the nation-state can only be a dangerous one, since it seeks to align nation with state through the expulsion of those nationalities that do not conform to the idea of the nation that sanctions the state.<sup>19</sup>

Within Israel today, the challenge faced by minority groups and non-Western groups of Jews, as will be seen especially in chapters three through seven, are fueled, in part, by this problem of a singular national identity within Israel that fails to protect the religious (and non-religious) identities of all of its people.

To study rights and privileges in Israel requires considering certain theories and concepts bound up with statecraft, religion, and nationalism. While multiple theorists and scholars will be important for exploring the rights of citizens in Israel today, a few key thinkers and their studies will be essential to this project. Several of Michel Foucault's works, for instance, will be important for developing an understanding of power relationships present in Israel that bear on matters of security, religion, and identity. An important legacy of this model of power is that liberal theorists have come to understand the importance of bottom-up power in the constitution of liberal subjects. Regarding power, Foucault states: "we have to show, obviously, how these procedures [of power] are displaced, extended, and modified and, above all, how they are invested or annexed by global phenomena, and how more general powers or economic benefits can slip into the

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<sup>19</sup> Ibid., 143.

play of these technologies of power, which are at once relatively autonomous and infinitesimal.”<sup>20</sup> As will be shown, many of the decisions Israel makes governmentally, which some Israeli citizens continue to support, come down to small changes in laws that are later intensified by perceived changes in Israel’s security. As Foucault demonstrates in his essay “Governmentality,” rule shifts away from sovereign power in the the seventeenth century toward governmentality in the eighteenth and nineteenth centuries.

He states:

[P]opulation comes to appear above all else as the ultimate end of government. In contrast to sovereignty, government has as its purpose not the act of government itself, but the welfare of the population, the improvement of its condition, the increase of its wealth, longevity, health etc.; and the means that the government uses to attain these ends are themselves all in some sense immanent to the population; it is the population itself on which the government will act either directly through large-scale campaigns, or indirectly through techniques that will make possible, without the full awareness of the people, the stimulation of birth rates, the directing of the flow of population into certain regions or activities, etc. . . . [T]he interest of the population regardless of what the particular interests and aspirations may be of the individuals who compose it, this is the new target and the fundamental instrument of the government of population: the birth of a new art, or at any rate of a range of absolutely new tactics and techniques.<sup>21</sup>

The structure of the PSL system, by not allowing for civil marriage, combined with Israel’s nonconstitutional Basic Laws and Temporary Provisions to those laws (see chapter one) is the means through which Israel asserts its governmentality. As will be seen in chapters three through seven, several minority groups, including nonwestern Jews, Muslims, and the Druze, are specific individuals whose “interests and aspirations” are subsumed by the

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<sup>20</sup> Michel Foucault, *Society Must Be Defended: Lectures at the Collège De France, 1975-76*, ed. Mauro Bertani, et al. (New York: Picador, 2003), 30-31.

<sup>21</sup> "Governmentality," in *The Foucault Effect: Studies in Governmentality with Two Lectures by and an Interview with Michel Foucault*, ed. Graham Burchell, Colin Gordon, and Peter Miller (Chicago: The University of Chicago Press, 1991).



governing of the Israeli population. However, as will also be seen, this same legal structure, by placing certain legal relationships between individuals in the hands of religious interpretations of law, gives individuals the ability to assert bottom-up power and agency.

Personal status laws, while religiously grounded, end up having far-reaching effects on the nation's culture and identity. Their sometimes-inconsistent application amongst Jewish (and non-Jewish) groups have led to political outcomes tinged with racism and intolerance. Wendy Brown's *Regulating Aversion: Tolerance in the Age of Identity and Empire* provides an understanding of how the concept of tolerance has changed since Locke's 1689 letter *Toleration*.<sup>22</sup> Ann Laura Stoler's *Race and the Education of Desire* lends to this study an extension of Foucault past his predominately Eurocentric worldview into (Stoler has concerns that by focusing primarily in Europe and not looking in Europe's colonies, Foucault "misses key sites in the production of that discourse, discounts the practices that racialized bodies, and thus elides a field of knowledge that provided the contrasts for what a 'healthy, vigorous, bourgeois body' was all about")<sup>23</sup> as I apply it, (post)-colonial Israel. While Israel may not be traditionally on the list of either colonial or post-colonial states,<sup>24</sup> given its unique founding in a time of decolonization, I also find

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<sup>22</sup> Wendy Brown, *Regulating Aversion: Tolerance in the Age of Identity and Empire* (Princeton, New Jersey: Princeton University Press, 2006).

<sup>23</sup> Ann Laura Stoler, *Race and the Education of Desire: Foucault's History of Sexuality and the Colonial Order of Things* (Durham: Duke University Press, 1995), 5.

<sup>24</sup> According to Penslar, "most scholars of Israel Studies teaching in Israeli universities denied or qualified linkages between Zionism and the high imperialism of the *fin de siècle*. This approach is still taken by a number of younger scholars in Israel, but in the past fifteen years there has risen a cohort of Israeli academics who, following the lead of Arab and Western scholarship on the modern Middle East, have made linkages between Zionism and colonialism central to their scholarly endeavors. . . . Traditional Zionist historiography emphasized that the founders of the state of Israel did not think of their enterprise as colonial in nature and, in fact, abhorred contemporary European colonialism for its parasitical profiting from the expropriation of native land and the exploitation of native labor. Classic Israeli sociology, in turn, has contended that the Zionist movement and Yishuv did not conform to any conventional model of a colonizing state and

useful Frantz Fanon's *The Wretched of the Earth* in helping to position decisions made by the Israeli government during and directly after the founding of Israel within postcolonial studies.<sup>25</sup>

Fanon's views on postcolonialism, combined with theories of the historical foundations of nationalism found in such works as Benedict Anderson's *Imagined Communities*, allow me to theoretically situate Israel's continuing concerns over identity and security between West and East, torn between conflicting ideologies while trying both to assert its own autonomy and legitimacy, and seeking to balance concerns over religion and identity in an increasingly insecure and tumultuous region. By trying to place Israel at the nexus of these competing conceptual frameworks, I am then able to use Talal Asad's analysis of nationalism, secularism, and religion in *Formations of the Secular* to analyze one vehicle through which Israel endeavors to assert its civil political power over religious communities, namely the personal status laws discussed earlier.<sup>26</sup> In the same way that Asad analyzes modernity as a "series of interlinked projects—that certain people in power seek to achieve"<sup>27</sup>—I analyze political Zionism and the crafting of the state of Israel as a series of interlinked projects, each working together to carefully establish Israeli national identity and to consolidate power in the name of state security. I have chosen personal

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that the structural barriers between Jewish and Arab society before 1948 were so great as to render impossible any consideration of the Jewish-Arab relationship as one between colonizers and colonized. Some of the more recent historical literature, on the other hand, claims that Zionist thinking, like that of *fin de siècle* Europeans as a whole, operated on multiple levels and that feelings of benevolence, humanitarianism, and sympathy could easily blend with condescending, Orientalist, and even racist views of the Palestinian Arabs." Derek Jonathan Penslar, "Israel: A Colonial or Post-Colonial State?," Computing in the Humanities and Social Sciences, University of Toronto, <http://homes.chass.utoronto.ca/~ikalmar/illustex/penslarzionism.htm>.

<sup>25</sup> Frantz Fanon, *The Wretched of the Earth*, trans. Richard Philcox (New York: Grove, 2004).

<sup>26</sup> Talal Asad, *Formations of the Secular: Christianity, Islam, Modernity*, ed. Mieke Bal and Hent de Vries, Cultural Memory in the Present (Stanford, Calif.: Stanford University Press, 2003).

<sup>27</sup> *Ibid.*, 13.

status laws, rather than another subject of attention (such as end-of-life decisions, the role of religious affiliation in political parties, or universal military conscription), both because the institution of marriage as a religious and a political relationship between two partners has a long legal history in Judaism, and because of the ways in which the amending of personal status laws has coincided with the ongoing concerns over security, religion, and identity in Israel. While marriage has changed in Judaism, due in part to the influence of the cultural mores present in those Diaspora countries (including views on polygyny and levirate<sup>28</sup> marriage),<sup>29</sup> it appears that the systematic changes placed by the government of Israel, often with the support of the religious leadership, tell a greater story about growing ethnocentrism and racialism within the Israeli state, a story that finds Jewish expressions of marriage and the family being amended to support state security.

If the evidence comes to show, through the analysis of these evolving personal status laws, that Israel does in fact have illiberal and discriminatory laws and policies within a self-declared democratic state, with institutions that are framed under religious laws and language, a question that immediately arises is, *who* stands to gain from continuing to connect marriage and family law with religious law rather than civil law? As was stated earlier, secular Ministers of the Knesset, and not simply its more Orthodox members, overwhelmingly enacted some of the earliest laws outlawing civil marriage in Israel. Today, Israel's government has returned to these personal status laws as a primary

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<sup>28</sup> Levirate marriage, within Judaism, was the marriage between a widow and her former husband's brother. This marriage was obligatory if a widow and her former husband had not had children. This was done in order to preserve family lineages in endogamous societies—or societies where individuals married within their social group.

<sup>29</sup> As will be explained in chapter five, heteromonogamy has not always been the only form of marriage within Judaism. As recently as 1000 CE, Jews of Europe still practiced polygyny and Jews in the Arab Diaspora only moved away from the practice beginning 1948.

means of control in an increasingly insecure political and security environment. The “Citizenship and Entry into Israel Law (Temporary Provision) 5763-2003,” which limited marriages between Israelis and citizens of Gaza and the West Bank, stands as an ongoing example of a law that changed marriage practices in the name of security.<sup>30</sup> Through this example (analyzed in chapter five), amongst others explored in subsequent chapters, and using the theoretical framework from Butler I have just discussed, I will be analyzing personal status laws that have gone from protecting the rights of citizens to being used in a struggle for security and power within Israel.

Two challenges arise in the scholarship bearing on perceived inequalities in the state of Israel. The first is a general misinterpretation of any critique of Israel as being made to wear the odious burden of possibly being driven by antisemitism. Judith Butler calls the attention of her readers about this problem in *Parting Ways*, a book she says she wrote in part to “debunk the claim that any and all criticism of the State of Israel is effectively anti-Semitic.”<sup>31</sup> Butler draws from both Jewish and non-Jewish theorists to explore issues of state violence, colonial subjugation, expulsion and dispossession. Antisemitism is often a very loaded charge, and Butler argues that once it is uttered, it immediately shuts down any conversation happening out of fear of the label,<sup>32</sup> with its associations with the Russian *pogroms*, the Holocaust, rumors of blood libel, etc. When someone criticizes the United States, for instance, he or she runs the risk of being called “unpatriotic.” But even in its strongest use, “unpatriotic” comes nowhere close to the stigma attached to the word antisemitic. Butler’s work, along with my own, attempts to

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<sup>30</sup> "Human Rights Groups Hit out at Racist Israeli Marriage Law," *Birmingham Post* 2003.

<sup>31</sup> Butler, *Parting Ways*, 1.

<sup>32</sup> *Ibid.*, 116-17.

separate Jewishness, Israeli identity, and Zionism from each other, allowing each concept to be critiqued analytically in order to expose political forms of discrimination that have come to be legalized under Israeli law.

This leads to a second problem in scholarship on theories of the State and how they apply to Israel: in seminal works on nationalism, religion, and racism—where one might expect a geopolitical situation as significant (or, at the very least, long-lasting) as the Arab-Israeli conflict to be focused upon—few scholars use Israel as a meaningful example of the challenges of balancing religious identity in a secular state. For instance, in Anderson’s chapter from *Imagined Communities* entitled “The Last Wave,” in which he describes forms of nationalism that arose after World War I and spread throughout the mid 20<sup>th</sup> century, Israel is completely absent. Yet, many of the key characteristics of late nationalism that Anderson describes, including the focus on a new print language, updating technological and agricultural conditions, and an “emerging nationalist intelligentsia,” were at work and very much at stake in the foundation of political Zionism and the early Israeli state.<sup>33</sup> In *Formations of the Secular*, Asad discusses the challenges that arise when religion becomes “an integral part of modern politics,”<sup>34</sup> but Israel, as an avowed Jewish-secular state, likewise is never mentioned. These two examples only scratch the surface of works that study the intersection of religion and national identity. Yet where one may assume Israel would be mentioned in these discussions, such discussions are strangely absent. If I am correct in identifying these two general problems, then analyzing questions about the accomplishments of liberal projects, especially when combined with religious rhetoric

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<sup>33</sup> Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, Revised ed. (London: Verso, 2006).

<sup>34</sup> Asad, *Formations of the Secular*, 182.

within the Israeli context, will give us new ways to ask questions about other liberal, democratic states where religion is being used to protect the rights of *some* citizens, but not of others to create particular national identities.

This dissertation is divided into the following chapters in order to explore the unique nature of Israel's personal status laws and to examine their role in shaping identity in Israel and in giving the government of Israel a vehicle for maintaining certain structures of power. Part one extends the theoretical framework presented in this introduction, examining the founding of the state of Israel and the development of laws of personal status. (chapter one) and the challenges of personal status law, tolerance, and equality within Israel (chapter two). Part two analyzes four instances where religion and identity have been changed by the application of personal status laws within Israel. Chapter three looks at pronatalist policies within Israel, including the 1950s "Heroine Mothers" program, under which women were encouraged to have ten or more children. This program, in addition to other social programs and inexpensive, government-sponsored access to assistive reproductive technologies, has changed Jewish, Israeli women's perceptions of motherhood and national identity in unique ways. Chapter four addresses non-Western Jewish marital practices, including polygyny, and it questions the validity of a Jewish state making certain religious practices illegal. Chapter five examines Palestinian-Israeli intermarriage and how its "temporary" probation by the Israeli government has thrown marriage into the middle of the fight for security in Israel. Finally, chapter six focuses on the experience of Ethiopian Jews, whose religious practices, language, and even bodies have been marginalized Israeli immigration policies.

In light of the concerns brought forth by this project, Thomas Hobbes serves as an important reminder of the original intentions and tensions of liberalism, particularly when attempting to situate Israel within the liberal tradition. In *Leviathan*, Hobbes explained that the state that gain its power through violence has one of two options for holding that power: through the authorization of the people, or through force. Hobbes defines the commonwealth as “one person, of whose acts a great multitude, by mutual covenants with one another, have made themselves every one the author, to the end he may use their strength and means of them all as he shall think expedient, for their peace and common defense.”<sup>35</sup> Sovereigns can establish commonwealths in one of two ways: by institution (authorized) or by acquisition (force).<sup>36</sup> Commonwealths by institution are automatically legitimate, as they are agreed upon by an assembly of men from their foundations.<sup>37</sup> Commonwealths by acquisition fall into two categories: those that nevertheless gain the consent of the people (legitimate), and those that do not have the consent of the people (illegitimate despotism).<sup>38</sup> Hobbes had these concerns in the revolutionary time of 1648, and in the case of Israel, his concerns continue to manifest themselves to this day, as Israel continues to struggle to maintain legitimacy and security, especially during periods of crisis.

Israel finds itself torn between, on the one hand, wanting to be a strong, secure nation, defined by its Judaism and committed to its modernity, and on the other hand relying upon relationships of power best left in the past, defining Judaism in ways that are,

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<sup>35</sup> Thomas Hobbes, *Leviathan* (Bristol, England: Thoemmes Continuum, 2003), Chapter 19.

<sup>36</sup> *Ibid.*, Chapter 17.

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*, 18.

at their kindest, narrow and, at their worst, contradict the Jewish traditions of many of Israel's citizens. Jewish practices, especially in Arab Jewish and Black Jewish communities, have simply vanished while Israel still defines itself as a *Jewish* state for *all* Jewish citizens.<sup>39</sup> This trend toward racialism and discrimination echoes what Anderson cautions can happen when patriotism and nationalism combine with colonialism.<sup>40</sup>

Thus, this dissertation explores the possibility that the current problems of instability, violence, and national identity in Israel are linked to decisions about power made by the earliest Zionists and that can be seen through the history and legacy of personal status laws. My contribution to the field of Arab-Israeli studies, and more broadly political theory, will be to ground this project not only in theory but also in policy, analyzing Israel's enforcement of its own policies from within its own laws and its international commitments. This method of analysis can be employed to analyze other countries facing the challenge of balancing commitments to social justice with the demand for governing over a multiconfessional society in a time of rapid demographic change. This includes the conflict between Sunni and Shi'a and the role of the Ba'ath party in Syria, the continued struggles to maintain equal parliamentary representation within the unitary parliament of Lebanon, and (to leave the Middle East), Hindu/Christian and Hindu/Muslim relations and representation within the Indian parliament—all countries where sudden demographic shifts have combined with an increase in violence that have led to struggles between religion and secularity that have intensified in recent decades. The State of Israel

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<sup>39</sup> Uri Ben-Eliezer, "Multicultural Society and Everyday Cultural Racism: Second Generation of Ethiopian Jews in Israel's 'Crisis of Modernization'," *Ethnic and Racial Studies* 31, no. 5 (2008): 944; Alex Weingrod and André Levy, "Pardoxes of Homecoming: The Jews and Their Diasporas," *Anthropological Quarterly* 79, no. 4 (2006): 699.

<sup>40</sup> Anderson, *Imagined Communities*, 150-60.



is only one example of the many political crises caused by the problematic intersection of religion, modernity, and secularism that we see in the world today. By studying the Arab-Israeli conflict as a paradox created by the intersection of Eastern and Western mores, pre-modern and modern political systems, and conflict between religion and secularism, one can develop a matrix for studying other such states undergoing religious and political conflict in the 21<sup>st</sup> century.



# Part One

## Chapter One Israeli Foundations and Laws of Personal Status

I should like to begin with the strange fact that the State of Israel exists. – Isaiah Berlin, 1953.<sup>1</sup>

### 1. INTRODUCTION

Born in Riga, Latvia, in 1909, Isaiah Berlin lived a Jewish life marked by the refugee experience. After fleeing Russia in 1917 and Latvia in 1921, Berlin spent the rest of his life in England, where he studied at Corpus Christi College, Oxford. He would lose many family members to the Holocaust, including “his grandfathers, an uncle, an aunt, and three cousins.”<sup>2</sup> Berlin intentionally placed himself on the periphery of the theorists of Zionism, including Martin Buber, Hannah Arendt, Vladimir Jabotinsky, Chaim Weizmann and David Ben-Gurion, because of his identification as a Diaspora Jew and his reticence at times to call himself a political Zionist (his hesitations to call himself a Zionist were due, in part, to his belief that Diaspora Jews should have little-to-no voice in the politics of Israel and political Zionism).<sup>3</sup> Yet his experience as a Jewish refugee *cum* liberal political theorist in England informs his views on the political Zionism that took shape during his lifetime.

In 1959, David Ben-Gurion,<sup>4</sup> who at that time served as the Israeli Defense Minister, sent a letter to over 50 preeminent Jews of the period, including Berlin, asking their

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<sup>1</sup> Berlin, Isaiah. 2000. "The Origins of Israel." In *The Power of Ideas*, edited by Henry Hardy, 143-161. London: Chatto & Windus, 143.

<sup>2</sup> John Gray, *Isaiah Berlin* (Princeton: Princeton University Press, 1996), 3.

<sup>3</sup> Isaiah Berlin, "Who Is a Jew?," in *Enlightening: Letters 1946-1960*, ed. Henry Hardy (Cambridge: Cambridge University Press, 2009), 764.

<sup>4</sup> The first prime minister of Israel and leader of that time of the Jewish Agency Executive, the “government in waiting” of Israel prior to its establishment.

opinion on how to legally define a person as Jewish<sup>5</sup> in Israel.<sup>6</sup> At this time, no legal document defined a person as Jewish under Israeli law. Responding to Ben-Gurion, Berlin strongly cautioned Ben-Gurion about reaching out to the Diaspora to answer questions about Israeli problems.<sup>7</sup> For Berlin, Israel is a state, not a religion, and thus, the opinions of non-citizens should be irrelevant. Berlin states: “[T]he civil status of the State of Israel must be sharply and definitively divided from Judaism as an established religion,” and he reminded Ben-Gurion that it was in moments like these that Israel *must* remember its status as a “modern liberal state, . . . secular in character.”<sup>8</sup> Berlin’s unique Zionism informed his views on Israel in a manner sharply dissimilar from that of Ben-Gurion and of the early founders. For Berlin, though Israel was to be a homeland for the Jews in a Jewish nation, Israel itself could not take measures to ensure liberty amongst all citizens if it began legislating religion, especially if it did so by taking the advice of a non-citizen.<sup>9</sup>

Berlin would eventually come to call himself a Zionist, even with his concerns over the need for a separation of Diaspora Jews from Israel. In a 1958 letter to Johanna Lambert, he explains:

If you then ask me why I am pro-Zionist, it is because I think that where right clashes with right – or rather misery with misery – one must not think about rights, which always exist . . . but of some calm utilitarian solution which produces on the whole the best or happiest solution in the end. . . . That being said, the reason for admitting the Jews to Palestine was that their misery has been too long and too great; that the only way to cure the people of that particular form of distortion is by creating the possibility of normal existence

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<sup>5</sup> Under Jewish *halakha* (law), one is Jewish if one’s birth mother is Jewish. Within Orthodox Judaism, individuals born to a Jewish father but a non-Jewish mother must convert to Judaism to be considered legally Jewish. Converts to Judaism without Jewish parents do not have this matrilineal requirement.

<sup>6</sup> Berlin, "Who Is a Jew?," 672, Editor's note.

<sup>7</sup> "Letter to Ben-Gurion, 1959," 671.

<sup>8</sup> *Ibid.*, 672.

<sup>9</sup> "Who Is a Jew?," 764.

for them. . . . These harsh words being said, it seemed to me that the wrong done to the Arabs . . . was smaller than the wrong which would have been done to the Jews had they been left to welter.<sup>10</sup>

Thus, Israel was founded, through war and violence, on the basis of what Berlin referred to as the “most idealistic liberal conception of the White Man’s Burden” of any state, founded to look “quite different from the [attributes] which anyone had previously intended.”<sup>11</sup> By the White Man’s Burden, he is referring to the Jews (especially the English) of Palestine entering into a “civilizing mission carried on by dedicated personalities who would bring the matures fruit of the most peace-loving and most humane culture of the West to these inchoate, rather wild, rather barbarous Eastern peoples.”<sup>12</sup> He adds: “In a certain sense, Israel is an anachronism; but still, in the 20<sup>th</sup> century, odd and unique.”<sup>13</sup> This anachronism that Berlin identifies in 1953 continues as part of the tensions of liberalism that are seen in Israel today. Berlin states that Israel relies upon 19<sup>th</sup> century liberalism, including “belief in freedom from government dictation; in civil liberties, in equality, in human rights” to create its state.<sup>14</sup> Yet, for Berlin, conflict in Israel will arise because in spite of the liberal founding ideals of the state, each ethnicity of Jews wished to see its *own* form of Judaism as the defining Judaism (and national identity) of Israel, which in and of itself is neither liberal nor tolerant.<sup>15</sup> This chapter explores the historical founding of Israel, focusing primarily on the evolution of its legal system from the Ottoman period through the present. It concludes with an assessment of the earliest personal status laws (PSLs) within Israel and how these

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<sup>10</sup> "Letter to J. Lambert, 1958," 630-31.

<sup>11</sup> "The Origins of Israel," in *The Power of Ideas*, ed. Henry Hardy (London: Chatto & Windus, 2000), 146.

<sup>12</sup> *Ibid.*, 146-7.

<sup>13</sup> *Ibid.*, 150.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*, 155.

laws were shaped to create the identities of Jew and Israelis that Berlin was hesitant to define himself as.

## **2. THE OTTOMANS AND THE BRITISH: PALESTINE'S COLONIAL HISTORY**

Israel, by declaring itself the world's first and only Jewish state, sets into motion the formation of a state unique from most others. Most striking is its legal system, which bears relics from the colonial powers that succeeded it. With its former colonial history and its current multiconfessional society, Israel has evolved to have a distinctive legal code. The area now known as Israel and Palestine came under Ottoman rule beginning in 1516 and formally under the control of Britain's Palestinian Mandate in 1922 after the dissolution of the Ottoman Empire. The British maintained many laws from the Ottoman period, including laws governing personal status. When David Ben-Gurion and his compatriots declared independence in 1948, the earliest Knesset debates revolved around the proposed legal system for the Jewish State. Israel today stands as a nonconstitutional state, relying instead on Basic Laws that, according to the Harari Compromise (named for Minister of the Knesset Yizhar Harari of 1950 – see section three), serve the function of a constitution when combined.<sup>16</sup> These Basic Laws include structures for the judiciary, definitions of the role of the President, the formation of the Knesset, and of the Israeli Defense Forces.<sup>17</sup>

While a comprehensive investigation of Ottoman-era law in Palestine is outside the purview of this dissertation, a basic understanding of how the Ottoman Empire structured

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<sup>16</sup> "Israel's First Knesset - the Debate on a Constitution - February 1 and June 13, 1950," in *Israel in the Middle East: Documents and Readings on Society, Politics, and Foreign Relations, Pre-1948 to the Present*, ed. Itamar Rabinovich and Jehuda Reinharz (Lebanon, New Hampshire: Brandeis University Press, 2008).

<sup>17</sup> "Basic Laws of the State of Israel," (<http://mfa.gov.il>: Ministry of Foreign Affairs, 2016).

its legal system helps explain how Israeli law came to be designed as it is today. Within the Ottoman Empire there were two legally constituted peoples: Muslims and tolerated non-Muslim communities, or *dhimmis*.<sup>18</sup> These tolerated communities within Muslim empires traditionally date back to the period of Muhammad, who entered into an agreement, called the Constitution of Medina, with the Jews in Medina. Because the Jews of Medina did not convert to Islam but still were members of the Peoples of the Book,<sup>19</sup> they were protected under this Constitution.<sup>20</sup> This same regard would be extended to most Abrahamic and monotheistic peoples of the different Muslim empires.<sup>21</sup>

The use of the word *millet*, however, to describe tolerated minority communities within the Ottoman Empire came into use during the mid-19<sup>th</sup> century. But it has anachronistically been applied to the structure of Ottoman government and law in periods dating back to the foundations of the Empire.<sup>22</sup> *Millet*, or nation, refers less to a rigid system of laws governing entire communities and their law and more to a system of “ad hoc arrangements” between the Empire and regional communities, especially Jews and Christians.<sup>23</sup> Communities recognized as *millets* included the Orthodox *millet*, known for their Greek language and generally their practice of Orthodox Christianity,<sup>24</sup> and the Jewish

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<sup>18</sup> Benjamin Braude and Bernard Lewis, "Introduction," in *Christians and Jews in the Ottoman Empire*, ed. Benjamin Braude and Bernard Lewis (New York: Holmes & Meier Publishers, 1982), 5.

<sup>19</sup> Believers in the one, true God of Abraham who have received a written, divine revelation. This includes Christianity and Judaism.

<sup>20</sup> Awad Halabi, "Constitution of Medina," in *The Oxford Encyclopedia of the Islamic World*, ed. John L. Esposito (Oxford: Oxford University Press, 2009).

<sup>21</sup> C.E. Bosworth, "The Concept of *Dhimma* in Early Islam," in *Christians and Jews in the Ottoman Empire*, ed. Benjamin Braude and Bernard Lewis (New York: Holmes & Meier Publishers, 1982), 37.

<sup>22</sup> Benjamin Braude, "Foundations Myths of the *Millet* System," *ibid.*, 72-73.

<sup>23</sup> Benjamin Braude and Bernard Lewis, "Introduction," *ibid.*, 12.

<sup>24</sup> Kemal H. Karpat, "*Millets* and Nationality: The Roots of the Incongruity of Nation and State in the Post-Ottoman Era," in *Christians and Jews in the Ottoman Empire: The Functioning of a*



*millet* centralized in Turkey where, for instance, 50,000 Jews lived in Istanbul alone by 1900.<sup>25</sup> According to Shiloh, the Ottomans made allowances for religious minorities for two reasons: on the one hand, it was a sign of religious tolerance justified by Islamic views on the Peoples of the Book; on the other, it was a pragmatic recognition of the fact that most of the minorities of the Ottoman Empire had economic ties to Europe, and that ongoing positive relations with these communities would ensure the continued flow of wealth into the Empire.<sup>26</sup> It is also important to note that, at this time, civil laws covering personal status were practically unprecedented, both in the Ottoman Empire and globally. Thus, the *millet* system stands as an Ottoman attempt to allow for the religious expression of the many peoples of the Empire.<sup>27</sup>

Jewish communities under the Ottoman Empire were in a distinctive position compared to the other *dhimmis*. Unlike both Catholic and Orthodox Christianity, for instance, which each have their own hierarchy of clergy with a single leader, Judaism does not have a centralized leadership. This lack of unified leadership left individual Jewish communities relatively autonomous within much of the Ottoman Empire.<sup>28</sup> Jews could be found in nearly every major urban area of the Empire and, excepting Palestinian Jewry (whose multiethnic population of religious pilgrims maintained their linguistic autonomy),

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*Plural Society*, ed. Benjamin Braude and Bernard Lewis (New York: Holmes & Meier Publishers, 1982), 160.

<sup>25</sup> Paul Dumont, "Jewish Communities in Turkey During the Last Decades of the Nineteenth Century in the Light of the Archives of the Alliance Israélite Universelle," *ibid.*, 211.

<sup>26</sup> Isaac S. Shiloh, "Marriage and Divorce in Israel," *Israel Law Review* 5 (1970): 481.

<sup>27</sup> *Ibid.*, 482. England, for instance, did not institute the modern understanding of a civil/non-religious marriage until the passing of the Marriage Act of 1836. See Nandini Chatterjee, "English Law, Brahma Marriage, and the Problem of Religious Difference: Civil Marriage Laws in Britain and India," *Comparative Studies in Society and History* 52, no. 3 (2010).

<sup>28</sup> Karpas, "Millets and Nationality," 160.

Jews assimilated linguistically with their non-Jewish neighbors,<sup>29</sup> in a process Sharot refers to as deacculturation.<sup>30</sup> Because of this legal autonomy and simultaneous linguistic integration, the general assumption in the literature is that Jews did quite well under Ottoman rule, often better than their counterparts in Christian-ruled areas. While this is true in part, current research indicates that Jews were generally treated no better or worse than any other religious minorities in the Ottoman Empire, and Jews and other religious minority groups in the Ottoman Empire lived without strong divisions between communities through much of the Empire's history. After Ferdinand and Isabella, the Catholic monarchs of Spain, issued the Edict of Expulsion and evicted Spain's Jews, many Jews fled to North Africa and the Ottoman Empire, setting up new communities in the Arab and Turkish world. After 1492, Jews and Muslims in the Empire found that they had more in common than before in the shared experiences of persecution and deportation.<sup>31</sup> Ottoman Jewish leadership came in two varieties: rabbis (split between local rabbis and political rabbis in Istanbul) and political laypersons.<sup>32</sup> This began to change with the Westernization and modernization that came into the Ottoman Empire in the late 1800s, primarily from a rise in a proselytizing Protestant presence as well as European (predominately French) Jewish immigration to the Empire. Sectarianism arose as both

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<sup>29</sup> Bruce Masters, *Christians and Jews in the Ottoman Arab World: The Roots of Sectarianism*, Cambridge Studies in Islamic Civilization (Cambridge: Cambridge University Press, 2001), 51.

<sup>30</sup> Stephen Sharot, "Minority Situation and Religious Acculturation: A Comparative Analysis of Jewish Communities," *Comparative Studies in Society and History* 16, no. 3 (1974): 330, 38, 52-3.

<sup>31</sup> Joseph R. Hacker, "Ottoman Policy toward the Jews and Jewish Attitudes toward the Ottomans During the Fifteenth Century," in *Christians and Jews in the Ottoman Empire: The Functioning of a Plural Society*, ed. Benjamin Braude and Bernard Lewis (New York: Holmes & Meier Publishers, 1982), 117; 20-21; Masters, *Christians and Jews in the Ottoman Arab World*, 42.

<sup>32</sup> Mark A. Epstein, "The Leadership of the Ottoman Jews in the Fifteenth and Sixteenth Centuries," in *Christians and Jews in the Ottoman Empire: The Functioning of a Plural Society*, ed. Benjamin Braude and Bernard Lewis (New York: Holmes & Meier Publishers, 1982), 101.

Muslims and Jews attempted to keep their religious and legal identities from the influence of Western ideals.<sup>33</sup>

England inherited the Ottoman *millet* system when it took control of the Palestinian Mandate in 1920, and it did very little to change the legal system structurally. According to Shiloh (writing in 1970):

The present situation of the law is more than a historical coincidence, resulting from the calculated policy of the British Mandatory legislator to abstain from any undue interference with legal rules embedded in religious law, and a similar wariness on the part of the Israeli legislator to tread on what is widely considered in [Israel] as 'hallowed ground.' The British, while far from bashful when it came to the virtual substitution of English common law and English statute law for the law of the land in practically every other sphere, shied away from any changes in family law or the 'law of personal status', to use the technical term adopted by the legislator. The Israeli legislator followed in the footsteps of his British predecessor, also refraining from too much interference in this field, most probably from fear of precipitating a cleavage between the Orthodox and non-Orthodox sections of the Jewish population likely to result in unforeseeable damage to national unity.<sup>34</sup>

Britain kept most of the preexisting legal system in place in the hopes of maintaining national unity. And yet, as Shiloh alludes to, the British had no problems instituting changes in personal status laws in other parts of the empire. For instance, civil marriage *did* exist in other British colonies, including India, prior to Britain's accepting the Palestinian Mandate. Like Israel, India is a multiconfessional society with a strong religious national identity. However, Great Britain established civil marriage in India under the Special Marriage Act of 1872, which legalized non-religious cross-caste religious ceremonies between all Indians, a law that exists to this day.<sup>35</sup> Ghandour, citing

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<sup>33</sup> Masters, *Christians and Jews in the Ottoman Arab World*, 65, 132-33.

<sup>34</sup> Shiloh, "Marriage and Divorce in Israel," 480.

<sup>35</sup> Chatterjee, "English Law, Brahma Marriage, and the Problem of Religious Difference," 529.

Kupfershmidt, explains England's reticence to interfere with laws governing personal status in Palestine:

Islamic family law persisted under the British because of its resilience as well as because of the colonial administrators' inherent conservatism; the British introduced few changes in civil law, and left personal status intact. Compared with the other nations affected by the onslaught of colonialism, British behavior in Palestine was curiously restrained. According to Kupfershmidt, this is due to three factors. First, the League of Nations Mandate did not give the British a free hand. Second, the British had already dabbled with Islam (e.g. in India), were consequently less threatened by its teaching, and could afford a more liberal approach. Third, by the time the British arrived in Palestine, the influence of Islam had been largely confined to the family law arena by the Ottomans. The former were therefore presented with a system built on the Islamic principles yet formalistically inspired by western models.<sup>36</sup>

Because Palestine practiced religions far closer to those of the United Kingdom, namely monotheistic, Abrahamic religions, and because these religions (including Islam, Christianity, and Judaism) included laws that the British were generally familiar with, the British were reticent to interfere with the established legal system.<sup>37</sup>

Occurring concurrently with the end of the Ottoman period and through the British Mandatory period was the rise of a group of nationalisms commonly referred to as Zionism. The beginnings of the movement we now call Zionism hold their roots in the 18<sup>th</sup> century, modeled after the nationalist movements which surfaced in Europe during this period.<sup>38</sup> Three main categories of Zionism arose during the late 1800s and early 1900s: social,

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<sup>36</sup> Ghandour, "Religious Law in a Secular State," 29.

<sup>37</sup> Epstein, "The Leadership of the Ottoman Jews in the Fifteenth and Sixteenth Centuries," 101.

<sup>38</sup> Berlin points out in his 1975 essay "The Achievement of Zionism" that there were many other instances in which Jews had been evicted from their countries that nationalist movements did not arise, leading him to believe that ancient claims to Jewish nationality are a bit of a stretch. Otherwise, why did the Jews of Spain not flee to Palestine in 1492? Isaiah Berlin, "The Achievement of Zionism," (1975), <http://berlin.wolf.ox.ac.uk/lists/nachlass/achiezio.pdf>.

cultural, and political. The social Zionists, upon fleeing the ghettos of Eastern Europe following the Russian *pogroms*, simply wished to pursue agricultural interests in Palestine, collecting together in enclaves that gave birth to the *kibbutz* (collective communities based on agriculture) movement. Beyond this, social Zionists had no state-building aspirations and generally lived peacefully with their Arab neighbors.<sup>39</sup> Often associated with the social Zionists because of his writings on the *kibbutz* movement, Martin Buber, who advocated for Jews to found “cooperative ventures” in Palestine,<sup>40</sup> stands as an example of cultural Zionism, a movement which “insists on the distinction between Israel, understood as a nation, and *Eretz Yisrael*, understood as a land.”<sup>41</sup> Finally, a nascent political Zionism was forming within Europe, which Lahav describes as “a hybrid of moderate pragmatic social reform and radical socialist principles. Its core is the goal of establishing a Jewish home.”<sup>42</sup> Over the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, various groups of political Zionists put forward ideas for the structure of this state, with theorists running the spectrum from the ultra-orthodox and ultra-liberal, which for separate reasons believe a State for Jews is unnecessary, to the conservative Revisionists who believed that a Jewish state was not only necessary but should traverse both sides of the Jordan River, and to binationalists who proposed a single State where Arab non-Jews and Jews would coexist.

Historically, the first formal request for a political homeland came from Bilu, a group of young Russian Jews who were amongst those present in the first wave of immigration to Israel. Bilu was founded in 1882 in response to the most recent wave of Russian pogroms,

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<sup>39</sup> Hannah Arendt, “Zionism Reconsidered,” in *The Jewish Writings*, ed. Jerome Kohn, and Ron H. Feldman (New York: Schocken Books, 2007), 349.

<sup>40</sup> Butler, *Parting Ways*, 36.

<sup>41</sup> *Ibid.*, 18.

<sup>42</sup> Lahav, “The Status of Women in Israel-Myth and Reality,” 108.

and, in that year, Bilu members published a manifesto requesting that the Ottomans create a protected Jewish homeland within Palestine.<sup>43</sup> In 1896, Herzl published *Der Judenstaat*, which laid out his reasoning for a Jewish state and gave the economic structure and political justifications for such a move. According to Isaiah Berlin,

Zionism arose out of the emancipation which pressed Jews against the problems of their identity more agonizingly than they had ever had to face it before. They became emancipated during the age of nationalism, which bred a certain kind of xenophobia, antisemitism. . . . [T]he great frozen mass of the Jews began to melt under the rays of the Enlightenment.<sup>44</sup>

It was into this world that Herzl was born, and it was Herzl, along with other early political Zionist thinkers, who first discussed the Jewish “desire to be a nation living on its own soul,” a sentiment not unlike many minority groups within Europe at the time.<sup>45</sup> Arendt explains that Herzl was one of a generation of Jews out of which a “class entirely new to Jewish society, the intellectuals,” had arisen, and Herzl quickly rose to the top of this group.<sup>46</sup> These intellectual Jews found common ground with the Russian Jews fleeing westward from the pogroms of the 1880s. Regarding these Eastern European Jews, Strum explains:

They had not experienced the Western European Enlightenment and emphasized the need for a Jewish homeland rather than the rights of individuals. As it was these immigrants who became the political and ideological leaders of Israel, their lack of familiarity with the concept of individual civil liberties rather than the idea of group self-determination would have a great impact on the status of women in the new state, where it

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<sup>43</sup> Bilu, "Manifesto - Summer 1882," in *Israel in the Middle East: Documents and Readings on Society, Politics, and Foreign Relations, Pre-1948 to the Present*, ed. Itamar Rabinovich and Jehuda Reinharz (Lebanon, New Hampshire: Brandeis University Press, 2008), 11.

<sup>44</sup> Berlin, "The Achievement of Zionism". 2.

<sup>45</sup> *Ibid.*, 3.

<sup>46</sup> Arendt, "The Jewish State," 379.

would coincide with the low status given to women in the Orthodox religion that the Zionists had rejected.<sup>47</sup>

Thus, Israel was founded by two distinctive groups arising out of Europe—one from Western Europe inspired in part by the Enlightenment; and the other from Eastern Europe, unified in their flight from various Russian *pogroms*. It is from these two groups that political Zionism arose, with each group having the goal to make the Jewish people “a ‘nation like all other nations.’”<sup>48</sup>

Additionally, Herzl believed that a Jewish state in Palestine would lead to an end of antisemitism. In his estimation, antisemitism began with the Diaspora, when the peoples of the world began to see the newly come Jews as outsiders or strangers. With a homeland, the Jews would be able to leave places of persecution and be their own nation. There would no longer be a *reason* to hate Jews.<sup>49</sup> With hindsight, Arendt explains why Herzl’s predictions were far too optimistic. Antisemitism, even by his time, had gone from simple othering to a pure, political racism. In her estimation, the establishment of a Jewish state would do little to change these virulent beliefs on the part of many in Europe.<sup>50</sup> Arendt adds that, by the time the State of Israel was actualized, Jews immigrating to Israel did not do so simply out of idealistic beliefs in a homeland or security. They too had “othered” all Europeans because of the events of the Holocaust and only “want[ed] to live among Jews alone, come what may.”<sup>51</sup> For many, this wish to only live amongst one’s own people extended past Europeans to include Arab Palestinians.

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<sup>47</sup> Philippa Strum, "Women and the Politics of Religion in Israel," *Human Rights Quarterly* 11, no. 4 (1989): 484-5.

<sup>48</sup> Arendt, "The Jewish State," 379-80.

<sup>49</sup> *Ibid.*, 383.

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*, 385-6.

Berlin describes Herzl's plans for Zionism as a bit simplistic, referring to Herzl himself as having a "somewhat romantic conception of the Jews."<sup>52</sup> Berlin adds: "Herzl who, though he came from Budapest, was not an Eastern European Jew, was free, perhaps too free. His ideas were nationalist, secular, romantic, liberal, and bore more affinity to the enlightenment of Vienna and Paris than to anything specifically Jewish."<sup>53</sup> Herzl was an assimilated Jew who did not live under the harsh conditions of his brothers and sisters in Eastern Europe and, as such, came up with rather utopian answers to the Jewish problem.<sup>54</sup> Arendt speaks far more harshly of Herzl than Berlin, believing the entire political Zionist movement would continue to be met with harsh criticism if Herzl's ideas were not updated to respond to the actual political situation of the Jews. For Arendt, Jews must petition for a homeland in Palestine based on their actions (the work projects and urbanization of certain areas of Israel in the preceding forty years, for instance) rather than historic right to the land, buying Palestine outright, or pleading to the British to just give the land to them. Jews, for Arendt, should show that they have *earned* their homeland in Palestine rather than simply stating that they had the *right* to it.<sup>55</sup> Furthermore, Arendt believed that Herzl's very definition of a nation harmed the Zionist message. Herzl defined a nation as a "group of people . . . held together by a common enemy."<sup>56</sup> She believes this definition of the Jewish nation gave conservative political Zionists a skewed idea of what it means to be Jewish, namely that Judaism only survived in the Diaspora *because* antisemitism gave Jews

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<sup>52</sup> Berlin, "The Origins of Israel," 144.

<sup>53</sup> *Ibid.*, 146.

<sup>54</sup> *Ibid.*, 144-46.

<sup>55</sup> Arendt, "The Crisis of Zionism," 184.

<sup>56</sup> "Zionism Reconsidered," 359.



a sense of nationhood.<sup>57</sup> Arendt believed that, for political Zionism to succeed, it needed to move past Herzl's 19<sup>th</sup> century idealism and move into the reality of Jewish experiences during the 20<sup>th</sup> century.<sup>58</sup> She found it ironic that Israel's founders were following most of Herzl's idealistic policies while largely ignoring his practical positions (which were the only policies of Herzl's that Arendt agreed with), including his proposals for a "Jewish Company" that would organize the physical building of a Jewish State and its infrastructure through social programs that would employ the poor.<sup>59</sup>

One of these practical positions included Herzl's advice on setting an official language for the future State of Israel. Herzl would caution against the use of Modern Hebrew as a way of crystalizing political Zionism. He states:

It might be suggested that our want of a common current language would present difficulties. We cannot converse with one another in Hebrew. Who amongst us has a sufficient acquaintance with Hebrew to ask for a railway ticket in that language! Such a thing cannot be done. Yet the difficulty is very easily circumvented. Every man can preserve the language in which his thoughts are at home. Switzerland affords a conclusive proof of the possibility of a federation of tongues. . . . [T]he language which proves itself to be of greatest utility for general intercourse will be adopted without compulsion as our national tongue. Our community of race is peculiar and unique, for we are bound together only by the faith of our fathers.<sup>60</sup>

Thus, Herzl argues for a multilingual, multicultural state where no one language has superiority over the other, and where no one language is official. Once Israel was founded, this would become far from the case. As will be examined in chapter three, the education of

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<sup>57</sup> Ibid.

<sup>58</sup> Ibid., 374.

<sup>59</sup> "The Jewish State," 375.

<sup>60</sup> Theodore Herzl, "Der Judenstaat," (<http://www.mideastweb.org/thejewishstate.htm>: MidEastWeb, 1896), 45.

children in Hebrew by mothers became a key component of the Jewish nationalism within Palestine in the late 1800s and early 1900s.

In the year following the publication of *Der Judenstaat*, David Ben-Gurion would capture the imaginations of Jews looking for a political homeland. In 1897, the First Zionist Congress, which produced the Basle Program, marked the first occasion for Zionists to demand a political state in Palestine.<sup>61</sup> Both liberal and orthodox rabbis were present at the Congress, leading to a fierce debate over defining the future nation of Israel and the Jewishness it would represent.<sup>62</sup> In attendance at the First Zionist Congress were over 200 Jews attending from worldwide, including Herzl. These delegates were split evenly between Eastern and Western European Jews, and with between 14-21 women present, too (though the women did not have the right to vote). Completely lacking representation on the discussion of a future state in Palestine were Jews from outside Europe, which is inconsistent with the fact that the first day of the three-day proceedings focused primarily on solidifying the unity of the whole Jewish people.<sup>63</sup> This lack of global Jewish views would have strong effects on early political Zionism.

Twenty years after the First Zionist Congress, responding to England's Balfour Declaration (which stated that England would be in favor of the possibility of a Jewish homeland in Palestine), the London Bureau of the Zionist Organization released the 1917 "Zionist Manifesto," in which they stated their wish for the entire Jewish people to come

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<sup>61</sup> First Zionist Congress, "The Basle Program - August-September 1897," in *Israel in the Middle East: Documents and Readings on Society, Politics, and Foreign Relations, Pre-1948 to the Present*, ed. Itamar Rabinovich and Jehuda Reinharz (Lebanon, New Hampshire: Brandeis University Press, 2008), 21.

<sup>62</sup> Yaakov Zur, "The 'Protest Rabbis'," in *The First Zionist Congress in 1897 - Causes, Significance, Topicality*, ed. Heiko Haumann (Basel, Switzerland: S. Karger AG, 1997), 128-9.

<sup>63</sup> Bettina Zeugin, "Three Days in Basel," *ibid.*, 142-43, 46.

into the Zionist Organization, thus forever linking modern political Zionism with all Jews, regardless of whether the world's Jewish population consented to this connection or not.<sup>64</sup>

Out of this early period would come four key political thinkers – Judah Leon Magnes (binationalism and the Ihud Party), Vladimir Jabotinsky (Revisionist Zionism and the Herut/Likud Party), and Chaim Weizmann and David Ben-Gurion (Moderate Zionism and the Mapai Party). Each of these thinkers would shape the formation of modern Israel.

Standing in opposition to Ben-Gurion and other state-oriented Zionists was American-born Judah Leon Magnes, a known pacifist and the president of Hebrew University. He firmly rejected the 1942 Biltmore Program, the document written at the Extraordinary Zionist Conference at the Biltmore Hotel in New York City, that would lay out a plan for the future political state of Israel. This document, in part, called for mass immigration to Palestine, for the handling of immigration to move from British control to the Jewish Agency, and for the founding of a Jewish State. According to the Anglo-American Committee of Inquiry, these proposals “ha[d] the support of the overwhelming majority of Zionists.”<sup>65</sup> Magnes deeply believed that lasting peace in Palestine could only come from equal coexistence between Jews and non-Jews under a unified binational state, as he stated in his 1942 Magnes Declaration.<sup>66</sup> According to Magnes, given that Palestine is the home

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<sup>64</sup> London Bureau of the Zionist Organization, "Zionist Manifesto - December 21, 1917," in *Israel in the Middle East: Documents and Readings on Society, Politics, and Foreign Relations, Pre-1948 to the Present*, ed. Itamar Rabinovich and Jehuda Reinharz (Lebanon, New Hampshire: Brandeis University Press, 2008), 30. The synonymy of “Zionist” and “Jew” will be of major concern to Judith Butler, as will be seen in Chapter 2.

<sup>65</sup> Emergency Committee of Zionist Affairs, "The Biltmore Program - May 11, 1942," *ibid.*, 54; Joseph Heller, *The Birth of Israel, 1945-1949: Ben-Gurion and His Critics* (Gainesville, Florida: University Press of Florida, 2000), 13.

<sup>66</sup> Arendt, "The Crisis of Zionism," 332-33.

for multiple religions, it could never be *simply* a Jewish state.<sup>67</sup> Thus, Magnes and his party, Ihud, stood in opposition to the Jewish Agency and David Ben-Gurion. For Magnes, this coexistence could only come if Jews were mindful of not becoming the overwhelming majority in the country. For Magnes, population parity was necessary.<sup>68</sup> Magnes and the Ihud ultimately would reject the 1947 UN Partition plan, the document that created the current two-state solution, “which, in Magnes’s words, would create two irredentist states. As in the Balkans, this would invite perennial war.”<sup>69</sup> Instead, Magnes recommended a UN-government area to govern Palestine, administered by a Middle Eastern Council and made up of equal representation by both Jews and Arabs.<sup>70</sup> While not successful in any long-term success for his plans, Magnes stands as an important liberal voice, balancing out the more moderate and conservative voices within political Zionism.

Opposing the ultra-liberal Magnes camp was the conservative Revisionist movement under the vocal leadership of Vladimir Jabotinsky. Revisionist Zionism’s goal is for Jews to control all of the land known as Biblical Israel, spanning both sides of the Jordan River, regardless of the presence of the Palestinians already residing in the land or the sovereignty of the Hashemite Kingdom of Jordan. Revisionist Zionist’s Russian founder Vladimir Jabotinsky refused to believe that peace with the Palestinians and the creation of a Jewish state in Palestine would ever be agreed upon. Citing examples of other colonized countries, he states: “Every reader knows something about the history of settlement in other countries of settlement. I ask him to recall all the examples he is familiar with and to

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<sup>67</sup> Heller, *The Birth of Israel, 1945-1949: Ben-Gurion and His Critics*, 166.

<sup>68</sup> *Ibid.*, 13.

<sup>69</sup> *Ibid.*, 165.

<sup>70</sup> *Ibid.*, 165-66.

find at least one instance of a country settled with the consent of the indigenous people.”<sup>71</sup> Thus, for Jabotinsky, taking Israel without the consent of the Palestinians was not only preferable, but it really was the only feasible option. Furthermore, a common tactic of the Revisionist movement included inflating statistics to give Jews territorial and population advantages in Palestine. For instance, when counting Jewish citizens of Israel at the founding, Jabotinsky’s followers included the Jews of the Diaspora, attempting to skew public perception of just how Jewish Israel was.<sup>72</sup> We see this same sort of skewed perception in Israel today: while only making up 11 percent of the population as of 2014, the Haredim, or ultra-orthodox Jews from varying sects of Judaism, have a disproportionately strong voice in policy and government (due, especially, to the fact that their strict form of Judaism is the only one with complete protection under religious laws), including how to define Jewishness and laws including marriage and divorce.<sup>73</sup>

Arendt disagreed with all “Maximalist” political Zionists.<sup>74</sup> She believed this overwhelming focus on statehood rather than a binational solution that includes Arabs already living in Palestine comes from Zionism’s birth as a movement out of European nationalism and socialism. These Maximalist policies destroyed what she thought should be the core of political Zionism: the establishment of a Jewish homeland rather than a Jewish political state. Arendt’s concerns with Revisionist Zionism bleed into her greater

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<sup>71</sup> Vladimir Jabotinsky, "The Iron Wall - November 4, 1923," in *Israel in the Middle East: Documents and Readings on Society, Politics, and Foreign Relations, Pre-1948 to the Present*, ed. Itamar Rabinovich and Jehuda Reinharz (Lebanon, New Hampshire: Brandeis University Press, 2008), 42.

<sup>72</sup> Heller, *The Birth of Israel, 1945-1949: Ben-Gurion and His Critics*, 256.

<sup>73</sup> Myers-JDC-Brookdale, "Israel’s Haredi Population: Progress and Challenges," (<http://brookdale.jdc.org.il>: Myers-JDC-Brookdale Institute, 2015), 1.

<sup>74</sup> Arendt, "'Free and Democratic,'" 230-31.

trepidation with conservative political Zionism. She sees the Revisionists as having influenced political Zionism so greatly that, by 1944, a “tragic conflict” (i.e. all-out war) model of how the Jews would achieve their homeland had become the highest ideal for many political Zionists.<sup>75</sup> This included the Zionist Organizations and the Palestinian League for Jewish-Arab Understanding and Cooperation, who believed that the founding of a Jewish state in Palestine would occur either by the voluntary deportation of its Arab denizens or through a “tragic conflict.” Arendt refers to both of these planned outcomes as “shams.”<sup>76</sup> If either the voluntary deportation or the tragic conflict models succeeded, Arendt argued that there would still be the major problem of an independent Jewish state surrounded by hostile neighbors. Thus, for Arendt, if any Jewish homeland were to come into existence, the Revisionists and the Zionist Organizations *had to* become far more progressive and realize that there is a need for Jewish/Arab understanding from the *ground* level for any sort of lasting peace to exist (in other words, a state could not just be handed down from these organizations on the populace).<sup>77</sup>

Forever concerned with the demographic advantage, once the 1948 War, known by Israelis as the War for Independence, began, the Revisionists proposed a plan to exchange any remaining Arab Palestinians for Jews in the Diaspora—a plan that, had it been actualized, would have deported all of the non-Jewish citizens of Israel.<sup>78</sup> These ultraconservative positions led intellectuals such as Isaiah Berlin to distance themselves as far as possible from the Revisionist camp. On being associated with the Revisionist Zionist

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<sup>75</sup> "Zionism Reconsidered," 343.

<sup>76</sup> "New Proposals," 220.

<sup>77</sup> *Ibid.*, 220-21.

<sup>78</sup> Heller, *The Birth of Israel, 1945-1949: Ben-Gurion and His Critics*, 265-66.

movement of England, Berlin comments in a 1943 letter to diplomat Angus Martin: "Picture my indignation at being charged with the appalling crime of Zionism." Berlin added that "no Zionist could possibly acknowledge me as a member of the faithful."<sup>79</sup> Concurrently, even during World War II, Arendt sided with Magnes, arguing that "Zionists are incapable of representing Jewish interests on a global scale," mostly due to their fixation on a State instead of a homeland.<sup>80</sup> By 1943, Arendt also formally separated herself from political Zionism as an ideology.<sup>81</sup>

In a letter to Felix Frankfurter in 1935, Berlin refers to the Revisionists as a "vile party"<sup>82</sup> and, later in 1943, he expresses his concerns in a letter to Angus Malcolm that he believed the Revisionist methods are dangerous and that they would lead nowhere if they did not reign themselves in.<sup>83</sup> Furthermore, if the agitation being caused in Palestine by these Zionists were not quelled, he believed that this could lead to widespread antisemitism, wherein individuals would not be able to tell the difference in behavior between Zionists and non-Zionists.<sup>84</sup> Berlin's fears were actualized in 1945, when, in a letter to the editor of *The Times*, he laments the recent acts of terror in Palestine, noting his concern that political Zionism has not listened to the moderates of the Mapai party, including Weizmann and David Ben-Gurion, and, instead, through their frustration and bitterness, they have turned to more violent forms of expression.<sup>85</sup>

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<sup>79</sup> Isaiah Berlin, "Letter to Angus Malcolm, Foreign Office, 9 August 1943," in *Letters: 1928-1946*, ed. Henry Hardy (Cambridge: Cambridge University Press, 2004), 438-9.

<sup>80</sup> Arendt, "Antisemitism," 56.

<sup>81</sup> Butler, *Parting Ways*, 152.

<sup>82</sup> Berlin, "Letter to F. Frankfurter, 1935," 121.

<sup>83</sup> "Letter to A. Malcolm, 1943," 441.

<sup>84</sup> "Letter to A. Malcolm, Foreign Office, 1943," 446-7.

<sup>85</sup> "Letter to the Editor of the Times," 8-9.

Between these two extremes, Russian Chaim Weizmann, who would serve as the first president of Israel, and Polish David Ben-Gurion, who would serve as the first prime minister of Israel (in addition to holding many other roles in the Jewish community and the Israeli government prior to his death in 1973), arose as the two moderate political Zionists who would have the greatest impact on early Israeli politics and law. While Weizmann and Ben-Gurion worked together very closely, Weizmann tended to be the member of the moderate political Zionists most willing to compromise with other groups (for instance, Weizmann was willing to limit Jewish immigration to Palestine in the 1930s if it meant security a long-term peace).<sup>86</sup> However, by 1946, Ben-Gurion was executing nearly every major decision regarding the future State of Israel and the Jewish people worldwide.<sup>87</sup>

Under Ben-Gurion, the Mapai party held more seats than any other party in the First Knesset (46 of the 120 seats). Under his leadership, many common elements of moderate political Zionism and the modern Israeli legal system came to be. For instance, Ben-Gurion helped perpetuate the myth that Palestinians did not exist as Arabs separate from other nations (Syrians, Egyptians, Jordanians, etc.). Not only did he not acknowledge their existence as a people, but he also argued that the Arab world as a whole was using the Arab peoples in Palestine as a tool in a "land grab."<sup>88</sup> For Ben-Gurion, the establishment of Israel would *protect* these Arab people from the greed of the surrounding Arab nations.<sup>89</sup> Finally, though Ben-Gurion sometimes garnered support from the Maximalists within Revisionist Zionism, he was far more pragmatic about Israel's borders, agreeing to the 1947 UN

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<sup>86</sup> Heller, *The Birth of Israel, 1945-1949: Ben-Gurion and His Critics*, 15.

<sup>87</sup> *Ibid.*

<sup>88</sup> Berlin, "Letter to F. Frankfurter, 1935," 121.

<sup>89</sup> David Ben-Gurion, *Memoirs* (New York: The World Publishing Company, 1970), 82-83.



Partition Plan not because he was satisfied with the final borders but because, in his opinion, borders are not permanent. Ben-Gurion always intended to expand the borders of Israel as far as possible.<sup>90</sup> Additionally, Ben-Gurion regularly downplayed the importance of Palestine in Arab history, referring to Palestine as a wasteland waiting for Jews to make it blossom.<sup>91</sup> Ben-Gurion habitually made sweeping statements comparing the experience of Jews hoping and fighting for a future state to the Israelites of old fighting for their rights under Rome, first at Masada during the First Jewish Revolt then later from 132-135 CE during the Bar Kokhba Revolt.<sup>92</sup> The dehumanization of Arabs and the Sephardim<sup>93</sup> in David Ben-Gurion's rhetoric would shape the formation of the social ethic of Israel and would lead to several key interventions into the PSL system inherited from the Ottomans and the British.

While Berlin would find some common ground with Ben-Gurion, Weizmann, and the Mapai party in general, Arendt opposed even their moderate political Zionism. For instance, she says of Weizmann in 1941 that his "famous statement that the answer to anti-Semitism is to build up Palestine has proven to be a dangerous lunacy."<sup>94</sup> Jews had begun immigrating to Palestine well before World War II, and this had done nothing to curb antisemitism in Europe. Arendt sees social Zionists as never having been politically active enough, thereby leaving a power vacuum that the political Zionists, whose policies she considered to be overly conservative, were able to then leverage.<sup>95</sup>

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<sup>90</sup> Heller, *The Birth of Israel, 1945-1949: Ben-Gurion and His Critics*, 148.

<sup>91</sup> Berlin, "Letter to the Editor of the Times," 8-9.

<sup>92</sup> Heller, *The Birth of Israel, 1945-1949: Ben-Gurion and His Critics*, 139.

<sup>93</sup> Jews of primarily southern European descent, especially from the Iberian Peninsula.

<sup>94</sup> Arendt, "New Proposals," 220-21.

<sup>95</sup> "Zionism Reconsidered," 346-52.

This lack of political behavior by any of the other Zionist movements, Arendt believes, is what allowed the American Zionist Organization and other Revisionist movements to strong-arm the entirety of the 1944 Jewish World Congress into unanimously passing (with only the Hashomer Haza'ir and Aliyah Hadashah parties abstaining) a resolution that “unanimously demand[ed] that all Palestine, ‘undivided and undiminished,’ be made of a Jewish commonwealth—all without even mentioning the existence of Palestinian Arabs.”<sup>96</sup> An important part of Arendt’s views on Zionism, and her political thought in general, is the importance of disagreement and proactive discussion, and the dangers of unanimity. And although she refers to “anti-Zionist die-hards” as people “whom nobody can take very seriously,”<sup>97</sup> the fact remains that Arendt has doubts regarding any political decision made without some form of dissent. With reference to the 1944 Jewish World Congress, her concerns are augmented by the realization that there was a lack of vocalized dissent from the anti-Zionists present, who in her estimation should have had *something* to say. With regard to this unanimous decision she states

the first evidence of the success of the ‘free and democratic Jewish commonwealth’ is the suppression of all free and democratic discussion,” adding that “all Jewish politics becomes the monopoly of professional politicians who behave like Führers, and finally it means the hardly happy transformation—but one so characteristic of our times—of a people into more or less fanaticized bands of ‘believers.’<sup>98</sup>

Later, when the United Nations presented its Partition Plan for Britain’s Palestinian Mandate, no significant Zionist party stood against it. Again, stating her beliefs on the problems of unanimity, she states: “[I]t was downright tragic that this most crucial of all

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<sup>96</sup> “Free and Democratic,” 230.

<sup>97</sup> “To Save the Jewish Homeland,” 389.

<sup>98</sup> “Free and Democratic,” 232.

moments the loyal opposition of the non-Zionists simply disappeared."<sup>99</sup> Thus, Arendt distances herself from any form of Zionism—political, social, cultural, or otherwise—that discourages open debate and forces the beliefs of one group onto the entirety of Zionism, and even Judaism. Nevertheless, it would be these moderate political Zionists, under the leadership of David Ben-Gurion, who would be the main voices in the push for a Jewish State, regardless of the concerns of individuals such as Arendt, Magnes, and Berlin.

### 3. THE DECLARATION OF THE ESTABLISHMENT OF THE STATE OF ISRAEL

On May 14, 1948, David Ben-Gurion and the earliest political leaders of the Jewish nation in the former Palestinian Mandate signed the *Declaration of the Establishment of the State of Israel*. This *Declaration* invokes the history of the Jewish people in *Eretz Yisrael* (the land of Israel) declaring the establishment of a liberal nation “based on freedom, justice and peace as envisaged by the prophets of Israel; it will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex; it will guarantee freedom of religion, conscience, language, education and culture.”<sup>100</sup> However, the previous year, when questioned by the World Agudat Israel Federation (Aguda)<sup>101</sup> on what a “Jewish” state would look like, David Ben-Gurion responded that any future Israel would be non-theocratic yet simultaneously Jewish.<sup>102</sup> These references to the history of

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<sup>99</sup> "To Save the Jewish Homeland," 394.

<sup>100</sup> "The Declaration of the Establishment of the State of Israel."

<sup>101</sup> An ultra-orthodox Jewish organization from Eastern Europe, primarily Hasidic, with Orthodox members.

<sup>102</sup> David Ben-Gurion, "Status-Quo Agreement, June 19, 1947," in *Israel in the Middle East: Documents and Readings on Society, Politics, and Foreign Relations, Pre-1948 to the Present*, ed. Itamar Rabinovich and Jehuda Reinharz (Lebanon, New Hampshire: Brandeis University Press, 2008), 58-9.

the Jewish people in *Eretz Israel* in speeches and statements by David Ben-Gurion<sup>103</sup> would continue through the early Establishment period. Though Israel pledges to “safeguard the Holy Places of all religions,”<sup>104</sup> presumably Christianity and Islam (and maybe Baha’i), the *Declaration* does not mention any religions outside of Judaism by name; Israel’s status as a Jewish nation-state is unquestionable.

Israel supports its identity as a Jewish State in the same way other European states built its national projects. According to the *Declaration*:

Eretz-Israel was the birthplace of the Jewish people. Here their spiritual, religious and political identity was shaped. Here they first attained to statehood, created cultural values of national and universal significance and gave to the world the eternal Book of Books. After being forcibly exiled from their land, the people kept faith with it throughout their Dispersion and never ceased to pray and hope for their return to it and for the restoration in it of their political freedom. Impelled by this historic and traditional attachment, Jews strove in every successive generation to re-establish themselves in their ancient homeland.<sup>105</sup>

Furthermore, there is no mention in this historical account of the Jewish people of the other peoples who lived in this area after them. In fact, there is no mention at all that this land belongs to anyone else. According to Nur Masalha, at the time of Israel’s founding, “the indigenous Palestinians were the overwhelming majority in the country and owned much of the land. In 1948 the predominately East European settler community in Palestine, or the Jewish Yishuv, was about a third of the total population and owned, after fifty years of

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<sup>103</sup> Heller, *The Birth of Israel, 1945-1949: Ben-Gurion and His Critics*, 139. Heller quotes Ben-Gurion, when referring to the early Israeli army compares them to “the heroes of Israel through the ages, going back to Rabbi Akiva and Bar Kochba, to the defenders of Yodfat and Massada.” This is typical of the language Ben-Gurion used to unify the young State of Israel.

<sup>104</sup> “The Declaration of the Establishment of the State of Israel.”

<sup>105</sup> *Ibid.*

colonization and land purchases, only 6 per cent of the land.”<sup>106</sup> DellaPergola corroborates these statistics. At the time of the founding, Jews numbered 630,000, Christians 143,000, and Muslims 1.181 million.<sup>107</sup> The founding of Israel (and the ongoing political Zionist project) required mass immigration to ensure a Jewish majority. David Ben-Gurion, for instance, was alarmed when Britain’s 1939 White Paper on Palestine limited Jewish immigration to Israel to 750,000 persons. In his mind, without the ability to immigrate, a Jewish State would never be actualized. This belief would put him in opposition to more liberally minded political Zionists, including Chaim Weizmann and Judah Magnes, who were both willing to at least temporarily compromise on immigration.<sup>108</sup> Khalidi confirms this lack of compromise amongst many early Zionists. He states: ” With few exceptions . . . early Zionist leaders, and Israeli politicians since the founding of the state, have tended to see their conflict with Palestinian nationalism as a zero-sum game.”<sup>109</sup> For Khalidi, the legitimation of Zionist nationalism came at the cost of the delegitimation of Palestinian nationalism, and this was achieved through political Zionism’s unwillingness to negotiate with the Palestinians from even the earliest days of the idea of a political homeland.<sup>110</sup>

Benjamin Akzin, a former professor of constitutional law and political science at Hebrew University, explains that there are eight primary divisions in Israeli law, based in part on the Ottoman *millet* system, which allowed for each confessional community to be

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<sup>106</sup> Nur Masalha, *The Bible and Zionism : Invented Traditions, Archaeology and Post-Colonialism in Palestine-Israel* (New York: Zed Books, 2007), 5.

<sup>107</sup> DellaPergola, "Demography in Israel/Palestine: Trends, Prospects, Policy Implications," 5.

<sup>108</sup> Heller, *The Birth of Israel, 1945-1949: Ben-Gurion and His Critics*, 14.

<sup>109</sup> Rashid Khalidi, *Palestinian Identity: The Construction of Modern National Consciousness* (New York: Columbia University Press, 2010), 24.

<sup>110</sup> *Ibid.*

governed by its own laws and legal system.<sup>111</sup> This legal precedent began with two main documents: the 1947 Status Quo Agreement and the 1948 Law and Administration Ordinance Number 1. The “Status-Quo Agreement,” put forth by Ben-Gurion to the Aguda in 1947 just prior to the founding of Israel, designed a legal system that protected Jewish interests in the proposed state in four areas: Sabbath observance, kosher laws, marital affairs (personal status), and education. Obligatory, especially within the sphere of education, would be the study of Hebrew as the official language of Israel—the only country in the world where Modern Hebrew is an official spoken language. In the first year of the establishment of the State of Israel, Israel’s first Knesset passed the 1948 Law and Administration Ordinance Number 1, which stated that unless otherwise specified, all laws in place in Palestine prior to the founding of the State of Israel were to remain in effect.<sup>112</sup>

While this Status-Quo Agreement promises that the future Israeli government “will take no steps that adversely affect the religious awareness and religious conscience of any part of Israel,” the Agreement simultaneously envisions Israel as a *Jewish* state. According to Strum, “In effect, a new system replaced the status quo, with many religious laws suddenly becoming compulsory and binding upon all Jews, rather than being limited to practices followed voluntarily by a sub-community. Many pre-state secular Jews had not adhered to most of the orthodox laws that are enforced by today’s rabbinical courts.”<sup>113</sup> Thus, from its earliest days as a state, religion for Jews becomes legislated in ways that

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<sup>111</sup> Benjamin Akzin, “Codification in a New State: A Case Study of Israel,” *The American Journal of Comparative Law* 5, no. 1 (1956): 45-49.

<sup>112</sup> R. Gottschalk, “Personal Status and Religious Law in Israel,” *The International Law Quarterly* 4, no. 4 (1951): 454.

<sup>113</sup> Strum, “Women and the Politics of Religion in Israel,” 488.

force Jewish citizens to change their levels of public observance. This includes Orthodox marriages for those wishing to be married in Israel.

Isaac Olshan, an original justice of the Israeli Supreme Court, was skeptical of the possibility of Israeli democracy even from Israel's inception. He explains that there was corruption in the election and formation of the first Knesset, the unicameral legislative body of Israel:

It would stand to reason that before the elections a number of parties would be forced to join together in order to form a coalition government on the basis of agreed-upon ground rules, and that each and every party entering into a coalition of this sort would present itself to the voter with its program the principles of which were to be based on agreed-upon rules. But, instead of this procedure being followed before the elections, it was actually done after them, without giving the voters a chance to express their assent or opposition to the ground rules. What is called by the Israeli politicians in the area of legislation "the democratic system" was in actuality a party regimentation that allowed no choice but required compromise agreements and even conspiracies contrived by coalition members after the fact, i.e., after the elections.<sup>114</sup>

Olshan draws our attention to the fact that some of the earliest moments in the Knesset may have been construed as not in line with Israel's democratic ideals.

The next steps in framing Israel's legal system came in the attempts to draft a constitution. Because of vast differences in the Zionist movements within Israel (ranging from social, political, cultural, and maximalist positions, each with secular and orthodox members), the Members of the Knesset (MK) were unable to come up with a constitutional language that defined and structured this liberal, Jewish state. Furthermore, David Ben-

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<sup>114</sup> Isaac Olshan, "Jewish Religion and Israeli Democracy," in *Israel in the Middle East: Documents and Readings on Society, Politics, and Foreign Relations, Pre-1948 to the Present*, ed. Itamar Rabinovich and Jehuda Reinharz (Lebanon, New Hampshire: Brandeis University Press, 2008), 93.

Gurion was hesitant to even push for a constitution. As Strum explains, Ben-Gurion believed that

a constitution should not be written as the English model of an unwritten constitution could be followed. Because too few of the world's Jews had gathered in Israel, he further argued that it was too early to write a constitution and that the state would be better served by the gradual adoption of 'basic laws' that, tested over time, could later become elements of a written constitution.<sup>115</sup>

Ben-Gurion's idea for a nonconstitutional state crystallized in the Harari Compromise, proposed by MK Yizhar Harari and enacted in 1950. This Compromise allowed the multiethnic, multi-sect Knesset to create a more fluid constitutionality, and this legal system is still in place to this day. Currently, there are eleven of these Basic Laws, which theoretically could be bound together in a future Constitution, that define the parameters of the Jewish State. These laws include the makeup of the Knesset (1958); the executive branch (1964); the economy, including the authority to mint currency (1975), the military (1976); and the establishment of Jerusalem as the capital of Israel (1970).<sup>116</sup>

Even more concern over the Jewish nature of the State of Israel would come in 1950 with the passing of the Law of Return, the law that defines the process for Jewish immigration to Israel.<sup>121</sup> The 1950 Law allowed for all Jewish immigration but did not define Jewishness. The 1970 amendment to the Law of Return defined a Jew as "a person who was born of a Jewish mother or has become converted to Judaism and who is not a member of another religion."<sup>122</sup> However, this 1970 amendment also extends rights to "a

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<sup>115</sup> Strum, "Women and the Politics of Religion in Israel," 487.

<sup>116</sup> "Basic Laws of the State of Israel."

<sup>121</sup> The Law of Return is not one of the Basic Laws but would theoretically be included in any future attempts at drafting a Constitution.

<sup>122</sup> "The Law of Return 5710 (1950)," (<http://knesset.gov.il>: The Knesset, 1950).



child and a grandchild of a Jew, the spouse of a Jew, the spouse of a child of a Jew and the spouse of a grandchild of a Jew, except for a person who has been a Jew and has voluntarily changed his religion.”<sup>123</sup> These blood-related definitions of citizenship and identity stem from Jewish religious law, but extend the possibility to those (such as grandchildren) that may not even self-identify as religiously Jewish. Under Jewish law, one is only considered legally Jewish if one’s mother is Jewish or if one has converted to Judaism. The 1970 amendment’s this progressive interpretation is significant because it goes against thousands of years of traditional legal definitions of Jewishness. While most European countries to date have definitions of citizenship that include some combination of both *jus soli* (right of the soil) and *jus sanguinis* (right of blood), with very few exceptions (as noted with the 1970 amendment to the Law of Return)k Israeli citizenship is achieved through *jus sanguinis*.<sup>124</sup> While this is neither out of the realm of normalcy nor is illegal under standards of international law, it is vital to understand that Israel’s notion of *jus sanguinis* has everything to do with defining Jewish identity and ensuring the continued majority presence of Jews in Israel; the Law of Return is not extended to non-Jews, especially Palestinians who very well might have blood-related affiliation to the land.. The centrality of blood to the idea of citizenship, whether interpreted through *halakha* or through the Law of Return, will come to shape laws governing reproductive rights and adoption, as will be seen in chapter three.

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<sup>123</sup> Ibid.

<sup>124</sup> Hanoach Flum and Rachel Gali Cinamon, "Immigration and the Interplay among Citizenship, Identity and Career: The Case of Ethiopian Immigration to Israel," *Journal of Vocational Behavior* 78, no. 3 (2011): 374.

While many of the earliest Knesset laws refer to Jews and Judaism when defining citizenship, a definition of what constituted a Jewish person did not come until the 1962 “Brother Daniel” Supreme Court case, in which a Carmelite monk invoked his Jewish heritage in hopes of immigrating to Israel. He was denied his immigration request because the justices did not consider him to be Jewish. The opinion of the Court proceeds to define Judaism under the Law of Return as someone who has not converted to any other religion that also qualifies as Jewish under *halakha* (Jewish law).<sup>125</sup>

Finally, while the Harari Compromise of 1948 established the writing of Basic Laws, it was not until 1992 that the MKs passed two Basic Laws that protected personal civil rights. These are the Basic Laws: Freedom of Occupation, and Human Liberty and Dignity.<sup>126</sup> According to Kaplan:

The two Basic Laws enacted in 1992—*Basic Law: Freedom of Occupation* and *Basic Law: Human Dignity and Liberty*—are significant in the constitutional law of Israel. The resolution accepted by the first *Knesset* . . . , the so-called “Harai [sic] resolution”, was to enact the constitution of Israel gradually, chapter by chapter, in the form of “Basic Laws.” In the first stage the Basic Laws that were enacted were mainly structural laws. At this stage the Basic Laws did not include a definition of individual rights and the form of their protection. In 1992 the Knesset passed two new Basic Laws: *Basic Law: Freedom of Occupation* and *Basic Law: Human Dignity and Liberty*. This was a beginning of a new constitutional period in Israel: an era of constitutional entrenchment of rights in Israel.<sup>127</sup>

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<sup>125</sup> Israel Supreme Court, “Jewish Religion and Israeli Nationality: The Brother Daniel Case,” in *Israel in the Middle East: Documents and Readings on Society, Politics, and Foreign Relations, Pre-1948 to the Present*, ed. Itamar Rabinovich and Jehuda Reinharz (Lebanon, New Hampshire: Brandeis University Press, 2008), 172-74.

<sup>126</sup> Yehiel S. Kaplan, “Enforcement of Divorce Judgments in Jewish Courts in Israel: The Interaction between Religious and Constitutional Law,” *Middle East Law and Governance* 4, no. 1 (2012): 2.

<sup>127</sup> *Ibid.*

These two Basic Laws were the first within the Israeli legal system to explicitly enumerate human rights in Israel. With regard to national and international law, Israel is defined as a dualist state, meaning that when Israel signs international treaties, they do not immediately become a part of national law (unlike in monist states, where treaties immediately become a part of domestic law).<sup>128</sup> This means that in spite of the fact that Israel has acceded to many international treaties on rights, including the Universal Declaration of Human Rights, formal legislation must be passed *within* Israel to address these sorts of rights. Specifically, the Basic Law: Human Dignity and Liberty specifically defines Israel as a “Jewish and democratic state” that does not violate the “life, body, or dignity” of any person.”<sup>129</sup> In the years following the passing of these Basic Laws and related Supreme Court decisions, there has been an ongoing conversation over the qualifications for “Jewishness” in the Jewish homeland, one that disproportionately and negatively affects Liberal/Reform Jews, Jews of color (including Ethiopian Jews), and non-European Jews (especially certain Arab Jews and Sephardi/Mizrahi<sup>130</sup> Jews). The chapters in part two of this dissertation will deal with each of these groups and how the current system of PSLs within Israel has shaped each group’s expressions of his or her own Judaism.

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<sup>128</sup> David Sloss, "Domestic Application of Treaties," *Faculty Scholarship at Santa Clara Law Digital Commons* (2011): 2-3.

<sup>129</sup> "Basic Law: Human Dignity and Liberty."

<sup>130</sup> Jews of predominately Arab background, who lived in the Diaspora under predominately Muslim majorities within the Middle East/North Africa, and Israel.

#### 4. THE EXPANSION OF PERSONAL STATUS LAWS UNDER THE STATE OF ISRAEL

Through the framework of political Zionism, the makeup of Israel's civil society and separate political and religious identities can be explained by an analysis of Israel's PSLs: how they were formed, who they exclude and include, and their continued control over the daily lives of Israelis and Palestinians. PSLs in Israel today cover multiple areas of law, including laws governing marriage, divorce, adoption, and inheritances. These laws have increasingly restricted particular communities' religious and social practices, all the while moving Israel toward a system of increasing regulation and inequality. These restrictions have been particularly noticeable in Druze, Muslim, and Sephardi/Mizrahi communities, whose rights regarding personal status have been limited significantly by the state. In order of precedence, Israel's legal system draws from Israeli, British, Ottoman, British common law, rabbinic law, shari'a law, Christian law, and Bedouin traditions.<sup>131</sup> When laws are passed that supersede religiously based PSLs, they are done so, according to Shiloh, "to restrict the latitude of the religious law, insofar as it appears contrary to some overriding principle of public policy"; this includes the prohibition on polygyny, and the institution of a minimum age for marriage.<sup>132</sup> Personal status governs every individual at some point in his or her life. Regardless of gender, sexual orientation, marital status, or choice to have children, everyone in Israel is a part of a legal relationship governed by PSLs. These relationships, in the Israeli context, also govern nationality and citizenship, both of which have definitions in Israel relating to Jewish identity.

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<sup>131</sup> Akzin, "Codification in a New State: A Case Study of Israel," 46-48.

<sup>132</sup> Shiloh, "Marriage and Divorce in Israel," 484-85.

Amongst the early laws written along with the Basic Laws were laws of personal status. In a 1951 article in *The International Law Quarterly*, written during the beginning stages of the legal establishment of the State of Israel, R. Gottschalk defines PSL within Israel as “compris[ing] suits regarding marriage or divorce, alimony, maintenance, guardianship, legitimation and adoption of minors, inhibitions from dealing with property of persons who are legally incompetent, succession, wills and legacies, and the administration of property of absent persons.”<sup>133</sup> These laws are “exercised by civil and religious courts respectively.”<sup>134</sup> Thus, excepting non-citizens of Israel, Muslim courts would have jurisdiction over cases of personal status for Muslims, Jewish courts for Jews, Christian courts for Christians,<sup>135</sup> etc.<sup>136</sup> In cases of multiconfessional issues of personal status, where the persons in question are of differing faith traditions, a Special Tribunal under the jurisdiction of the Supreme Court is called into session.<sup>137</sup> Under Israeli law, each individual is governed by his or her own religious laws, which in theory sounds like equal treatment under the law. However, if one scrutinizes the religious demographics of Israel, one quickly realizes that this system has the potential to create inequality amongst the citizens of Israel, especially citizens without religious affiliation.

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<sup>133</sup> Gottschalk, "Personal Status and Religious Law in Israel," 454.

<sup>134</sup> Ibid.

<sup>135</sup> At the time of Israel's founding, the recognized Christian communities were: "(1) The Eastern (Orthodox) Community, (2) The Latin (Catholic) Community; (3) The Gregorian Armenian Community; (4) The Armenian (Catholic) Community; (5) The Syrian (Catholic) Community; (6) The Chaldean (Uniate) Community; (7) The Greek (Catholic) Melkite Community; (8) The Maronite Community; (9) The Syrian (Orthodox) Community." The Protestant communities did not have any courts in Israel so they were not officially recognized. Ibid., 455. The Druze would not be recognized until the passing of the Druze Religious Courts Law of 1962. See Shiloh, "Marriage and Divorce in Israel," 483.

<sup>136</sup> Gottschalk, "Personal Status and Religious Law in Israel," 454-55.

<sup>137</sup> Ibid., 455.

According to Shiloh, Israel “retains the law relating to the creation, incidences and termination of the matrimonial status in its almost unadulterated form of religious precepts, and maintains a ramified system of religious tribunals for the administration thereof.”<sup>138</sup> And this is not limited simply to marriage, which Israel defines as heteromonogamous. In all matters of personal status, according to Fogiel-Bijau, “No comparable state of affairs exists in any other liberal democratic country, because all the world’s ‘enlightened’ states provide for civil marriage and divorce. This is hardly a trivial matter in the constitution of a democracy.”<sup>139</sup> To date, Israel leaves the adjudication of personal status to religious courts, with the exception of a core group of laws passed by the Knesset, to individual religious communities. Civil courts with jurisdiction over personal status would weaken Israel’s hold over issues of personal status and allow for the possibility, as Fogiel-Bijau posits, “of the formation of a true civil society” separate from religious identity.<sup>140</sup> Yuval-Davis adds: “Whenever anyone has proposed . . . establishing civil marriage and divorce in Israel, the religious, and many of the secular Zionist parties, vehemently objected, fearing what they called ‘a national split’” between Orthodox Judaism on the one hand and more liberal forms of Judaism on the other hand.<sup>141</sup> The nuclear, Jewish, Israeli family as defined by laws of personal status has become symbolic of the nation as a whole (in both Yuval-Davis and Fogiel-Bijau’s analyses, Israel does not mention non-Jews in this discussion of Israeli identity), so much so that questioning PSLs is to question the nation itself.

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<sup>138</sup> Shiloh, "Marriage and Divorce in Israel," 479.

<sup>139</sup> Fogiel-Bijau, "Why Won't There Be Civil Marriage Any Time Soon in Israel?," 30.

<sup>140</sup> *Ibid.*, 29.

<sup>141</sup> Nira Yuval-Davis, "The Bearers of the Collective: Women and Religious Legislation in Israel," *Feminist Review*, no. 4 (1980): 21.

Given both Israel itself and writers on the State situate Israel in both the liberal and democratic traditions and the western legal tradition, the lack of civil laws governing personal status show the challenges of attempting to create a Jewish democratic state. Civil marriage according to Chatterjee, is a crucial part of modern, secular state. Chatterjee contextualizes this within liberal legal systems:

One might say that by instituting civil marriage, a bureaucratic enumerative, and secularized state permits its subjects absolute individual choice of marital partners, and concurrently, by refusing to take into account the religious affiliation of any party, grants total freedom of religious faith. As such, it may be seen as a quintessentially modern phenomenon, connected through the adjective 'civil' with other distinctively modern concepts such as civil society, all of which point to a notion of individual liberty, predicated upon a modern state guaranteeing the autonomy of large arenas of social life.<sup>142</sup>

If civil marriage is such an integral part of civil society and liberal states, Israel's continued commitment to religiously based PSLs grants us into a view of one of the State's main vehicles for maintaining control over definitions of civil society. Rather than allow Israeli civil society evolve and shape itself, Israel creates the state it wishes particularly through its PSLs, which divide the people into sects rather than allowing for unity through marriage and the family. Silvie Fogiel-Bijau argues that in Israel, "the nationalization of the institution of the family serves establishment interests for the principle ethnic-national groups constituting Israel's population . . . by maintaining the legal and cultural divisions between 'them' and 'us' that stand in the way of the formation of a true civil society."<sup>143</sup> For Jews, the focus in particular on the *natural-born* family becomes heavily supported through government intervention (see chapter three).

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<sup>142</sup> Chatterjee, "English Law, Brahma Marriage, and the Problem of Religious Difference," 524.

<sup>143</sup> Fogiel-Bijau, "Why Won't There Be Civil Marriage Any Time Soon in Israel?," 28-29.

Daphna Birenbaum-Carmeli, extending the work of Yuval-Davis, asks:

why the state of Israel is so keen to cultivate a 'natural', 'blood-based' definition of the local Jewish collectivity. What ends can this ideology serve? . . . [D]eep seated narratives regarding the 'naturalness' of the family and the centrality of this family for collective regeneration, can probably be invoked to advance various political interests, most notably, claims to the 'land of our forefathers' (*eretz avotenu*) . . . , thereby charging 'natural' kinship with religious, ideological and political significance.<sup>144</sup>

In this way, families are not described as people with connections to each other, but rather people connect specifically by blood. When Arab families are even mentioned by the Israeli government and media, they are described with words of fear, relating the Arab "population's birth rates in comparison with those of Jews, reiterating the construction of the country's Arab citizens as a 'demographic threat.'"<sup>145</sup> Israel's deployment of higher laws that supersede religious jurisdiction were systematically deployed, via the Knesset, legal precedent, or rabbinical courts, to lead Israel in the demographic and social directions lauded by the founding members of a Jewish state. Where Israel has interceded in marriages, divorces, etc., it has done so in critical ways that position more conservative and European forms of Judaism higher than other Jewish traditions. It is with these concerns and questions in mind that I begin my examination of PSLs in Israel.

With this inconsistency between the protection of religious practices on the one hand and PSLs that trump religious laws on the other, many problems arise in the current state of Israeli legal tradition. To use the Jewish community as a main focus, only Orthodox Jewish marriage is accepted by the State. This means that Reform, Conservative, same-sex, and interfaith Jewish marriages are illegal to perform in Israel (as Nora Yuval-Davis notes,

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<sup>144</sup> Daphna Birenbaum-Carmeli, "The Politics of 'the Natural Family' in Israel: State Policy and Kinship Ideologies," *Social Science and Medicine* 69, no. 7 (2009): 1023-24.

<sup>145</sup> Fogiel-Bijau, "Why Won't There Be Civil Marriage Any Time Soon in Israel?," 29.



many of these couples are forced to marry overseas, often in Cyprus),<sup>146</sup> which, constitute the majority of Jewish individuals in Israel.<sup>147</sup> Furthermore, as Shiloh explains, "A number of Jewish sects exist which, for the purposes of marriage and divorce, *inter alia* are not recognized as Jews by the Rabbinical authorities, such as the Karaites, Samaritans and Falashas. These sects have no recognized religious courts of their own, and the doors of the Rabbinical courts are closed to them."<sup>148</sup> Thus, within Israel, a *Jewish* state, there are practicing Jewish groups who do not have the same rights and privileges for marriage, divorce, and other religious ceremonies.

The outcomes of these changes to religious laws and practices of can be seen in some of Israel's marriage laws today. Under Israel's legal system, citizens *should* be allowed to practice polygyny, for instance, if the practice is acceptable under their religious (which it is under Muslim and some Jewish) traditions. Yet with the passage of PSLs such as the Criminal Code Ordinance of 1936, § 181 in 1936 under the British Mandate<sup>149</sup> and the subsequent Penal Law Amendment (Bigamy) of 1959,<sup>150</sup> polygynous marriages are illegal in Israel and male violators of this law are subject to five year imprisonment. This is one of many examples of Israeli laws passed in direct opposition to longstanding religious traditions in the communities represented in Israel.

PSLs, in addition to governing the aforementioned relationships between individuals, are also part of the larger legal system that defines Jewishness and Israeli

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<sup>146</sup> Yuval-Davis, "The Bearers of the Collective," 21.

<sup>147</sup> Shiloh, "Marriage and Divorce in Israel," 488.

<sup>148</sup> Ibid., 492.

<sup>149</sup> Gottschalk, "Personal Status and Religious Law in Israel," 454.

<sup>150</sup> Shifman, "The English Law of Bigamy in a Multi-Confessional Society: The Israel Experience," 79.

nationality. As Yuval-Davis states, there are two main laws that define Israel as a Jewish State, neither of which are Basic Laws: the 1950 Law of Return (see section three of this chapter) and the 1953 Law of Marriage and Divorce. Yuval-Davis argues that the Law of Return allows for all Jews worldwide to immigrate to Israel as citizens, and the Law of Marriage and Divorce situates the Jewish family at the center of Israeli identity<sup>151</sup> When the suggestion is made that Israel move toward civil definitions of marriage and the family, many become concerned that Israeli identity itself is under attack. The establishment of civil marriage and civil PSLs also introduces a secondary problem, namely the relationship with the Diaspora (Jews living outside of Israel):

[The secular population] had a vague sense of obligation to the Orthodox for what they saw as their role in preserving Judaism for two millennia, and tended to a sentimental equation of the Israeli Orthodox with their own parents and grandparents in the *shtetls* [small Jewish villages in Eastern Europe]. They believed the assertion of the Orthodox, repeated by secular leaders such as Golda Meir, that civil marriage in Israel would alienate Diaspora Jews (those living outside Israel) in part because it would encourage mixed marriage and in part because Diaspora Jews wanted to see Orthodoxy enshrined in Israel.<sup>152</sup>

In other words, on some level, Israel sees itself as being *the* example of Judaism, namely Orthodox/Haredi Judaism, for the world, regardless of the religious adherence of its citizens. With the 1950 Law of Return and the 1953 Law of Marriage and Divorce in mind, there are four early PSLs passed in 1950 that bear further scrutiny for Israeli identity formation.

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<sup>151</sup> Yuval-Davis, "The Bearers of the Collective," 19.

<sup>152</sup> Strum, "Women and the Politics of Religion in Israel," 488-89.

#### **4a) 1950 – The Age of Marriage Law**

The 1950 Age of Marriage Law raised the legal age of marriage to 17 years or older, regardless of the religious affiliation of the couple.<sup>153</sup> Concerns over the scope of this law and its disproportionately strong effect on particular Israeli populations began nearly immediately. In 1951, R. Gottschalk noted: “This provision affects members of many of the religious communities in Israel which permitted marriage at a much earlier age. Anybody marrying a woman below the age of seventeen, or arranging or assisting in celebration of such a marriage is liable to imprisonment not exceeding two years, or two a fine or to both these penalties.”<sup>154</sup> On the one hand, raising the age of marriage can be seen as a step forward for human rights, especially women’s rights (see chapter three). On the other hand, the Age of Marriage law sets the stage for laws that begin chipping away at the religious and cultural expressions of many minority groups within Israel, especially the Sephardim.

#### **4b) 1951 – The Women’s Equal Rights Law (WERD)**

The WERD of 1951 gave women and men equal rights in legal matters, including equal claims to owning property and equal status in court. Included in this law was a five-year prison sentence for those who entered polygynous marriages.<sup>155</sup> Additionally, this law gave married women the right to property as if they were single, granted parents joint custody of children, and enumerated provisions about laws of succession. It also protected

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<sup>153</sup> Ghandour, "Religious Law in a Secular State," 30.

<sup>154</sup> Gottschalk, "Personal Status and Religious Law in Israel," 460.

<sup>155</sup> Ghandour, "Religious Law in a Secular State," 31.

the right for women to have equal access employment unless another law forbids it (such as religious laws prohibiting women from serving as rabbis).<sup>156</sup> Finally, it stated explicitly that the right to interpret the laws of marriage/divorce in Jewish communities were solely to be under rabbinical jurisdiction.<sup>157</sup> As one might expect, the WERD was a step ahead for women's rights in many ways, by providing legal equality in many forms of the law. There were exceptions. For instance, the WERD did not overturn any previous laws barring women from particular jobs, especially in religious leadership, including the ability to be rabbis or serve on rabbinical courts.<sup>158</sup>

The provisions of this law were for all religious communities in Israel, and not just Jews. This law was the first passed under the Israeli State that made specific prohibitions on polygyny.<sup>159</sup> This would have the greatest effect on the Arab Muslim community, for whom polygyny is legal under Islamic law. According to the Qur'an, a man is permitted to have up to four wives, provided he can care for all of them equally.<sup>160</sup> Polygyny, while all-but-eradicated in European Jewish communities at this time, was still practiced in non-European Jewish communities (see chapter four). This law, combined with the 1959 Penal

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<sup>156</sup> Yuval-Davis, "The Bearers of the Collective," 16.

<sup>157</sup> R. Gottschalk, "Personal Status and Religious Law in Israel," *The International and Comparative Law Quarterly* 3, no. 4 (1954): 674; Shiloh, "Marriage and Divorce in Israel," 489.

<sup>158</sup> Yuval-Davis, "The Bearers of the Collective," 16.

<sup>159</sup> Shifman, "The English Law of Bigamy in a Multi-Confessional Society: The Israel Experience," 79. Section 181 of the 1936 Criminal Code Ordinance had made bigamy illegal during the British Mandatory period. This law was inherited into the Israeli legal system with the passing of the 1948 Law and Administration Ordinance No. 1. See Gottschalk, "Personal Status and Religious Law in Israel," 454.

<sup>160</sup> Sura 4:3 - "If you feel that you cannot deal justly with the orphans, then marry such of the women as appeal to you, two, three, or four; but if you fear that you cannot be equitable, then only one, or what your right hands own. That is more likely to enable you to avoid unfairness." According to Fakhry, polygyny according to this verse is permitted but not recommended (see note 271). *An Interpretation of the Qur'an*, trans. Majid Fakhry, Bilingual ed. (Reading, United Kingdom: Garnet Publishing, 2002).

Law Amendment (Bigamy) Law (see section 4d), would eradicate this religious practice in Sephardi and Mizrahi communities.

#### **4c) 1953 – The Rabbinical Jurisdiction (Marriage and Divorce) Law**

The Marriage and Divorce Law of 1953 stated that rabbinical courts are “exclusively competent in matters of marriage and divorce of Jews.”<sup>162</sup> Furthermore, this law states that for Jews, all marriages and divorces must adhere to Jewish *halakha* (law), adding that there shall be no civil marriage/divorce in Israel, regardless of religious affiliation.<sup>163</sup> It is this law that, while not a Basic Law, becomes the main argument against civil marriage in Israel. Additionally, it is this law in particular that makes illegal non-Orthodox Jewish marriages in Israel.

#### **4d) 1959 – The Penal Law Amendment (Bigamy)**

The 1959 Penal Law Amendment (Bigamy) “replaced and filled the gaps in the earlier provisions [in the Criminal Code Ordinance of 1936] and prescribed a term of five years’ imprisonment for the offense” of bigamy.<sup>164</sup> It also allowed for a second marriage for men in the event of insanity or prolonged abandonment leading to “a reasonable presumption of death.”<sup>165</sup> So, while in some ways the law relaxed restrictions on a second marriage in very specific circumstances, it also reified the anti-polygyny stance of the Israeli government.

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<sup>162</sup> Gottschalk, "Personal Status and Religious Law in Israel," 674.

<sup>163</sup> Ibid.

<sup>164</sup> Shifman, "The English Law of Bigamy in a Multi-Confessional Society: The Israel Experience," 79.

<sup>165</sup> Ibid.

According to Pinhas Shifman, this additional amendment to the PSL strengthened the language of the prescribed five-year prison sentence for any man entering a bigamous relationship (there were no punishments for women), Muslim and Jewish alike.<sup>166</sup> Today, only a handful of polygyny cases—virtually all of them involving Muslims—come before the Ministry of Justice every year. Of these, perhaps one or two lead to convictions.”<sup>167</sup> This bias against Muslims is corroborated by Druze sources, which state that in spite of the increasing presence of polygynous relationships in Druze communities, no Druze man has been charged with practicing polygyny.<sup>168</sup>

But what of polygynous Jews? According to Herlihy, Christianity, which limited individuals to monogamous marriage (with further restrictions on marrying individuals within one’s own family), forever changed the institution of marriage in the West.<sup>169</sup>

According to Herlihy:

The Church further (if slowly) extended this ‘leveling’ ethos to the originally polygynous Celts, Germans, and Slavs. The Church forbade divorce, and expanded the types of relationship in which marriages were prohibited. Not only consanguinity but also mere affinity (relationship through marriage) were sufficient to prevent a marriage. According to the rules laid down in the early Middle Ages, if a man and woman even suspected that they were related, they could not marry. This definition of incest was far more stringent than the comparable rules of ancient Israel, Rome, or Islam.<sup>170</sup>

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<sup>166</sup> Ibid. Additionally, “At the same time, an enabling power was introduced for giving permission for a second marriage in special circumstances, e.g. where mental illness has rendered a spouse incapable of concurring in dissolution of the marriage or prolonged absence of one spouse raises a reasonable presumption of death.”

<sup>167</sup> Michele Chabin, "In Sickness, Health, Polygamy: Bedouins Break Israeli Law," *Chicago Tribune* 2000.

<sup>168</sup> Aharon Layish, "Polygamy and the Druze Family in Israel," *Journal of the American Oriental Society* 99, no. 1 (1979): 59-60.

<sup>169</sup> David Herlihy, "Biology and History: The Triumph of Monogamy," *The Journal of Interdisciplinary History* 25, no. 4 (1995): 578-79.

<sup>170</sup> Ibid., 579.

These changes to marriage laws in the Christian West lead Rabbi Gershom ben Judah of Mainz, Germany's to issue his *takkanot*<sup>172</sup> on polygyny in 1000 CE. This *takkanot* made the practice of polygyny illegal for the Jews of Europe and was binding only for the Jews of Europe, and while polygyny had been eradicated since 1000 CE, Mizrahi Jews continued to practice it until the establishment of the State of Israel.

Former Israel Prime Minister David Ben Gurion is quoted as describing Sephardim as being "without a trace of Jewish or human education," and he elaborated further on the Sephardim's place in Israel: "We do not want Israelis to become Arabs. We are in duty bound to fight against the spirit of the Levant, which corrupts individuals and societies, and preserve the authentic Jewish values as they crystallized in the Diaspora."<sup>173</sup> The traditions he discusses here include the polygyny practiced by Sephardic Jews. He echoes the sentiments of the Christians of Europe who, as stated before, considered polygynous Jews in Europe to be immoral. Yet the Sephardim/Mizrahim did not seek to end this practice. Due to Israel's anti-bigamy laws, polygyny is all but eradicated in Judaism now, and it is this Bigamy Law in particular that shows the particularly racialized role some Knesset-passed PSLs have taken since Israel's founding (see chapter four).

## 5. CONCLUSION

Concerns over the lack of civil laws governing personal status in Israel are nothing new. In 1970, more than two decades after the founding of Israel, Shiloh raised

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<sup>172</sup> A major, normative legislation enactment within Jewish *halakha* (law).

<sup>173</sup> Ella Shohat, "Sephardim in Israel: Zionism from the Standpoint of Its Jewish Victims," *Social Text*, no. 19/20 (1988): 4.

apprehensions over the severity under which Jewish laws over personal status were interpreted. He states:

The need for extreme rigidity has now passed, and the erstwhile degree of elasticity in the interpretation and application of *Halachic* principles is now called for in Israel, where the great majority of the Jewish population, though appreciative of Jewish tradition and anxious to retain Jewish institutions in the field of family law, is far removed from Orthodox thought.<sup>174</sup>

And statistically, this is true. By the 1980s, only 12 percent of Israeli Jews considered themselves Haredi and 22 percent considered themselves to be religiously active.<sup>175</sup>

Today, the Haredi population is roughly the same percentage of the Jewish population as it was in 1980 (currently numbering roughly 911,000 individuals, over half of which are under 19). However, if demographic trends continue (due to their high birth rates), the ultra-orthodox will increase to 17 percent of the Jewish population by 2034.<sup>176</sup> In spite of their small numbers within the Israeli Jewish community, legal restrictions affecting multiconfessional individuals, especially those seeking to intermarry (both within Israel and across the borders of Israel and Gaza/the West Bank), continued to be enacted through the early 2000s. David Ben-Gurion himself foresaw this eventual problem of religious *halakha* over civil law: "The religious [parties] misused the Law . . . the time has come to abolish it . . . everything done up to now to give legal effect to *halakha* must be abolished, and we must establish that this is a nation of law and not of *halakha*, and that there is no legal force in *halakha* and that there is no religious or anti-religious compulsion."<sup>177</sup> Even David Ben-Gurion, one of the original proponents of both the Status-Quo Agreement and

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<sup>174</sup> Shiloh, "Marriage and Divorce in Israel," 492.

<sup>175</sup> Yuval-Davis, "The Bearers of the Collective," 18.

<sup>176</sup> Myers-JDC-Brookdale, "Israel's Haredi Population: Progress and Challenges," 1.

<sup>177</sup> Strum, "Women and the Politics of Religion in Israel," 491.



the Harari Compromise, saw structural problems in attempting to have religious law stand for civil law in a liberal, democratic state.

As will be seen in subsequent chapters, PSLs, unlike any other laws, have been used to continue to shape both Jewish and Israeli identity. But on an even deeper level, they become the cause of further the conflict between Israelis and Palestinians. As Fogiel-Bijai argues:

I would like to argue that personal law—the body of law concerned with marriage, divorce, and personal status—is a silenced issue in Israel, precisely because of its centrality to the historical continuity that undergirds the collective memories of the two national groups, Jewish and Arab, that comprise Israel’s population. Thus, in a situation of conflict, neither group wants a change in the existing state of affairs. Personal law is ‘nationalized’; that is, it is conscripted in the service of the national cause.<sup>178</sup>

For the purposes of this dissertation, I will analyze marriage and adoption/reproductive rights to show how Israel has used its PSLs to craft the demographical and religious landscape and limit the rights of certain of its citizenry under the Basic Laws. As Silvie Fogiel-Bijai notes:

Personal law in Israel, according to the Law of the Rabbinic Courts (1953) and the Law of the Druse [sic] Religious Courts (1962), is regulated and adjudicated exclusively by the Jewish, Moslem [sic], Christian, and Druse religious courts. No comparable state of affairs exists in any other liberal democratic country, because all the world’s ‘enlightened’ states provide for civil marriage and divorce. This is hardly a trivial matter in the constitution of a democracy.<sup>179</sup>

In other words, by keeping the existing structure of the PSLs, Israel maintains control over the formation of Israeli identity. Yet, there have been some clear changes in the system, as seen in section four. Ghandour explains: “Israel professed to be forward looking, a State

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<sup>178</sup> Fogiel-Bijai, "Why Won't There Be Civil Marriage Any Time Soon in Israel?," 28.

<sup>179</sup> Ibid., 30.

built on the liberal democratic model, and in that vein set out to introduce reforms to those personal status laws which it found offensive to its pronounced liberal-secularity. For the liberal approach does not acknowledge the adequate protection of inalienable civil liberties by religious law.”<sup>180</sup> In my estimation, Israel carefully manipulates the trajectory of its PSLs through religious definitions, rather than allow for civil definitions of marriage, divorce, adoption, inheritance, etc., Israel does so for three main reasons: 1) to keep Jewish and non-Jewish communities divided, 2) to fight the perceived “demographic threat” of the Arabs in Israel and Palestine, and 3) to strengthen the ties of kinship and identity amongst Jews by framing Jewishness through Othering (both Arabs and particular Jews). Chapter Two explores *how* Israel was structured to become an example of *why* nationalisms that do not acknowledge multiculturalism and that start from laws that encourage (if not institutionalize) racism/racialism find challenges when attempting to foster a secure, liberal state.

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<sup>180</sup> Ghandour, "Religious Law in a Secular State," 30.

## Chapter Two Tolerance, Equality, and Personal Status in Israel

*No peace and security among mankind—let alone common friendship—can ever exist as long as people think that governments get their authority from God and that religion is to be propagated by force of arms. – John Locke, Toleratation, 1689<sup>1</sup>*

### 1. INTRODUCTION: TOLERANCE IN THE JEWISH STATE

On January 27, 2016, Israel's unicameral legislature, the Knesset, rejected a bill that would have added an equality clause to its 1992 Basic Law: Human Dignity and Liberty. While the current law "protects human liberty and dignity" in the areas of the person, property, unlawful arrest, freedom of movement, and privacy,<sup>2</sup> it does not begin by naming all citizens of Israel as equal before the law. In fact, no Israeli law to date does. The law, proposed by Minister of the Knesset (MK) Jamal Zahalka, a member of the Joint Arab List, failed to pass due to the votes of a coalition of conservative parties including Likud, the Haredi parties, Kulanu, and Yesh Atid. Regarding the necessity of the amendment, Zahalka stated: "All constitutions in modern countries begin with stressing the principle of equality amongst their citizens. Even undemocratic countries adopt this principle legally, considering it a cornerstone for any modern political system, including democracy, which seems impossible and meaningless without equality."<sup>3</sup> Furthermore, he added that without an equality clause, all other human rights laws in Israel are hollow and lacking in a foundation. For Zahalka and his supporters, the Knesset's rejection of a law guaranteeing the equality of all citizens is "clear proof of the state's nature," namely that they believe that Israel is not committed to human rights. According to Zahalka, any MKs who voted against

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<sup>1</sup> John Locke, *Toleratation*, trans. Jonathan Bennett (<http://earlymoderntexts.com> 2010), PDF, 8.

<sup>2</sup> "Basic Law: Human Dignity and Liberty."

<sup>3</sup> "Knesset Rejects Bill for Equality for All Citizens," *Middle East Monitor* 2016.

the measure have no right now to claim that they support democratic, anti-racist, or anti-discriminatory principles of governance.<sup>4</sup> This chapter explores Zahalka's claims, looking into the nature of Israel as a liberal, democratic state, exploring whether Israel has the right to call itself either liberal or democratic and what is at stake when Israel uses these terms to describe itself.

There is a story to be told about racism and racialism and the modern state, one that replays repeatedly across continents. It is a story whose supporting characters include colonialism, nationalism, economics, and power. Israel, as one of these modern states, arises in a post-World War II period where much of the world was undergoing decolonization. State after state declared independence from former empires, and countries such as India were coming out from under the mantle of colonialism and were gaining self-determination as nation-states. Fanon feared many of these post-colonial states would give themselves over to the same racism and violence that had been practiced by their former colonial leaders. In the African context, he explains: "The national bourgeoisie . . . take over from the Europeans and lay the foundations for a racist philosophy that is terribly prejudicial to the future of Africa. Through its apathy and mimicry it encourages the growth and development of racism that was typical of the colonial period."<sup>5</sup> The colonial bourgeoisie, who had been given a small amount of power over the former colonial regime, turned the methods of colonialism toward its own people in the early postcolonial days, mirroring the same mistakes the colonizers had made.<sup>6</sup> These decisions lead to instability in the fledging new nations

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<sup>4</sup> Ibid.

<sup>5</sup> Fanon, *The Wretched of the Earth*, 108.

<sup>6</sup> Ibid., 99-101; 03, 19.

Furthermore, Fanon was also concerned about the role religion plays in dividing people within a nation. He states: "Within the same nation, religion divides the people and sets the spiritual communities, fostered and encouraged by colonialism and its apparatus, at odds with one each other. . . . [T]his religious tension can take the shape of the crudest form of racism."<sup>7</sup> In this way, according to Fanon, religion itself becomes a means of discrimination and is used to support a lack of toleration under the State. The concern about the role of church, state, and tolerance in Western philosophy is handed down from the work of John Locke. In his 1689 treatise *Toleration*, Locke states: "An evil that is less visible but more dangerous to the commonwealth occurs when men claim for themselves and their co-religionists some special prerogative that does in fact conflict with the civil right of the community but is covered over with a glittery show of deceitful words."<sup>8</sup> His concern, above all, was religious toleration in newly liberal states. He believed that toleration itself was a Christian virtue, but should be applied to all people regardless of religious affiliation. Locke qualifies this by saying that "neither pagan nor Moslem [sic] nor Jew should be shut out from the republic because of his religion" (his exception to this rule are atheists, who he claims cannot make valid oaths due to their lack of faith).<sup>9</sup> So while Locke begins a conversation on tolerance and the separation of church and state, his own views are not completely tolerant. We see similar tensions in Israel today where, on the one hand Israel is a homeland for all Jews, however, non-religious Jews (like Locke's atheists in the commonwealth) do not have the ability to fully be a part of Israeli identity. In a commonwealth, a citizen's loyalty is to the magistrate, whose role is "to secure, for the

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<sup>7</sup> Ibid., 107-08.

<sup>8</sup> Locke, *Toleration*.

<sup>9</sup> Ibid., 2, 24.

people in general and for each one in particular, the just possession of these worldly things,” adding that it is not, in fact, the magistrate’s responsibility “to take care of souls”; this is the role of the church.<sup>10</sup> Conversely, churches should have no right to control civil rights of citizens.<sup>11</sup> Should either a commonwealth or a church misunderstand its role or, worse, act directly in violation of its jurisdiction, peace is impossible. Locke states: “No peace and security among mankind—let alone common *friendship*—can ever exist as long as people think that governments get their authority from God and that religion is to be propagated by force of arms.”<sup>12</sup> In other words, an incorrect conflation of the roles of church and state, according to Locke, will necessarily lead to conflict.

Locke wrote his treatise on toleration at a time when the Catholic Church was seen as expanding its control over England. His calls for tolerance came at a pivotal moment in England’s political history, and his words stood as a warning about the dangerous mixing of Church and State. The separation of church and state becomes a bedrock of Western, liberal state structures that has endured. Israel, by only partly embracing the legal systems of the West that it claims to be a part of,<sup>13</sup> specifically its lack of civil law to govern personal status, has created its own instability, leading to intolerance and racism supported by the rule of law.

Locke warns his readers: “[T]hings that are forbidden by law because in their ordinary use they are harmful to the public ought not to be permitted to churches in their

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<sup>10</sup> Ibid., 3-4.

<sup>11</sup> Ibid., 7-8.

<sup>12</sup> Ibid., 8.

<sup>13</sup> For a detailed explanation of the portions of Western law present in Israel's legal system and for his understanding, as a professor of law in Israel, of how Israel fits into the Western, democratic society, see Akzin, "Codification in a New State: A Case Study of Israel."

sacred rites. But the magistrate should be very careful not to misuse his authority by oppressing some church, on the pretext of securing the public good.”<sup>14</sup> When the church begins to encroach upon upon personal rights, or conversely, when the State begins to involve itself in the faith of a nation, this constitutes a failure of liberal toleration.

Regarding Israel, Abu Rawia describes the results of not separating religion and the state:

Israel is engaging in both internal and external forms of colonization. Although Israel presents itself as a democracy, it may arguably be described as an ‘ethno-republic, the State of the Jewish people.’ Under a normal application of the right to self-determination, Israel would be defined as an Israeli State and not as a Jewish State. However, Israel’s definition of itself as a Jewish State supports calling it an ethnocracy. That is, on the one hand, Israel has demographic features and formalities. . . . On the other hand, Israel has established a legal, institutional, and cultural regime which advances the undemocratic project of Juda-izing and de-Arab-izing the country. It has nearly twenty discriminatory laws that treat Arabs and Jewish citizens differently from one another.<sup>15</sup>

Chapter one explored the history of the foundations of the State of Israel and its system of religiously based personal status laws (PSLs). Today, PSLs have evolved in a way that gives primacy to Orthodox interpretations of Judaism, as espoused by a collective group of orthodox Jewish movements known in Israel as Haredi Judaism, as the official voice of Judaism in the country. Muslim and Christian courts have jurisdiction over their own cases of personal status, but only if their interpretation of the law does not violate the Basic Laws or other superseding laws passed by the Knesset. And some Jewish practices, including marriages, divorces, and religious services, are not given the same legal status as others, often on racialized lines.

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<sup>14</sup> Locke, *Toleration*, 15.

<sup>15</sup> Rawia Abu Rabia, "Redefining Polygamy among the Palestinian Bedouins in Israel: Colonialism, Patriarchy, and Resistance," *American University Journal of Gender, Social Policy and the Law* 19, no. 2 (2011): 476.

While Locke gives us a theoretical understanding of toleration and the importance of the separation of church and state, Locke's definition of toleration is no longer sufficient for understanding how different religions, and especially the non-religious, live both within a State and alongside each other in modern nation-states. Wendy Brown, in her book *Regulating Aversion: Tolerance in the Age of Identity and Empire*, traces the genealogy of discourses on "tolerance" within nationalism since Locke. Analyzing America at the time of its founding, she understands tolerance as a "practical solution" for exclusivist religious traditions. She states: "tolerance is a principle coined of necessity, a necessity produced by a collision of absolutist principles, and it is in this sense something of an antiprinciple."<sup>16</sup> Tolerance morphs from the crowning achievement of Western modernity, as seen with Locke, to a word that cloaks intolerance. According to Brown, tolerance is not what each of us does for everyone, but rather "[t]olerated individuals will always be those who deviate from the norm, never those who uphold it, but they will also be further articulated as (deviant) individuals through the very discourse of tolerance."<sup>17</sup> In other words, when a religious, ethnic, or cultural minority in a country today is "tolerated," it does not mean that it is accepted as equal to all other forms of these sorts of expression, but rather that it is compared negatively to the majority or strongest group and is simply endured because intolerance is unacceptable in Western society. Tolerance today produces otherness, creating fault lines between communities.

Israel now finds itself in a situation where some Judaisms are "official" and others are, in Brown's sense of the term, merely tolerated. Non-Jews are in an even lower

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<sup>16</sup> Brown, *Regulating Aversion*, 32-33.

<sup>17</sup> *Ibid.*, 37, 44.



position, living in situations closer to that of the colonized described by Fanon. While chapter one looked at *how* the Israeli legal system and laws of personal status were crafted, this chapter analyzes *why* PSLs have evolved and are currently interpreted in ways that lead to a lack of toleration for multiple demographic groups in Israel. After an analysis of how definitions of liberalism and religion were deployed to create and define national identity in Israel, this chapter looks at three key ways PSLs have been developed in Israel, shaping the idea of the Jewish citizen: by keeping Jewish and non-Jewish communities divided; by fighting the perceived “demographic threat” of the Arabs in Israel and Palestine; and by strengthening the ties of kinship and identity amongst Jews by obliquely define Jewishness through Othering (both Arabs and particular Jews)

## **2. RELIGION, LIBERALISM, AND COLONIALISM IN ISRAEL**

The history of the Jewish people in the land today called Israel has been one of occupation, exile, and return. Unified Israel under the Davidic dynasties only existed from roughly 1010 BCE to 931 BCE, less than a century. And, in total, Jews ruled over themselves through 587 BCE, and the kingdoms of Israel and Judah were routinely plagued by the invasions of outside forces (namely, from Assyria and Babylon) and constantly shifting political borders. During and after this period, the land was under the control of several empires (the Assyrian, Babylonian, Persian, Ptolemaic, Seleucid) before the entrance of Rome in the century before the birth of Christ. In 70 CE, during the height of the Jewish Uprising against Rome, Rome forcibly deported most of the Jewish population of Palestine, spreading them across the Roman Empire in an event known as the Diaspora. This is not

the first time that the Israelites had been exiled; both the Assyrian and Babylonian empires had also practiced this forced exile form of colonization.<sup>18</sup>

After the Diaspora, Jews found themselves spread across most of Europe, the Middle East, and North Africa, scattering as far east as China and India during this nearly 2000-year dispersion. In no part of the former Roman Empire did they find themselves in a position of majority in any area, living under the cultural and political whims of whatever area in which they lived.<sup>19</sup> During this entire period, the former Israelite kingdom now known as Palestine was held by multiple empires after the Romans: Byzantine, Umayyad, Abbasid, Fatimid, and Ottoman before coming under British jurisdiction following the collapse of the Ottoman Empire at the end of World War I.<sup>20</sup> The Middle East, carved up between France, Russia, and Britain under the Sykes-Picot Agreement, was divided into multiple Mandates. This included the Palestinian Mandate of the British, an umbrella over the modern states of Israel, Jordan, and Iraq, areas that had not been cohesive nations before this European involvement. Israel, Jordan, and Iraq are all attempting to define national identity to this day.<sup>21</sup>

While Israel's founders and critics have described the State as both Jewish and democratic since its founding days, the first piece of law to formally define Israel in this way is the Basic Law: Human Dignity and Liberty, which was passed by the Knesset in

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<sup>18</sup> Sara E. Karesh and Mitchell M. Hurvitz, "Assyrians," in *Encyclopedia of Judaism* (New York: Facts on File, Inc, 2006); "Exile (Galut)," in *Encyclopedia of Judaism* (New York: Facts on File, Inc, 2006).

<sup>19</sup> "Diaspora," in *Encyclopedia of Judaism* (New York: Facts on File, Inc, 2006).

<sup>20</sup> "Arab-Israeli Conflict," in *Encyclopedia of Judaism* (New York: Facts on File, Inc, 2006).

<sup>21</sup> Mir Zohair Husain, *Global Islamic Politics*, 2nd ed. (New York: Addison-Wesley Educational Publishers, Inc., 2003), 159, 303.

1992.<sup>22</sup> As explored in chapter one, religion, both as a concept and linguistically, was integral to the formation of the Israeli state, regardless of how liberal the founders of Israel may have intended Israel to be. As José Casanova remarks, “in the modern secular world, the boundaries between the religious and the secular are so fluid that one ought to be very cautious when drawing such analytical distinctions.”<sup>23</sup> That is not to say that these two concepts are so hard to pin down that defining them is impossible or unhelpful. Scholars including Casanova, Talal Asad, and William T. Cavanaugh each grapple with definitions of religion, secularism, and nationalism, and each of these thinkers will help us to understand who stands to gain in Israel by invoking these concepts.

Using a genealogical method, Asad attempts to define how we use the concepts of “religious” and “secular.” With regard to defining and studying religion, on one hand, Asad is quick to point out that

For . . . twentieth-century anthropologists, religion is not an archaic mode of scientific thinking, nor of any other secular endeavor we value today; it is, on the contrary, a distinctive space of human practice and belief which cannot be reduced to any other. From this it seems to follow that the essence of religion is not to be confused with, say, the essence of politics, although in many societies the two may overlap and be intertwined.<sup>24</sup>

On the other hand, with regard to the secular and secularism, he states:

The concept of “the secular” today is part of a doctrine called secularism. Secularism doesn’t simply insist that religious practice and belief be confined to a space where they cannot threaten political stability or the liberties of ‘free-thinking’ citizens. Secularism builds on a particular conception of the world (‘natural’ and ‘social’) and of the problems generated by that world.<sup>25</sup>

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<sup>22</sup> “Basic Law: Human Dignity and Liberty.”

<sup>23</sup> José Casanova, “Secularization Revisited: A Reply to Talal Asad,” in *Powers of the Secular Modern: Talal Asad and His Interlocutors*, ed. David Scott and Charles Hirschkind, Cultural Memory in the Present (Stanford: Stanford University Press, 2006), 24.

<sup>24</sup> Talal Asad, *Genealogies of Religion: Discipline and Reasons of Power in Christianity and Islam* (Baltimore: Johns Hopkins University Press, 1993), 27.

<sup>25</sup> *Formations of the Secular*, 191-2.

The problems that arise with these terms, as both Asad and Cavanaugh point out, is that neither “religion” nor “secular” are terms that they would define as “transhistorical” or “transcultural.”<sup>26</sup> This means that their meanings have changed over time, and that different systems of power have utilized them in very different ways.<sup>27</sup> Regarding, religion, Asad states: “there cannot be a universal definition of religion, not only because its constituent elements and relationships are historically specific, but because that definition is itself the historical product of discursive processes.”<sup>29</sup> This entire dissertation explores the sites of power from which which the State of Israel, through its Supreme Court, Knesset, Chief Rabbis, and others have defined religion, secularity, liberalism, and ultimately Jewishness.

But how does Israel define its liberalism? Pinning down a definition of liberal(ism) is notoriously difficult. Domenico Losurdo explains:

What is liberalism? As we register the disappearance of the old certainties, a great saying comes to mind: “What is well-known, precisely because it is *well-known*, is not *known*. In the knowledge process, the commonest way to mislead oneself and others is to assume that something is well-known and to accept it as such.”<sup>30</sup>

Given that Israel has never explicitly defined how it uses the term, applying a definition of liberalism to Israel is all the more challenging. Yet, Israel is committed to defining itself in this way. In trying to pin down a definition of nationalism, Cavanaugh points out that

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<sup>26</sup> *Genealogies of Religion*, 28-29; William T. Cavanaugh, *The Myth of Religious Violence: Secular Ideology and the Roots of Modern Conflict* (New York: Oxford University Press, 2009), 4, 8, 89.

<sup>27</sup> See chapter two, “The Invention of Religion,” in Cavanaugh’s *The Myth of Religious Violence* for a detailed genealogy of the term “religion.” *The Myth of Religious Violence*.

<sup>29</sup> Asad, *Genealogies of Religion*, 29.

<sup>30</sup> Domenico Losurdo, *Liberalism: A Counter-History* (New York: Verso, 2014), 27.

liberalism often has with it a definition of a state with a secularized government,<sup>31</sup> which Israel claims to have. But what happens when we throw the term “democratic” in on top of the term liberal? As recently as March 19, 2015, Israel’s ambassador to the UN, Ron Prosor, in response to accusations of undemocratic practices occurring in Israel (including the negative treatment of the Palestinians and the currently stalled peace process), stated: “The United Nations may disagree with the policies of the Israeli government, but there is one fact that can't be disputed - that Israel is the only democracy in the Middle East.”<sup>32</sup> Israel continues to define itself as a democracy, both through its 1992 Basic Law: Human Dignity and Liberty<sup>33</sup> and through statements from representatives of the government such as Prosor, and by doing so gives critics of the state a framework of concepts from which to analyze Israel itself.

However, if a nation is to be defined as a liberal democracy, can religious identity be a factor in determining national identity and citizenship? Neither Berlin, nor Arendt, nor Butler believes that definitions of religious identity should inform definitions of national identity and citizenship in Israel. However, as was discussed in chapter one, religious definitions are intertwined with definitions of citizenship. Failing to heed to Berlin’s advice to keep Jewishness and definitions of citizenship far away from one another, the State of Israel now has laws in place governing both citizenship and marriage determining who is

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<sup>31</sup> Cavanaugh, *The Myth of Religious Violence*, 174.

<sup>32</sup> Michelle Nichols, "U.N.: Peace Process Only Way for Israel to Stay a Democracy," *Reuters*, March 18 2015.

<sup>33</sup> Section 1 of the 1992 Basic Law: Human Dignity and Liberty: “The purpose of this Basic Law is to protect human dignity and liberty, in order to establish in a Basic Law the values of the State of Israel as a Jewish and democratic state.” “Basic Law: Human Dignity and Liberty.”

legally considered Jewish (see chapter one).<sup>34</sup> Berlin would hypothetically be puzzled by this. He believed that “[i]f Israel is to be, in the full sense, a modern Liberal State, the question of religious affiliation should make no difference to its laws of citizenship, or the civil and political rights enjoyed by its inhabitants.”<sup>35</sup> For Israel to “define the status of its citizens or even of its residents in purely religious terms” would be to choose to be a theocracy, not a liberal State.<sup>36</sup> Berlin believed that “the creation of the State of Israel has liberated all Jews, whatever their relation to it.”<sup>37</sup> Thus, any Israeli decision that takes away personal freedoms from Jews (not to mention non-Jewish Israelis) negates the entire purpose the Jewish homeland for Berlin. However, to some degree the realities of freedom and liberty in Israel are far from this idyllic presentation in the *Declaration*, which calls for the protection of all individuals based on “religion, race, or sex.”<sup>38</sup>

Butler, Arendt, and Berlin, each of whom culturally identify as Jewish, have set the tone for Jewish critiques of political Zionism—and all three have been met with harsh criticism from those who associate critiques of Israel and of political Zionism with antisemitism. For instance, Butler explains that, after the publication of *Eichmann in Jerusalem* in 1963, Arendt’s detractors undercut her arguments against the policies of the State of Israel because of her status as a refugee, a member of the Diaspora: “[Arendt] was, of course, accused of misunderstanding the importance of the Eichmann trial because she was a German Jew who had left Europe for New York, sacrificing membership in the Israeli

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<sup>34</sup> Jessica Steinberg, "Court Accepts Reform, Conservative Conversions in Israel; Orthodox Vow to Fight On," Jewish Federations of North America, <http://www.jewishfederations.org/page.aspx?id=28914>.

<sup>35</sup> Asad, *Genealogies of Religion*, 29.

<sup>36</sup> Berlin, "Who Is a Jew?," 764.

<sup>37</sup> "Jewish Slavery and Emancipation," 184.

<sup>38</sup> "The Declaration of the Establishment of the State of Israel."

state that would have ratified her position as a member of the community.”<sup>39</sup> It is this control over the definition of Jewishness by the Israeli state over all Jews, including those in the Diaspora. Butler explains that for Arendt, “no state should be formed on the basis of a single nationality or religion.”<sup>40</sup> Yet Israel, as a Jewish state, does just this.

Chapter one discussed *how* Israel came to be structured as it is. Now, it is important to ask *why*. In his *Politics*, Aristotle states that human beings have an inherent need to belong to one another, and it is through this need that humans first put together families and then states.<sup>41</sup> And for Jews, dispersed over much of the world for the last 2000 years, belonging came through interactions in small communities where they were always the minority. The State of Israel arises out of the need some Jews felt for Jews to belong to a nation when, across Europe predominantly, they had lost their emancipation and often their citizenship. This includes in Germany, where Jews were stripped of their citizenship and basic protection under the law by the passage of the Nuremberg Laws of 1935.<sup>42</sup> By 1945, these scared, tired, angry post-Holocaust European Jews were desperate for a state where they would no longer have to encounter antisemites. But for Arendt, it goes deeper than this. The Jews of Europe who survived the Holocaust did not simply want a state where they would be free of antisemitism; they wanted a state free from non-Jews: “This is what lies at the bottom of their present strong desire to go to Palestine. It is not that they imagine they will be safe there—it is only that they want to live among Jews alone, come

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<sup>39</sup> Butler, *Parting Ways*, 152.

<sup>40</sup> *Ibid.*

<sup>41</sup> Aristotle, *The Politics and the Constitution of Athens*, Student ed., Cambridge Texts in the History of Political Thought (Cambridge: Cambridge University Press, 1996; repr., 2003), 1253a2-18; 62a25-40.

<sup>42</sup> Sara E. Karesh and Mitchell M. Hurvitz, “Nuremberg Laws,” in *Encyclopedia of Judaism* (New York: Facts on File, Inc, 2006).

what may."<sup>43</sup> For Arendt, the reason Israel comes to make the same mistakes as its European peers can be attributed to desires for a homogenous, Jewish state; today, the consequences of these early desires can be seen in its PSLs, which at times even discriminate against Israel's own self-identified Jewish citizens.

It is through Fanon's understanding of colonialism that we come to understand just how Israel comes to be shaped and how it retains its power over its citizenry. Israel exists both as a nation of formerly colonized people and now as a colonizing nation. As a nation, the founding citizens of Israel (and the cultural memory of the current state) had lived in colonized conditions throughout much of the world. Yet Israel, too, engaged in a colonial project when founding the State of Israel. Fanon, invoking the history of the United States, warns of the dangers of colonized peoples acting the part of the colonizer. He states: "Two centuries ago, a former European colony took it into its head to catch up with Europe. It has been so successful that the United States of America has become a monster where the flaws, sickness, and inhumanity of Europe have reached frightening proportions."<sup>44</sup> Yet the Israeli experience as both colonized and colonizer, especially when one considers Israel's continued settlement projects in the West Bank, is far different than that of any other nation of people, as will be explained in the following sections. Fanon's discussion of both the colonized and the colonizer can be applied to political Zionism and the State of Israel in order to explain the ways Israel deploys changes in PSLs to shape its people.

While not colonized in the sense that they lived as a nation together under the colonial power of a separate nation, Jews lived as colonized peoples often live, under threat

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<sup>43</sup> Arendt, "The Jewish State," 385-6.

<sup>44</sup> Fanon, *The Wretched of the Earth*, 236-7.



of violence and under the focus of many separate forms of racism and religious intolerance. Fanon describes the “colonized’s sector” of any town in a colonized area as “a disreputable place inhabited by disreputable people. . . . It’s a world with no space, people are piled one on top of the other, the shacks squeezed tightly together.”<sup>45</sup> This description calls to mind the ghettos of Rome and Warsaw, among others, where Jews were forced to live behind walls separate from the rest of the population of the city. For Fanon, “the colonized subject is a persecuted man who is forever dreaming of becoming the persecutor,” who internalizes the violence visited both upon his person and inherited through cultural memory and becomes the “depraved animals” the colonizers describe them as being.<sup>46</sup> The accusations of blood libel during the Middle Ages gives us an example of Jews being likened to animals; Jews across Europe were falsely accused of barbaric, ritual killings of Christians, using the blood of their victims in their ritual foods.<sup>47</sup> In addition to accusing the colonized of these sorts of heinous crimes, the colonizers are able to achieve the “pacification of the colonized by the inescapable powers of religion.”<sup>48</sup> This is much like what happened to Sephardic Jews during the Spanish Inquisition; by being given the option “convert, leave, or die,” Spain was able to use its Catholic hegemony to quickly quell any cultural problem Jews presented to emerging ideas of Spanish nationalism.

Just as the Jewish people’s experience of colonization is exceptional from many other nations, Israel’s deployment of the strategies of Fanon’s colonizers is also unique. Because Israel is the only Jewish nation in the world, Israel often sees itself as speaking on

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<sup>45</sup> Ibid., 4.

<sup>46</sup> Ibid., 16.

<sup>47</sup> Sara E. Karesh and Mitchell M. Hurvitz, “Blood Libel,” in *Encyclopedia of Judaism* (New York: Facts on File, Inc, 2006), 60-61.

<sup>48</sup> Fanon, *The Wretched of the Earth*, 26.

behalf of the Jewish people. Israel's colonization is not just political, taking over the land formerly called Palestine, but is also, as Judith Butler explains, uniquely cultural – spreading its views of what it means to be Jewish across the Diaspora.<sup>49</sup> In this way Israel, the formerly colonized, becomes in the colonizer and falls into pitfalls similar to that of many other formerly colonized nations. Furthermore, as Fanon suggests, the colonized often make the same mistakes as the colonizers, without the added benefit of, as he will put it, the “initial phases of exploration and invention that are the assets of [the] Western bourgeoisie.”<sup>50</sup> This can be seen in the disproportionately loud voice of the Haredi minority within the Jewish population in Israel, who from their position of orthodoxy shape definitions of Jewishness, and consequently Israeli identity, both for the nation and out into the Jewish Diaspora. Furthermore, Fanon explains that the formerly colonized quickly move toward “nationalization” that becomes “increasingly tinged with racism.”<sup>51</sup> Those who have the means demand of the new government certain types of jobs, in the higher classes, which they feel they have earned. Concurrently, the lower classes begin to model their behavior after the bourgeois upper class who is oppressing them in the same way as the former colonizers had.<sup>52</sup>

The tolerance on which the State of Israel was founded has not been fully realized, and Brown's theories of tolerance help us to explain why this is so. Brown explains the function of tolerance within greater governmentality as such: “For tolerance discourse not only governs subjects, it not only quiets potential civic conflict or social unrest, it also

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<sup>49</sup> Butler, *Parting Ways*, 2.

<sup>50</sup> Fanon, *The Wretched of the Earth*, 159, 303.

<sup>51</sup> *Ibid.*, 16.

<sup>52</sup> *Ibid.*, 103.

shores up the legitimacy of the state and in doing so shores up and expands state power.”<sup>53</sup> Brown believes that modern conversations of tolerance come when a state is battling a crisis of legitimacy.<sup>54</sup> According to Fanon, a key component of the nationalisms of formerly colonized peoples is force. He states: “The colonial regime owes its legitimacy’ to force and at no time does it ever endeavor to cover up this nature of things.”<sup>55</sup> Current Israeli Prime Minister Benjamin Netanyahu has often stressed that Israel will use all force necessary to protect its sovereignty and borders, and in doing so he ignores resolution after resolution from the United Nations, including condemnations of Israeli settlements in the Occupied West Bank. In 2014, during the most recent incursion into the Gaza Strip, according to a report in the *Times of Israel*, Netanyahu “[made] plain that ‘no international pressure will prevent us from acting with all force against a terrorist organization ( Hamas ) that seeks to destroy us,’ and that Operation Protective Edge<sup>56</sup> would go on until guaranteed calm was restored to Israel.”<sup>57</sup> In this statement, Netanyahu, speaking on the behalf of the Israeli State, does not hide the fact that Israel’s main way of protecting its legitimacy is force. When tolerance is not an option, Israel resorts to force to masks its incursions into the legal rights of its Jewish citizens. Israel uses this tolerance to shore up its perceived stability while simultaneously attempting to hold on to its identity as a state.

The following sections of this chapter explore three critical ways by which the structure of PSLs in Israel has led to an untenable situation of intolerance within Israel. By

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<sup>53</sup> Brown, *Regulating Aversion*, 83.

<sup>54</sup> *Ibid.*

<sup>55</sup> Fanon, *The Wretched of the Earth*, 42.

<sup>56</sup> The Israel Defence Force’s name for the incursion into Gaza in 2014.

<sup>57</sup> David Horovitz, "Netanyahu Finally Speaks His Mind," *The Times of Israel*, July 13, 2014 2014.

separating Jew from non-Jew, by changing laws in the face of demographic concerns, and by continuing to cling to particular definitions of Jewishness and citizenship, Israel's laws governing marriage and the family continue to form identities of intolerance within the State. This increasingly racialized and gendered intolerance calls into question the continued legitimacy of a liberal, democratic state founded on religious principles that give religious acceptance to some citizens over others.

### **3. THE SEPARATION OF JEW AND NON-JEW IN ISRAEL**

The geographical area of Israel and Palestine today represents a divided state. Both Gaza and the West Bank are separated from Israel by a series of barriers (see chapter five). Arab-Israelis live in their own communities separate from Jews throughout Israel proper. The threat of daily violence is a part of the lived experience of those living on both sides of the barrier. Early theorists of the state such as Arendt predicted these sorts of problems would occur if Israel and the world went forth with the 1948 United Nations Partition Plan to separate the Palestinian Mandate into two states, Israel and Palestine. And while Israel is recognized by most of the world, as of today, only the members of the League of Arab States formally recognize Palestine as a state.

During World War II, Arendt believed that any sort of two-state solution would end in war. As such, she explicitly argued for a Jewish *homeland* and not a Jewish *state*.<sup>58</sup> She maintains this position both during World War II and even after the establishment of the

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<sup>58</sup> Arendt, "To Save the Jewish Homeland," 401. While Arendt never formally defines her use of "homeland," when she uses the term, it generally refers to the idea of a predominately Jewish area in Palestine that wavers between a one-state/binational solution at the far end, and increased cooperation with Arab Palestinians on the other.

State of Israel. Arendt was principally opposed to a two-state solution, believing that a tiny Jewish state amongst its Arab neighbors would be unprotected. In 1943, she argued for a bi-national single state, in a structured federal style, stating: "Palestine can be saved as the national homeland of Jews only if . . . it is integrated into a federation."<sup>59</sup> By being part of either a European or Mediterranean Federation, along with the Arab states (she reminds her readers of the vast contributions of Arabs to Western civilization), Jews in Palestine would be ensured protection and stability. Furthermore, while many Revisionists (see chapter one) argued that under the proposed Partition Plan, the fledgling State of Israel would need to ally itself with a foreign power, in 1944, Arendt strongly urged reconsideration of the Partition Plan, arguing that any nation that requires a foreign power's strength to survive will ultimately founder. Her fear was that any Jewish state was destined to collapse. Such a tiny Jewish state had no hope of surviving if it antagonized its Arab neighbors to establish itself.

In addition to these apprehensions, Arendt was also concerned that the surrounding Arab states, and even the world at large, would see a newly founded Israel as profiting from the presence of the major foreign powers being brought into the region, leading to new waves of anti-Semitism worldwide. She states:

Jews who know their own history should be aware that such a state of affairs will inevitably lead to a new wave of Jew-hatred; the anti-Semitism of tomorrow will assert that Jews not only profited from the presence of the foreign big powers in that region but had actually plotted it and hence are guilty of the consequences.<sup>60</sup>

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<sup>59</sup> "Can the Jewish-Arab Question Be Solved?," 195.

<sup>60</sup> "Zionism Reconsidered," 345.

For Arendt, the UN Partition Plan was destined to fail because it relied too heavily on world partners and the necessary displacement of Palestinian Arabs.<sup>61</sup> By declaring a political state in violation of the borders established by the UN Partition Plan, Ben-Gurion and the early founders set into motion a chain-reaction of nearly constant warfare since its founding in 1948.<sup>62</sup> Today, even Israel's Western allies criticize Israeli policies such as the building of settlements in the West Bank. As recently as March 2016, both France and Germany criticized further Israeli incursions past the Green Line (the armistice line from the 1948 War), with France's Foreign Ministry spokesperson Romain Nadal strongly condemning Israel's settlements, stating, "Settlements constitute a violation of international law and contradict commitments made by Israeli authorities in favor of a two-state solution."<sup>63</sup> The building of these settlements is in line with Maximalist/Revisionist Zionism's vision of having as large of an Israel as possible. Arendt only saw all-out war if Jewish leaders embraced Revisionist policies. Arendt continued to argue for a federation model for Israel, even after the founding of the state.<sup>64</sup> This belief was based on her experiences with National Socialism. As Butler explains:

Arendt thought that the clear mandate from the atrocious historical formation of state violence and genocide that was National Socialism was that no state should be formed on the basis of a single nationality or religion and that the rights of the stateless must remain forever paramount. An alternative slogan, then: statelessness—never again!<sup>65</sup>

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<sup>61</sup> "The Crisis of Zionism," 344.

<sup>62</sup> See United Nations Security Council Resolutions 446 (1979), 726 (1992), and 1322 (2000) for examples.

<sup>63</sup> John Irish and Michael Nienaber, "Germany, France Criticize Israel for Seizing West Bank Land," *Reuters* 2016.

<sup>64</sup> Arendt, "To Save the Jewish Homeland," 397-400.

<sup>65</sup> Butler, *Parting Ways*, 152.

Thus, for Arendt, political Zionism, with its nation-state borders dividing Jews from non-Jews, would have a challenging time existing without conflict.

The reaction on the part of Israel's neighbors has been exactly what Berlin expected. In a 1935 letter to Felix Frankfurter concerning Revisionist and British Zionists' lack of concern over the self-determination of the Arabs living in Palestine, Berlin states: "[I]n fifteen years time the Arab nationalists will be sincere, incorruptible, utterly brutal fascists. It is then that the real fun will begin. Unless something is done now, however, by way of self-explanation, the opportunity will be missed. And it is difficult for anyone, even Weizmann, to do this without being howled down as a traitor."<sup>66</sup> Berlin's timeline is only off by five years. Political leaders in the early Arab nationalist movements came together in 1945 to draw up the Charter of the League of Arab States (LAS). As written in the "Annex Regarding Palestine":

Since the termination of the last great war the rule of the Ottoman Empire over the Arab countries, among them Palestine, which had become detached from that Empire, has come to an end. She has come to be autonomous, not subordinate to any other state. . . . However, even though she was as yet unable to control her own affairs, the Covenant of the League (of Nations) in 1919 made provision for a regime based upon recognition of her independence. Her international existence and independence in the legal sense cannot, therefore, be questioned, any more than could the independence of the other Arab countries.<sup>67</sup>

From the League's inception, the issue of Palestine has been a rallying point for Arab nationalists, and though while one can question the sincerity of current leaders' commitment to Palestine, the fact remains that to this day, Israel's presence in Palestine, which keeps Palestine from having its sovereignty, continues to unify Arab nationalism.

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<sup>66</sup> Berlin, "Letter to F. Frankfurter, 1935," 120-21.

<sup>67</sup> "Charter of the League of Arab States," (Cairo: The League of Arab States, 1945).

Though each member of the LAS has different opinions over what constitute the political borders of Israel, all states in the League, including Egypt and Jordan (who are the only two recognized Arab states that recognize the sovereignty of Israel) agree that there is yet to be an equitable solution to the Arab-Israeli border issues at large.<sup>68</sup>

This history situates the modern predicament of the separation between Jew and non-Jew in Israel. Externally, Israel currently finds itself in border disputes with Egypt near the Gaza Strip, Syria near the Golan Heights, and the Palestinian Authority in both Gaza and the West Bank. Since 2000, the issue of the Security Barrier dividing the West Bank and Israel has increased anti-Israeli sentiments worldwide. Brown explains that even within Israel, “Left Israelis today pose a similar question as the project of walling in West Bank and Gaza Residents not only decreases the possibilities for a political solution, but intensifies the militarization and bunker mentality contouring Israeli life.”<sup>69</sup> Both the Israeli Supreme Court and the International Court of Justice both determined that a barrier separating Israelis from Palestinians is illegal. Yet, the Barrier still stands to this day.<sup>70</sup> Israel has changed the border of the proposed Barrier multiple times since it was first presented, encroaching more and more onto Palestinian-held areas in the West Bank, a clear sign that the expansionist policies of the Revisionists have not abated with time.<sup>71</sup> As Arendt predicted, any Jewish state that does not take into account its neighbors or its

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<sup>68</sup> Martin A. Weiss, "Arab League Boycott of Israel," in *CRS Report Prepared for Members and Committees of Congress* (Congressional Research Service, 2016), 3.

<sup>69</sup> Wendy Brown, *Walled States, Waning Sovereignty* (New York; Cambridge, MA: Zone Books, 2010), 42.

<sup>70</sup> *Ibid.*, 40.

<sup>71</sup> "Icj Advisory Opinion on Israeli Security Fence," *The American Journal of International Law* 98, no. 2 (2004); Xinhuanet, "Backgrounder: Israeli Security Fence," *Xinhua News Agency* 2006.



minority populations will find itself in constant political trouble.<sup>72</sup> The Barrier is not the only way Israel keeps its populations separate. Laws of Personal Status have been brought in as a legal mechanism to support the physical barriers between peoples. By the continuation of Jewish/non-Jewish separation, Israel clings to its ability to define what it means to be Israeli as it sees fit. The earliest PSLs began to form identities for Jews and non-Jews. Today, limitations on PSLs protect Jewish identity through the Jewish family. And, through the Jewish family, a strong Israel survives.

#### **4. DEMOGRAPHIC AND RACIALIZED THREATS TO THE STATE**

The separation of Jew from non-Jew serves to mitigate a second way in which Israel uses PSLs to fight larger ideological wars in Israel. As PSLs become increasingly restrictive, through measures such as the 2003 Citizenship and Entry into Israel Law (Temporary Provision) which has “temporarily” rescinded citizenship through marriage between Israelis and Palestinians for the last thirteen years,<sup>73</sup> the severity of the myth of the demographic war between Arabs and Israelis has escalated dramatically. The laws that keep Arabs and Jews from marrying are in place to keep a mixing of identities from occurring, causing questions over citizenship to arise. All of these concerns lead to the use of demographic scare tactics in the propaganda war against Arabs. After the Second

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<sup>72</sup> Arendt, "New Proposals," 220.

<sup>73</sup> The Citizenship and Entry into Israel Law (Temporary Provision) of 2003 provisionally rescinded the provisions of the Nationality Law, 5712-1952, namely citizenship through marriage. With a vote of 53 in favor, 25 against, and one abstaining, the Knesset passed the Citizenship law of 2003, making it illegal for married Palestinians (from the Occupied Territories) and Israelis to live together for a period of one year, requiring them to either live separate lives in their territories of origin or to move out of the country. See "Human Rights Groups Hit out at Racist Israeli Marriage Law."

Intifada, which began in 2000, the Government Press Office, led by Yoram Ettinger, a former Israeli diplomat, began a concerted campaign to convince Israelis and the world that Israel was winning the demographic context for majority in Israel and would continue to do so. His goal was to convince Jewish Israelis of their demographic advantage, and that non-Jewish Arabs were not in fact growing—something that is patently false. Ettinger's public relations campaign included underreporting Palestinian populations in Gaza and the West Bank by between 1 and 1.5 million persons.<sup>74</sup> Sergio DellaPergola, a leading demographic statistician of Israel and Palestine, shows through his research that Israel will maintain a demographic majority in Israel, Gaza, and the West Bank through 2050. He qualifies these statistics, however, by explaining that due to fertility rates, Jewish populations will decline from 81.4 percent in 2000 to 74 percent in 2050.<sup>75</sup> Within the Jewish population, the Haredi population will increase due to its own high birth rate (on average 6.2 children per family, compared to 2.4 children per family in non-Haredi Jewish families) but still would maintain a minority overall within the Jewish community.<sup>76</sup> Regardless, Israel's ability to continue its policies of inequality will become more difficult to maintain if Jewish populations make up less and less of the population of the state.

The demographic concerns as portrayed by representatives of the State of Israel such as the aforementioned Ettinger, become racialized in two ways: through issues of class and through biopolitical technologies. Benedict Anderson ends his *Imagined Communities* by naming racism as one of the lasting institutions of nationalism. As he

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<sup>74</sup> Ian S. Lustick, "What Counts Is the Counting: Statistical Manipulation as a Solution to Israel's 'Demographic Problem'," *The Middle East Journal* 67, no. 2 (2013): 187-88.

<sup>75</sup> DellaPergola, "Demography in Israel/Palestine: Trends, Prospects, Policy Implications," 20-21.

<sup>76</sup> Myers-JDC-Brookdale, "Israel's Haredi Population: Progress and Challenges," 1.

explains, racism arises out of *class*: “The dreams of racism actually have their origin in ideologies of class rather than in those of nation.”<sup>77</sup> He explains that this happens for two reasons: 1) “[c]olonial racism was a major element in the conception of ‘Empire’ which attempted to wield dynastic legitimacy and national community,” and 2) “the colonial empire . . . permitted sizeable numbers of bourgeois and petty bourgeois to play aristocrat off centre court; i.e. anywhere in the empire except at home.”<sup>78</sup> Historically, these class issues and the racialism that comes from them are inherent within the earliest forms of Jewish nationalism. The earliest Western European Jewish settlers were those who could *afford* to immigrate, to purchase land, and to be financially stable in the British-held Palestinian Mandate. Through financial stability, they found themselves in stronger positions than the Jews (predominantly non-politically active social Zionists) and Arabs already living in Palestine, and they were able to work more closely with the British colonial powers.

But class alone does not explain racialism within Israel. Domenico Losurdo adds that in states with strong racist/racialist tendencies, myths, fabricated by the government, become a way of unifying young nations. These include what Losurdo calls “empty cradle” myths: myths that assert that the land a country has been founded upon was empty at its founding.<sup>79</sup> While Losurdo is discussing this in the American context, within Israel, this type of myth is alluded to in the *Declaration*, which refers to the earliest immigrants to Israel as “making deserts bloom” (while simultaneously not discussing the peoples already

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<sup>77</sup> Anderson, *Imagined Communities*, 149.

<sup>78</sup> *Ibid.*, 150.

<sup>79</sup> Losurdo, *Liberalism: A Counter-History*, 231.

living in said deserts)—a myth that becomes more commonly known as the myth of a “Land Without a People.”<sup>80</sup> Abu Rawia explains:

Israel exercises its colonial power with Zionist ideology as its premise. This ideology constructed the Zionist myth of a ‘land without a people for a people without a land.’ The Zionists created this myth for the purpose of making the false claim that Palestine was empty at the creation of the State of Israel. This myth became the foundation upon which the settler movement operated and is similar to settler projects in other colonial contexts.<sup>81</sup>

Demographically, the Arabs simply do not exist in these early narratives. Racist policies, according to Losurdo, are easier to justify if a strong myth is in place from the country’s inception, one that dehumanizes and deletes indigenous peoples from history (in the Israeli context, this includes Arab Bedouin and in some cases Mizrahi Jews, too).<sup>82</sup> As will be seen below, these concerns over results in concerns in demographics being controlled by government-sponsored family planning technologies and making it illegal for particular ethnic and religious groups to (inter)marry (see chapter five).

Yet, through the many wars, Arabs have continued to survive in Israel, and stronger techniques have been employed to combat the problem of the non-Jew in the Jewish state. The focus on people as populations and bodies as merely part of the greater body/organism of the public moves us towards a power to “take life or let live” to a power sovereign power to “foster life or disallow it.”<sup>83</sup> It is this latter form of power that Foucault refers to as “biopower” or the “entire series of interventions and regulatory controls,” focused around a two-pronged system of anatomic and biological technologies which

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<sup>80</sup> Berlin, “The Achievement of Zionism”. 6; Arendt, “The Jewish State,” 382; “The Declaration of the Establishment of the State of Israel.”

<sup>81</sup> Abu Rabia, “Redefining Polygamy among the Palestinian Bedouins,” 475.

<sup>82</sup> Losurdo, *Liberalism: A Counter-History*, 231.

<sup>83</sup> Michel Foucault, *The History of Sexuality, Vol. 1: An Introduction*, trans. Robert Hurley, Vintage Book ed. (New York: Vintage, 1990), 138.

created “a power whose highest function was perhaps no longer to kill, but to invest life through and through.”<sup>84</sup> This shift of looking at bodies as part of a system of power, according to Foucault, “was without question an indispensable element in the development of capitalism . . . [which] would not have been possible without the controlled insertion of bodies into the machinery of production and the adjustment of the phenomena of population to economic processes.”<sup>85</sup> And through this shift in power, “racism in its modern, ‘biologizing,’ status form” arises.<sup>86</sup>

Class influence may have informed early Israeli views on demographics, but biopolitics was the language through which security measures such as the Barrier (the construction of which began in 2000) were established. Adding a second point of view on the rise of racism in the modern period, which will in part also be helpful for understanding racism/racialism in the state of Israel, Foucault defines racism in his 1975-6 lectures found in *Society Must Be Defended* as

a way of establishing a biological-type caesura within a population that appears to be a biological domain. This will allow power to treat that population as a mixture of races, or to be more accurate, to treat the species, to subdivide the species it controls, into the subspecies known, precisely, as races. That is the first function of racism: to fragment, to create caesuras within the biological continuum addressed by biopower. Racism also has a second function. Its role is, if you like, to allow the establishment of a positive relation of this type: “The more you kill, the more deaths you will cause” or “The very fact that you let more die will allow you to live more.”<sup>87</sup>

Thus, for Foucault, biopower includes the technologies that allow states to control populations through both the individual and the collective bodies of its people. In Israel,

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<sup>84</sup> Ibid., 139.

<sup>85</sup> Ibid., 141.

<sup>86</sup> Ibid., 149.

<sup>87</sup> *Society Must Be Defended*, 255.

forms of state biopower are supported through a combination of PSLs and government programs sponsoring health and fertility initiatives. These measures generate a situation whereby power is diffused throughout society as people are subjected to governmental surveillance as a result of the study of demography,<sup>89</sup> which leads to a rise in the “medicine of perversions and programs of eugenics,”<sup>90</sup> creating the categories that will be used later by state-directed racism.<sup>91</sup>

But where does this shift come from, and how does it apply to Israel? Ann Laura Stoler agrees with Foucault that racism emerges from of an “excess of biopower,” but she also agrees with Anderson that it comes, too, from an “excess of nationalism.”<sup>92</sup> For instance, without a strong nationalist narrative to unite the early Jewish State, the 1948 War/War for Independence may not have been successful in defeating the multinational Arab armies, a narrative that consistently downplayed the significance of the Arabs of Israel and constantly played up the Western values of the Israeli people.

Moving toward a genealogy of racism, Stoler uses Foucault as a framework to critique the nationalisms that lead to colonialism. She argues that liberalism is an exclusionary belief system, that it is exacerbated by nationalism, which is explicitly exclusionary, as nationalism makes women and children simultaneously both part of the project demographically but not explicitly part of the political system with regard to

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<sup>89</sup> Foucault, *The History of Sexuality, Vol. 1*, 116.

<sup>90</sup> *Ibid.*, 118.

<sup>91</sup> *Ibid.*, 119.

<sup>92</sup> Stoler, *Race and the Education of Desire*, 93.

emancipation.<sup>93</sup> There was also a very strongly gendered and racialized slant to nationalism.<sup>94</sup> In regard to European nationalism and colonialism, Stoler states:

Women were seen as crucial to civil society not as participatory citizens in the public sphere, but as those who would insure that marriage, sexual morality, and family provided the natural foundations for civil life. Many have argued that women's rights were restricted by the argument that Motherhood was a "national service." It was also a heavily racialized one; as much as a rhetoric of a master race in peril forced middle-class women in Britain to accept limits put on their civil rights, this same rhetoric of racial superiority served British women in India, American women in the Philippines, and Dutch women in the Indies, all of whom sought new ways to clarify their selfhood and assert their independence.<sup>95</sup>

Thus, according to Stoler, parenting and motherhood specifically became a "class obligation and duty of empire."<sup>96</sup> In this way mothers become an important tool of nationalism, even if they are not necessarily a part of governing of the State. Stoler then concludes with an assertion (and critique of Foucault) that becomes important for this project: "[b]y marginalizing the link between nationalism and desire in both his genealogy of racism and his history of sexuality, Foucault eclipses a key discursive site where subjugated bodies were made and subjects formed."<sup>97</sup> The chapters of part two of this dissertation will look specifically at these formations, including in-depth examinations of at how Israeli women (referred to as Heroine Mothers) were encouraged to have large families beginning in the 1950s (chapter three) and how Ethiopian women were temporarily sterilized without their consent during their immigration process to Israel (chapter six).

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<sup>93</sup> Ibid., 131.

<sup>94</sup> Note the discussion of French anti-Semitism in a colonial context (133).

<sup>95</sup> Stoler, *Race and the Education of Desire*, 131-2.

<sup>96</sup> Ibid., 134.

<sup>97</sup> Ibid., 136.

While citizenship through *jus sanguinis* has come to be related to the inheritance of property, Israel's is still related to religious affiliation—in a state that describes itself as liberal and democratic. Unlike many other Western nations, however, Israel is continuing to cling to religiously charged definitions of citizenship *through a symbolics of blood* (and, as will be seen in chapter six *tangibly* through the disposal of Ethiopian blood donations in Israel), while simultaneously using “regulatory controls: a biopolitics of the population”<sup>98</sup> to control populations that do not fit into political Zionist conceptions of Israeli identity and to shape the demographics of Israel in a way that fits its ideal Zionism.

## 5. DEFINITIONS OF JEWISHNESS AND TIES OF KINSHIP IN ISRAEL

Concerns over demographics have only caused the fight for control over Jewishness to intensify. According to Anderson, European nations beginning in the mid 17<sup>th</sup> century emerged out of an increased secularism.<sup>99</sup> While this does not mean that religion does not play a large role in the culture of certain European states (Cavanaugh will argue, for instance, that it is specifically the democratizing nature of the Reformation that will lead to the movement away from monarchies to the foundations of the nation-state<sup>100</sup>), Anderson states that modern states are founded both linguistically and culturally, as religion in Europe becomes less ecclesiastical. Eventually, different “power-groups” will combine with these “linguistic-nationalisms,” in a “willing merger of nation and dynastic empire.”<sup>101</sup> But

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<sup>98</sup> Foucault, *The History of Sexuality, Vol. 1*, 176.

<sup>99</sup> Anderson, *Imagined Communities*, 39.

<sup>100</sup> Cavanaugh, *The Myth of Religious Violence*, 83-84.

<sup>101</sup> Anderson, *Imagined Communities*, 86.



Anderson stresses that religion is not the founding principle of modern, Western states.<sup>102</sup>

So what, then, of Israel? Can Israel be defined as a *modern* state?

Anderson explains: “official nationalism” is “an anticipatory strategy adopted by dominant groups which are threatened with marginalization or exclusion from an emerging nationally-imagined community.”<sup>103</sup> Moreover, Israel was quite anticipatorily imagined. Zionism was not an organic ground-up movement of nationalism within Palestine, as was seen in Europe. It was a top-down imposition of a nationalist ideal onto a land where many of its theorists did not even live. Political Zionism arose out of a need for the nation of Jews in Europe (especially Eastern Europe) to have a sense of identity like the other peoples around them. Anderson explains: “The significance of the emergence of Zionism and the birth of Israel is that the former marks the reimagining of an ancient religious community as a nation, down there among the other nations – while the latter charts an alchemic change from wandering devotee to local patriot.”<sup>104</sup> The founders of Israel used these ancient ties to the land combined with the ideal of a properly protected Jewish nation to create a national identity from amongst the (predominately European) Jews of the Diaspora, ignoring the identity of much of Middle Eastern and North African (MENA) Judaism.<sup>105</sup>

While other factors will be important to Anderson for the founding of nations, he explains: “[F]rom the start the nation was conceived in language, not in blood, and that one could be ‘invited to’ the imagined community. Thus today, even the most insular nations

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<sup>102</sup> Ibid., 86, 110.

<sup>103</sup> Ibid., 101.

<sup>104</sup> Ibid., 149, note 16.

<sup>105</sup> See sections two and three of chapter one for a discussion of the ethnic makeup of the First Zionist Congress and the use of history in the speeches of David Ben-Gurion.

accept the principle of *naturalization* . . . no matter how difficult in practice they make it.”<sup>106</sup> To be sure, Israel does have definitions of citizenship that involve the possibility of naturalization, but most definitions involve lineage. Or, in other words, blood. In contrast to Anderson, Gil Anidjar argues that far from being conceived in language, Western nations were crafted from a blood imagery that permeated every aspect of identity. Anidjar refers to “the nation” synonymously as a “community of blood” throughout his book *Blood: A Critique of Christianity*.<sup>107</sup> For Anidjar, in Europe, “blood shapes and defines the channels and motions that carry the family, the class, and the race, the nation and the economy.”<sup>108</sup> Furthermore, blood becomes an image within the nation that can either unify or divide. As Anidjar explains, “Blood makes and marks difference, an allegedly universal difference inscribed *between bloods*.”<sup>109</sup> Thus, blood can be used to talk about the nation as a whole, or it can talk about individuals within the nation in terms of having the *right* blood.<sup>110</sup> This primacy of blood over other ways of identifying nation is the backbone of Israeli identity politics. Today, there are four ways in which one can become an Israeli citizen: by birth (if one or both of their parents is an Israeli citizen); by invoking the Law of Return (see

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<sup>106</sup> Anderson, *Imagined Communities*, 145. Emphasis in original.

<sup>107</sup> Gil Anidjar, *Blood: A Critique of Christianity* (Columbia: Columbia University Press, 2014), 71.

<sup>108</sup> *Ibid.*, 89.

<sup>109</sup> *Ibid.*, 85. Emphasis in original.

<sup>110</sup> *Ibid.*, 312 note 8. In this note, specifically, he mentions a small group of Jews within Israel, known as Karaites, who view themselves as having a unique community identified by the cleanliness of their blood. He quotes Ruth Tsoffar, stating, “In contemporary Israel, among other places, and testifying to the endurance of conceptions of blood as community belonging, ‘it is not surprising . . . to find some Israeli Karaite leaders arguing for their community’s legitimacy and for the personal status of individual Karaites by advocating the use of ‘blood tests’ to ‘prove’ their ethnic purity, as if to say, ‘Our blood has been clean for thousands of years. . . . No foreign blood entered us. . . . We did not mix with the goyim [gentiles].’”

chapter one); by residency;<sup>111</sup> or by naturalization. Naturalization is a difficult process, involving a period of residency and the sworn intention to remain in Israel. Ultimately, the final decision is “at the discretion of the Minister of the Interior.”<sup>112</sup>

The Law of Return allows Jews ranging from ultraliberal to ultraconservative to immigrate to Israel with relative ease. Part of this is in support of Israel’s demographic goals: more Jews in Israel give more legitimacy to the Israeli state. Yet, once they are there, not all Jews are allowed to continue practicing as they had in their home countries. A Reform Jew from the United States, for instance, cannot marry under Jewish *halakha*, as his or her Judaism does not follow important laws such as certain laws of *kashrut* and Sabbath day observance. Demographics and expression of Jewishness become more important to the goals of the State than actual Jewish practice.

What we find in Israel today is a reminder of Locke’s concerns over the misuse of the powers roles of religion and the commonwealth. Israel represents how difficult it is to separate secular goals and religious definitions from the modern nation-state, as the opening paragraphs of its *Declaration* draw upon religious and liberal themes to justify the founding of the state (see chapter one). As Cavanaugh notes, this myth of religious violence is used by nations to “legitimate the marginalization of certain types of practices and groups labeled religious.”<sup>113</sup> Through its lack of provisions for equality, a personal status

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<sup>111</sup> According the Ministry of Foreign Affairs, “Persons born in Israel, who have never had any nationality and subject to limitations specified in the law, if they: apply for it in the period between their 18th and 25th birthday and have been residents of Israel for five consecutive years, immediately preceding the day of the filing of their application.” MFA, “Acquisition of Israeli Nationality,” <http://www.mfa.gov.il/mfa/aboutisrael/state/pages/acquisition%20of%20israeli%20nationality.aspx>.

<sup>112</sup> Ibid.

<sup>113</sup> Cavanaugh, *The Myth of Religious Violence*, 4.

system that does not provide the same rights as civil law in other Western countries, and a continued integration of Judaism in the State, Israel will have to continue to delegitimize the Other to continue holding its legitimacy.

## 6. POLITICAL ZIONISM, JEWISHNESS, AND THE DIASPORA

Judith Butler's 2012 *Parting Ways: Jewishness and the Critique of Zionism* is written from the point of view of a secular Jew who has many of the same concerns as Berlin<sup>114</sup> and particularly Arendt foretold in the 1940s and 1950s and that we see today in Israel. While Arendt was able to present solutions to the Arab-Israeli conflict which included a non-statist binational federation without condemnation,<sup>115</sup> Butler finds herself writing in a far different religious and political climate for Jews both in Israel in the Diaspora. She sets out to write "a book seeing to debunk the claim that any and all criticism of the State of Israel is effectively anti-Semitic," using both Jewish and non-Jewish sources to explore issues of state violence, colonial subjugation, expulsion and dispossession.<sup>116</sup>

Today, Israel claims to represent the entirety of the Jewish people, both in Israel and in the Diaspora.<sup>117</sup> Yet Israel has positioned itself in such a way that to criticize the State excludes you from the community of Jewishness. It is this problem that Butler addresses in

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<sup>114</sup> Butler at no time mentions Berlin in *Parting Ways*. While I have no idea why this is the case, it may have something to do with the fact that she would probably see him as falling into the same ideological camp as the other political Zionists she critiques.

<sup>115</sup> It is not until the 1963 publication of *Eichmann in Jerusalem* that individuals such as Gershom Scholem, who accuse her of being unpatriotic toward the new state and not having enough *ahabath Israeli*, or "love of the Jewish people," publically criticize Arendt's Jewishness. Her political views against Zionism prior to this had not been met with public uproar. Arendt, "The Crisis of Zionism," 178, editors' note.

<sup>116</sup> Butler, *Parting Ways*, 1.

<sup>117</sup> *Ibid.*, 2.

her most recent work. By being so fearful of criticizing the State of Israel, important conversations about human rights, the status of women, and dispossession of Palestinians fail to occur in Jewish circles. In fact, as Butler explains, Edward Said, toward the end of his life, called upon Jews to remember the periods of dispossession in their own history, from the Exodus to the Diaspora, believing that there should be a Jewish resistance to Israel based on the same concerns posed by the Palestinians.<sup>118</sup>

The continued Arab-Israeli conflict has created a power gap whereby Israel has created a binationalism like that argued for by Arendt and Butler. In *Parting Ways*, Butler provides a “theorization of cohabitation and binationalism” that would allow Israelis and Palestinians to coexist under one State, but only through, as she describes it, “the dismantling of political Zionism.”<sup>119</sup> But, as Butler points out, this binationalism is “wretched.”<sup>120</sup> Instead of creating a state of (at least) two equal peoples, Israel has become a state of Jewish supremacy defined through PSLs. Israel as a nation, defined by its Jewish culture, has created a system by which its very identity is wrapped up in the subjugation of others. Butler asks, “[W]hat would Israel be without its subjugation of Palestinians?”<sup>121</sup> Something wholly different, she argues—something better. In 1944, Arendt expressed concerns over the “aloofness” she saw in Palestinian Jewry, who culturally saw themselves as more important than Diaspora Judaism: “instead of making itself the political vanguard of the whole Jewish people, [Palestinian Jewry] developed a spirit of self-centeredness”<sup>122</sup> which even then distanced Zionists from the rest of the Jewish world.

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<sup>118</sup> Ibid., 29.

<sup>119</sup> Ibid., 7.

<sup>120</sup> Ibid., 210.

<sup>121</sup> Ibid., 214.

<sup>122</sup> Arendt, “Zionism Reconsidered,” 361.

At the crux of Butler's critiques of political Zionism the fact that, from the outside, many people view Judaism and Zionism as synonymous terms (though I do not think she would argue that they are not *intertwined* concepts). Because this leads many to think that all Jews are Zionists, some Jews feel compelled to leave Judaism if they do not agree with mainstream Israeli Zionism.<sup>123</sup> Agreeing with Butler, I would add that this fact alone stands as one of the greatest challenges facing political Zionism today. A movement that was founded to protect the religious and political rights of Jews has now become so hegemonic in its positions that it redefines Jewishness for Jewish groups that do not fit into their ideal version of Judaism. It is this Israeli, Zionist hegemony over definitions of Judaism, along with the colonial subjection of the Palestinian people, to which Butler most objects.<sup>124</sup>

Take, for instance, the proposed Law of the Nation, which if it had passed would have added a new Basic Law to Israel's nonconstitutional system. In 2014, Prime Minister Benjamin Netanyahu's cabinet put together a fourteen-point Basic Law that would once and for all define Israel as a Jewish state in plain language. The proposed law stated: "The purpose of this Basic Law is to secure the character of Israel as the National State of the Jewish People in order to codify in a basic law the values of Israel as a Jewish democratic state in the spirit of the principles of its Declaration of Independence."<sup>125</sup> This proposal, which ultimately failed, went on to outline the cultural nature of the Jewish state, describing the flag (the current flag of Israel), the anthem (Hatikva), and the state symbol ("a seven-branched menorah with olive branches on either side of the menorah and the

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<sup>123</sup> Butler, *Parting Ways*, 3.

<sup>124</sup> *Ibid.*, 4.

<sup>125</sup> Avi Dichter, "Basic Law: Israel as the Nation-State of the Jewish People," ed. 18th Knesset (justice.gov.il: Ministry of Justice, 2014).

word 'Israel' at its base").<sup>126</sup> It also would have made Hebrew the only official language of the state. Furthermore, the law would also have required public schools to teach Jewish history. Regarding the calendar, the proposal formally instituted the Hebrew calendar, listed the Day of Remembrance, Holocaust Memorial Day, and Independence Day as state holidays, and it tried to put into effect protections for Jewish workers wishing to observe the Sabbath. State symbols, a state language, or state holidays have never been put into a Basic Law.<sup>127</sup> Finally, it tried to reaffirm the primacy of Jewish laws within Israel's legal system, stating; "Where a court decides that a dispute cannot be resolved by existing statute, by judicial precedent, or by strict legal analogy, it shall render its decision in accordance with the principles of freedom, justice, equity, and peace derived from Jewish civil law."<sup>128</sup>

Failure to come to an agreement on a coalition to support this bill in the Knesset led to the dissolution of the 18<sup>th</sup> Knesset and to a new election for Prime Minister, which Netanyahu won in March 2015. By July 2015, a revised "Law of the Nation" was presented before the Knesset by Likud MK Benny Begin.<sup>129</sup> Continued criticism of the bill, centering around concerns that it would lead to "anti-democratic legislation and discriminatory policies against Israel's Arab population," led the Netanyahu government to dissolve discussion of the bill in October 2015.<sup>130</sup> Though the many iterations of this law have failed, the fact that conservative governments in Israel spent a full year and two separate

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<sup>126</sup> *Ibid.*

<sup>127</sup> Tamar Pileggi, "Ministers Debate Softened Version of 'Jewish State Bill'," *The Times of Israel*, July 12 2015.

<sup>128</sup> Dichter, "Basic Law: Israel as the Nation-State of the Jewish People."

<sup>129</sup> Pileggi, "Ministers Debate Softened Version of 'Jewish State Bill'."

<sup>130</sup> Times of Israel Staff, "Government Shelves Controversial 'Jewish State Bill'," *ibid.*, October 25.

Knessets trying to pass this bill shows their fears over losing its control over definitions of Jewish and Israeli identity.

Echoing Arendt, Butler believes that early political Zionism, which gave little thought to the rights of the Arabs already living in Palestine, should never have pursued statehood through the methods of settler colonialism described by Fanon. I would argue that these practices Fanon describes are heightened by the biopolitics Foucault analyzed. Butler rejects any one- or two-state solution that fails to allow for equal coexistence of all religions and nations within Israel and Palestine.<sup>131</sup> Rather than ask the question “Do you believe in Israel’s right to exist?”, she finds it more productive to instead ask:

What form of polity could be regarded as legitimate for lands that are currently inhabited by Jewish and Palestinian Israelis, and by Palestinians living under occupation, and are no longer inhabited by hundreds of thousands [of] Palestinians who were dispossessed of their lands through a systematic and recurrent pattern of land confiscation that is part of the ongoing project of settler colonialism?<sup>132</sup>

However, questions such as this one, as will be discussed below, are seen as anti-Zionist, even conflated as antisemitic by some, thus, according to Butler, keeping many Jewish and non-Jewish critics of Zionism silent.<sup>133</sup>

For Butler, political Zionism should have taken note of Berlin’s stern recommendation to keep religious definitions and Judaism completely separate from definitions of citizenship in Israel as a liberal state. Furthermore, political Zionism fails religiously because it culturally mandates Jewish beliefs onto Jews both in Israel and in the Diaspora. Butler argues that it is neither “self-hating” nor “anti-Semitic” for Jews to

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<sup>131</sup> Butler, *Parting Ways*, 7.

<sup>132</sup> *Ibid.*, 19.

<sup>133</sup> Dichter, "Basic Law: Israel as the Nation-State of the Jewish People."



question Israel (or any other state for that matter), citing a long history of questioning within the Jewish tradition.<sup>134</sup> There is something particularly alarming in accusing a Jew of being antisemitic. If Zionism is to be political, and if Israel is to be a democratic, liberal state, assuming that Locke is right, neither Zionism nor Israel in any way should influence, or legislate, the religious beliefs of anyone, Jewish or otherwise.

## 7. CONCLUSION

In this chapter, I traced concepts including tolerance, liberalism, religion, and colonialism and placed them in a framework through which to analyze the State of Israel. All of these concepts come to bear in the current challenges facing Israel, seen through separation of groups based on religion and ethnicity, perceptions of demographics and the state, and how all of these problems are tied to Jewishness and familial relationships. Israel's behavior as a state toward its own citizens, while clearly influenced by its Jewish roots, can be understood and analyzed within the greater conversations surrounding liberalism in the modern world. This analysis invites questions over the future of political Zionism as a form of governance. PSLs, as influenced by the project of political Zionism, become a vehicle through which the tensions found in the liberal state affect the daily lives of citizens. Part two of this dissertation addresses ways in which the problems of citizenship, demographics, and PSLs presented in this chapter have been used to control the future trajectory of Israeli identity and the varied responses from many religious and ethnic groups. From early Mothers of the Nation to resurgent polygynous practices to Jewish-Arab intermarriage and on to the struggles of the Ethiopian Beta Israel, these

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<sup>134</sup> Butler, *Parting Ways*, 116.

chapters explore what it means to live today or in the future under Israel's laws of personal status.

# Part Two

### Chapter Three

## “Heroine Mothers”: Women’s Bodies, Pro-Natal Policies, and Assistive Reproductive Technologies in Israel<sup>1</sup>

### 1. INTRODUCTION

In 2013, on the sixty-fifth anniversary of the founding of the State, the Israeli government announced an important achievement: the population of Jews in Israel had finally surpassed that of the United States. It was now the largest Jewish population in the world, topping six million Jewish people.<sup>2</sup> This statistic is significant in two ways. First, it took nearly sixty-five years for this growth to occur; and second, the population of Jews in Israel had surpassed that of the Jews lost in the Holocaust.<sup>3</sup> The dramatic loss of life in the 1930s and 1940s informs many of the demographic goals Israel has today. The creation and preservation of life are an integral part of Jewish-Israeli identity, from birth and fertility to end of life decisions and euthanasia. For instance, within Israel, the preservation of life is seen as being of greater legal importance than end-of-life directives. According to Schick Tanz et al:

a general presumption that autonomy, as ‘a’ democratic value, has to be balanced with Jewish religious values—of which ‘sanctity of life’ is the most important. This can be seen in the (non-liberal, socially prescriptive) recommendation of the Israeli committee that caregivers have a duty to persuade patients to accept oxygen, food, drink and regular medicine, and that they may not withdraw ongoing medical treatment. Similarly, the Israeli law adopted the committee’s recommendation that doctors must administer

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<sup>1</sup> This chapter was originally presented at two conferences: the annual meeting of the Western Political Science Association, San Diego, California, March 2016, and the annual meeting of the ASPECT Conference, Virginia Tech, Blacksburg, Virginia, March 2016. Thank you to Ellen Andersen, Komal Dhillon, and Arnold Fleischmann for their critical feedback at these conferences.

<sup>2</sup> Israel Central Bureau of Statistics, "Press Release: 65th Independence Day - More Than 8 Million Residents in the State of Israel," ed. Israel Central Bureau of Statistics ([www1.cbs.gov.il](http://www1.cbs.gov.il)2013).

<sup>3</sup> DellaPergola, "Demography in Israel/Palestine: Trends, Prospects, Policy Implications," 5.

artificial feeding and fluids even if the patient made advance directives to the contrary.<sup>4</sup>

Thus, even in situations where a patient may be suffering in ways that may lead to a cessation of medical treatment, such decisions are not recommended and in some cases are even impossible in Israel, due to the primacy of preserving life.

While end-of-life decisions, passive euthanasia, and final directives are outside of the purview of this project, being aware of how life ends in Israel casts light on how it begins. The focus on the preservation of life at all costs was inherited by post-Holocaust generations in multiple ways, including the importance of creating as much new life as possible, primarily through the encouragement of large, natural-born families. Many of the personal status laws (PSLs) and subsequent social programs of Israel were formed with this concern in mind, giving women access to financial and medical support to have as many children as they could, without fear of losing their jobs or of not having the financial resources to care for their families.

In Israel, women are equal to men in many prominent ways, including perceived fitness for serving as Prime Minister and serving alongside men in the Israeli army. However, even today, they are not equal privately, namely in the home and under Jewish law. As Lahav explains, a study of married women in Israel in the 1970s showed that even more than twenty years after Israel's founding, the social and gender equality of men and women was largely a myth. She states:

The study of married women further indicated that women saw themselves as inferior to men in general and their husbands in particular. Conflicts within the family tended to end with wife deferring to her husband's wishes. The

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<sup>4</sup> Silke Schicktanz, Aviad Raz, and Carmel Shalev, "The Cultural Context of Patient's Autonomy and Doctor's Duty: Passive Euthanasia and Advance Directives in Germany and Israel," *Medicine, Health Care and Philosophy* 13, no. 4 (2010): 366.

husband was usually the principal decision maker in major policy issues concerning the home. For the majority of the participants having a job outside the home meant work in addition to, but not displacing, any part of the woman's responsibilities in the home.<sup>5</sup>

The connections Israeli women feel toward motherhood and national identity have remained largely unchallenged since the 1970s. Even now, motherhood becomes the crowning achievement of a Jewish woman, and 21st century Jewish women who are unable to naturally have children, according to Haelyon, inherit a narrative that “associates infertility with inability to take part in the collective mission,” namely the perpetuation of the demographically strong Jewish State.<sup>6</sup> Israel, therefore, is only as enduring as the strength of its next generation, and Israel’s national project is reliant upon the procreative bodies of its women. However, as will be explored in this chapter, while women have full emancipation in Europe, their lives within Israel is still heavily skewed toward maternal roles, with their natality becoming their central role in Israel’s national identity.

Today, the State of Israel encourages Jewish women to have families, large when possible, and to use government resources to ensure the healthy birth and longevity of the future generation. As will be seen below, while resources to have large families are readily available, through national medical services, contraceptives and general family planning are not. Israeli Christians and Muslims are not given this encouragement equally and are often not aware that such resources even exist.<sup>7</sup> Furthermore, Arab-Israeli Muslims who are aware of the availability of these technologies are often discouraged by their religious

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<sup>5</sup> Lahav, "The Status of Women in Israel-Myth and Reality," 110-11.

<sup>6</sup> Butler, *Parting Ways*, 116.

<sup>7</sup> Birenbaum-Carmeli, "The Politics of 'the Natural Family' in Israel," 1022.

leadership from using them due to religious prohibitions against using donor eggs.<sup>8</sup> Thus, even if an Israeli doctor were to give them the option to pursue assistive reproductive technologies, Muslims may still decline them for religious reasons. From public education to marriage laws to government programs encouraging the use of assistive reproductive technologies and discouraging birth control, Jewish women are called to play an important role in ensuring the growth of the Jewish State and in raising the citizens of tomorrow. This chapter examines how Israel has endeavored to carefully craft gender relations in Israel to ensure the future of its Zionist project through the education of women and financial and governmental support for marriage, large families, and assistive reproductive technologies.

## **2. EDUCATING THE “MOTHERS OF TOMORROW”**

Even before the State of Israel was founded, Palestinian Jewish women living under the Ottoman Empire were encouraged by their families to be educated. The goal of this education was to cultivate the future mothers of the new nation. Popular in the 1920s, inspirational (often fictional) stories of Jewish women taking on the roles of Mothers of the Nation began appearing in newspapers such as *Doar ha-Yom*. According to Melman, these stories would describe the ideal Jewish woman in Palestine, with the pioneer women of the British Mandatory period “described as a link in the chain of mothers of the nation, which includes the biblical Sarah, Deborah, and Yael.”<sup>9</sup> In Judaism, Sarah is known for being the

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<sup>8</sup> "Reproductive Policy in Context: Implications on Women's Rights in Israel, 1945-2000," *Policy Studies* 24, no. 2-3 (2003): 108; "'Cheaper Than a Newcomer': On the Social Production of Ivf Policy in Israel," *Sociology of Health & Illness* 26, no. 7 (2004): 907.

<sup>9</sup> Billie Melman, "The Legend of Sarah: Gender, Memory, and National Identities (*Eretz Yisrael/Israel, 1917-1990*)," in *Jewish Women in Pre-State Israel: Life History, Politics, and Culture*, ed. Ruth Kark, Margalit Shilo, and Galit Hasan-Rokem (Lebanon, New Hampshire: Brandeis University Press, 2008), 302.

mother of all of Israel, and Jews are her religious descendants through her son, Isaac.<sup>10</sup> Even today, converts to Judaism are known as the sons and daughters of Abraham and Sarah, who take the place of Jewish parents in their Hebrew name lineage.<sup>11</sup> Deborah and Yael, the heroines of Judges 4-5, while not directly shown as being mothers in the text, are referred to as “mother in Israel” and the “most blessed of women,” respectively.<sup>12</sup> Deborah served as Judge of the people, the only woman to do so, leading her people into battle against the Canaanites. She did this, notably, because the actual military commander, Barak, refused to go without her. Because of Barak’s lack of faith, Deborah, who was also a prophet, predicted that a woman, and not he, would be remembered for this victory. Yael is this prophesied woman, a non-Israelite to boot, who ends up killing the commander of the Canaanite army and bringing peace to the land for forty years. These appeals to the history of mothers in the Holy Land serve to bring all Israeli women into the cultural memory of the land and the people, and their maternal qualities are lauded as being vital to the future of the nation. This call back to history to support current policies is part of many national projects, as was seen in chapter two. Along with these sorts of historical stories, literacy and education became an important part of early Jewish nation-building within Palestine.

In the late Ottoman period moving into the British Mandatory period, education, specifically the education of women, became an important part of crafting a national identity for both Palestinians and early Zionists. Ela Greenberg connects this push toward

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<sup>10</sup> See Genesis 17-21.

<sup>11</sup> All converts to Judaism take on a Hebrew name just as all children are given Hebrew names. Children of Jewish parents are known as the sons or daughters of their parents’ Hebrew names. Given converts do not have Jewish parents, in lieu of Hebraizing their non-Jewish parents’ names, they are given the adopted parents of Abraham and Sarah, the founding parents of the Jewish people.

<sup>12</sup> Judges 5:7, 24 (Revised Standard Version).



education and the creation of a national identity, especially in Arab Palestine, with Anderson's positions on print capitalism and literacy via education.<sup>13</sup> As Anderson argues, print languages chosen by monarchies and newspapers aided nationalist projects in three ways: first, they "created unified fields of exchange and communication below Latin and above the spoken vernaculars"; second, "print-capitalism gave a new fixity to language, which in the long run helped to build that image of antiquity so central to the subjective idea of the nation"; and finally, "print-capitalism created languages-of-power of a kind different from the older administrative vernaculars."<sup>14</sup> Palestine was no different. Both Arab Palestinians and local Jews began building their own national projects from within Ottoman and British educational systems.

According to Greenberg, within the Arab Palestinian community, "educated [Palestinian] women used their literacy to take small steps within the public sphere, particularly by writing in the local and non-local Arabic press and delivering talks on the radio. Both served as a vehicle for transmitting ideas, and in the case of women, for making their voices heard."<sup>15</sup> The Islamic Girls' School and the Anglican-run Jerusalem Girls' College both subscribed to newspapers and journals that included the writings of women. In the 1920s, it was a common practice for men to give subscriptions to print text as presents to young women in Palestine, thus implying the importance of educating women during this period.<sup>16</sup>

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<sup>13</sup> Ela Greenberg, *Preparing the Mothers of Tomorrow: Education and Islam in Mandate Palestine* (Austin: University of Texas Press, 2010), 9.

<sup>14</sup> Anderson, *Imagined Communities*, 44-45.

<sup>15</sup> Greenberg, *Preparing the Mothers of Tomorrow*, 168.

<sup>16</sup> *Ibid.*, 169.

During the Mandatory period, Anglican schools in Palestine catered primarily to Christian students, but a sizeable minority of Jewish and Muslim students attended these schools, including the Jerusalem Girls' College and the English High School at Haifa. An important mission of these schools was encouraging "peaceful coexistence and tolerance for the other," even if the curriculum was heavily influenced by avowedly Christian teachings.<sup>17</sup> According to Greenberg, "[t]he missionary teachers often referred to the Anglican schools as having the unique position of being a 'miniature League of Nations,' reflecting the encounter and friendship between girls of different nationalities and religious backgrounds."<sup>18</sup> This type of religious tolerance, with its invocation of friendship between peoples, holds echoes of Locke (see chapter two). Yet, while these schools would have some success in bringing multiconfessional students together, ultimately, separate nationalist movements would give rise to private schools for Jews and Muslims, respectively.<sup>19</sup> Arab Palestinians clung to learning and expanding Arabic literature as a part of national identity, forming schools to teach both men and women Arabic instead of colonial languages.<sup>20</sup>

Schools were created for Arab women in areas with enough resources to have schools (coeducational schools existed in more rural areas), and the stated goal of women's education was to train them to educate their future sons to be nationalists.<sup>21</sup> In Egypt, for instance, there was a direct connection with education and becoming "modern."<sup>22</sup> Egypt

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<sup>17</sup> Ibid., 77.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid., 76-78; 88.

<sup>20</sup> Ibid., 15.

<sup>21</sup> Ibid., 16-17.

<sup>22</sup> Ibid., 168.

would only advance to take its proper place in the world community if its women were educated.<sup>23</sup> Under most of the Ottoman Empire, including Palestine, early education was gender segregated, though as will be seen in Palestine, coeducational facilities were built in more rural areas due to constrained budgets.<sup>24</sup> Literacy became associated within nationalism, both in Palestinian and Jewish communities. For the Palestinians, literacy was a crucial component in uniting the people against the British, whom they believed purposely kept the Palestinians illiterate so they would not rise up.<sup>25</sup> Jews on the other hand pushed this literacy through the acquisition of Hebrew within all of the Jewish communities of Palestine.<sup>26</sup>

A 1911 article by Khalil al-Sakakini, a well-known Arabic teacher of the period, describes the importance of educating women: “The woman raises her children and is their teacher and her home creates the men of the future and his women. How can she prepare men who are enlightened about the nation when she does not learn this art in school?”<sup>27</sup> The private schools started in Palestine were seen both as a challenge to the West and to modernity; furthermore, Jews were seen as having “secular influences” on Arab Palestinians (Jewish students were educated alongside Arab Muslim and Christian students in the public schools), so private schools became a way of strengthening Palestinian nationalism.<sup>28</sup> These schools, while bringing women out of the home as students, also educated them for a future in the home. Female education changed in tone to

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<sup>23</sup> Ibid., 3.

<sup>24</sup> Ibid., 11.

<sup>25</sup> Ibid., 69-70.

<sup>26</sup> Ibid., 92. Recall Anderson’s connections with nationalisms and literacy. See Anderson, *Imagined Communities*, 44-45.

<sup>27</sup> Greenberg, *Preparing the Mothers of Tomorrow*, 16.

<sup>28</sup> Ibid., 94, 106-7.

not only educate the sons of the future, but also to create Palestinian women as “preservers of culture against Western colonialism” (this sentiment included both the British and the Zionists).<sup>29</sup> Many of the Palestinian women educated during the Mandatory period were the first of their families to receive an education. The breakout of the 1948 War, however, would put Palestinian women’s education on hold. After 1948, Palestinian women were at the forefront of pushing for the reestablishment of schools, as they saw their roles as mothers and educators as vital for keeping their national identity intact.<sup>30</sup>

Similar trends, some in response to Palestinian education programs, arose within Jewish communities in Palestine during the late Ottoman period and into the Mandatory period. Like in Arab communities, the education of young women was described as a positive sign of “social progress” in Jewish communities. Educating young women in Hebrew, the domestic arts, “arithmetic, history, geography, and natural science” gave these women the skills to care for their families in modern ways and to add to the growth of the nation. Thus, women’s education became known as being for the “good of the nation.”<sup>31</sup> In fact, many of the Jewish schools patterned themselves after earlier Palestinian schools. Jews recognized that Palestinian nationalism had been strengthened by the education of women, namely the eradication of certain folk practices that kept Jews from modernizing.<sup>32</sup> In addition to the aforementioned topics of education, one particular area of focus of education in Israel would come to be called maternalism, or new, scientific forms of raising children and keeping the home (see section three).

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<sup>29</sup> Ibid., 95, 111.

<sup>30</sup> Ibid., 193, 95.

<sup>31</sup> Margalit Shilo, *Princess or Prisoner?: Jewish Women in Jerusalem, 1840-1914*, trans. David Louvish (Waltham, Mass.: Brandeis University Press, 2005), 160; 63;76.

<sup>32</sup> Greenberg, *Preparing the Mothers of Tomorrow*, 137.

Motherhood was described as “a supreme religious mission” for Jewish women, and the ideal Jewish woman in Jerusalem at the turn of the century was a mother who produced children (in fact, there were laws in place requiring divorce if a Jewish couple had not produced offspring within 10 years).<sup>33</sup> Mandatory Palestinian Jews, especially in Jerusalem, formed a polyglot community. In the early 1900s, the Jewish leadership of Jerusalem began to see Hebrew as a way of unifying the community into a nation regardless of ethnic group. As such, Hebrew began being connected with Israeli nationalism and love of nation, in spite of Theodor Herzl’s cautions against instituting any official language in Israel (see chapter one)<sup>34</sup>. Instead, this movement toward Hebrew as a unifying identity for a nascent Jewish nation in the early 1900s echoes Anderson’s understanding of linguistic nationalisms in Europe in the mid- to late-1800s. According to Anderson, “the conviction that languages (in Europe at least) were, so to speak, the personal property of quite specific groups – their daily speakers and readers – and moreover that these groups, imagined as communities, were entitled to their autonomous place in a fraternity of equals.”<sup>35</sup> Mothers’ place in this imagined community of Israel was as the teachers of Hebrew to their children and the caregivers of the future nation.<sup>36</sup> In fact, mothers were seen as more influential than just about anyone else, including fathers, schoolteachers, and religious leadership, in influencing a new generation to adopt

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<sup>33</sup> Shilo, *Princess or Prisoner?*, 99, 103.

<sup>34</sup> Herzl, "Der Judenstaat," 42.

<sup>35</sup> Anderson, *Imagined Communities*, 87.

<sup>36</sup> Shilo, *Princess or Prisoner?*, 160, 69, 76, .

Hebrew.<sup>37</sup> However, this role was not equal to men, as it necessarily required women to remain in the home.

### 3. MARRIAGE AND THE FAMILY

As explained in chapter one, after the founding of the State of Israel, several key laws were passed, including the 1950 Age of Marriage Law and the 1951 Women's Equal Rights Law (WERD). Both laws were championed as protecting women's rights and moving Israel into modernity by both lawmakers and citizens.<sup>38</sup> Yet, at the same time, other programs were being sponsored by the government that reinforced traditional family roles. On the one hand, the WERD gave women equality in the workplace and the right to pursue careers, for instance. The WERD also did not allow for discrimination based on gender. On the other hand, the law was written with the caveat that the rights given under the WERD did not supersede other laws prohibiting women from *particular* professions, namely serving as rabbis or on religious courts, professions that remain closed to women in Israel to this day.<sup>39</sup> These laws did far more than change the trajectory of women's lives in Israel. They, in fact, served to further shape women into the types of bodies Israeli nationalism needed: bodies willing to marry and to have multiple children, often at the expense of their own health through invasive assistive reproductive technologies.<sup>40</sup>

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<sup>37</sup> Ben-Artzi, "Have Gender Studies Changed Our Attitude toward the Historiography of the *Aliyah* and Settlement Process," in *Jewish Women in Pre-State Israel: Life, History, Politics, and Culture*, ed. Ruth Kark, Margalit Shilo, and Galit Hasan-Rokem, Hbi Series on Jewish Women (Lebanon, New Hampshire: University Press of New England, 2008), 20.

<sup>38</sup> Yuval-Davis, "The Bearers of the Collective," 16.

<sup>39</sup> *Ibid.*

<sup>40</sup> Birenbaum-Carmeli, "Reproductive Policy in Context," 108.

Today, Jewish women's identities as mothers in Israel are encouraged by an ever-increasing public pronatalism. This encouragement toward motherhood happens in three main ways in Israel: through marriage laws themselves; through the encouragement and financial backing of the government to have large families; and through fertility treatments such as in vitro fertilization (IVF) and, to a lesser extent, donor insemination (DI) if they are unable to conceive naturally. The goal of this framework of policies is simple: the perpetuation of a Jewish Israel. The following sections will investigate key interventions by the Israeli government into the reproductive lives of women, including women (such as same-sex couples) who are not generally encouraged under *halakha* to have families; these interventions all have the common theme of supporting women toward pursuing motherhood.

### **3a. Marriage and the Family, Nationalized**

According to the 16<sup>th</sup> century *Shulchan Aruch* (Code of Jewish Law), widespread marriage was a sign of a healthy community. As such, during this period, women could be married as young as twelve years old and men as young as thirteen years old, according to interpretations of Jewish law.<sup>41</sup> Children marrying young was seen as morally positive, and “marrying off one’s children at an early age was also intended as a measure against succumbing to sexual desire before it could arise.”<sup>42</sup> Prior to the 20<sup>th</sup> century in Jerusalem, a regulation was in place that required any man of marrying age entering Jerusalem to be married within six months, otherwise, he would be forced to leave. This policy applied to

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<sup>41</sup> Shilo, *Princess or Prisoner?*, 37-8.

<sup>42</sup> *Ibid.*, 39.

all men, aged twenty to sixty, and was compulsory regardless of a man's financial situation.<sup>43</sup> Jerusalem was the Holy City, and these regulations on marriage helped ensure the wholesomeness of the community. Shilo explains:

[m]arried life was recognized as the best way to preserve society's purity. The lack of any reference to women in the regulations speaks for itself; it essentially expresses the view that women are no more than instruments, expected to come and get married at any time and under conditions. There was no similar regulation concerning women – that would have been considered superfluous or impractical.<sup>44</sup>

Thus, Jerusalem could only be healthy if it was full of families, properly married under *halakha*.

Furthermore, there was a gendered goal to these young marriages as well.

According to Shilo, it was a common belief in the early 1800s that “[t]he bride’s youth guaranteed that she would be completely under the sway of her parents and husband, in a state of utter submission and resignation.”<sup>45</sup> These views would begin to change during the last days of the Ottoman Empire. By the 19<sup>th</sup> and 20<sup>th</sup> centuries, the practice of children brides and grooms began to be questioned by Jews both within and outside of Palestine, and child marriage began to be seen as a means of subjugating children who were neither old enough nor sexually mature enough to enter into such relationships.<sup>46</sup> When the first girls’ school in Jerusalem, the Evalina de Rothschild School, opened at the beginning of the 20<sup>th</sup> century, one of its chief goals was to keep young women from being married until a later age, closer to 17-18.<sup>47</sup> This had a disproportionately higher effect on

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<sup>43</sup> Ibid., 36-37.

<sup>44</sup> Ibid., 37.

<sup>45</sup> Ibid., 39.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid., 41.



Sephardi/Mizrahi women, who tended to marry younger than their Ashkenazi peers. Educated women served the function of mothers of the next generation and became the keepers of religious knowledge for their sons, who were infinitely preferred to daughters, especially in the Sephardic communities.<sup>48</sup>

The education in these early schools involved lessons in maternalism, the application of new scientific techniques to childrearing and housekeeping. Organizations such as Hadassah (the Women's Zionist Organization of America)

targeted Jewish and Arab women alike, presenting them with a 'new version of motherhood based on science rather than superstition, and modeled on American values rather than traditional folk customs.' . . . Hadassah's projects saw both Jews of Middle Eastern origin and Arabs in Palestine as being the antithesis of the 'new man,' which the 'Easterner being code for all that is not hygienic,' who was characterized by a 'primitiveness,' with no interested in adopting the rational rules of health that doctors and nurses of Hadassah promoted.<sup>49</sup>

Even from its earliest days, the education of Jewish women involved putting Western values over Eastern ones, and focused on the role of mothering over all other roles for women. Women who were uneducated on modern parenting techniques were accused not only of causing infant mortality, but also of damaging the nation itself by not raising healthy children.<sup>50</sup>

Israel's PSLs today appear designed to work in conjunction with these trends introduced in early Israeli education to create the Jewish Mothers of Tomorrow, a phrase originally used to describe ideal female graduates within Palestinian schools in Jaffa.<sup>51</sup>

Israel's legal system governing personal status is unique, especially for the West. As

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<sup>48</sup> Ibid., 93-98.

<sup>49</sup> Greenberg, *Preparing the Mothers of Tomorrow*, 135-6.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid., 134.

discussed in chapter one, according to Shiloh, Israel is the only Western nation that does not have a civil recourse for issues of personal status, leaving Israelis nearly completely under the purview of religious courts and tribunals.<sup>52</sup> For decisions on marriage and divorce, several laws were enacted in the 1950s, each with, according to the government, the goal of increasing women's rights, often in ways that also tied women and their bodies into definitions of citizenship and Jewishness. In addition to the 1950 Age of Marriage Law, the Equality of Women's Rights Law of 1951 and the Penal Law Amendment (Bigamy) Law of 1959 were introduced as laws promoting the rights of women. Shifman explains that polygyny, as it was practiced by non-Ashkenazi communities, was equated to the abuse of women, regardless of their cultural background (see chapter four).<sup>53</sup> And while we know polygyny was rarely practiced even in Sephardi communities by the mid 1800s,<sup>54</sup> by framing the practice in the language of abuse, Ashkenazi lawmakers in the 1950s helped to solidify the perception that the Sephardim were backwards and uncultured compared to their Ashkenazi neighbors. Regarding these perceptions, while intermarriage occurred between Ashkenazi and Sephardi communities, there was a gender bias even there, as it was acceptable for Ashkenazi men to marry Sephardi women but not vice versa. Furthermore, Sephardi women were expected to learn Ashkenazi religious and cultural traditions, including food, dress, and language.<sup>55</sup> A pervasive orientalism came to represent the relations between Jewish communities, with Ashkenazi, often Haredi,

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<sup>52</sup> Shiloh, "Marriage and Divorce in Israel," 479.

<sup>53</sup> Shifman, "The English Law of Bigamy in a Multi-Confessional Society: The Israel Experience," 85.

<sup>54</sup> Shilo, *Princess or Prisoner?*, 81.

<sup>55</sup> *Ibid.*, 47.

interpretations of Jewishness being connected with national identity, and Sephardim and Mizrahim being associated with archaic forms of Jewish expression.<sup>56</sup>

Keeping the family unit intact is also of importance to the Jewish state. As Shiloh explains, from the moment of marriage under Jewish *halakha*, “the woman is forbidden to all except her husband and cannot sever the tie until he dies or divorces her. Although she may ask for it, she can only be the passive recipient of the divorce (the term in Hebrew is banishment).”<sup>57</sup> This is rather different for women in Muslim communities in Palestine, who under *shari’a* are allowed to petition a divorce from their husbands. During the Ottoman period, there are examples of Jewish women who would temporarily convert to Islam to use Muslim courts to petition for divorce, because their own courts did not give them these rights.<sup>58</sup> Today, divorce, along with marriage, remains firmly in the defining hands of the religious courts, which keeps families together because of a lack of civil legal recourse. Recalling Yuval-Davis, the public outcry that arises every time civil marriage and divorce is discussed in Israel has less to do with orthodox religious practices (given how many secular Zionist support this point of view) and more to do with fears over what she called a “national split.”<sup>59</sup> The right to protections of personal status under civil law, believed to be as so integral to other Western systems of law, is seen and promulgated as so negative that to question its lack of presence in Israel is to be against the state and the people.<sup>60</sup>

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<sup>56</sup> Ibid., 88.

<sup>57</sup> Yuval-Davis, "The Bearers of the Collective," 17.

<sup>58</sup> Masters, *Christians and Jews in the Ottoman Arab World*, 34.

<sup>59</sup> Yuval-Davis, "The Bearers of the Collective," 21.

<sup>60</sup> Akzin, "Codification in a New State: A Case Study of Israel," 66.

What exists in Israel today is a personal status system that, on the one hand, presents women's rights as a key component of national identity. On the other hand, PSLs intensify social, gender, and cultural boundaries between men and women and between Jews of different ethnicities. In this way, as Fogiel-Bijau explains, personal law is "conscripted" into the continued project of political Zionism.<sup>61</sup> This chapter continues by looking at the different ways the Israeli government encourages women's identities to be completely paired with motherhood and national identity. This even includes women who generally would be outside of the traditional community of mothers, including women in same-sex relationships and single mothers. All women in Israel, regardless of orientation or social status, become eligible for government stipend programs for mothers of large families and have access to alternative reproductive technologies when they cannot conceive naturally.

### **3b. Heroine Mothers, Mothers of the Nation, and Natural-Born Children**

In the years leading up to Israel's founding, large families were often discouraged in Palestine, looked at as "backward" and associated with non-European Jews and a lack of education. Having three or four children was encouraged, but more than that was looked down on as not being modern. After the Holocaust, however, there came a push for "Jewish regeneration," focused on the natural-born family.<sup>62</sup> To encourage large families in the newly founded State, Israeli lawmakers fashioned laws and funded programs encouraging Israeli Jews to have large families.

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<sup>61</sup> Fogiel-Bijau, "Why Won't There Be Civil Marriage Any Time Soon in Israel?," 28.

<sup>62</sup> Birenbaum-Carmeli, "The Politics of 'the Natural Family' in Israel," 1019.

During the 1950s, the first social programs instituted in Israel were for mothers: “Maternity benefits to working mothers were the first benefits to be paid by the State of Israel. Together with free maternity care, protection from redundancy to pregnant employees and to women as well as various tax reductions, these measures have all been taken as evidence of Israel’s pronatalism.”<sup>63</sup> This pronatalism is supported further by the greater system of PSLs. The promulgation of these benefits shows that, for Israeli lawmakers, a Jewish state can only be ensured for generations to come if women make childbirth and childrearing part of their national identity.

Amongst these early pronatal policies were stipends and press coverage given to women who had ten or more children.<sup>64</sup> These women were called “Heroine Mothers” and were given awards by Prime Minister David Ben-Gurion himself starting in 1949.<sup>65</sup> These awards included a symbolic one-time 100-lira grant to the mother for her service to the country.<sup>66</sup> The phrase “heroine mothers” describing mothers of ten or more children was originally used in the Soviet Union to commend women who actively were increasing the population of the Soviet Union after World War II. However, as Yuval-Davis notes:

This title of 'heroine mother' to mothers of ten children has been a practice also in Israel, established by David Ben-Gurion in the first days of the Jewish State. However, unlike in the Soviet Union, this title can be borne in Israel virtually only by Jewish mothers—the financial rewards given by the Institute for National Insurance to mothers of many children are limited by the Legislator only to those women who have, or used to have 'a family relative who served in the Israeli army—in which Arabs do not usually serve!’<sup>67</sup>

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<sup>63</sup> Ibid.

<sup>64</sup> Lahav, "The Status of Women in Israel-Myth and Reality," 113.

<sup>65</sup> Birenbaum-Carmeli, "'Cheaper Than a Newcomer'," 9023.

<sup>66</sup> Hilla Haelyon, "'Longing for a Child': Perceptions of Motherhood among Israeli-Jewish Women Undergoing in Vitro Fertilization Treatments," *Nashim: A Journal of Jewish Women's Studies & Gender Issues*, no. 12 (2006): 178.

<sup>67</sup> Yuval-Davis, "The Bearers of the Collective," 23.

In other words, while this was a national program, by adding in the stipulation that women must have had a family member who had served in the military, the Heroine Mothers award was geared overwhelmingly toward Jewish women. This Heroine Mothers award was joined in 1968 by the founding of the Demographic Center, which had the goal of “carry[ing] out a natality policy intended to create a psychologically favourable climate, such that natality will be encouraged and stimulated, an increase in natality being crucial for the whole future of the Jewish people.”<sup>68</sup> In addition in 1968, birth grants were given as a “one-time fixed payment to everyone woman who delivers a baby in a recognized hospital” as part of a “Fund of Encouraging Birth.”<sup>69</sup> This payment connected programs that encouraged high rates of birth with public hospitals who provided the services for prepartum and postpartum women.

These pronatal programs are not merely a relic from the post-Independence days when the loss of life in the Holocaust was still a very painful memory for many Israeli citizens. Stipends under the Institute for National Insurance still exist. In the 1980s, according to Sharoni:

[t]he newly formed Efrat Committee for the Encouragement of Higher Birthrates linked the public debate on abortion at the time to the widely disseminated worry among Israelis that Israel's survival depended on its victory over Palestinians in what they saw as a *demographic war*. Utilizing the rhetoric of religious antiabortion groups and the memory of the Holocaust, the Efrat Committee called upon Jewish women to fulfill their national duty by bearing more children to replace the Jewish children killed by the Nazis during the Holocaust. . . . [A]bortion was an act of national treason, while bearing more

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<sup>68</sup> Daniel Sperling, "Commanding the 'Be Fruitful and Multiply' Directive: Reproductive Ethics, Law, and Policy in Israel," *Cambridge Quarterly of Healthcare Ethics* 19, no. 3 (2010): 365.

<sup>69</sup> Birenbaum-Carmeli, "Reproductive Policy in Context," 107; Haelyon, "'Longing for a Child'," 178.

children was an act of supreme loyalty to the collectivity, which turned Israeli-Jewish mothers into national heroines.<sup>70</sup>

In the ensuing decades, these programs for mothers of multiple children would be greatly expanded. As recently as 2000, the Knesset voted in favor of the Halpert Bill, under the initiative of an Haredi Member of the Knesset, which increased the monetary stipends given to mothers beginning with the fifth child.<sup>71</sup> These social programs are, on one level, necessary, as the likelihood of a woman in Israel maintaining her own career with that many children is generally impossible. This adds to the lack of equality between men and women in employment in Israel, as culturally it is understood that women will stay home with children. This inequality is not often questioned by Israeli women; however, beginning in the 1980s, women's movements began questioning the connections between women as mothers and identity within the Israeli state. Yet most women, Lahav explains, even through the 1980s believed that "[i]nterestingly enough, when questioned about Prime Minister Golda Meir, (the most frequently mentioned indicator of equality) most women expressed admiration for her achievement but did not wish to resemble her,"<sup>72</sup> preferring domestic lives. With Israel's use of women's bodies to increase the Jewish population of Israel as part of national identity, these programs that allow women to stay at home with their children became the backbone of Israeli pronatalist policies.

Israel's encouragement of large families was justified by Israeli psychologists, who stated that children without siblings would not be as strong as children with siblings, which

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<sup>70</sup> Simona Sharoni, "Gendered Identities in Conflict: The Israeli-Palestinian Case and Beyond," *Women's Studies Quarterly* 23, no. 3/4 (1995): 120. Emphasis added.

<sup>71</sup> Ofira Seliktar, "Israel's Economy," in *Contemporary Israel: Domestic Politics, Foreign Policy, and Security Challenges*, ed. Robert O. Freedman (Boulder, CO: Westview Press, 2008), 164.

<sup>72</sup> Lahav, "The Status of Women in Israel-Myth and Reality," 111.

in turn would not create a strong nation.<sup>73</sup> This is another way that the future generation's health was put forth as the motivating factor for pronatal policies, to the detriment of the health and wellbeing of the mother (see section 3c of this chapter). Furthermore, demographics concerns also became paramount—in order for the number of Jewish people in Israel to grow in each generation, women were encouraged by publicly funded parents' manuals to have at least three children – two to replace herself and her husband when she died, and a third to expand the generation.<sup>74</sup> And even though women serve equally alongside men in the Israel Defense Forces, women were also encouraged to have children as part of the war effort (initially during the 1948 War but later in subsequent Arab-Israeli Wars), making it far more difficult to serve given women generally are the parent that would remain home with children.

Along with financial programs that reward fertile women, there is conversely a lack of family planning resources in Israel.<sup>75</sup> Additionally, public clinics do not provide family planning advice or contraceptives of any kind. Thus, only those with the financial resources to pursue private health care have the options of modern family planning.<sup>76</sup> One method of family planning comes under particular scrutiny in Israel given its connections with the termination of life: Abortion. Even today, abortion is only legal with a medical committee's approval. According to Amir and Benjamin, unlike other countries

the Israeli position toward abortion differs considerably from most other societies, where the rationale of abortion laws is linked to a broader socio-ethical principle, and where the state's position regarding the legitimacy of

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<sup>73</sup> Sachlav Stoler-Liss, "'Mothers Birth the Nation': The Social Construction of Zionist Motherhood in Wartime in Israeli Parents' Manuals," *Nashim*, no. 6 (2003): 113-14.

<sup>74</sup> *Ibid.*

<sup>75</sup> Lahav, "The Status of Women in Israel-Myth and Reality," 113-14.

<sup>76</sup> *Ibid.*



pregnancy termination and entitlement to privacy is clearly expressed. . . . Israeli abortion law presents abortion primarily as an exigency.<sup>77</sup>

And yet, at times when demographic concerns have arisen, anti-abortion legislation appears before the Knesset. In 1986, a report came before cabinet showing that there were more Arab births than Jewish births. As Strum explains:

Various cabinet ministers immediately suggested eliminating the few abortions that were still legal, so there would be more Jewish than Arab births; using Jewish Agency funds to encourage a higher Jewish birthrate; increasing the number of crèches [or nurseries] and day-care centers; bettering maternity benefits; and offering free kindergarten and university education to Israeli families 'in which there is a soldier' (i.e., Jewish families) that had third and fourth children within the next two years.<sup>78</sup>

While abortion has not in fact been fully outlawed, in Israel today, abortion is not a preferred means of family planning, and it is often associated with Soviet immigrants, who had used abortion as a means of family planning before immigrating.<sup>79</sup> This association is often coupled with derogatory language accusing the women pursuing abortions as sexually promiscuous.<sup>80</sup>

Therefore, women assume a key role in Israel's demographic aspirations, and these aspirations have a bearing on Israel's continued concerns over population size. Women's unique abilities to create life made it easy for the Israeli government to use that ability to fashion the next generation of Jewish Israelis. Stoler-Liss asserts that it is not shocking for women's bodies to be brought into the discussion of the nation. However, she states:

The Zionist case is remarkable, not because it stressed the woman's role in bearing and raising children, but because it expanded the national boundaries

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<sup>77</sup> Delila Amir and Orly Benjamin, "Defining Encounters: Who Are the Women Entitled to Join the Israeli Collective?," *Women's Studies International Forum* 20, no. 5-6 (1997): 642.

<sup>78</sup> Strum, "Women and the Politics of Religion in Israel," 499.

<sup>79</sup> Amir and Benjamin, "Defining Encounters: Who Are the Women Entitled to Join the Israeli Collective?," 646.

<sup>80</sup> *Ibid.*

of motherhood to include the period before birth and the entire span of time between birth and the child's enlistment in the army. The volume of production—the quantity of children—deemed essential in previous national-maternal regimes was coupled in this context with a deliberate stress on the quality of the children produced.<sup>82</sup>

Thus, Israel women are not supposed to just give birth to new citizens, but to *ideal* citizens and, ironically through this narrative, to citizens who very well might go die in the army.

Thus, in Israel, women were and are seen mainly as having the ability to procreate and thus give birth to future defenders of the nation.<sup>83</sup>

Stoler reminds us that the gendering of nationalism is not at all surprising: coming out of colonial and liberal contexts, women were seen as mothers enlisted into the “national service.”<sup>84</sup> Parenting and motherhood specifically became a “class obligation and duty of empire.”<sup>85</sup> In the case of Israel, marrying and having children became the mission inherited by the legacy of political Zionism. As Haelyon explains, “Not only is voluntary childlessness extremely rare in modern Israeli society, but even involuntary childlessness may be regarded as a form of social deviance.”<sup>86</sup> This ability to connect childlessness with deviance goes back to the first commandment given to man by God in Genesis 1: “Be fruitful and multiply, and fill the earth and subdue it.”<sup>87</sup> Natality is a key component of God's requirements for humankind. Thus, this criticism of involuntary childlessness as “deviant” is augmented by the easily accessible reproductive technologies funded for Jewish women by the Israel government, because the expectations of bearing children go

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<sup>82</sup> Stoler-Liss, “The Social Construction of Zionist Motherhood,” 115.

<sup>83</sup> *Ibid.*, 114.

<sup>84</sup> Stoler, *Race and the Education of Desire*, 131. See chapter two for a fuller treatment of this passage from Stoler.

<sup>85</sup> *Ibid.*

<sup>86</sup> Haelyon, “‘Longing for a Child’,” 178.

<sup>87</sup> Genesis 1:28 (Revised Standard Version)

back to the earliest days of Judaism. Arendt sheds light on the importance of natality within political activity. In *The Human Condition*, Arendt explains that there are “three fundamental human activities: labor, work, and action. They are fundamental because each corresponds to one of the basic conditions under which life on earth has been given to man.”<sup>88</sup> Regarding action, she states:

Action, in so far as it engages in founding and pre serving political bodies, creates the condition for remembrance, that is, for history. . . . However, . . . action has the closest connection with the human condition of natality; the new beginning inherent in birth can make itself felt in the world only because the newcomer possesses the capacity of beginning something anew, that is, of acting. In this sense of initiative, an element of action, and therefore of natality, is inherent in all human activities. Moreover, since action is the political activity par excellence, natality, and not mortality, may be the central category of political, as distinguished from metaphysical, thought.<sup>89</sup>

The primacy of natality in Israel, therefore, can be understood in this way. Childbirth and childrearing are central to women’s political activity in Israel.

### **3c. Adoption and Assistive Reproductive Technologies in Israel**

But what of women who cannot conceive children naturally? While adoption is legal within Jewish communities, and while laws governing adoption are present in Israel’s PSL system, adoption rarely occurs. This is in spite of a series of laws over the last sixty years put into place specifically to protect the rights of adopted persons, including the 1960 and 1981 Adoption of Children laws.<sup>90</sup> Under Israeli PSLs, adopted children are legally viewed no differently than natural-born children. According to Shifman, an adopted person is

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<sup>88</sup> Hannah Arendt, *The Human Condition*, Second ed. (Chicago: University of Chicago Press, 1998), 7.

<sup>89</sup> *Ibid.*, 8-9.

<sup>90</sup> Pinhas Shifman, “Kinship by Adoption: Where Adoption Differs from Natural Affinity,” *Israel Law Review* 23, no. 1 (1989): 36.

actually seen as “reborn” to the adoptive parents and is no different than any natural-born siblings they may have.<sup>91</sup> In fact, the rights of adopted persons are seen as so important that Knesset passed the 1960 Adoption of Children’s Law, which took most of adoption law out of the personal status courts, and then amended the law in 1981 to strengthen the role of the state in the adoption of children.<sup>92</sup> In spite of these crucial laws, adoption is still rare. When adoption occurs, it is usually within families due to emergency situations (the death of the child’s parents, for instance). In either case, under Israeli law, the adoptive family for all intents and purposes replaces the natural-born family as relatives and the birth-parents (assuming they are alive), with rare exception, have little rights over the child they gave up for adoption.<sup>93</sup>

Intra-Israeli adoption is rare in Israel and the adoption of children from outside Israel generally does not occur. Birenbaum-Carmeli believes that this is, in part, because Israel constitutes its identity by blood (see chapter one). She states: “My suggestion is that adoption is perceived as a challenge to the ‘natural family’ paradigm that underlies the notion of Israel’s Jewish collectivity as a network of biologically related kin.”<sup>94</sup> What Birenbaum-Carmeli is explaining, in other words, is that while there are provisions for adoption within Israel, the primacy of nationality-by-blood and identity-by-blood within Jewish Israeli identity is connected with the use of certain assistive reproductive technologies to ensure that everyone can be part of the collective. In an implicit support of the notion of the superiority of natural birth over adoption, Birenbaum-Carmeli notes:

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<sup>91</sup> *Ibid.*, 35.

<sup>92</sup> *Ibid.*, 36.

<sup>93</sup> *Ibid.*, 35.

<sup>94</sup> Birenbaum-Carmeli, "The Politics of 'the Natural Family' in Israel," 1023.

“[a]doptive parents are entitled to all maternity-related provisions but have no rights during the adoption process. Unlike women undergoing fertility treatment, they are not entitled to paid leave for adoption-related reasons and are not protected from redundancy.”<sup>95</sup> In this way, women may be more drawn to in vitro fertilization and other forms of assistive reproductive technology because their options and resources as birth-mothers far exceed those they would have access to as adoptive mothers.

Because of the preference for natural-born children within Israel, women are encouraged to pursue IVF as a means of giving birth to children whose Jewishness would in no way be questioned, because they were *born* to a Jewish mother. Bureaucratic challenges also push women toward natural-born children. As Haelyon explains, [a]doption procedures in Israel are complicated and tedious, turning this into an unrealistic choice for most couples. As very few healthy Jewish babies are available for adoption, the waiting period can be up to a decade, and families are screened stringently for ‘suitability’ as adoptive parents.”<sup>96</sup> Conversely, very little is done to screen the “suitability” of women who wish to proceed with reproductive technologies to conceive. As will be seen, the psychological screenings that are increasingly recommended for women pursuing IVF, are not required of Israeli women.<sup>97</sup>

Today, Israeli women undergo more IVF cycles than women in any other country. Introduced to Israel in 1981, IVF births today account for roughly 2.1 percent of live births,

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<sup>95</sup> Ibid.

<sup>96</sup> Haelyon, "Longing for a Child," 181.

<sup>97</sup> For an extended analysis of the psychological screenings generally required of women pursuing IVF (before, during, and after pregnancy), including the importance of looking at factors such as anxiety and depression and how they affect fertility, see C.M. Verhaak et al., "Who Is at Risk of Emotional Problems and How Do You Know? Screening of Women Going for Ivf Treatment," *Human Reproduction* 25, no. 5 (2010).

with the Israeli government apportioning 40 million dollars to IVF pregnancies as of 1995, proportionally higher than any other state.<sup>98</sup> The importance of having children is so paramount that even single women and same-sex couples can receive the government subsidies for IVF treatments.<sup>99</sup> This fact alone shows the demographic importance of ensuring the next generation. Single-parent homes are not preferred within Jewish practice, for instance. But single women pursue the use of government programs to have children. Even more telling is the fact that same-sex couples can use government programs for IVF and other assistive reproductive technologies to have children. Their unions are far more explicitly condemned in *halakha*, and there is no legal option for them to marry within Israel. Thus, while same-sex couples are not allowed to marry under Israeli PSLs and having children outside of a marriage (in the case of single-parent homes) is against *halakha*, the importance of having children and increasing the Jewish population in Israel not only supersedes these prohibitions, but it enjoys government support. This ties, once again, to Haelyon's use of "suitable" to talk about adoptive parents; when applied to IVF parents, there are far less concerns over parental suitability than there was in cases of adoptions. Women who are excluded from the community of marriage within Israel, given their same-sex orientation, are still included in the community of mothers.

While IVF is so prevalent in Israel, Israel is unlike most states that employ IVF technologies in that doctors are not legally required to screen candidates for physical or psychological health concerns before beginning treatment. Furthermore, there are also no legal limits in place for how many IVF treatments a woman can go through, in spite of the

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<sup>98</sup> Birenbaum-Carmeli, "'Cheaper Than a Newcomer'," 904.

<sup>99</sup> *Ibid.*, 900-01.

long-term health consequences medical side effects of multiple IVF treatments.<sup>100</sup> Thus, the ensuring of generations of Jewish children supersedes the quality of life and health, both physical and mental, of the mother.<sup>101</sup> The primacy of these demographic concerns goes to the highest medical and governmental levels in Israel, according to Birenbaum-Carmeli: "Probably the most explicit link between IVF and demography politics was drawn by former Chief of Staff and former Minister of Health, Mordechai Gur, who applied his dual authority to contend that 'IVF is anyway cheaper than a new immigrant.'"<sup>102</sup> Thus, even unborn Israelis are still given more privileges than international Jews hoping to immigrate.

Birenbaum-Carmeli adds:

The preference of an intrusive treatment, even when ineffective and potentially harmful, over safer and 'guaranteed', though less 'biogenetic' alternatives to parenthood suggests a hierarchy. It suggests that beyond subscribing to the Jewish-Zionist discourse of motherhood as a basis for a woman's normalcy and place in society, Israeli IVF patients accept the primacy of biogenetic motherhood.<sup>103</sup>

IVF is so common and so easily accessible that women who choose not to pursue these options are excluded from the community of mothers and their identities as Jewish Israelis is questioned.<sup>104</sup>

IVF is even encouraged when other, safer options, including donor insemination (DI), exist. Donor insemination is a method used frequently in the case of male infertility, by using a donor from a third party. But given the importance of natural-born families, it is highly discouraged (if it is even mentioned) in Israeli fertility clinics.<sup>105</sup> When DI is

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<sup>100</sup> "Reproductive Policy in Context," 108.

<sup>101</sup> "The Politics of 'the Natural Family' in Israel," 1023.

<sup>102</sup> Ibid., 1020.

<sup>103</sup> Ibid., 1022.

<sup>104</sup> Haelyon, "'Longing for a Child'," 178.

<sup>105</sup> Birenbaum-Carmeli, "The Politics of 'the Natural Family' in Israel," 1021.

considered, it is done religiously and racially. Doctors admit to not allowing Jewish women to be inseminated with Arab sperm and vice-versa. Furthermore, Arab-Israeli citizens are purposely not advised about the range of fertility options available to them.<sup>106</sup> Israel stands far ahead of most nations in fertility treatments and technology, yet these resources are only encouraged to the “right” kind of citizens. Connecting IVF back to adoption, Birenbaum-Carmeli adds:

To complete the picture, Israel’s adoption law is outlined, showing tight restrictions on domestic adoption and complete lack of state support or subsidy for inter-country adoption. I suggest that both the marginalization of non-genetic forms of kinning and the emphasis on IVF indicate a state interest in upgrading the ‘natural family’ so as to nature a geneticised notion of the local Jewish collectivity.<sup>107</sup>

Israel’s PSLs defining Jewishness and Israel nationality through the line of the mother only serve to reinforce the importance of the naturally born citizen, which in turn diminishes options for safe family planning, including adoption and donor insemination. It also privileges blood-related options above all others.

#### **4. CONCLUSION**

This chapter began by exploring the ways that education framed women’s goals in Israel. By encouraging Jewish women to become educated to raise future Israel citizens, women’s identities became deeply intertwined with conceptions of motherhood, and national identity within the collective. While this focus on women as educators of tomorrow began as a way to unify the Jewish people under a nascent nationalist

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<sup>106</sup> Ibid., 1022.

<sup>107</sup> Ibid., 1018.



movement, women have not left the home in the ways that laws such as the WERD envisioned.

Women in Israel, especially Jewish women, benefit from having access to assistive reproductive technologies and financial support for families. However, the accessibility of these resources also comes with a cost, namely the formation of women's Israeli identity through motherhood. The natality of Israel and the strength of its future generations becomes the means by which women's political existence is defined in Israel. The importance of large, Jewish families becomes even more critical when looking at birth trends in Israel today. In response to growing insecurity within Israel, something which I examine further chapter five, demographic concerns have become increasingly influential with respect to the ways in which women's bodies and marriage itself are both regulated. Women in Israel, thus, stand as a critical component in ensuring Israel's future, and Jewish women, through programs such as the Heroine Mother program and through access to assistive reproductive technologies, are given everything resources to become the Mothers of Israel's Tomorrow.

## **Chapter Four: Anti-Polygyny Legislation as Cultural Colonialism in Israel**

### **1. INTRODUCTION: POLYGYNY, NATIONALLY AND INTERNATIONALLY**

While a prevalent form of marriage throughout most of the world at one time or another, polygyny, the marriage between one man and multiple women, has been on the decline globally, especially within countries influenced by the West and Christianity. Global protections for the rights of married persons first appear in the *Universal Declaration of Human Rights* (UDHR), issued by the United Nations. Article 16 of the *Declaration* states:

- 1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
- 2) Marriage shall be entered into only with the free and full consent of the intending spouses
- 3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.<sup>1</sup>

The UDHR does not define the terms “spouse” or “family”; it simply states that marriage should be entered into (or dissolved) as a relationship of equals. Furthermore, the UDHR does not define marriage in terms of gender identification or number of marriage partners. However, multiple Declarations and Recommendations from several UN agencies, including the United Nations Committee on the Elimination of Discrimination against Women (CEDAW), lobbying an abolishment of polygyny as a form of marriage, indicating that polygynous arrangements are not implied by the use of “family” in the UDHR.<sup>2</sup>

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<sup>1</sup> "Universal Declaration of Human Rights," (United Nations, 1948).

<sup>2</sup> "General Recommendations Made by the Committee on the Elimination of Discrimination against Women ", United Nations,  
<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>.

For instance, in 1994, CEDAW released its General Recommendation Number 21, which had two clauses regarding polygyny. Clause 14 states: "Polygamous marriage contravenes a woman's right to equality with men, and can have such serious emotional and financial consequences for her and her dependents that such marriages ought to be discouraged and prohibited." Clause 39 adds: "The State can thereby ensure compliance with the Convention and establish equality between partners, a minimum age for marriage, prohibition of bigamy and polygamy and the protection of the rights of children." At no time since 1994 has CEDAW backed away from these statements, which are indicative of the overall goals of the United Nations to eliminate of polygyny as a form of marriage in developing nations.

But what of polygyny in Israel? Founded in the liberal, democratic tradition (coming out of the West, which defined marriage at that time as heteromonogamous) in 1948, one might assume that bigamy automatically would be made illegal under Israeli law, and one would be correct in this assumption. But religiously within Judaism, a ban on polygyny is not that simple. Polygyny had a different status within each Jewish ethnic community. Polygyny was illegal in Ashkenazi communities for nearly 1000 years, but other Jews had kept the practice, acculturating<sup>3</sup> to Arabs around them for hundreds of years.<sup>4</sup> However, within Palestinian Jewish communities during the late Ottoman and British Mandatory periods, polygyny was practiced but was on the decline. The outlawing of polygyny in Israel predates the founding of the UN. First under the British Mandatory 1936 Criminal

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<sup>3</sup> For an extended discussion of acculturation within Judaism, see section two of this chapter as well as Sharot, "Minority Situation and Religious Acculturation."

<sup>4</sup> Shifman, "The English Law of Bigamy in a Multi-Confessional Society: The Israel Experience," 79.

Code Ordinance of 1936, § 181 and then reaffirmed by the 1959 Penal Law Amendment (Bigamy) Law in Israel, the banning of polygyny within Israel was lauded by the members of the Knesset as a move toward modernity in Israeli law and toward giving all women in Israel equal protection under the law.<sup>5</sup> As part of the 1948 *Declaration of the Establishment of the State of Israel*, Israel's early leaders promised to "be faithful to the principles of the Charter of the United Nations."<sup>6</sup> On the one hand, Israel's anti-bigamy laws fall in line with the UDHR as well as subsequent UN documents, primarily from CEDAW. However, on the other hand, its lack of civil marriage, limitations on interreligious marriage, and temporary bans certain cross-national marriages go opposed the UDHR's commitment to freedom to marry without regard to nationality or religion. As stated in chapter one, Israel is a dualist state, so its accession to the UDHR did not automatically make it a part of Israeli national law.<sup>7</sup> It would take an enactment from the Knesset to bring Israeli marriage laws fully within the statutes of the UDHR.

The current geopolitical situation in Israel has led to a breakdown in traditional family structures. Both divorce and polygyny are on the rise in many communities, in some cases because of economics and in others as a method of protest. This chapter explores the unintended consequences of the ban on polygyny in the Jewish, Druze, and Muslim communities, showing that the combination of a lack of civil courts for issues of personal status and Israel's use of colonial practices fosters protest through "subversive" marital practices. In each of these religious communities, polygyny was either on the decline or rarely practiced. Yet, after Israeli laws were passed against polygyny, polygynous

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<sup>5</sup> Ibid., 83.

<sup>6</sup> "The Declaration of the Establishment of the State of Israel."

<sup>7</sup> Sloss, "Domestic Application of Treaties," 2-3.

arrangements actually rose rather than declined. The following sections look at the history of polygyny in the three main communities in Israel that have practiced it: the Jews, the Druze, and the Muslims, exploring how the ban on polygyny in Israel has changed each community's perceptions of the place of these marriages within modern Israeli society.

## 2. JEWS AND POLYGyny

The history of polygyny in Judaism goes back to the earliest founders. Many of the patriarchs of the Bible, for instance, had more than one wife, and polygyny was an acceptable religious practice through all of Biblical Judaism. Religious figures such as Abraham, Jacob, and David each had multiple wives and children,<sup>8</sup> and the Bible, unlike the Qur'an, does not include language limiting or discouraging polygynous relationships.<sup>9</sup> After the Diaspora, Rabbinic Judaism split primarily between two communities: Ashkenazi and Sephardi. Within the Ashkenazi community, societal pressures led Rabbi Gershom ben Judah of Mainz, Germany to release a *takkanot*, or legislative enactment, in 1000 forbidding the practice of polygyny. This position has never been overturned within Ashkenazi Judaism. Some see Rabbi Gershom's ban on polygyny in favor of the surrounding Christian monogamy "as a concession to the times."<sup>10</sup> In other words, the Jews of Europe abandoned polygyny as a form of marriage, not because there was anything inherently against it within

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<sup>8</sup> See Genesis 16, Genesis 29-30, 1 Samuel 18, and 2 Samuel 12.

<sup>9</sup> The one exception to this is a set of laws in Deuteronomy 17 called the Law of the King. Within it, there is a recommendation that kings limit their wives. Deuteronomy 17:17 states: "And he shall not multiply wives for himself, lest his heart turn away" [Revised Standard Version]. Multiple wives were seen as dividing the king's loyalties away from his people. This set of laws, however, only applies to the kings of Biblical Israel and not to men in general.

<sup>10</sup> Ron Csillag, "Marriage by the Numbers," *The Toronto Star*, February 5 2005. In this article, Csillag is quoting Toronto Rabbi Yehiel Ben Ayon's view of the ban on polygyny by Rabbi Gershom.

*halakha*, but rather in response to the Christian monogamy around which they were surrounded. Meanwhile, Sephardi Jews, encountering primarily Islamic traditions, continued to practice polygyny well into the Modern period, though not in great numbers. A third group, the Beta Israel of Ethiopia, practiced polygyny in greater numbers than the Sephardim, with the practice only ending when they immigrated to Israel (see chapter six).

This tendency of Jewish communities to mirror the marital practices of surrounding religions is explained through the process of acculturation. As Sharot explains, Jews either acculturated or deacculturated to their surrounding communities depending on the pressures placed by their surrounding communities:

acculturation is defined as the change of the minority's culture to that of the 'host' or 'core' society. Deacculturation is defined as the change of the minority's culture away from that of the 'host' or 'core' society. . . . Deacculturation involves an increase in, or greater emphasis on, distinctive beliefs and practices of the Jewish minority and the abandonment of practices and beliefs which were shared with non-Jews.<sup>11</sup>

He adds: "The contrast between the development of Judaism in east and west is striking; in the west the Jews not only retained but reinforced their religio-cultural distinctiveness, while in the east the Jews adopted much of the local culture and religion into their own religio-cultural system."<sup>12</sup> Thus, for Sharot, Ashkenazi Jews tended to deacculturate far more than their Sephardi and Mizrahi peers. This is due, in part, to the fact that, under Muslim rule, Sephardi and Mizrahi Jews were not widely persecuted. Under Christian rule, Jews were less accepted into the greater community, thus retaining their acculturation. Sharot explains that this trend extends worldwide. In situations where Jews were more accepted, one sees less deacculturation. The higher the persecution or the greater the lack

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<sup>11</sup> Sharot, "Minority Situation and Religious Acculturation," 330.

<sup>12</sup> *Ibid.*, 338.

of acceptance, the more likely Jews were to cling to their traditions and become more separated from their surrounding communities.<sup>13</sup> This explains the tendency of polygyny to remain in Jewish communities surrounded by an Islamic community that practiced polygyny, whereas Jewish communities surrounded by Christian majorities, worried over concerns about acceptance and legality, moved away from the practice while still maintaining their Jewish identity in other ways, including clothing, Sabbath observance, etc.

Within Sephardi and Mizrahi communities, including the Jewish community in Israel before the founding of the State, polygyny, while legal, was minimally practiced. As Shilo explains, both Jewish and non-Jewish polygyny declined in communities living under the rule of the Ottoman Empire. By the census of 1855, only three polygynous Jewish marriages were registered in the area of modern-day Israel. In 1905, Hayim Sethon, the Sephardic rabbi of Safed, in modern-day Israel, issued a statement affirming that the Jews of the Sephardic world did not follow Rabbi Gershom's decree against polygyny. Yet, even with Rabbi Sethon's allowance for polygyny, the practice was still rare in Jewish communities in the Ottoman Empire. Shilo states, "[B]y the beginning of the 20th century the practice of marrying a second wife had almost disappeared, except for a few cases in which the first wife was barren or had born only daughters."<sup>14</sup> In these rare situations where a man took more than one wife, wives generally lived in separate households.<sup>15</sup> However, outside of Palestinian Judaism, polygyny was more widespread. In Yemen, for instance, Jewish women became so acculturated to the surrounding Muslim practices that

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<sup>13</sup> Ibid., 352-3.

<sup>14</sup> Shilo, *Princess or Prisoner?*, 81.

<sup>15</sup> Ibid., 82.

they, along with their polygynous Muslim counterparts, stopped attending religious services and became distanced from their religious lives; Sharot feels that the practice of polygyny itself puts these women in a secondary status to men and encourages their distance from religion.<sup>16</sup>

The earliest language regarding Jewish marriage in Israel came with a letter written in 1947 by David Ben-Gurion to the orthodox group Agudat Israel asking for their support to go before the United Nations with an outline for the new state. According to Strum:

The Orthodox agreed to those policies of the projected state that they considered to be basic. Of relevance here is the letter's inclusion of a deliberately vague pledge that the laws of matrimony would be dealt with so as 'to eliminate the danger of dividing the House of Israel.' This position was somewhere between the Orthodox demand that the Jewish state adopt the matrimonial precepts of Orthodox Jewish law (halakha) . . . and the minimal attention paid to such strictures by the secular majority of Jews in Palestine. In the years ahead, the letter would become a major part of the so-called 'status quo' in religious matters.<sup>17</sup>

The Agudat Israel, who approved of this plan, agreed to support David Ben-Gurion's bid for statehood before the UN, and today this has translated, according to Strum, into the continued influence of Haredi Jews, of predominately Ashkenazi origin, within the Israeli cabinet. Strum argues that this had "negative implications for women" because it set the precedent from day one in Israel that definitions of marriage would be made from religious positions and not a position of women's or civil rights.<sup>18</sup> In 1949, civil marriage did not become a part of the legal system, again because David Ben-Gurion was worried over dividing the Jewish people between observant Jew and secular Jew.<sup>19</sup> None of the language

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<sup>16</sup> Sharot, "Minority Situation and Religious Acculturation," 337.

<sup>17</sup> Strum, "Women and the Politics of Religion in Israel," 485.

<sup>18</sup> *Ibid.*, 485-6.

<sup>19</sup> *Ibid.*, 486.



from this period, however, is particularly concerned with the status of women under this religious system (other than that belief that polygyny itself was anti-women).

The passage of the Women's Equal Rights Law (WERD) of 1951 and of the Penal Law Amendment (bigamy) of 1959 (see chapter one) meant that polygynous Jewish families could immigrate to Israel but that no additional marriages could be entered into by Sephardic Jews. According to Telushkin, today, polygyny as a form of marriage is all-but-extinct within Jewish communities, both within Israel and internationally.<sup>20</sup> This does not mean, however, that Jewish polygynous marriages do not still happen. There are exceptions within Rabbinical courts that allow for a man to take on a second wife (though there is no evidence of a third wife ever being allowed), in cases where wives have gone missing, in the case of long-term abandonment, or in the case of mental illness. Polygynous arrangements are also permitted in situations where a wife refuses a petition for divorce from her husband and is labeled legally as "rebellious" by the Orthodox court systems.<sup>21</sup> In the case of a "rebellious" wife, a man

may then be able to obtain a *heter nisuin* (release from the ban of polygamy), which is a difficult procedure requiring the signed approval of 100 rabbis and of the chief rabbi if the couple is Ashkenazi or the approval of the local rabbinical court if the couple is Sephardi. Approximately ninety Israeli Jewish men [as of 1989] have obtained such a release and may therefore take another wife. No such option is available to women.<sup>22</sup>

It is this last point that concerns authors such as Strum. Given the religious definitions of marriage in Israel and the lack of civil institutions for marriage and divorce, women who are in similar positions of abandonment, having missing husbands, or having husbands

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<sup>20</sup> Joseph Telushkin, "Ban on Polygamy: The Takkanot (Decrees) of Rabbi Gershom," in *Jewish Literacy* (New York: HarperCollins, 2001 Reissue), 183.

<sup>21</sup> Strum, "Women and the Politics of Religion in Israel," 494.

<sup>22</sup> *Ibid.*

who refuse to grant divorces have neither the same option to take a second husband under *halakha*, nor the ability to pursue a civil divorce.

Divorces or annulments are not available to women without their husbands' permission, and an entire category of "trapped women" exists in Israeli law. A trapped woman, or *agunah*, is a woman who has been abandoned by her husband (often due to imprisonment or physical abandonment) or whose husband refuses to divorce her. These women are called trapped because they have no other legal recourse to seek out a divorce. While the Orthodox rabbinate and rabbinical courts can put pressure on these husbands, even having the right to imprison them as part of their so-called encouragement, they cannot force the men to offer these divorces.<sup>23</sup> Unlike Jewish men, who may be granted permission for a second wife, these Jewish women do not have the option to take a second husband. Jews in the Diaspora do not struggle with these issues. If a Jewish man refuses to give his wife a *get* (the Jewish divorce document) in the United States, for instance, this does not keep the woman from pursuing a civil divorce and remarrying under civil law, although a Jewish marriage will never be available to her again.<sup>24</sup> Furthermore, within Israel, if these abandoned women enter into relationships with other men, any children they have are categorized legally as *mamzer*, defined as a child of a forbidden relationship, a category which passes down in Judaism for ten generations. A person born under the legal designation *mamzer* can only marry another *mamzer* or a convert to Judaism and is said to carry the shame of their mothers. If a man has a child with a second woman,

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<sup>23</sup> *Ibid.*, 493.

<sup>24</sup> Pascale Fournier, Pascal McDougall, and Merissa Lichtsztral, "Secular Rights and Religious Wrongs? Family Law, Religion and Women in Israel," *William & Mary Journal of Women and the Law* 18, no. 2: 335.

however, any children they have do not carry this title.<sup>25</sup> Thus, even if polygyny is generally illegal under *halakha*, the laws governing *agunot* and *mamzerim*, for instance, are holdovers from a situation where polygyny were still legal. Men's children from multiple partners remain recognized while married women's children from a second partner are punished as bastards.

On the surface, these issues seem to be grounded in problems of conservative values within *halakha*. Yet, according to Professor Ariel Rosen-Zvi of Tel Aviv University, himself a practicing Orthodox Jew, "The problem is not *halacha* . . . but who interprets it. The rabbinical courts today represent the narrowest view of *halacha*."<sup>26</sup> Rosen-Zvi and other leading Orthodox legal experts have put multiple civil law proposals before the Knesset allowing for a civil definition of marriage, believing that the rabbinical courts themselves are "highly discriminatory toward women," with little success.<sup>27</sup> Lahav expands our understanding of how this preferential treatment of men leads to discrimination against women:

under Jewish law only the husband, not the court, can dissolve the marriage, his absence precludes such an act. Even if the civil courts issued a declaratory judgment proclaiming the husband dead, the religious tribunals applying their own much stricter requirements consider the woman married; and, since only they can preside over her remarriage within Israel's boundaries, she is forever forbidden to remarry.<sup>28</sup>

Without a civil court system to fall back onto, Jewish women in Israel find themselves with fewer marriage rights than their peers under other Western law systems, including Jewish women throughout much of the Diaspora. They even in many cases find themselves with

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<sup>25</sup> Fogiel-Bijau, "Why Won't There Be Civil Marriage Any Time Soon in Israel?," 31.

<sup>26</sup> Strum, "Women and the Politics of Religion in Israel," 496.

<sup>27</sup> *Ibid.*, 495.

<sup>28</sup> Lahav, "The Status of Women in Israel-Myth and Reality," 121.

less rights than their female Muslim co-citizens, who under the Islamic court systems are allowed to petition for divorce. In fact, under both Muslim and Druze laws, a *qadi*, or judge, can “compel a husband to accept divorce.”<sup>29</sup> The ban on polygyny, which for some citizens comes with a fine and/or a five-year prison sentence, can be used in ways that take away from Jewish women’s rights. The ban on polygyny in Israel was lauded as a commitment to women’s rights. Unfortunately, the few cases where polygyny still persists in Israel come at the cost of the rights of Jewish women, going directly against the spirit of the ban.

But the ban on polygyny goes deeper, showing that fears over a split in Israeli identity (between Orthodox and secular) meant more and continue to mean more than the preservation of the civil rights of Israeli women. When Jewish men circumvent the ban on polygyny, it is always at the expense of the civil rights of Jewish women. And given polyandry (the marriage between a woman with multiple male partners) is not permissible under *halakha* (or any Western form of law), women are left with no legal recourse to leave the same sorts of relationships men can (not necessarily easily) dissolve.

### **3. THE DRUZE AND POLYGyny**

As of 2012, the Druze, an ethnic and religious minority in Israel, number 130,500 citizens of Israel.<sup>30</sup> An offshoot of Isma’ili Shi’a Islam, the Druze practice their own,

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<sup>29</sup> Fogiel-Bijau, "Why Won't There Be Civil Marriage Any Time Soon in Israel?," 30. Fogiel-Bijau also notes that one other group of men and women cannot petition for divorce under Israeli law, namely Catholics. While Christians, including Catholics, are not addressed in this chapter, given polygyny is illegal in nearly all Christian traditions, the lack of civil courts to govern personal status affects these citizens, too, as well as all non-religious citizens.

<sup>30</sup> Israel Central Bureau of Statistics, "Sources of Population Growth, by District, Population Group, and Religion," Statistical Abstract of Israel 2013 (cbs.gov.il: Central Bureau of Statistics, 2013), 120.

monotheistic tradition within the genealogy of the Abrahamic traditions.<sup>31</sup> Regarding personal status, the Druze look at marriage as a relationship of equals, one that can only be entered by the consent of both parties. Additionally, the age of marriage amongst the Druze is higher than in the other monotheistic communities in the Levant, with the traditional age of marriage being 17 for women and 18 for men (with exceptions).<sup>32</sup> One of the traditions that make the Druze unique and different from Muslims and other monotheistic religions is their stance on polygyny. Given that the Druze faith derives from Islam, the Druze have many of the same Islamic laws governing marriage. The main difference between the Druze and the Muslims is how the Druze interpret the verses found in Sura 4, namely those governing polygyny. The key phraseology in the allowance for polygyny in Sura 4 of the Qur'an is that you can have more than one wife *if you are able and can be equitable to them*. The Druze contend that a man could never truly be completely equal to more than one partner either financially or emotionally. Thus, while the law allows for polygyny, no Druze could enter into such a relationship within good conscience.<sup>33</sup>

According to Layish, this banning of polygyny within the Druze religion is one of the key ways the Druze differ from Muslims.<sup>34</sup> In fact, "polygamy seems to be very rare among the Druzes. . . . [P]olygamy does not occur even in serious cases of barrenness and that if the husband wants to have children he will divorce the barren wife and take another wife

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<sup>31</sup> Lubna Tarabey, *Family Law in Lebanon: Marriage and Divorce among the Druze* (London; New York, NY: I.B. Tauris, 2013), 18-19.

<sup>32</sup> *Ibid.*, 47-49.

<sup>33</sup> Layish, "Polygamy and the Druze Family in Israel," 58.

<sup>34</sup> *Ibid.*

instead.”<sup>35</sup> Within Islam, one of the main reasons men do take on a second wife is in cases of infertility. The Druze would rather formally divorce a wife than to force her to live within a polygynous arrangement, a position they feel is disrespectful to women.<sup>36</sup> This is in keeping with their general views on divorce, which are even more egalitarian than under Islamic law. Both men and women have equal divorce rights under Druze law.<sup>37</sup> And yet, there are exceptions within the Druze community. Polygyny is not completely banned, given the Qur’an *does* allow for it, so from time to time throughout the history of the Druze faith, Druze men will take on a second wife. Socially, however, the practice is seen as unacceptable, and men who enter into these relationships are often socially ostracized.<sup>38</sup>

Under the Ottomans, the Druze, given their status as heretics amongst many Muslim groups, were never a protected *dhimmi* (see chapter one). According to Ghandour, “Under the Ottoman Millet system, the Druze were not included as a recognized religion; they resorted to the *Shari’a* court (where Islamic law would be applied to them though in some cases matters of personal status would be settled autonomously within the community).”<sup>39</sup> Because of their shared heritage, there were many instances in which the use of an Islamic court would have been perfectly acceptable for the Druze, given that much of their law is the same. When Israel was founded, the founders continued with Ottoman policy and did not recognize the Druze as a separate religion, which meant they had no courts under the Israeli legal system.<sup>40</sup> The Druze, however, still used their own courts for many internal

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<sup>35</sup> Ibid., 59.

<sup>36</sup> Ibid.

<sup>37</sup> Tarabey, *Family Law in Lebanon*, 270, note 20.

<sup>38</sup> Layish, "Polygamy and the Druze Family in Israel," 60.

<sup>39</sup> Ghandour, "Religious Law in a Secular State," 37-38.

<sup>40</sup> Ibid., 38.

community issues. Finally, in 1962, Israel moved toward recognition of the Druze as their own religious community with legal jurisdiction in their own courts over issues of personal status:

In 1962, the DRUZE RELIGIOUS COURTS LAW was enacted by the Knesset, granting them exclusive jurisdiction in marriage and divorce, trust and charitable endowments. . . . When mutual consent is not forthcoming, the matter shall be referred to the District Court. The competence of the Druze religious courts is restrictive when compared to, for instance, the extent of the *Shari'a* court's jurisdiction. . . . [W]hilst the Druzes are closer to Islam than they are to Judaism, the jurisdiction granted to the Druze religious courts is akin to that granted to the Rabbinical courts.<sup>41</sup>

In other words, in addition to being recognized as their own community, the Druze courts were given equal legal jurisdiction to Jewish rabbinical courts.

Polygyny cases are handled internally within the Israeli Druze community. Like in other parts of the Druze world, polygyny is discouraged. Regarding the legal history of Druze polygyny within Israel specifically, "The Lebanese Law of Personal Status of the Druze Community of 1948, which was adopted by the Spiritual Leadership of the Druze Community in 1961, provides categorically that polygamy is forbidden (*mamnu'*) and that if a man takes a second wife the second marriage is null and void (*batil*)."<sup>42</sup> Generally speaking, then, the Druze theoretically would not have been affected by Israel's ban on polygyny, as they had already banned polygyny themselves. And for the most part, they have not been. But there have been a few instances where polygynous marriages have been entered into, in spite of the ban. In fact, according to Ghandour, the ban does little by

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<sup>41</sup> Ibid., 39. Capitalization in original.

<sup>42</sup> Layish, "Polygamy and the Druze Family in Israel," 58.

way of deterring this behavior, as no Druze has ever been punished under the polygyny ban.<sup>43</sup>

In a few exceptional situations, for those concerned about breaking Israel's laws, men have instead begun keeping second wives without registering them as officially married. Where in the past, Druze couples would simply divorce before a man married a second wife or would marry a second wife in spite of his community's disapproval, men are now keeping separate women from their first spouses. And, as Layish explains, "The Knesset has provided a legal and normative legitimation for keeping a second woman without marriage."<sup>44</sup> In other words, the banning of polygyny led to an increase in unregulated polygynous-type relationships within the Druze communities, whether this had been the intent or not. Furthermore, this has led to changes in family structures, where divorces that would have one time been entered into are no longer pursued. Given the relative autonomy in which the Druze live in under the Israeli legal system, the few Druze men who enter into polygynous relationships are not punished under Israeli law, which leads to questions about the efficacy of the Penal Law itself.

#### **4. MUSLIMS AND POLYGyny**

The religious practitioners most obviously affected by Israel's anti-polygyny and anti-bigamy laws are Muslims. While polygyny was generally on the decline in Palestine before the founding of Israel, it was still practiced in some communities, especially amongst the Bedouin of the southern Negev desert region of Israel. Amongst many Palestinian

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<sup>43</sup> Ibid., 60.

<sup>44</sup> Ibid., 20.



Muslims, however, the practice of polygyny was seen as “decidedly anachronistic” and was culturally looked at as backward.<sup>45</sup> And yet, today polygyny is on the rise across Palestinian communities and has been increasing in response to changes to Israeli laws of marriage and the family based on security.<sup>46</sup> The bans on polygyny, far from curtailing unwanted marital practices, in some ways encouraged them, especially when put into the greater context of a lack of civil marriage:

The result [of the 1959 Penal Law Amendment (Bigamy)] in the Muslim community was not, as had been desired, a more orthodox family structure. Rather, divorce rates escalated, women were divorced without being alerted, second marriages were not registered, their offspring were given the mother’s name, and cohabitation increased. Moreover, the Islamic officials responsible for registering marriages were co-operative, issuing ‘worthless’ divorce documents, and charging twice as much for a union which they would not register—an activity, involving, as it did, the risk of a six-month prison.<sup>47</sup>

While polygyny rose generally in all Muslim populations in Israel, Gaza, and the West Bank, especially after the 1967 War, the rate of practice polygyny rose sharpest amongst the Bedouin. In the 1970s, only 7.5 percent of Bedouin men described themselves as polygynous, and the practice was found primarily amongst the wealthiest of Bedouin. From the period of the 1967 War until 2004, however, this practice was on the rise, partly due to individuals from Gaza and the West Bank moving their to have better access to employment and other resources within the State of Israel.<sup>48</sup> As explained by Dinero,

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<sup>45</sup> Amalia Sa'ar, "Maneuvering between State, Nation, and Tradition: Palestinian Women in Israel Make Creative Applications of Polygyny," *Journal of Anthropological Research* 63, no. 4 (2007): 515.

<sup>46</sup> See chapter five for an extended analysis of how polygyny was used across the border between Israel and the West Bank/Gaza to grant Palestinians passports and citizenship, and how the laws of personal status were used to curtail this practice beginning in the mid 2000s.

<sup>47</sup> Ghandour, "Religious Law in a Secular State," 31.

<sup>48</sup> Steven C. Dinero, "Neo-Polygamous Activity among the Bedouin of the Negev, Israel: Dysfunction, Adaptation—or Both?," *Journal of Comparative Family Studies* 43, no. 4 (2012): 496-7.

“13,000-14,000 co-wives relocated into the Negev from the Palestinian Territories . . . . As of 2003, about 25,000 Jordanian wives were also present in the country. . . . Thus, a total of approximately 39,000 ‘foreign’ Arab women, it is estimated, were residing alongside a Bedouin population of 140,000-160,000 by the end of the 2000s.”<sup>49</sup> Until the early 2000s, when laws began to change, polygyny allowed for Palestinians living in the occupied West Bank and Gaza the opportunity to move to Israel, gain work permits or even citizenship, and live a higher quality of life.<sup>50</sup>

And while men may have seen polygyny as a sign of wealth, regarding the status of women, Abu Rabia explains: “The prevalence of polygamy redefined Bedouin women’s marginality as they were suddenly subjected to triple marginalizations by being (1) women in a (2) patriarchal-tribal society as part of (3) an ethnic minority in a Jewish State.”<sup>51</sup> The increase of polygynous relationships alone has led to a marked rise in birth rates in the Negev region. Currently, the birth rate holds at five percent per year, the highest in Israel. Within Bedouin communities, these large families are seen as a classic sign of economic security. The more children one has, the more likely one will have someone to take care of one in old age.<sup>52</sup> Today, Muslim women find themselves in polygynous relationships in Israel for two reasons. On the one hand, women find themselves as second wives as part of the demographic war with Israel, married to men whose power has been curtailed by Israeli’s policies of relocation (especially amongst Bedouin of the Negev). On the other hand, women have proactively begun navigating the murky waters of polygyny law,

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<sup>49</sup> Ibid., 496.

<sup>50</sup> Ibid., 496-7.

<sup>51</sup> Abu Rabia, “Redefining Polygamy among the Palestinian Bedouins,” 464.

<sup>52</sup> Aref Abu-Rabia, Sandra Scham, and Salman Elbedour, “Polygyny and Post-Nomadism among the Bedouin in Israel,” *Anthropology of the Middle East* 3, no. 2 (2008): 32-33.

purposely entering into polygynous marriages in an attempt to take agency over their lives, which changed dramatically after the war of 1967 as Israel became more deeply involved in arranging Bedouin lives.

#### **4a. Polygyny as an Assertion of Muslim Male Power**

The south of Israel, known as the Negev Desert, is home to a traditional, nomadic group of Muslims known as Bedouins. In the name of security, beginning in 1966 and continuing through the 1990s, Israel began a process of relocating Bedouin from their centuries-old tribal lands to seven main cities in the south. According to Aref Abu-Rabia et al:

Over the years, Israel has justified the settlement initiative as a form of enlightened social mainstreaming, promoting advancement through urbanisation and the enhancement of access to basic services, including education and integration into modern life patterns. The townships established under government initiatives were not, however, equipped to provide adequate means for earning a livelihood, and the Bedouin living there have suffered from a high rate of unemployment.<sup>53</sup>

Abu-Rabia et al add that the process of urbanization itself is a factor contributing to the rise of polygyny in Bedouin communities.<sup>54</sup> Women's livelihoods in the Negev under seminomadic conditions were lost upon moving to the cities.<sup>55</sup> Furthermore, with lower economic prospects for men as well, many fathers began offering their daughters in second marriages to alleviate their own financial woes.<sup>56</sup>

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<sup>53</sup> Ibid., 30.

<sup>54</sup> Ibid., 29-31.

<sup>55</sup> Dinero, "Neo-Polygamous Activity among the Bedouin of the Negev," 495.

<sup>56</sup> Abu-Rabia, Scham, and Elbedour, "Polygyny and Post-Nomadism among the Bedouin in Israel," 30-31.

The resurgence of polygyny within these Bedouin communities is part of a rise in Islamic behavior in general in the South. Rawia Abu Rabia explains that this is due to feelings of isolation amongst the Bedouin of the south, as they are cut off ever increasingly from Palestinian Muslims in Gaza and the West Bank, with whom they had more open relations prior to increased security following the 1967 War and the 2000 Intifada. Abu Rawia explains this increase in polygyny as a means of creating solidarity with Muslims internationally, where polygyny is more prevalent, and to have a closer identity with their Arab neighbors.<sup>57</sup> It also is a response on the part of Bedouin men feeling that they have lost their dominance and authority to the Israeli state—through the loss of their land and their economic stability.<sup>58</sup> As Abu-Rabia et al note: “Anchored in religious sanctions, polygyny has been demonstrated to be a highly adaptable means of exerting control and maintaining prestige in a desperate situation in which there is little enough control or prestige to be had.”<sup>59</sup> The very fact that polygyny is illegal, combined with the cultural history of polygyny associated with a high economic status and prestige in Muslim communities, makes it an ideal form of cultural protest against Israel, which the Bedouin, especially, see as taking away their economic stability and legislating against their religious traditions .

Economics is not the only contributing factor to the rise in polygyny. According to Abu-Rabia, “In the last 20 to 30 years, there has been a reversal of the trend towards the Western ideal of monogamous marriage among the Bedouin tribes in Israel and a

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<sup>57</sup> Dinero, "Neo-Polygamous Activity among the Bedouin of the Negev," 495.

<sup>58</sup> Abu Rabia, "Redefining Polygamy among the Palestinian Bedouins," 483.

<sup>59</sup> Abu-Rabia, Scham, and Elbedour, "Polygyny and Post-Nomadism among the Bedouin in Israel," 34.

consequent increase in polygyny at all levels of Bedouin society.”<sup>60</sup> This idea of monogamy as a Western value was introduced with Israel’s ban of polygyny regardless of religious background. This reaction to Western mores combines with other cultural beliefs:

In the case of the Arab Bedouin of the [Negev], polygamy can be explained as resistance to the State and to the colonial power it activates. Given that Bedouin society values freedom and autonomy, it is understandable how external oppression from an ethnocentric government can translate into internal ‘autonomy’ manifesting itself through adherence to cultural practices such as polygamy.<sup>61</sup>

Thus, polygyny for men becomes a way of fighting against the incursions, physically, culturally, and religiously, on the part of the Israeli state. For Bedouin men, according to Dinero, this becomes a way to assert their power and dominance in economic and cultural situations in which they feel increasingly powerless.<sup>62</sup>

#### **4b. Polygyny as an Assertion of Muslim Female Agency**

Alternatively, polygyny has been used by women for their own empowerment. In her ethnographic studies of Palestinian Bedouin women, Amalia Sa’ar interviewed women who had deliberately sought to enter polygynous relationships. Sa’ar found that the women in her study

frame their choices to become second wives as empowering, in seeming inversion of common attitudes that regard polygyny as bad for women, are interpreted against the historical conditions of their community with particular attention to the gendered aspects of the structures of power. . . . In the case at hand, the national and civil oppression of Palestinians inside Israel is essential to the analysis of the women’s gendered strategies of opting to become second wives.<sup>63</sup>

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<sup>60</sup> Ibid., 23.

<sup>61</sup> Abu Rabia, "Redefining Polygamy among the Palestinian Bedouins," 487.

<sup>62</sup> Dinero, "Neo-Polygamous Activity among the Bedouin of the Negev," 498.

<sup>63</sup> Sa'ar, "Maneuvering between State, Nation, and Tradition," 516-17.

In this way, Sa'ar explains, polygyny becomes a matter of agency. Muslim women, whose social position, economic security, and personal status have been bombarded by constant change since the 1960s are turning to polygyny as a means of regaining control over their own lives. Sa'ar adds: "women's uses of an explicitly traditional and patriarchal script of gender morality to legitimize lifestyles that are easily stigmatized as immoral comprise symbolic subversions from within the power biases that inform the lives of their community."<sup>64</sup> It is the fact that polygyny still very much exists under Islamic law, however, that gives women this form of marriage to deploy as a disruptive tool in the struggle against marginalization, a seeming reversal of the normal views toward polygyny both within Palestine and worldwide.<sup>65</sup> This is seen in how these women are setting the parameters of their relationships, often not living with these men after the marriages. Polygyny may be illegal under Israeli state law, but it is very much still legal under Islamic law. When Israeli state laws and programs such as the increased policing of the West Bank border and the relocation of the Bedouin of the south disrupt women's lives, women are finding ways, legal under Islamic law, to take back control of their lives.

The women in Sa'ar's article have chosen "gendered strategies of opting to become second wives" in order to have access to more resources, including financial and social support.<sup>66</sup> One Muslim Israeli woman in Sa'ar's study, named Lamya, wished to have a child though she was not married. As in vitro fertilization is generally not approved under Islamic law, Lamya purposely looked for a husband willing to take a second wife. Beyond conceiving a child, Lamya did not wish to be a part of any man's household. Believing that a

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<sup>64</sup> Ibid., 515.

<sup>65</sup> Ibid., 524.

<sup>66</sup> Ibid., 517.

Bedouin man may assert too many claims to a child, she instead looked for a husband from the West Bank, where polygyny is far more prevalent. Her belief was that by picking a man on the other side of the border, she would have far more control over her future as a single mother.<sup>67</sup> Lamy'a's is one of many such stories. In other accounts, divorced Muslim Israeli women with children will purposely find husbands looking for second wives, using their income as a way to supplement their own to create better lives for children. These women maintain their own households and are often wives in name only.<sup>68</sup> Sa'ar explains that there are no consequences for women to enter into marriages as second wives. Under Israel's bans of polygyny, the punishment for entering into bigamous relationships is only levied on men.<sup>69</sup> Thus, knowing that they will not be prosecuted for entering into a polygynous marriage, these Bedouin women that Sa'ar interviews are using polygyny, an accepted form of marriage within their own religion, to push back against their loss of economic freedom under Israel's increasing involvement in the Negev.

## **5. THE BANS ON POLYGyny AS A FORM OF ISRAELI CULTURAL COLONIALISM**

According to Abu Rabia and others, the imposition of anti-polygyny and anti-bigamy laws by Israel is part of its greater project of cultural colonialism and political Zionism. As explored in chapter two, polygyny had long been on the decline in Sephardi/Mizrahi Judaism and had been banned within Ashkenazi Judaism since 1000. Israel banned polygyny in 1951 under the Women's Equal Rights Law, yet the practice, at times, has been tacitly allowed. As Abu Rabia states:

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<sup>67</sup> Ibid., 518-20.

<sup>68</sup> Ibid., 524.

<sup>69</sup> Ibid., 531.

Polygamy is simultaneously a legal, social, cultural, and political issue and is mostly a product of change. For many of the issues accompanying polygamy, there is a colonial component that fosters its continuity as a traditional practice. . . . In this respect, polygamy may be a regression to the old patterns of the Bedouin in reaction to the colonial power.<sup>70</sup>

And yet it is the fact that Israel, at times, allowed this practice to continue with relative impunity that seems to make little sense. From the 1960s until the 2000s, very few Bedouin were ever prosecuted for their polygynous marriages. Abu Rabia and others believe that, like the ban on polygyny itself, which resulted in the cultural imposition of monogamy on many populations in Israel, the lack of enforcement is another means of rule through colonial power: "The increase of prevalence of polygamy is a direct result of Israel's colonial power as exercised against the Bedouin population. State authorities benefit from the practice of polygamy among the Arab-Bedouins because it keeps them preoccupied in their internal affairs."<sup>71</sup> By her estimation, Israel's lack of enforcement of its polygyny bans *leads* to an increase in the behavior. Conversely, Israel's continued allowance of Bedouin polygyny helps to create "us" versus "them" narratives where, through their polygyny, the Bedouin remain the Other.<sup>72</sup>

Thus, while on the one hand Israel bans polygyny and will punish those who enter into it, especially if there is a perception that polygyny is being used to circumvent citizenship laws, on the other hand, Israel at times overlooks polygyny as a strategy for keeping the Bedouin so focused on their own problems that they do not organize against Israel. Polygyny and bigamy were banned in Israel in part as a means improving the rights

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<sup>70</sup> Abu Rabia, "Redefining Polygamy among the Palestinian Bedouins," 485.

<sup>71</sup> *Ibid.*, 479.

<sup>72</sup> *Ibid.*, 490.



of women. Yet, as polygyny increases in prevalence, especially in Muslim communities, women's rights are actively being compromised. Abu Rawia concludes:

Colonial power and patriarchal power operate together actively and reactively to exclude Bedouin women and to increase their marginalization. The State does not enforce the law and thereby enables Bedouin men to manipulate the system and practice polygamy. The operations of the mechanisms of these two powers lead to the activation of two legal systems and to the externalization of polygamy from the legal system. Bedouin women remain invisible in the eyes of the law.<sup>73</sup>

Israel's tendency to overlook polygyny amongst the Bedouin through the 1990s began to rapidly change as issues of security arose in the 2000s and 2010s. In the wake of the Second Intifada, Israel began controlling the movement of individuals through the Security Barrier from the West Bank into Israel, leading to more marriages across the border. To curb this behavior, Israel increasingly began enforcing the penalties for bigamy and limiting access to Jewish-Muslim intermarriage, as will be explored in chapter five.

## **6. CONCLUSION**

The lack of civil courts governing personal status within Israel has led to many challenges, as we have seen through the preceding chapters. In some cases, laws passed by the Knesset supersede laws within the religious courts. One such set of laws, the laws outlawing polygyny and bigamy, were passed with the goal of ensuring women's rights and keeping certain religious communities for continuing marital practices seen by both secular Jews and the Ashkenazim as being anachronistic within a modern Jewish state. What they may not have been able to predict at the time, but what has come to exist, is a state in which polygyny is now on the rise. In a situation where the state curbs the civil rights of its citizens, citizens may feel the need to fall back on old practices, attached to old identities, to

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<sup>73</sup> Ibid., 474.

assert themselves as culturally distinct from the majority. Amongst Muslim Palestinians, especially the Bedouin from the Negev region, this seems the case. And yet, even within the Jewish communities, we see the use of polygyny, however rare, in ways that reify male and female gender roles from an Orthodox Jewish frame of reference and assert male dominance within these polygynous marriages. The Druze are seemingly caught between these two extremes, having rarely practiced polygyny yet suddenly finding themselves drawn toward the institution as other forms of divorce (including unilateral divorce<sup>74</sup>) has been outlawed. As will be explored in chapter five, today, polygyny is one of the ways Israelis try to circumvent Israel's increasingly restrictive laws governing citizenship-through-marriage.

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<sup>74</sup> Sa'ar, "Maneuvering between State, Nation, and Tradition," 531.

## Chapter Five

### Love and Marriage: Exogamous Marriage in Israel and the West Bank<sup>1</sup>

#### 1. INTRODUCTION

In 2006, Reuters began reporting the struggles of a Jewish-Muslim interfaith couple attempting to live together in Israel. Jasmine Avissar, an Israeli Jew, and Osama Zatar, a Palestinian Muslim from the West Bank, fell in love and married overseas, as their differing religious traditions kept them from a legal marriage within Israel (see chapter one). Overseas marriages are accepted by the Israeli government, and many Israeli couples who cannot marry legally in Israel will marry overseas, often in Cyprus.<sup>2</sup> Avissar and Zatar believed that Avissar's citizenship would be enough to bring Zatar from the West Bank and give him at least provisional citizenship in Israel. Under Israel's Nationality Law of 1952, spouses of Israeli citizens may apply for citizenship under section seven, which states: "The spouse of a person who is an Israel national or who has applied for Israel nationality and meets or is exempt from the requirements of section 5 (a) may obtain Israel nationality by naturalization even if she or he does not meet the requirements of section 5 (a)."<sup>3</sup> For

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<sup>1</sup> Portions of section three of this chapter first appeared in a book essay written for *Public Knowledge*. Thank you to ASPECT alum Robert Kirsch for his valuable feedback on the essay. See Holly A. Jordan, "Walls as Scrims in Wendy Brown's 'Walled States, Waning Sovereignty,'" *Public Knowledge* 4, no. 1 (2012). Other portions of this chapter were presented at the annual meeting of the ASPECT Conference, Virginia Tech, Blacksburg, Virginia, March 2013. Thank you to Cindy Weber for her critical feedback at that conference.

<sup>2</sup> Yuval-Davis, "The Bearers of the Collective," 18.

<sup>3</sup> "Nationality Law, 5712-1952," (<http://www.knesset.gov.il>: The Knesset, 1952). Section 5(a) of the Nationality Law states: "(a)A person of full age, not being an Israel national, may obtain Israel nationality by naturalization if: (1)he is in Israel, and (2)he has been in Israel for three years out of the five years immediately preceding the day of the submission of his application; and (3)he is entitled to reside in Israel permanently; and (4)he has settled, or intends to settle, in Israel; and (5)he has some knowledge of the Hebrew language; and (6)he has renounced his nationality or has proved that he will cease to be a foreign national upon becoming an Israel national."

many years, this section of the Nationality Law, especially after 1967, was used to reunify families that had been separated by the several Arab-Israeli conflicts.

Avissar and Zatar's story represents a new tension in citizenship-through-marriage within Israel. Passed in 2003, the Citizenship and Entry into Israel Law (Temporary Provision)<sup>4</sup> rescinded the citizenship-by-marriage provision of the 1952 Nationality Law specifically for inhabitants of Gaza and the West Bank wishing to marry Israelis or be reunited with their families, regardless of their religious affiliation. Thus, Zatar was unable to move to Israel with his wife or seek Israeli citizenship. The next choice was for Avissar to move to the West Bank with Zatar. However, Israel also refused to issue Avissar a permanent permit to live in the West Bank. In 2006, Avissar and Zatar were living together temporarily in Ramallah. Avissar describes her experience in Ramallah in the language of identity: "I feel like a refugee. The moment I decided not to be part of the mainstream I was told that I was not a part of my country anymore."<sup>5</sup> Conversely, regarding her time in Ramallah, Avissar states: "I was surprised to see that the Palestinians accepted me as one of their own."<sup>6</sup> But this solution was only temporary, as the 2003 Temporary Provision had not been lifted, and a third option had to be found.

By 2007, Avissar was forced to leave Ramallah and return to Israel, as much a prisoner outside of the Barrier dividing the West Bank and Israel as many Palestinians trapped inside. Avissar and Zatar appealed to the Israeli High Court to allow their family to

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<sup>4</sup> I will examine this law in far more detail in section four of this chapter.

<sup>5</sup> Matthew Price, "Star-Crossed Lovers Quit West Bank," *BBC News* (2007), [http://news.bbc.co.uk/2/hi/middle\\_east/6405799.stm](http://news.bbc.co.uk/2/hi/middle_east/6405799.stm).

<sup>6</sup> David Hardaker, "Love across the Israel-Palestine Divide," *Australian Broadcasting Company*, March 15 2007.

unify either in Israel or the West Bank, but the appeal failed by a narrow margin.<sup>7</sup> Because the 2003 Temporary Provision amending the Citizenship Law continues to be in effect, some thirteen years after it was voted into law, Zatar and Avissar were forced out of their homelands and have immigrated to Germany. Their story has been made into a documentary, "Love During Wartime," calling the international community's attention to their plight.<sup>8</sup> When asked what it was like to leave Israel, Avissar notes, "In a way I feel now more free because I don't have the illusions of nationalism of the Israeli country. All people who live in Israel love their country and fight for it. I don't have these feelings anymore and I'm happy not to be a part of that society anymore."<sup>9</sup> This observation shows how complete intertwined ideas of Israeli identity are with configurations of marriage and the family. Avissar found herself having to making the choice between living with her husband or living in her homeland, a choice necessary because of Israel's marriage laws, and their temporary restrictions. Without civil recourse to marry or naturalization through marriage, Zatar does not have access to citizenship like he would have prior to 2003. Israel's thirteen-year Temporary Restriction has taken away the rights of Palestinians like Zatar to receive naturalization through marriage (even if his partner were Muslim) and Avissar's right as an Israeli to bring her spouse to Israel, which she would have been able to do under the 1952 Nationality Law prior to the passage of the Temporary Restriction.<sup>10</sup>

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<sup>7</sup> Allyn Fisher-Ilan, "Arab Romeo and Israeli Juliet Seek Refuge," *Reuters*, May 17, 2006; Hardaker, "Love across the Israel-Palestine Divide."

<sup>8</sup> George Robinson, "Love across the Great Divide " *The Jewish Week* (2011), [http://www.thejewishweek.com/arts/film/love\\_across\\_great\\_divide](http://www.thejewishweek.com/arts/film/love_across_great_divide).

<sup>9</sup> Hardaker, "Love across the Israel-Palestine Divide."

<sup>10</sup> "Nationality Law, 5712-1952."

Avissar and Zatar's story is certainly not the only story of love and marriage across the Barrier, nor is it the only story of a marriage between an Israeli citizen and a West Bank refugee, irrespective of religious affiliation. Yet, in the history of marriage world-wide, the tendency is toward endogamous unions, or the unions of individuals within the same group. Exogamy, or the marriage of someone outside one's social group, is far more uncommon. And while advances in transportation have changed this for many (one may not be as tied to one's homeland as in previous generations), most people still marry within their own social group, however they define it: city, state, religion, ethnicity, etc.<sup>11</sup> Jews, Christians, and Muslims historically have been religiously endogamous and when one marries outside of the faith, one of the partners, generally the woman, often converts. This predisposition to marry within one's own community is challenged in the instance of Israel and Palestine because constantly shifting borders and barriers have been erected, dividing particular endogamous groups, especially Palestinian Christians and Muslims now split between Gaza, the West Bank, and Israel proper. Both Jewish-Muslim intermarriage and Muslim-Muslim marriages across the Security Barrier located on the 1949 Green Line between Israel and the West Bank, built by Israel in response to the 2000 Second Intifada) have been affected by the ongoing conflict and the continued challenges faced by a people living in a divided land. After a brief analysis of the history of religious intermarriage between Muslims and Jews and of the series of events leading to the Separation Barrier on the Green Line between the West Bank and Israel, this chapter examines two types of exogamous relationships occurring within Israel and the West Bank today: the marriage of

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<sup>11</sup> Limore Racine and Simon Dein, "Jewish-Arab Couple Relationships in Israel: Underlying Motives for Entering and Engaging in Intermarriage," *Journal of Muslim Mental Health* 5, no. 3 (2010): 279.

a Muslim from the West Bank to a Muslim within Israel, and the intermarriage of Jewish and Arab Israelis. Both forms of exogamous are legally challenging given Israel's current laws of personal status (PSLs) and laws governing nationality and citizenship.

## **2. RELIGIOUS INTERMARRIAGE IN JUDAISM AND ISLAM**

Religious intermarriage, or the marriage between two people of different religious backgrounds, while not widespread in the Abrahamic faiths, nevertheless occurs in all three of the major traditions. As of the last official publication from the Israeli Central Bureau of Statistics in 2010, Christians made up 151,700 persons of the roughly 7.6 million citizens of Israel (not including Gaza or the West Bank).<sup>12</sup> Overall, Christians tend to be the most endogamous group within the Abrahamic traditions practiced in Israel, and as Racin and Dein note, it is rare to find interfaith couples with one Christian partner and even rarer to find a couple who wishes to speak of their relationship.<sup>13</sup>

Under Judaism, intermarriage tends to involve the conversion of the non-Jewish partner, especially if the non-Jewish partner is a woman, which is crucial because of how Jewish lineage is inherited. The most often cited story from the Bible about religion and intermarriage is that of the story of Ruth, Naomi, and Boaz found in the biblical book of Ruth. Naomi, a Jewish woman from the tribe of Judah, along with her husband and two sons, move to Moab, located in modern-day southern Jordan. From among the Moabites, who are a cousin tribe to the Israelites, Naomi's two sons marry (there is no language implying that these women converted). Through the course of the narrative both Naomi's

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<sup>12</sup> Israel Central Bureau of Statistics, "Statistical Abstract of Israel, 2010: Population, by Religion," ed. Israel Central Bureau of Statistics ([www1.cbs.gov.il/2010](http://www1.cbs.gov.il/2010)).

<sup>13</sup> Racin and Dein, "Jewish-Arab Couple Relationships in Israel," 282-83.

husband and two sons die, and Naomi returns to Judah, with her two Moabite daughters-in-law Orpah and Ruth accompanying her on the journey. While on their journey, Naomi attempts to send the young women home to their mothers and gods. Orpah leaves, but Ruth remains behind. This mention of their gods indicates that Ruth and Orpah did not convert to Judaism but rather kept their own faith. This is further confirmed by Ruth's vow to Naomi, the core of the liturgy of conversion ceremonies within Judaism today. Ruth, not wishing to leave her mother-in-law, begs: "Entreat me not to leave you or to return from following you; for where you go I will go, and where you lodge I will lodge; your people shall be my people, and your God my God."<sup>14</sup> Eventually, Ruth will marry a Jewish man, Boaz, and her great-grandson becomes King David, the first king of a unified Israel. In this short book of the Bible, we get several key understandings of identity within Judaism: that a woman does not necessarily always convert in a marriage to a Jewish man, that a person *can* convert and is accepted fully into the community, and that female conversion does not preclude them from giving birth to future Jewish leaders of the nation.

The same issues of inheritance of religious identity are important in Muslim communities as well. Male Muslims are allowed to marry non-Muslim women, but not vice versa, as religious identity is inherited through the line of the father. Many of the rules regarding intermarriage of Muslims with non-Muslims can be found in the early Muslim document "The Pact of Umar," apocryphally written by the second caliph of Islam, Umar ibn al-Khattab, sometime during the ninth century CE. This document, of unknown origin, which standardized early understandings of the *dhimmi* (see chapter one), states the rules for non-Muslims living under the fledgling Islamic Empire, including rules on proper sexual

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<sup>14</sup> Ruth 1:16, Revised Standard Version.



behavior, trade between Muslims and non-Muslims, and prohibited forms of public religion.<sup>15</sup> Regarding intermarriage, non-Muslims

would refrain from committing fornication with Muslim women. This was extended to include marriage between non-Muslim men and Muslim women. Marriage between Muslim men and *dhimmi* women was allowed, following the Prophet's example, as long as the children were brought up as Muslims. But non-Muslim wives of Muslim men were free to worship according to their own faith.<sup>16</sup>

In this way, while clearly a gendered concession, non-Muslim women are at the very least allowed to keep their own personal religious practices should they marry a Muslim, which is a bit different than in Judaism, where it is expected today that a non-Jewish woman who wishes to marry a Jewish man would convert before the wedding ceremony.

Religious intermarriage between Jews and Muslims, while not common in any sense, has been present since the founding of Islam, and generally consisted of a Jewish woman marrying a Muslim man. But there were other interactions between the two communities in areas of personal status. By the fifteenth century, Ottoman Islamic courts were being used by members of both the Jewish and the Christian *dhimmi*s for adjudication on issues of marriage and especially divorce. As Masters explains, for many of the Christian communities in the Ottoman Empire, divorce was illegal. Multiple instances in Islamic legal rulings indicate that the use of temporary conversion was in place to allow Christian women, for instance, to temporarily convert to Islam to have the ability to divorce their husbands.<sup>17</sup> For Jews, Christians, and Muslims, alliances were formed through marriages, more often for economic reasons than any other reason.<sup>18</sup>

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<sup>15</sup> Masters, *Christians and Jews in the Ottoman Arab World*, 22.

<sup>16</sup> *Ibid.*

<sup>17</sup> Hardaker, "Love across the Israel-Palestine Divide."

<sup>18</sup> Masters, *Christians and Jews in the Ottoman Arab World*, 38.

Under both Islam and Judaism, laws governing religious intermarriage gendered qualities. In the case of non-Jewish women marrying Jewish men, the tendency is toward conversion. In fact, due to many factors, but especially circumcision, women tend to convert to Judaism more readily than men, who would be required in most instances to undergo circumcision as part of the covenantal nature of Jewish religious practice.<sup>19</sup> In the case of a Jewish woman marrying a Muslim man, while not forced to convert, a woman's children would necessarily be raised Muslim. So, while interfaith marriage again was not prevalent, each religion allows for provisions for it to occur. It is only the founding of the State of Israel that calls into question the legality of these unions, especially after power shifts in the 1967 War and growing security concerns in the wake of the 2000-2004 Second Intifada.

### **3. THE SECOND INTIFADA AND THE BUILDING OF THE BARRIER**

In the wake of the 1967 Arab-Israeli War (also known as the Six-Day War to Israelis and Al-Naksah, or The Setback, to Palestinians), Israel for the first time claimed jurisdiction over Gaza, the West Bank, and East Jerusalem. Most of the international community, however, does not believe this is a legal claim, referring to these three areas as the Occupied Territories. Prior to the 1967 War, Gaza had been under the jurisdiction of Egypt, while the West Bank had been under the jurisdiction of Jordan. The 1967 War led to the displacement of thousands of Palestinians from Gaza and the West Bank, including some already displaced persons from the 1948 War who poured into the the United Nations

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<sup>19</sup> Paul Wexler, *The Non-Jewish Origins of Sephardic Jews* (Albany, New York: SUNY Press, 1996), 51.

Relief and Works Agency (UNRWA) refugee camps in the surrounding countries.<sup>20</sup> After the end of the 1967 War, steps were made to reunify Palestinians displaced outside of the West Bank and Gaza during the conflict, who numbered over 400,000 persons, or over one-third of the Palestinians who had resided in these areas. Those who have been allowed to return to the West Bank or Gaza, and numbers on this are incredibly unclear (both due to individuals crossing the border illegally or due to individuals having never formally registered with UNRWA), do so under the permission of the Israeli government who has the sole deciding voice in who is allowed to return.<sup>21</sup> After 1967, one of the only ways someone living in Gaza and the West Bank could obtain Israeli Citizenship would be through marriage under the aforementioned section seven of the Nationality Law of 1952.<sup>22</sup>

In the following years, Israel would find itself in and out of conflict with its Arab neighbors. A seeming resolution to the conflict came with the 1993 Oslo Peace Accords, the first formal meeting between Israel, under Prime Minister Yitzhak Rabin, and the future government of Palestine, the Palestinian Liberation Organization led by Yassir Arafat. This accord, among other things, created a framework for a two-state solution to be actualized by 1999, a solution which failed to materialize as the following two prime ministers, Shimon Peres and Benjamin Netanyahu, both disagreed with key components of Oslo. By

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<sup>20</sup> Kjersti Gravelseter Berg, "From Chaos to Order and Back: The Construction of Unrwa Shelters and Camps, 1950-1970," in *Unrwa and Palestinian Refugees: From Relief and Works to Human Development* ed. Sari Hanafi, Leila Hilal, and Lex Takkenberg, Routledge Studies on the Arab-Israeli Conflict (New York: Routledge, 2014), 234.

<sup>21</sup> Usama Halabi, "The Legal Status and Rights of the Palestinians Displaced as a Result of the June 1967 War," *Israel Journal of Politics, Economics, and Culture* 15/16, no. 4 (2009).

<sup>22</sup> "Human Rights Groups Hit out at Racist Israeli Marriage Law."

2000, the peace process planned at Oslo had unraveled.<sup>23</sup> Palestinian disappointment and unrest as a result of the conservative policies of Peres and Netanyahu, including the continued building of Jewish settlements in Gaza and the West Bank, came to a head in 2000 in the Palestinian uprising now known as the Second (Al-Aqsa) Intifada. This uprising escalated after the visit of Prime Minister Ariel Sharon to the Al-Aqsa Mosque, located on the Jewish Temple Mount, in what was seen by the Palestinians as a symbolic assertion of Jewish power over one of Islam's holiest sites.<sup>24</sup> By the end of 2004, "According to defense establishment data, the al-Aqsa Intifada claimed the lives of 319 Israeli soldiers and 745 civilians, and left 2,430 soldiers and 5,032 civilians wounded. According to the B'Tselem human rights group and Red Crescent Data the Palestinians suffered 3,315 fatalities and 29,181 casualties."<sup>25</sup> And while the violence suffered by Palestinians was far higher than that of Israelis, the Israeli government pushed forward with strong security measures.

Sharon quickly responded to the violence of the Second Intifada with the planning and building of the Israeli Security Barrier beginning in 2001. Former Prime Minister Yitzhak Rabin was the first to suggest a Barrier around Gaza in 1992, but it was under the leadership of Ariel Sharon that the Barrier around the West Bank was first constructed. Officially, Israel erected this Barrier of barbed wire and concrete as a means of providing security and "not to form a border."<sup>26</sup> This Barrier has had a significant impact on the

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<sup>23</sup> Sara E. Karesh and Mitchell M. Hurvitz, "Palestinian Liberation Organization (PLO)," in *Encyclopedia of Judaism* (New York: Facts on File, Inc, 2006).

<sup>24</sup> Juliana Ochs, *Security and Suspicion: An Ethnography of Everyday Life in Israel* (Philadelphia: University of Pennsylvania Press, 2013), 5-6.

<sup>25</sup> "The Al-Aqsa Intifada," *Ynetnews* 2009.

<sup>26</sup> "Israel Building Fence Along West Bank," (2002), [http://articles.cnn.com/2002-06-17/world/mideast\\_1\\_palestinian-state-bad-fences-arafat-s-palestinian-authority?\\_s=PM:WORLD](http://articles.cnn.com/2002-06-17/world/mideast_1_palestinian-state-bad-fences-arafat-s-palestinian-authority?_s=PM:WORLD).

ability for Palestinians on either side to move without hassle or without cause for concern for their personal safety. The Barrier, which in theory was to have put up a security barrier or fence (Israel's terminology) between Israel proper and the West Bank on the 1949 ceasefire line, encroaches repeatedly away from the Green Line into Palestinian territory, cutting off entire villages and towns from the rest of Palestine.<sup>27</sup> Construction began in July 2001, with changes made to the original plans in June 2002 that move the Barrier further into Palestinian territory. Where the Barrier deviates from the 1949 ceasefire lines, it encroaches upon and engulfs West Bank towns with sizeable Jewish populations, including East Jerusalem, Ariel, Gush Etzion, and Maale Adumim.<sup>28</sup> The international community has been overwhelmingly opposed to this Barrier. Both the ICJ and the General Assembly have condemned its construction. In July 2004, the ICJ passed an advisory opinion "rul[ing] that Israel violated international law in the routing of the security fence and urged Israel to dismantle sections built in the West Bank and East Jerusalem."<sup>29</sup> In support of this opinion, the General Assembly, also in July 2004, passed a resolution calling upon Israel to comply with the ICJ's advisory opinion. Both the opinion and the resolution continue to be summarily ignored by Israel.<sup>30</sup>

By April 2006, 335 kilometers of this Barrier was complete.<sup>31</sup> By 2011, UNRWA, the agency who supports Palestinian refugees, reported that 62 percent of the 708 km projected Barrier had been completed; these statistics are the most recently reported figures from UNRWA. UNRWA's main concerns with the Barrier include the fact that if

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<sup>27</sup> Brown, *Walled States, Waning Sovereignty*, 30-31.

<sup>28</sup> Xinhuanet, "Backgrounder: Israeli Security Fence."

<sup>29</sup> "Icj Advisory Opinion on Israeli Security Fence."

<sup>30</sup> "Backgrounder: Israeli Security Fence."

<sup>31</sup> *Ibid.*

completed, the Barrier would annex an additional 9.4 percent of Palestinian lands beyond the 1967 Green Line. Furthermore, they are troubled by the fact that the Barrier itself

separates families and severely restricts Palestinian access to land, livelihoods and basic services, including schools and hospitals. Amongst refugee communities affected by the Barrier, these negative impacts are compounded by the fact that they tend to lack security of property tenure and endure higher rates of unemployment and food insecurity.<sup>32</sup>

The Barrier adds new checkpoints to those already existing, and new permits and ID cards were needed for those stuck between the Green Line and the Barrier itself.

Far from being the simple, temporary security fence Israel has described it to be, “[t]he barrier—ranging from fifty to one hundred meters in width—consists of a fence equipped with electronic sensors, concrete walls, surveillance installations, a patrol road, barbed wire, and other protective infrastructure.”<sup>33</sup> It is also not temporary, given that construction began in 2001 and the Barrier still stands to this day. And while the suicide bombings that Israel used to justify the construction of the Barrier have diminished, according to Wendy Brown, this Barrier “also shares with other walls the literal rerouting of danger that the wall purports to block, its intensification of enmity and incitement of new tactics and forms of aggression against what it would protect.”<sup>34</sup> The intensification of security within Israel, including the temporary provisions amending both citizenship laws and PSLs that never fade away, are a form of these “new tactics” Brown discusses. For Brown, there is a correlation between modern walls and the deterioration of traditional statehood and sovereignty, which she calls the “paradoxes” of modern wall building.<sup>35</sup>

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<sup>32</sup> United Nations, "Barrier Monitoring Unit," (unrwa.org: United Nations Relief and Works Agency, 2012).

<sup>33</sup> "Icj Advisory Opinion on Israeli Security Fence," 361.

<sup>34</sup> Brown, *Walled States, Waning Sovereignty*, 34.

<sup>35</sup> *Ibid.*, 121.

Through these paradoxes, Brown shows that rather than providing defense against siege, the alleged purpose of ancient walls, modern walls stand as physical artifices symbolizing the crumbling of modern connotations of sovereignty.<sup>36</sup> Brown states, walls “signif[y] the ungovernability by law and politics of many powers unleashed by globalization and later modern colonialization and a resort to policing and blockading in the face of this ungovernability.”<sup>38</sup> While Israel, indeed, has the strength and means to build this Barrier, the structure itself, as Brown understands it, masks internal self-doubt. The tenability of dividing people culturally by keeping them within endogamous marriage groups, in a globalizing world with increasing access to civil marriage, is becoming more impossible for Israel to justify. According to Brown, walls become “scrim,” theatrical backdrops that are either transparent or opaque depending on lighting, upon which weakened state sovereignty is projected, the goal of which is to shore up the “erosion” of the state.<sup>39</sup> In the case of the Barrier, its scrim-like qualities were elevated to that of a canvas. In 2005, in addition to the usual graffiti one would expect to find on such a structure, the English graffiti artist known as Banksy painted a mural on Barrier itself near the Qalandiya checkpoint between Jerusalem and Ramallah in an attempt to bring world attention to the structure.<sup>40</sup> Finally, according to Brown, states build walls to try to evoke some semblance of sovereign status; however, doing so adds to the problems (terror, violence, etc.) that the walls were intended to solve. Brown states, “The popular desire for walling harbors a wish for the powers of protection, containment, and integration

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<sup>36</sup> Ibid.

<sup>38</sup> Brown, *Walled States, Waning Sovereignty*, 24.

<sup>39</sup> Ibid.

<sup>40</sup> Rebecca Harrison, "Graffiti Artist Banksy Goes to the Holy Land," *Reuters UK* 2007.

promised by sovereignty, a wish that recalls the theological dimensions of political sovereignty.”<sup>41</sup> Along with this protection language, Norman Finkelstein, explains that Israel as a colonizer initially saw itself as a protector of the land that it took over, bringing the Arabs already living in Palestine a safe state while providing Jews a stable homeland.<sup>42</sup> Thus, the production of the Security Barrier is an evolution of that preexisting security mindset. Yet in many ways, by moving the border between Israel and Palestine farther into Palestinian territories and by dividing residents (regardless of religious or national affiliation) that had cohabitated previously, the Barrier has done more to create violence and animosity between Israelis and Palestinians than it has curtailed.

#### **4. EXOGAMOUS MARRIAGES IN ISRAEL AND PALESTINE**

Certain forms of marriage continue to be illegal within Israel. For instance, same-sex marriages and marriages between persons of unrecognized religions continue to be impossible to enter under the current PSL code in Israel—this includes certain Christian sects, for instance (see chapter one). These concerns bear upon divorces as well. What of couples of unrecognized religions that wish to divorce? Shiloh asks:

To take one possible instance: husband and wife are both Christians who do not belong to any of the recognized Christian communities, say Baptists, and have always been domiciled in Israel and were married here. . . . Possibly such a case might be assigned by the President to one of the Christian courts recognizing divorce, with the pious hope that all derivations of canon law recognizing the right to divorce must be similar in the results of adjudication. But again, what if such couple belongs to the Buddhist faith?<sup>43</sup>

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<sup>41</sup> Brown, *Walled States, Waning Sovereignty*, 26.

<sup>42</sup> Norman G. Finkelstein, *Image and Reality of the Israel-Palestine Conflict*, 2nd ed. (London: Verso, 2003), 99.

<sup>43</sup> Shiloh, "Marriage and Divorce in Israel," 486.



While these are unique and fruitful inquiries, for the purposes of this chapter, two main groups of endogamous marriages stand out as a unique problem and/or response to the continued security measure established by the State of Israel. The movement toward making illegal certain interfaith and cross-border marriages has little to do with religious law (as was seen in section two), and more to do with the reasons for the erection of the Barrier: a concern over changing identity and fears over a loss of political power.

#### ***4a. Muslim-Muslim Political Inter-marriage***

Since 1948, Palestinians in the West Bank, Gaza, and Israel itself found themselves separated by artificial endogamous borders, where prior they had intermingled and intermarried with relative ease. After 1967, these borders became even less porous, and the self-identified Palestinian nation began having to marry over political borders. However, after the First Intifada (1987-1993), Israel tightened security across the boards of Gaza and the West Bank. Restricted in their movements between the Palestinian territories and Israel proper, Palestinians seeking to gain Israeli citizenship began pursuing marriages across the border. As explained earlier, this was possible through clause seven of Israel's Nationality Law of 1952. Most citizens of the West Bank used clause 7 to move from refugee status in the West Bank and Gaza to Israeli citizenship. For Arab refugees living in Gaza and the West Bank, intermarriage with Israeli citizens was their only way to gain even provisional citizenship through an Israeli residency permit.<sup>44</sup> Many Palestinians, some registered with UNRWA, but others living within refugee camps without being registered, lived in the West Bank while working in East Jerusalem and other parts of

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<sup>44</sup> "Human Rights Groups Hit out at Racist Israeli Marriage Law."

Israel. Increased security at the border beginning in the 1990s, in response to the First Intifada, often meant business owners were unable to access the businesses in Israel they legally owned. For others living in the West Bank, for whom unemployment remains far higher than in Israel, intermarriage with a person from Israel was also a means of achieving employment. Muslim men from the West Bank began divorcing their wives, often leaving them (as Israel does not allow them to enter into polygynous relationships) to marry Arab women (described by one Palestinian man as “divorced or widowed or very old. Like 24 or 25.”) from Israel to gain Israeli ID cards and work permits.<sup>45</sup>

Quotes from refugees themselves explain how the conflict has given a new function to marriage. In 1995, a refugee, identified in a *Philadelphia Inquirer* article simply as Ahmed, risked bodily harm and arrest by sneaking over the border into Israel every day simply to work. Marriage became the option that would allow him freedom of movement without concern for safety. He states, “In order to solve all my problems, I decided to marry,” he said, a mild blush rising. “It wasn’t my goal to marry. It’s a way to help me live.”<sup>46</sup> While I do not argue that marriages of convenience have *not* occurred before increased security on the part of Israel, marriage as a direct response to tightening restrictions on bodies and movement has. In addition, Ahmed’s quality of life has increased, as he went from being able to make 15 USD per day in the West Bank to 50 US per day in Israel.<sup>47</sup> Ahmed is by far not the only case. As Dinero explains, many of the Muslim-to-Muslim marriages across the border, especially polygynous relationships, take place between

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<sup>45</sup> Ibid.

<sup>46</sup> "Palestine Refugees," United Nations Relief and Works Agency, <http://unrwa.org/etemplate.php?id=86>.

<sup>47</sup> Alan Sipress, "Need a Job? Get a Bride from Israel. Palestinian Men Resort to Marriage," *The Philadelphia Inquirer*, July 21 1995.

Muslims of the West Bank and Bedouin in the Negev region of Southern Israel (see chapter four).<sup>48</sup> Israeli responses to this movement towards citizenship on the part of primarily West Bank Arabs were to cite issues of security. According to Alan Sipress, “[m]embers of Israel's right-wing Tsomet Party have warned that West Bank husbands might infect the traditionally quiescent Arab Israelis with militant ideas.”<sup>49</sup> This language of “infection” is troubling when one realizes that that it describes actual human beings attempting to live in relative socioeconomic equality with their neighbors, with whom they had recently been able to move amongst with relative ease.

The 2003 The Citizenship and Entry into Israel Law (temporary provision) was the response to this increase in cross-border marriage. With a vote of 53 in favor, 25 against, and one abstaining, the Knesset passed this temporary provision, making it illegal for married Palestinians (from the Occupied Territories) and Israelis to live together for a period of one year, requiring them to either live separate lives in their territories of origin or to move out of the country.<sup>50</sup> According to Clause 2 of the 2003 law:

During the period in which this law shall remain in force, despite what is said in any legal provision, including article 7 of the Citizenship Law, the Minister of the Interior shall not grant the inhabitant of an area citizenship on the basis of the Citizenship law, and shall not give him [sic] a license to reside in Israel on the basis of the Entry into Israel Law, and the Area Commander shall not grant a said inhabitant, a permit to stay in Israel, on the basis with the security legislation in the area.<sup>51</sup>

This law applies to all women under 25 and all men under 35.<sup>52</sup> In a 2003 *New York Times* article, James Bennet explains:

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<sup>48</sup> Dinero, "Neo-Polygamous Activity among the Bedouin of the Negev," 501.

<sup>49</sup> Sipress, "Need a Job? Get a Bride from Israel. Palestinian Men Resort to Marriage."

<sup>50</sup> Ibid.

<sup>51</sup> Ibid. This law is written with a clear gender bias, hence my use of *sic erat scriptum*.

<sup>52</sup> "Human Rights Groups Hit out at Racist Israeli Marriage Law."

Yuval Steinitz, a parliamentary leader from Likud [the major right-wing party in Israeli], accused the governing Palestinian Authority of encouraging Palestinians to marry Israeli Arabs and move into Israel. 'It's not a humanitarian case – or not only humanitarianism – but a deliberate strategy by the Palestinian Authority to change the demographic balance in Israel in order to destroy us,' he said in a telephone interview.<sup>53</sup>

Steinitz, along with other Israeli members of parliament voting in favor of the measures cite security reasons for their decision, claiming that marriages between citizens of Israel and refugees of Gaza and the West Bank lead to more frequent instances of terrorism.<sup>54</sup> From 1993-2003, 100,000 Palestinians gained Israeli citizenship through section 7 of the Nationality Law. Only twenty instances of terrorism have been connected to these 100,000 persons.<sup>55</sup> A leading Israeli official was cited as saying that these "100,000 Palestinians received Israeli residence permits through marriage, and that the law was needed to halt the influx."<sup>56</sup>

The 2003 law effectively ended family reunification for Israelis and residents of the West Bank and Gaza displaced in the 1967 war.<sup>57</sup> The news of the law passing came in spite of massive negative response on the part of Humans Rights Watch, Amnesty International, and Arab Israelis, who framed the law as being racist because of its direct targeting of Palestinians and given the demographics language used by Steinitz.<sup>58</sup> Recall Foucault's explanation of governmentality and its concern over populations. Foucault states "[I]t is the population itself on which government will act either directly through

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<sup>53</sup> Ibid.

<sup>54</sup> "The Citizenship and Entry into Israel Law (Temporary Provision) 5763 - 2003," ed. The Knesset (<http://www.knesset.gov.il>2003).

<sup>55</sup> James Bennet, "New Law Raises Obstacles to Israeli-Palestinian Marriages," *New York Times* (1923-Current file) 2003. and "Human Rights Groups Hit out at Racist Israeli Marriage Law."

<sup>56</sup> "Human Rights Groups Hit out at Racist Israeli Marriage Law."

<sup>57</sup> "Israeli Court Upholds Marriage Restrictions," *Telegraph Herald* 2006.

<sup>58</sup> "New Law Raises Obstacles to Israeli-Palestinian Marriages."

large-scale campaigns, or indirectly through techniques that will make possible, without the full awareness of the people, the stimulation of birth rates, the directing of the flow of population into certain regions or activities, etc.”<sup>59</sup> While the PSL system, at first, indirectly kept different religious groups from marrying one another (by not giving them the civil alternative to do so), measures like the Temporary Provision are made with the full awareness of the people. In 2003, about 1.32 million Palestinians lived in Israel proper, with another 3 million living in the West Bank and Gaza. The Temporary Provision, however, allowed for Israeli Arabs to move to the West Bank and Gaza. But as we saw with Avissar, this was not extended to Jews. Furthermore, the Temporary Provision kept those Israeli Arabs living in East Jerusalem (which, while technically part of Israel is overwhelmingly Palestinian) from living with their families from the West Bank.<sup>62</sup> By 2006, the law was still in full effect, and although the international community was calling for the law to be overturned, the Israeli Supreme Court voted 6-5 to uphold the law.<sup>63</sup> The Supreme Court voted, again with the same split, in January 2012 to continue the 2003 law and, to this day, the law has not been overturned.<sup>64</sup> The international community continues to denounce both the Supreme Court’s decisions and the Security Barrier that only adds to these issues. In 2014, United Nations Secretary-General Ban-Ki Moon, on the tenth anniversary of the ICJ’s 2004 advisory ruling on the illegality of the Security Barrier, criticized Israel for continuing to build portions of the Barrier. Ban, addressing the United Nations Committee on the Exercise of the Inalienable Rights of the Palestinian People,

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<sup>59</sup> Foucault, "Governmentality."

<sup>62</sup> "Israeli Cabinet Extends Law Separating Palestinians from Israeli Spouses," *Associated Press* 2004.

<sup>63</sup> *Ibid.*

<sup>64</sup> "Icj Advisory Opinion on Israeli Security Fence."

stated that the Barrier itself was leading to the continued security problems and tensions between Israel and Palestine and urged Israel to abandon building both the Barrier and the West Bank settlements.<sup>65</sup>

Under the current legal situation, Palestinians and Israelis go year-to-year never knowing what marriages will be allowed, when they may have to split from their families (or when they might be reunified), or whether (in the case of Arab Israelis) their citizenship might be in question. As a result, certain Jewish and Muslim groups have come up with inventive ways to circumvent Israeli policies, as we have seen. And while many of these marriages across the border happened for love, many happened specifically for the purposes of circumventing Israel citizenship laws.

#### ***4b. Jewish-Muslim Religious Inter-marriage***

Unlike Muslim-Muslim political intermarriage, which at times is about the reunification of families and at others is about circumventing Israel's system of laws governing marriage and citizenship, Jewish-Muslim intermarriage seems to be far more about love and relationships. While Avissar and Zatar's story crosses the border, Jewish-Muslim intermarriage, especially since the passing of the Temporary Provision in 2003, occurs, when it does at all, within Israel proper. For instance, as explained above, in the southern Negev region, many Muslims are taking on multiple wives to increase their ability to have children. According to Dinero, "some of these second marriages even include native-born Jewish Israelis (including, according to one of my interlocutors, the daughter of

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<sup>65</sup> "Ban Says Israel's Construction of West Bank Wall Violates International Law, Fuels Mid-East Tensions," *UN News Centre* 2014.

a rabbi).”<sup>66</sup> Jewish-Muslim intermarriage continues to be rare within Israel. But while these marriages have always been uncommon, they now seem to be taking on a political symbolism they had never enjoyed before, regardless of the intentionality behind the unions. As Racin and Dein explain, “When individuals marry across the collective frontiers of nationality, ethnicity, and religion, concerns arise for the in-group, as there is a need to differentiate ‘me’ from ‘not me’ and ‘us’ from ‘them,’ because identity is defined by the drawing up of such distinctions.”<sup>67</sup> The intermarriage between Jews and Muslims in Israel, especially since the enactment of the 2003 Temporary Provision, calls into question Israeli identity within the Jewish, democratic state; it blurs the lines between “us” and “them.” Israeli and Palestinian couples that intermarry are able to do what the State of Israel seems unwilling to allow: cohabitation.

As stated in the introduction to this chapter, marriage within endogamous groups was the standard for much of the world. When people before the modern period entered into exogamous relationships, they did so for a number of reasons “ranging from idealism to masochism. Economic, sociological, geographical, and psychological aspects have also been posited for encouraging intermarriage.”<sup>68</sup> Through their research, Racine and Dein found that most of these factors played into the decisions made to intermarry within Israel. And while most couples admit that their motives for marriage included love, and often times rebellion, for a few couples, they saw their marriages as “symboliz[ing] a potential settlement between Jews and Arabs.”<sup>69</sup>

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<sup>66</sup> Dinero, "Neo-Polygamous Activity among the Bedouin of the Negev," 501.

<sup>67</sup> Racin and Dein, "Jewish-Arab Couple Relationships in Israel," 279.

<sup>68</sup> *Ibid.*, 281.

<sup>69</sup> *Ibid.*, 292.

Yet within some conservative groups in Israel, these marriages are seen quite the opposite way: as destroying Israeli national identity and unity. Recall in chapter one Fogiel-Bijau's concern that the identity-forming qualities of Israel's PSLs stood in the way of forming a true, unifying civil society separate from religious identity.<sup>70</sup> Jewish-Muslim intermarriage, while not a political tool (in most cases) to acquire citizenship, has become a symbol of the disunity within Israel. Fear of far-right protest groups such as Lehava<sup>71</sup> make it difficult to find couples willing to talk about what it is like to live in Israel as an intermarried couple.<sup>72</sup> The few stories one gets involve common themes: couples moving to primarily mixed towns rather than staying in predominantly Jewish towns; couples having a transition period of acceptance within their own families; and families having less problems with their peer groups and friends than generally expected.<sup>73</sup> Many flat-out reject the idea that their marriage has anything symbolically to do with the Arab-Israeli conflict. In an interview with Al-Monitor, a leading news organization for Middle Eastern news, a man under the anonymous name "Agbariyah" states: "I'm not fulfilling some vision of coexistence or anything ideological like that. . . . I met a woman 12 years ago, fell in love with her and married her. Don't put the whole conflict on us."<sup>74</sup> Public opinion, however, would do just that: make cases of intermarriage symbolic of the entire conflict.

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<sup>70</sup> Fogiel-Bijau, "Why Won't There Be Civil Marriage Any Time Soon in Israel?," 28.

<sup>71</sup> Allyn Fisher-Ilan, "Israeli Wedding of Jew, Muslim Draws Protestors Amid War Tensions," *Reuters*, August 18 2014.

<sup>72</sup> Nurit Canetti, "Jewish-Muslim Couples Tell Their Stories," *Al-Monitor*, October 26 2015; Racin and Dein, "Jewish-Arab Couple Relationships in Israel."

<sup>73</sup> Canetti, "Jewish-Muslim Couples Tell Their Stories."; Hardaker, "Love across the Israel-Palestine Divide."

<sup>74</sup> Canetti, "Jewish-Muslim Couples Tell Their Stories."



In a story similar to that of Avissar and Zatar, in 2014 a Jewish-Muslim interfaith couple, Jewish Maral Malka and Muslim Mahmoud Mansour, both from Tel Aviv in Israel, sought to marry in the Tel Aviv suburb of Rishon Lezion. Their case is not as difficult as that of Avissar and Zatar: both are Israeli citizens, and Malka had converted to Islam. What should have legally been a straightforward marriage—a lifelong Muslim and a converted Muslim in Israel marrying—became grounds for public protest on the part of Jews who disagreed with their union.<sup>75</sup> This disagreement included Malka’s own father, who was both disappointed that she converted to Islam and disapproved of her choice of husband, stating that his “problem with [Mansour] is that he is an Arab.”<sup>76</sup>

Malka and Mansour’s wedding came weeks after the end of the month-long 2014 Gaza war, and a far-right group called Lehava, known for its anti-miscegenation positions and for regularly protesting Jewish-Arab unions, showed up with roughly 200 members to protest their wedding and chant “Death to Arabs!”<sup>77</sup> Other chants are even more telling about how divided the Israeli people are about intermarriage and identity. Several protests led by Lehava chanted that Malka was a “traitor against the Jewish state” and sang songs including the lyrics “May your village burn down.”<sup>78</sup> A much smaller counter-protest of left-wing Israelis attended, holding flowers and holding signs that said ‘Love conquers all.’<sup>79</sup>

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<sup>75</sup> Fisher-Ilan, "Israeli Wedding of Jew, Muslim Draws Protestors Amid War Tensions."

<sup>76</sup> Ibid.

<sup>77</sup> Ibid.

<sup>78</sup> Leon Watson, "Jewish-Muslim Couple Forced to Hire Security and Marry Amid Protests after Israeli Court Refuses to Ban Demonstrations from Outside Reception Venue," *The Daily Mail*, August 18 2014.

<sup>79</sup> Fisher-Ilan, "Israeli Wedding of Jew, Muslim Draws Protestors Amid War Tensions."

Lest there be concern that this example is singular, the marriage itself and the organized protests were notable enough to draw the attention of President Reuven Rivlin himself. Regarding Lehava's protests, a group he had vocally opposed previously, he stated, "Such expressions undermine the basis of our coexistence here, in Israel, a country that is both Jewish and democratic."<sup>80</sup> And that is exactly what groups like Lehava, who represent much of the ultraorthodox community, intend to do—end coexistence. According to Fisher-Ilan, "Lehava spokesman and former lawmaker Michael Ben-Ari denounced Jews intermarrying with non-Jews of any denomination as 'worse than what Hitler did,' alluding to the murder of 6 million Jews across Europe in World War Two."<sup>81</sup> Because Malka herself converted to Islam (which, as explained earlier, would not have been necessary according to Islamic law), rather than being born a Muslim, her wedding became a platform for political groups to decry intermarriage and lament the loss of Jewish identity.

Jewish-Muslim intermarriage is not the only form of intermarriage present within Israel. According to a 2014 article, using statistics from the Israeli Central Bureau of Statistics, as many as one in ten marriages within Israel today is interfaith. The statistics they use cover only the year 2011, but in that year alone there were 19 Jewish-Arab couples who married in Israel or whose overseas marriages were accepted by Israel: three between Jewish men and Arab women, and sixteen between Arab men and Jewish women.<sup>82</sup> Of the nearly 60,000 marriages recognized in 2011, only .03 percent were

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<sup>80</sup> Ibid.

<sup>81</sup> Ibid.

<sup>82</sup> Judy Maltz, "Why Interfaith Marriage Is on the Rise in Israel - and Why It's a Problem," *Haaretz*, June 2 2014.

between Jewish and Arab partners. The rest of these marriages often involve a foreign partner. Nicole Maor, an Israeli attorney, states:

What we've seen quite a few cases of since last summer is non-Jewish spouses of Israelis, who come from countries that don't usually require visas to enter Israel, being stopped at the border and asked to show their visas. . . . We later discovered that the ministry did introduce a new regulation a few years ago requiring visas for such couples, but only began enforcing it over the past year.<sup>83</sup>

From this observation, the concern is rising for non-Palestinians who, even thirteen years ago, would not have had to worry about their status but now have to due to the passing of the 2003 Temporary Provision.

The lack of civil law governing marriage and nationality allows for this constant shift in definitions of marriage and the family within Israel. Hanna Lerner, discussing the 1953 Knesset, quotes MK David Bar-Rav-Hai of the Mapai Party:

I may agree that [interfaith marriage] is an unwelcome phenomenon given the current conditions of the state of Israel, yet I cannot perceive in the 20th century a state that would prohibit such an option . . . it conflicts with the development of the world, with our connections with other societies, with mutual recognition agreements with other countries. I would have liked to see what the Knesset members would say if another state were to forbid the intermarriage of Jews and non-Jews by law.<sup>84</sup>

MK Bar-Rav-Hai, stating this during the heart of conversations about citizenship and nationality surrounding the 1953 Rabbinical Jurisdiction law,<sup>85</sup> raises an challenging question: what would the point of view of Israel, and the greater Jewish Diaspora, be if any state worldwide banned Jews from marrying whomever they wished? The point, ultimately, is that Israel is the *only* state that bans Jews from marrying non-Jews, and vice

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<sup>83</sup> Ibid.

<sup>84</sup> Lerner, "Critical Junctures, Religion, and Personal Status Regulations in Israel and India," 396.

<sup>85</sup> Ibid., 401.

versa, due to the absence of civil marriage laws, which Lerner points out is quite ironic, given that both Prime Ministers David Ben-Gurion and Golda Meir were each married in civil ceremonies.<sup>86</sup> Until a solution comes to the challenges put forth by Israel's unique laws of personal status, marriages such as those described in this chapter will continue to be a method of resisting state hegemony over Israeli identity.

## 5. CONCLUSION

This chapter continued the analysis of chapters three and four, looking at the ways that exogamous marriage has become both a tool of the state of Israel to shore up its security and a tool of resistance by citizens against increasingly strict guidelines over marriage and the family. If, as Brown argues, walls are scrim on which the security of the state is projected, then marriage is one plot device that allows the play to move forward. Marriages such as that of Avissar and Zatar become headlines in the ongoing drama. Stories such as theirs do show that in many ways, marriage rights in Israel are infringed upon in ways that, were they to happen to Jewish citizens of other states, would draw the criticism of the Israeli state, if not the world. Chapter three focused on women's rights within marriage, chapter four on family rights under polygyny, and chapter five on interreligious marital rights, each of which had a racialized element. All three of these concerns will come together in the final chapter, chapter six, which details the treatment of Ethiopian Jews by the Israeli state.

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<sup>86</sup> Ibid., 397.

## Chapter Six Black, Poor, and Jewish: The Ostracism of Ethiopian Jews in Israel<sup>1</sup>

### 1. INTRODUCTION

The Beta Israel (House of Israel), which currently numbers 130,000 citizens within Israel,<sup>2</sup> is a unique Jewish community with a centuries-old history of Jewish practice in Ethiopia.<sup>3</sup> The Ethiopian community developed separately from other major Jewish communities in modern-day Israel, Iraq and Iran, and it has existed without many of the texts and traditions that currently are a part of normative Jewish practice, including a lack of knowledge of the Talmud, the Oral Torah, and *halakha* of Rabbinic Judaism, preserved in written form during the Diaspora. Using primarily the Torah as their legal guide, the Beta Israel have developed their own traditions of Sabbath observance and legal interpretation.<sup>4</sup> Due to this lack of awareness of worldwide Jewish practice after the destruction of the Second Temple, Ethiopian Judaism is often described as being much closer in practice to Biblical and Second Temple Judaism than Rabbinic and Modern Judaism. Because many Beta Israeli communities do not recognize core religious traditions within Rabbinic Judaism and also have many traditions exclusive to themselves, the communities within

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<sup>1</sup> This chapter began as a paper I presented at two conferences: the Annual Meeting of the Association of American Geographers, Tampa, Florida, April 2014, and the Annual Meeting of the ASPECT Graduate Student Conference, Blacksburg, Virginia, 2014. Many thanks to Danna Agmon, Harald Bauder, Nicholas Copeland, and Christian Matheis for their feedback on this chapter at these conferences. The paper was then edited into a chapter for an edited volume, edited by Bauder and Matheis. See Holly A. Jordan, "Black, Poor, and Jewish: The Ostracism of Ethiopian Jews in Modern Israel," in *Migration Policy and Practice: Interventions and Solutions*, ed. Harald Bauder and Christian Matheis, Migration, Diasporas and Citizenship (New York: Palgrave Macmillan, 2015).

<sup>2</sup> Flum and Cinamon, "Immigration and the Interplay among Citizenship, Identity and Career," 373.

<sup>3</sup> For more information on the formation of the Beta Israel, see Ulysses Santamaria, "Ethiopian Jews in Israel," *Dialectical Anthropology* 18, no. 3/4 (1993): 405-07.

<sup>4</sup> *Ibid.*, 406.

Israel who seek to define Jewishness as Orthodox Judaism have called the Beta Israel's status as Jews into question, especially in the legal sense for purposes of Israeli citizenship.

In spite of questions over the validity of their historical claims to Jewishness, the Beta Israel have always self-identified as Jewish and, along with other minority Jewish groups, sought to make *aliyah* (to immigrate to Israel) after the founding of the State of Israel.<sup>5</sup> Upon immigrating to the State of Israel, the Beta Israel found themselves under different living conditions than those of other immigrants and were required to live in separate housing areas from other groups making *aliyah*. The Beta Israel are unique from other groups, not only because they are one of the only Black Jewish populations worldwide, but because of Israel's heavy involvement in their lives after immigration. Different because of their skin color, their unique Jewish practices and their cultural differences, the second generation of Ethiopian Jews finds itself slipping further and further down the socioeconomic ladder, with many children never finishing high school and a juvenile delinquency and unemployment rate higher than any other community within Israel.<sup>6</sup> Some scholars argue that this rapidly increasing gap between Ethiopian Jews and other Jews within Israel is due to a shift on the part of the Israeli government away from the social welfare state of its earliest days to a "neo-liberal state with diminishing government intervention, especially in the economy, and with growing privatization,"<sup>7</sup> as a result of what Nelly Elias and Adriana Kemp refer to as an increasingly "ethnonational regime in Israel," whereby "religion and race remain central criteria for inclusion in

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<sup>5</sup> Abebe Zegeye, "The Construction of the Beta Israel Identity," *Social Identities* 10, no. 5 (2004): 591.

<sup>6</sup> Flum and Cinamon, "Immigration and the Interplay among Citizenship, Identity and Career," 375, 79.

<sup>7</sup> Ben-Eliezer, "Multicultural Society and Everyday Cultural Racism," 950.

Israel.”<sup>8</sup> While a consideration of the shifts in governing style and goals within Israel is helpful for tracking how institutional and everyday racism has persisted in Israel, it is important to examine the sites where this racism occurs—which is the focal point of this chapter.

The Beta Israel are caught in a position where even if they conform to the national religious identity, their skin color and ethnicity will be linked with the Other indefinitely. From the quality of their blood to issues of fertility to the placement of housing, discrimination against the Beta Israel is visited upon their very bodies. Israel’s discrimination toward Ethiopians is explained (though not justified) when one contextualizes this discrimination within the biopower orchestrated by modern states. This chapter addresses the overarching issue of the belonging of migrants into the national community. After a brief history of the Beta Israel, this chapter analyzes the institutional and everyday racism experienced by the Ethiopian community, exploring both why and how this racism is able to continue and what is at stake for the multicultural future of Israel. While this chapter focuses primarily on the Beta Israel, Ethiopian Jews are one of many Jewish minorities within Israel (see also Druze and Arab Palestinians, discussed in chapter four) who find the unique voices they developed in the Diaspora (and in the case of the Beta Israel, pre-Diaspora) suppressed upon immigrating to Israel.

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<sup>8</sup> Nelly Elias and Adriana Kemp, "The New Second Generation: Non-Jewish Olim, Black Jews and Children of Migrant Workers in Israel," *Israel Studies* 15, no. 1 (2010): 87.

## 2. THE BETA ISRAEL: ORIGINS, HISTORY, TRADITIONS

To understand the conditions facing the Beta Israel, it helps to first note some of the main similarities and differences between the Judaism practiced by Beta Israel and the official Orthodox, predominantly Western/White, Judaism of the State of Israel. While the origin stories of the Beta Israel vary from tribe to tribe within Jewish Ethiopian communities, two myths of origins are the most prevalent.<sup>9</sup> The first involves the Queen of Sheba, a ruler referenced in 1 Kings 10:1–13.<sup>10</sup> This Ethiopian queen traveled to the

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<sup>9</sup> There are other historical-anthropological theories explaining the presence of Jews in Ethiopia. According to Weil, “other theories refer to them variously as descendants of Yemenite Jews, Agaus (non-Semitic Ethiopians), Jews who went down to Egypt and wandered south, or even as descendants of the ancient Jewish garrison at Elephantine. Some academic research suggests that they formed as a group under the influence of Ethiopian Christian monasticism in the fourteenth century.” See Shalva Weil, “Ethiopian Jewish Women: Trends and Transformations in the Context of Transnational Change,” *Nashim: A Journal of Jewish Women's Studies & Gender Issues*, no. 8 (2004): 74.

<sup>10</sup> 1 Kings 10:1–13 (NRSV): “When the queen of Sheba heard of the fame of Solomon (fame due to the name of the Lord), she came to test him with hard questions. She came to Jerusalem with a very great retinue, with camels bearing spices, and very much gold, and precious stones; and when she came to Solomon, she told him all that was on her mind. Solomon answered all her questions; there was nothing hidden from the king that he could not explain to her. When the queen of Sheba had observed all the wisdom of Solomon, the house that he had built, the food of his table, the seating of his officials, and the attendance of his servants, their clothing, his valets, and his burnt offerings that he offered at the house of the Lord, there was no more spirit in her. So she said to the king, ‘The report was true that I heard in my own land of your accomplishments and of your wisdom, but I did not believe the reports until I came and my own eyes had seen it. Not even half had been told me; your wisdom and prosperity far surpass the report that I had heard. Happy are your wives! Happy are these your servants, who continually attend you and hear your wisdom! Blessed be the Lord your God, who has delighted in you and set you on the throne of Israel! Because the Lord loved Israel forever, he has made you king to execute justice and righteousness.’ Then she gave the king one hundred twenty talents of gold, a great quantity of spices, and precious stones; never again did spices come in such quantity as that which the queen of Sheba gave to King Solomon. Moreover, the fleet of Hiram, which carried gold from Ophir, brought from Ophir a great quantity of almug wood and precious stones. From the almug wood the king made supports for the house of the Lord, and for the king’s house, lyres also and harps for the singers; no such almug wood has come or been seen to this day. Meanwhile King Solomon gave to the queen of Sheba every desire that she expressed, as well as what he gave her out of Solomon’s royal bounty. Then she returned to her own land, with her servants.” According to the Beta Israel, the Queen of Sheba was understood to have returned home pregnant, bringing with her the Jewish religion, and Sheba and Solomon’s children became the rulers of Ethiopia (see Hanan Chehata, “Israel: Promised Land for Jews . . . As Long as They’re Not Black?,” *Race and Class* 53, no. 4 (2012): 68-69.).



Kingdom of Israel to visit King Solomon. According to legend, while there she became pregnant with his child. This story is expanded upon within the Ethiopian text, the *Kebranegest*. In this story, a son, Prince Menelik, was born from the union of the Queen of Sheba and King Solomon.<sup>11</sup> This son, born in Aksum, in Ethiopia, returns to Israel to meet his father. Solomon sends him home with a contingent of priests, who, along with Menelik, steal the Ark of the Covenant and return to Ethiopia. Menelik, upon returning to Ethiopia, establishes a Jewish community and is understood to be the progenitor of all the Ethiopian peoples, both Jewish and non-Jewish alike.<sup>12</sup>

The other commonly cited origin story of the Beta Israel comes from connections with the tribe of Dan. When the Assyrians invaded northern Israel in 722 BCE, the ten tribes living there were dispersed. And while most theories posit that they were moved either throughout the Assyrian Empire or fled south to Judah and integrated with the Jews living there, many other legends have them showing up across the globe.<sup>13</sup> Some Ethiopian communities, and some Jews outside of this region, trace the Beta Israel's lineage through this lost tribe of Dan.<sup>14</sup> While not as ancient an origin myth as that of the Queen of Sheba, references to this origin story begin to surface in Ethiopia in the 19<sup>th</sup> century, but they also appear 500 years earlier in two *responsa* (religious legal letters) written by Rabbi David ibn Abu Zimra of Safed in Northern Israel. These two letters, which explore the history of the Beta Israel, are the *halachic* precedent used by the Sephardi Chief Rabbi, who recognized

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<sup>11</sup> Weil, "Ethiopian Jewish Women," 75.

<sup>12</sup> Steven Kaplan, "Genealogies and Gene-Ideologies: The Legitimacy of the Beta Israel (Falasha)," *Social identities* 12, no. 4 (2006): 448.

<sup>13</sup> Kaplan states: "Numerous traditions claim that, rather than assimilating with the local population in exile or joining their southern brethren in the kingdom of Judah, they continued to survive as distinct tribal groups in various parts of the globe. Ibid., 449.

<sup>14</sup> Ibid.

the Beta Israelis as Jewish in 1973.<sup>15</sup> Today, the ways in which these stories are referenced are a critical part of understanding how Beta Israeli identity has changed since leaving Ethiopia and entering Israel. According to Kaplan, prior to emigrating from Ethiopia, the Beta Israel tended to favor the Sheba/Solomon narrative, which connected their heritage to royalty and the founding of Ethiopia. Since arriving in Israel, the Beta Israel have preferred the Dan story, which both makes them a unique group within Ethiopia, rather than connecting them to all the peoples (mostly Christian) of Ethiopia, and also gives them a closer connection to Judaism.<sup>16</sup>

Regardless of which of these myths is correct, the Beta Israel historically were separated from the Jewish community of Palestine prior to both the canonization of the Hebrew Bible and the writing of the Oral Torah and the Talmud. Because of the lack of additional Rabbinic texts, the Beta Israel consider themselves to be an older, purer form of Judaism. Their version of the Jewish scriptures comes from the Greek Septuagint inherited from the Egyptian communities. This translation from the Hebrew scriptures includes extra books such as Jubilees not present in the modern Hebrew canon.<sup>17</sup> In addition to having their own canon, the Beta Israel have their own holiday cycle. For instance, none of the post-biblical holidays,<sup>18</sup> such as Hanukkah, are practiced within the Ethiopian community, and their Sabbath practices are much more rigorous than modern-day Orthodox observances. In addition to not observing certain holidays, the Beta Israel have their own celebrations, the most prominent of which is Sigd. According to Edelstein:

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<sup>15</sup> Ibid., 449-50.

<sup>16</sup> Ibid., 450.

<sup>17</sup> Santamaria, "Ethiopian Jews in Israel," 407.

<sup>18</sup> Historical holidays which do not appear in the Bible.

Sigd is celebrated 50 days after Yom Kippur. In Ethiopia, each Jewish village had celebrated this holiday with a procession and [Torah] reading at a local hill or mountainside. Sigd is said to have numerous meanings: It commemorates Moses's reception of the ten commandments at Mount Sinai and may have marked the departure of the monastic community in more distant times. Finally, it has been a renewal of the covenant between the Ethiopian Jews and God and a traditional time of penitence and fasting.<sup>19</sup>

Sigd is now practiced in Israel amongst the Beta Israel, with groups numbering 30,000 gathering outside Jerusalem annually.<sup>20</sup> Finally, the Beta Israel also follow a far shorter canon written in Ge'ez instead of the traditional Hebrew found in most of the Jewish world.<sup>21</sup>

In addition to a unique canon and set of holidays, the Beta Israel have several religious and cultural practices that make them set apart from the rest of Judaism (and the Christians surrounding them in Ethiopia). Two practices are singular to women: tattooing and female genital mutilation (FGM). Unlike most of Judaism, for whom the practice is forbidden under *halakha*, the Beta Israel practice ritual tattooing. These tattoos, primarily on the hands, faces, and neck, are done both for beauty and for medicinal and spiritual purposes. Jews in the Diaspora do not practice tattooing, citing particular passages of the Torah as evidence that the practice should be forbidden.<sup>22</sup> Additionally, Jewish women in Ethiopia have performed FGM on young women for centuries, with excision being the main form of FGM practiced.<sup>23</sup> This practice has been eradicated since arriving in Israel, where

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<sup>19</sup> Monika D. Edelstein, "Lost Tribes and Coffee Ceremonies: Zar Spirit Possession and the Ethno-Religious Identity of Ethiopian Jews in Israel," *Journal of Refugee Studies* 15, no. 2 (2002): 162.

<sup>20</sup> *Ibid.*, 162-3.

<sup>21</sup> Santamaria, "Ethiopian Jews in Israel," 406-7.

<sup>22</sup> Edelstein, "Lost Tribes and Coffee Ceremonies," 159-60.

<sup>23</sup> Bruce D. Haynes, "People of God, Children of Ham," *Journal of Modern Jewish Studies* 8, no. 2 (2009): 246. The World Health Organization defines excision as "the partial or total removal of the clitoris and the labia minora (the inner folds of the vulva), with or without excision of the labia

the practice is illegal, both because FGM is illegal in Israel and because most Beta Israel women state that they do not wish to have the procedure done.<sup>24</sup> Judaism requires the circumcision of men on the eighth day, which the Beta Israel practice, but there is no requirement for FGM in the Bible or in the Rabbinical literature.

Additionally, the Beta Israel interpret the laws separating men and women differently from Rabbinic Judaism. Under Rabbinic Judaism, beginning with marriage, women are to distance themselves from men during and after their menstrual cycles and also postpartum. This is because blood is seen as making individuals ritually impure. Women, therefore immerse themselves in a *mikveh* or pool of water after each menstrual cycle and after birth to purify themselves. Ethiopians are even more conservative in their interpretation of these Torah requirements. In Ethiopia, beginning with puberty, women separate themselves in communal menstrual huts during their periods and after childbirth. This separation is not present in Rabbinic Judaism. After their cycles, women immerse themselves in natural, running water (a stream, river, etc.) before reintegrating into the family home.<sup>25</sup> This separation has become challenging in Israel itself, where housing is less communal and menstrual huts are not present or possible.<sup>26</sup> Men are required to purify themselves as well after encountering unclean items. They also have specific purification rituals associate with holidays including the New Year.<sup>27</sup> These purity practices in particular, practiced by both men and women, have separated the Beta Israel

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majora (the outer folds of skin of the vulva )." See "Female Genital Mutilation: Fact Sheet," World Health Organization, <http://www.who.int/mediacentre/factsheets/fs241/en/>.

<sup>24</sup> Weil, "Ethiopian Jewish Women," 77, 79.

<sup>25</sup> Santamaria, "Ethiopian Jews in Israel," 406-7.

<sup>26</sup> Edelstein, "Lost Tribes and Coffee Ceremonies," 160; Steven Kaplan, "The Beta Israel and the Rabbinate: Law, Ritual, and Politics," *Social Science Information* 27, no. 3 (1988): 365.

<sup>27</sup> Zegeye, "The Construction of the Beta Israel Identity," 612.

from their Christian counterparts in Ethiopia.<sup>28</sup> Kaplan explains that rather than explain their differences from Christians by physiognomy,

The Beta Israel themselves, by contrast, attribute their local distinctiveness to the 'incessant ritual ablutions' for which they were justly famous on the local scene. Such practices could only be transformed into marks of visceral difference. [...] [O]ne Falasha informed me that Ethiopians say that they can recognize a Falasha only by the heavy mineral odor of water which clings to him as a result of his incessant ritual ablutions.<sup>29</sup>

Thus, for the Beta Israel, their differences from other Ethiopians are religious and can be linked directly to their purity practices.

Finally, the Beta Israel's marriage practices are also different from those in Israel and throughout Rabbinic Judaism (see chapters one and three). In Ethiopia, while the Beta Israel practiced polygynous marital arrangements, legal marriage was supposed to be monogamous. However, many men took on secondary wives, including "a common-law wife, a concubine, a slave (*barya*), or a divorced woman [...] who was seeking "protection" in Ethiopian terms. A rich man could have several women, usually residing in different villages, so that they had little knowledge of or contact with each other."<sup>30</sup> Furthermore, "temporary" marriages were common in Ethiopian Jewish communities through the 20<sup>th</sup> century, where women would marry men for a particular period of time predetermined prior to the marriage ceremony itself. This allowed for a couple to marry without having to divorce if the marriage did not end well.<sup>31</sup> This is one way in which marriage is more

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<sup>28</sup> Weil, "Ethiopian Jewish Women," 78.

<sup>29</sup> Don Seeman, "The Question of Kinship: Bodies and Narratives in the Beta Israel-European Encounter (1860-1920)," *Journal of Religion in Africa* 30, no. 1 (2000): 110. See below for an explanation of the problematic term Falasha and its pejorative meaning as a name for the Beta Israel.

<sup>30</sup> Weil, "Ethiopian Jewish Women," 77.

<sup>31</sup> "It Is Futile to Trust in Man': Methodological Difficulties in Studying Non-Mainstream Populations with Reference to Ethiopian Jews in Israel," *Human Organization* 54, no. 1 (1995): 4.

egalitarian under the Beta Israeli law system than rigid *halakha*. While common in the Horn of Africa in both Jewish and Muslim communities, temporary marriages do not exist under Jewish *halakha* and are not recognized as official within Israel.

Within Ethiopia, the Beta Israel have maintained their Jewish practice, from the circumcision of boys to their unique dietary and purification practices, even through 1700 years of Christian rule. Yet, even within Ethiopia they have faced discrimination. The word for their community in Amharic is *Falasha*, a pejorative term meaning anything from “immigrant” in some of the more positive translations<sup>32</sup> to “pillager” or “stranger” in others.<sup>33</sup> This association with the Beta Israel as being outsiders to Ethiopia begins in the in the fourteenth century when the Christian Ethiopian emperor Yeshaq forbade any non-Christian from owning land or passing on property to their children.<sup>34</sup> The Beta Israel had no choice but to take menial jobs, including tenant farming, “metalworking, weaving, and pottery,” all of which are considered to be lower class jobs in Ethiopia.<sup>35</sup> By the twentieth century, according to their Christian coreligionists, the Beta Israel were considered to be “an occupational as well as a religious minority.”<sup>36</sup> As “others” within their own homeland, Ethiopian Jews found themselves caught between two communities: their Ethiopian community, which treats them as a separate tribe from the rest of Ethiopia, and the worldwide Jewish community, who only became aware of their existence in the mid-1800s.

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<sup>32</sup> Chehata, "Israel: Promised Land for Jews . . . As Long as They're Not Black?," 67.

<sup>33</sup> Weingrod and Levy, "Paradoxes of Homecoming: The Jews and Their Diasporas," 698.

<sup>34</sup> Seeman, "Bodies and Narratives in the Beta Israel-European Encounter," 88.

<sup>35</sup> Edelstein, "Lost Tribes and Coffee Ceremonies," 157.

<sup>36</sup> Hagar Salamon, "Blackness in Transition: Decoding Racial Constructs through Stories of Ethiopian Jews," *Journal of Folklore Research* 40, no. 1 (2003): 5.

In 1860, the London Society for Promoting Christianity Amongst the Jews (LJS) began proselytizing to the Beta Israel, bringing knowledge of their existence back to Europe. This mission was followed by the Jewish Alliance Israélite Universelle (AIU) of France, under the leadership of Joseph Halévy, who came to Ethiopia first in 1867 on a fact-finding mission based on the work of LJS. Both the LJS and the AIU encountered these Ethiopian Jews, with their radically different practices, and attempted to racialize them into the greater white Jewish community (by tracing their racial lineage separately from the Christians of Ethiopia) and to rid them of their unique ritual and purification practices.<sup>37</sup> According to Seeman, the AIU, specifically, “may have been the first Jewish organization in Western Europe to argue for an active, transnational ‘solidarity’ between Jews based on what amounted to modern ethnic (rather than traditional) criteria, expressed through their philanthropic concern for distant ‘brothers.’”<sup>38</sup> Yet this solidarity only went so far. Dr. Jacques Faitlovitch, a Polish-born French Jew and student of Halévy, upon going to Ethiopia himself, immediately sought ways to “Zionize” and “whiten” them through racialized studies of their origins.<sup>39</sup> Faitlovitch, along with his peer Henry Stern, painstakingly sought to connect the Beta Israel’s origins genetically to Abraham himself, looking at skin tones and phenotypical indicators to prove that the Beta Israel were “whiter” than their Ethiopian counterparts.<sup>40</sup> For Europeans, it was important to prove that these Jews were in fact as Jewish as they were, on the genetic level.

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<sup>37</sup> Seeman, "Bodies and Narratives in the Beta Israel-European Encounter," 86-87.

<sup>38</sup> *Ibid.*, 103.

<sup>39</sup> Haynes, "People of God, Children of Ham," 241.

<sup>40</sup> Seeman, "Bodies and Narratives in the Beta Israel-European Encounter," 101.

After the rise of Mengistu Haile Maryam's communist government in the 1970s, the Beta Israel's status as Jewish in Ethiopia was institutionally rejected. Instead, under the Mengistu regime they were referred to as ultra-fundamentalist Christians (for their strict adherence to Mosaic law, the laws of Moses found in the Torah), regardless of the fact that they had no belief in Christ.<sup>41</sup> This accusation was particularly troubling for the Beta Israel, who considered their purity laws as the very thing that had kept them separate from their Christian coreligionists. With increased violence in Ethiopia, including blatant antisemitism fostered by the Mengistu administration, the Beta Israel began to petition Israel to recognize them officially as a Jewish community allowed to make *aliyah*. Even without this formal recognition, some attempted the journey through the Sudan to Israel throughout the early 1970s, with approximately 4,000 dying on the way.<sup>42</sup> From the establishment of the state of Israel in 1948 through 1973, the Chief Rabbinate did not recognize the Beta Israel as a legitimate Jewish community. Thus, immigration was not permitted under the Law of Return. The Sephardi Chief Rabbi of Israel affirmed their Jewish heritage, using the aforementioned *responsa* of Rabbi David ibn Abu Zimra to justify their being allowed to immigrate to Israel.<sup>43</sup> The Ashkenazi Chief Rabbi recognized them two years later using the same *halakhic* justifications.<sup>44</sup>

Currently, the official Israeli position on Beta Israelis is that their lineage is traceable through the tribe of Dan, although, as was stated earlier, even this is questionable.<sup>45</sup> In three major operations, named Moses (1984), Joshua (1985) and Solomon (1991), the

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<sup>41</sup> Santamaria, "Ethiopian Jews in Israel," 406.

<sup>42</sup> Chehata, "Israel: Promised Land for Jews . . . As Long as They're Not Black?," 69.

<sup>43</sup> Salamon, "Decoding Racial Constructs through Stories of Ethiopian Jews," 6.

<sup>44</sup> Haynes, "People of God, Children of Ham," 245.

<sup>45</sup> Zegeye, "The Construction of the Beta Israel Identity," 592.



Israel Defence Forces (IDF) airlifted over 23,000 Beta Israelis to Israel. Once in Israel, the Beta Israel were taken to “absorption centers,” where they lived for two years, learning Modern Hebrew and studying Israeli culture.<sup>46</sup> For other communities, this assimilation period is a mere six months.<sup>47</sup> Furthermore, the loss of Ethiopian culture happens immediately after they crossed the border. Many Beta Israelis are given new names along with their citizenship, Hebrew names rather than Ethiopian. Chehata discusses these changes of names amongst the Beta Israel, quoting one young Ethiopian woman in particular: When we arrived they asked me my name and I replied ‘Yuvnot’. The girl didn’t understand what I said, so she said ‘Okay, from now on you’re going to be Rahel’. So I was Rahel until after my army service.”<sup>48</sup>

Along with this cultural integration, currently, 70 percent of first-generation Ethiopian immigrants find themselves unemployed due to their lack of socioeconomic integration,<sup>49</sup> either for not having strong enough Hebrew skills to pass an interview or for being rejected for positions when employers realize during their second in-person interview that they are black.<sup>50</sup> These feelings are encapsulated in the view of a twenty-two-year-old Ethiopian woman interviewed by Ben-David and Ben-Ari:

The first impression is that I am a person of color and from Ethiopia. From then on, I have to struggle with this first impression and to put everything I have into changing this first impression and create a different one. [...] I am being identified by others immediately as a person of color who came from

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<sup>46</sup> Chehata, "Israel: Promised Land for Jews . . . As Long as They're Not Black?," 70.

<sup>47</sup> Santamaria, "Ethiopian Jews in Israel," 409.

<sup>48</sup> Chehata, "Israel: Promised Land for Jews . . . As Long as They're Not Black?," 71.

<sup>49</sup> Sophie D. Walsh and Rivka Tuval-Mashiach, "Ethiopian Emerging Adult Immigrants in Israel: Coping with Discrimination and Racism," *Youth and Society* 44, no. 1 (2012): 51.

<sup>50</sup> *Ibid.*, 64-65.

Ethiopia [Africa], meaning that I am disadvantaged, ignorant, and uneducated.<sup>51</sup>

While this discrimination against minority Jewish groups within Israel is not necessarily unusual, Ethiopian Jews are the only Black population within Israel (and the only Black Jewish community worldwide). In fact, according to Germaw Mengistu and Eli Avraham, "The migration of Black Jews to Israel is one of the most unique phenomena of modern day Black history for two reasons. First, the Ethiopian Jews are the only African group that believes in Judaism. Second, they are the only Black group that immigrated to a White majority society for religious reasons."<sup>52</sup> Unlike other groups that have immigrated to Israel, however, forms of discrimination against the Beta Israel weigh far more heavily on the body and religion than other groups, including the Sephardim and Mizrahim.

In many ways, the Beta Israel are marginalized ways similar to that of the Sephardim and Mizrahim, who early in Israel's history were described as "backwards" and mentally inferior by the earliest Zionist leaders (including Golda Meir and David Ben-Gurion), but with one major difference: while the Sephardim/Mizrahim have managed to assimilate (often at the expense of their public practice), Ethiopian Jews have not. As explained by Ulysses Santamaria, while the Ashkenazim have managed to "de-Orientalize" the Sephardim and Mizrahim, even if the Ethiopians are stripped of their culture, they will still be Black.<sup>53</sup>

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<sup>51</sup> Amith Ben-David and Adital Tirosh Ben-Ari, "The Experience of Being Different: Black Jews in Israel," *Journal of Black Studies* 27, no. 4 (1997): 521.

<sup>52</sup> Germaw Mengistu and Eli Avraham, "'Others among Their Own People': The Social Construction of Ethiopian Immigrants in the Israeli National Press," *Communication, Culture & Critique* 8, no. 4 (2015): 557.

<sup>53</sup> Santamaria, "Ethiopian Jews in Israel," 410.

### 3. ISRAELI ETHNOCULTURAL DISCRIMINATION

Israel has, at least in theory, set up an assimilation process for the Beta Israel that could “nationalize” them effectively (although one could easily argue whether this is necessary or even proper). In the required two-year period at the “absorption centers,” the Beta Israel are systematically separated from other citizens, not assimilated into the greater community. As explained by Shira Offer:

Because they were considered a weak population requiring special care, Ethiopian immigrants were referred upon arrival to absorption centres. Unlike other newcomers who immigrated during the same time period, most notably immigrants from the Former Soviet Union, Ethiopian immigrants could not take advantage of the direct absorption policy, according to which immigrants using in-cash grants and other benefits are responsible for their own integration. By contrast, in the absorption centres, all the immigrants’ basic needs are provided directly by the government. These absorption centres have been criticized for isolating Ethiopian immigrants from Israeli society and creating dependency on governmental support. Indeed, moving out of absorption centres became a great challenge for many families, who continued to reside in these centres for much longer periods than intended by the government.<sup>54</sup>

While the centers become areas where families can live together, after a period of assimilation, Ethiopian children are sent to private schools (with the cost subsidized by the government) to help bridge the gap in their education. Because of this, Ethiopian students are at a disadvantage educationally when entering the Israeli school system,<sup>55</sup> often from them having to endure the cost of separation from their families and loss of cultural traditions in favor of a more “orthodox” Judaism.<sup>56</sup>

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<sup>54</sup> Shira Offer, "The Ethiopian Community in Israel: Segregation and the Creation of a Racial Cleavage," *Ethnic and Racial Studies* 30, no. 3 (2007): 464-65.

<sup>55</sup> Hanna David and Richard Lynn, "Intelligence Differences between European and Oriental Jews in Israel," *Journal of Biosocial Science* 39, no. 3 (2007): 470.

<sup>56</sup> Ben-Eliezer, "Multicultural Society and Everyday Cultural Racism," 942.

According to Uri Ben-Eliezer, the Beta Israel find themselves caught between an older “institutional racism” and a “new racism” that he refers to as “everyday” racism. Ben-Eliezer states:

The new type of racism that appeared in the second half of the twentieth century was no longer based expressly on the idea of genetic and biological differences. [...] In the new racism, the difference between ethnic or religious groups are emphasized and used as a kind of warning sign to prevent the immigrants’ integration into the society and to make clear the danger they supposedly represent to the society’s unity.<sup>57</sup>

This form of racism, according to Ben-Eliezer, has become more a part of day-to-day life in Israel after World War II, as a less institutionalized and yet culturally pervasive response to certain fascist European policies. Regarding the treatment of Ethiopian Jews in Israel, Ben-Eliezer states: “[W]ith the transformation of ethno-republican Israel to neo-liberal amid a multicultural society, cultural racism appeared in new forms as well: less as institutional racism and more as everyday racism; ‘societal’ racism’ more than ‘state racism’, and, lastly, not a semi-inclusionary discrimination, typical to the assimilation process, but an inclination towards an exclusionary racism.<sup>58</sup> In fact, according to Salamon, the use of the word “racism” to describe internal Israeli policies had been unheard of prior to the immigration of the Beta Israel. She states: “Using the terms ‘race’ and ‘racism’ in relation to internal Jewish affairs had until then been taboo in a society that reserved them exclusively for relations between Jews and non-Jews.”<sup>59</sup> Yet today, the Beta Israeli themselves look at their treatment under the Israeli government as racism, especially their required conversion to Orthodox Judaism through a process of immersion (see section

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<sup>57</sup> Ibid., 938.

<sup>58</sup> Ibid.

<sup>59</sup> Salamon, "Decoding Racial Constructs through Stories of Ethiopian Jews," 17.

3b).<sup>60</sup> Some have turned to new forms of cultural expression to voice these frustrations.

According to Haynes,

*Beta Israel* youth have widely adopted aspects of Afro-Caribbean and Afro-American culture as their own, and Shira Offer argues that poverty, segregation and social isolation have racial meaning among *Beta Israel* youth. By the late 1990s, these youths had embraced an international "Rasta" image that includes dreadlocks, hip hop and reggae club music, and Black Liberation colours (red, gold, black and green). Artists who spin reggae songs on a Jewish axis are popular in Israel. Many *Beta Israel* adolescents are finding themselves increasingly resentful and angry at being alienated from mainstream Israeli society, while they are also finding the culture of their parents' generation increasingly alien.<sup>61</sup>

In this way, Beta Israeli youth are not only rejecting Israel's cultural impositions, but they also are choosing new forms of expression beyond their own culture.

A lack of full assimilation into Israeli culture and society has directly led to the socioeconomic gap between Ethiopian Israelis and Israelis of different ethnic groups. With 70 percent of adult Beta Israelis unemployed, parents find themselves less and less able to communicate with and even raise their children, who see their parents as failures and often look to an older sibling for guidance.<sup>62</sup> In addition to this socioeconomic gap, Beta Israelis find themselves often receiving subpar medical preventative care as compared to other citizens. Because they are not assimilating culturally, nor learning Hebrew, doctors, who in Israel speak predominantly Hebrew, Russian, German or Arabic, cannot communicate with Ethiopians and often fail to recommend preventative screenings for critical medical conditions such as pap smears and mammograms.<sup>63</sup> While much attention has been paid to the institutional and everyday discrimination faced by Ethiopian Jews within Israel, far less

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<sup>60</sup> Haynes, "People of God, Children of Ham," 246-7.

<sup>61</sup> *Ibid.*, 247-8.

<sup>62</sup> Walsh and Tuval-Mashiach, "Ethiopian Emerging Adult Immigrants in Israel," 52.

<sup>63</sup> *Ibid.*, 58.

attention has been paid to the strategy behind this treatment. What follows is an analysis of how Israeli discrimination against the Beta Israel is focused specifically on their very bodies; the Beta Israel, with their unique practices, are a prime target for cultural discrimination in the realms of religious activities, the positioning of their bodies, and even their blood. Blood becomes symbolic in the Arab–Israeli conflict repeatedly, from the inheritance of citizenship and religion, to the donation of blood for the Israeli army. Though providing the Beta Israel an arguably safer home than the cities they fled in Ethiopia, through attacks, both literal and metaphorical, against the bodies, religion and blood of Ethiopian Jews, Israel discriminates against its Jewish brothers and sisters in ways far more intimate and personal than it does with other minority Jewish groups.

### **3a. The Bodies of Beta Israel**

The West Bank settlements are some of the most controversial homes and communities in the world. Yearly, the United Nations General Assembly condemns the building of Israeli settlements in the West Bank. Yet yearly, the settlements expand. Following the 1967 War, Gaza, the West Bank, and East Jerusalem came under the control of Israel. According to B'Tselem, The Israeli Information Center for Human Rights in the Occupied Territories:

As of the end of 2013, there are 125 government- sanctioned Israeli settlements in the West Bank (not including East Jerusalem and settlement enclaves within Hebron). In addition, there were approximately 100 “settlement outposts” located throughout the West Bank. The outposts do not have official government recognition, although many of them were established with governmental assistance. . . . There are an estimated 547,000 settlers in the West Bank. . . . According to data provided by the Jerusalem Institute for Israel Studies, the population of the Israeli neighborhoods in East Jerusalem numbered 196,890 people at the end of 2012. According to the [Israel Central Bureau of Statistics] , the annual growth rate for the settler population

(excluding East Jerusalem) in 2013 was more than two and a half times higher than that of the overall population in Israel: 4.4% and 1.9% percent, respectively. Furthermore, approximately 25% of the increase in the number of settlers was the result of relocation by Israelis and of the arrival of new immigrants to Israel who chose to live there.<sup>64</sup>

The answer to the question why Israel supports Beta Israel's migration while simultaneously quelling their religious and cultural practices becomes more apparent when one understands where many Ethiopian Jews were relocated upon immigrating to Israel.

Seventy percent of Ethiopian Israelis find themselves unemployed once they have immigrated to Israel. Israel offers many immigrants the opportunity for subsidized housing in the West Bank settlements. When questioned, most of the Beta Israel were unaware of the severity of the issues surrounding the settlements. They simply were happy to have a place to live.<sup>65</sup> For instance, prior to the 1860s (when the aforementioned LJS and AIU came to Ethiopia), the Beta Israel thought they were the only Jewish community left in the world,<sup>66</sup> so the nuances of the Arab-Israeli conflict are completely foreign to first-generation Ethiopian Israelis. Israel is able to use their ignorance of the geopolitical situation to continue expanding their settlement projects while simultaneously fulfilling their humanitarian "duty" to provide for these immigrants fleeing from Ethiopia. Christian Matheis notes this discrepancy, explaining that the Israeli state acts on a moral obligation to offer refuge but carries out the process in accord with political expediency detached

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<sup>64</sup> "Statistics on Settlements and Settler Population," B'Tselem - The Israeli Information Center for Human Rights in the Occupied Territories, <http://www.btselem.org/settlements/statistics>.

<sup>65</sup> Chehata, "Israel: Promised Land for Jews . . . As Long as They're Not Black?," 75.

<sup>66</sup> Mengistu and Avraham, "The Social Construction of Ethiopian Immigrants in the Israeli National Press," 561.

from morally principled treatment of immigrants.<sup>67</sup> Placing the Beta Israel in settlements was not the original plan for the integration of Ethiopian Jews. The goal was to place the Beta Israel throughout multiple cities, to help them become members of Israeli society. Instead, when not relocated to the settlements, the Beta Israel are placed in large groups in several cities throughout Israel.<sup>68</sup> The conditions of these Ethiopian communities in Israel are poor, with high instances of crime and low quality of housing. According to Chehata, not only do Ethiopian Jews number four times the average Israeli in juvenile jails, but Ethiopians refer to their own communities as “ghettos” (a view of these neighborhoods that Chehata herself confirms)<sup>69</sup>

### **3b. The Beliefs of Beta Israel**

It is important to recall that, regardless of their origins, the Beta Israel consider themselves to be Jewish. The Law of Return states, “Every Jew has the right to come to this country as an *oleh* (one who makes *aliyah*).” Yet, at the time of founding, this law did not include the Beta Israel. As explained earlier, the Law of Return was amended in 1973 to include the Beta Israel, when the Chief Rabbinate of Israel finally considered them Jewish.<sup>70</sup> However, unlike other groups, Ethiopian Jews have to go through formal conversion ceremonies to Judaism, as if they were not Jewish, because their practice is considered to be non-normative under the dominant orthodoxy. According to Kaplan, “Throughout the

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<sup>67</sup> Christian Matheis, “Refuge and Refusal: Credibility Assessment, Status Determination, and Making It Feasible for Refugees to Say ‘No’,” in *Migration Policy and Practice: Interventions and Solutions*, ed. Harald Bauder and Christian Matheis, Migration, Diasporas and Citizenship (New York: Palgrave Macmillan, 2015), 17.

<sup>68</sup> Weingrod and Levy, “Pardoxes of Homecoming: The Jews and Their Diasporas,” 699.

<sup>69</sup> Chehata, “Israel: Promised Land for Jews . . . As Long as They’re Not Black?,” 68, 71.

<sup>70</sup> Weingrod and Levy, “Pardoxes of Homecoming: The Jews and Their Diasporas,” 692.



1970s and early 1980s, Ethiopian immigrants to Israel were required to undergo a modified conversion ceremony consisting of ritual immersion (*tevila*), a declaration accepting Rabbinic law, and (in the case of males) a symbolic re-circumcision.<sup>71</sup> For male Ethiopians, this recircumcision involves drawing a symbolic drop of blood from the tip of the penis.<sup>72</sup> This is similar to practices required of any male convert to Judaism today. The main difference is, however, that the Beta Israel already self-identify Jewish.

The Beta Israel view these conversion ceremonies, especially the immersion in a *mikveh*, or purifying bath, as incredibly offensive, as the Beta Israel pride themselves on their ancient purification ceremonies. According to Chehata,

This was understandably taken as a clear insult, given that many Ethiopians consider themselves to be direct descendants of King Solomon and the Queen of Sheba and, therefore, of a purer bloodline than many of the European Jews who were calling for their 'conversion'. However, under the Law of Return, 'the Ethiopian Jews must undergo a process of conversion to Judaism in order to receive all the financial benefits of new immigrants' and, thus, must concede, however degrading the process may be.<sup>73</sup>

By 1984, the requirement of re-circumcision was lifted, but the conversion ceremony for those wishing to marry is still required.<sup>74</sup> Furthermore, the insults from these requirements on the part of the State of Israel stem from linguistic differences. According to Kaplan, the Hebrew word Israel uses to describe this ceremony is *tevila*, which translates in Amharic and Ge'ez to *temqat*, meaning baptism. Given that baptism has such loaded connotations associated with Christianity, the religion the Beta Israel had separated themselves from so wholly in Ethiopia, the Beta Israel today are highly offended when even

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<sup>71</sup> Kaplan, "The Beta Israel and the Rabbinate," 363.

<sup>72</sup> Matheis, "Refuge and Refusal: Credibility Assessment, Status Determination, and Making It Feasible for Refugees to Say 'No'," 17.

<sup>73</sup> Chehata, "Israel: Promised Land for Jews . . . As Long as They're Not Black?," 75.

<sup>74</sup> Kaplan, "The Beta Israel and the Rabbinate," 363.

the term describing the ceremony of their forced conversion is used.<sup>75</sup> Those refusing to go through conversion find themselves in a position of not being able to marry within Israel, as there is no civil court that will marry them (see chapter one).<sup>76</sup> Others will hold a formal Ethiopian ceremony but live as domestic partners rather than go through an Orthodox marriage.<sup>77</sup> Finally, illegal marriage practices, such as polygyny, have all but ended in Israel.

In contrast to the conversion ceremonies imposed on Beta Israel, there is no conversion requirements for the *olim*, or immigrants, from Russia.<sup>78</sup> As many as 300,000 of the one million Russian immigrants to Israel, who came in the 1990s fleeing Soviet persecution, have nominal connections to Judaism at best.<sup>79</sup> Unlike the *olim*, upon immigrating to Israel, the Beta Israel have been forced to convert to Orthodox Judaism, and Ethiopian *kesim* (their term for rabbis) cannot preside over the conversion ceremony itself.<sup>80</sup> Today, in many towns where the Beta Israel live, Ethiopian synagogues are completely absent. Conversely, Ethiopian children are not allowed to attend the more orthodox religious schools, most notably those run by the Chabad-Lubavitch, who do not consider the Beta Israel to be Jewish in spite of the rulings from the Chief Rabbinate and their conversions.<sup>81</sup>

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<sup>75</sup> Ibid., 365.

<sup>76</sup> Ibid., 364.

<sup>77</sup> Ibid., 368. These couples living together without being married are still entitled to a number of social benefits under Israel's social programs. See Pinhas Shifman, "Marriage and Cohabitation Law in Israeli Law," *Israel Law Review* 16, no. 4 (1981).

<sup>78</sup> Haynes, "People of God, Children of Ham," 246-47.

<sup>79</sup> Elias and Kemp, "Non-Jewish Olim, Black Jews and Children of Migrant Workers in Israel," 77-80.

<sup>80</sup> Weingrod and Levy, "Paradoxes of Homecoming: The Jews and Their Diasporas," 699.

<sup>81</sup> Chehata, "Israel: Promised Land for Jews . . . As Long as They're Not Black?," 75.

Additionally, unlike other groups who have been allowed to keep their religious leaders and traditions, Ethiopian Jews find themselves stripped of their religious leadership and ceremonies. Most *kesim*, have been defrocked and must serve as laypersons in religious ceremonies.<sup>82</sup> In fact, most Orthodox rabbis refuse to do Ethiopian-style marriages, and as of 2008,<sup>83</sup> there was only one Ethiopian *kesim* officially allowed to do ceremonies in Israel.<sup>84</sup> This lack of acceptance stands as a major concern for Kaplan: “Although the Chief Rabbis had affirmed the *communal* status of the Ethiopians as Jews, they continued to express reservations concerning the *personal* status of individuals. In particular, they voiced their concern that in Ethiopia neither conversions nor divorces were performed in a manner consistent with Rabbinic law.”<sup>85</sup> Stated in this way, Israel brought the Ethiopians in as nominally Jewish but not as officially Jewish.

This has led to a loss of religious roots for second-generation Ethiopian Jews, who speak Hebrew over Amharic and Tigrinya and attend services in Hebrew, not Ge’ez. The private schools second-generation Ethiopians attend teach Orthodox, Ashkenazi Judaism. Some of these second-generation Beta Israel respond with religious indifference, like many of their generation within Israel.<sup>86</sup> Others respond quite passionately, referring to the separation of the Beta Israel from their religion as “apartheid.”<sup>87</sup> Nevertheless, within thirty years of the first major wave of immigration, the Beta Israel are quickly losing their

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<sup>82</sup> Ibid., 75-76.

<sup>83</sup> Weingrod and Levy, "Paradoxes of Homecoming: The Jews and Their Diasporas," 699.

<sup>84</sup> Ben-Eliezer, "Multicultural Society and Everyday Cultural Racism," 944.

<sup>85</sup> Kaplan, "The Beta Israel and the Rabbinate," 362-63.

<sup>86</sup> Ben-Eliezer, "Multicultural Society and Everyday Cultural Racism," 944.

<sup>87</sup> Ibid.

unique traditions and have been homogenized into the Ashkenazim's cultural and religious hegemony within Israel.

### **3c. The Blood of the Beta Israel**

Blood has many symbolic and physical meanings within Judaism. Regarding the different roles of blood in Judaism, Anidjar states:

[W]hereas some instances of blood running are considered contaminating ("the contrast between menstrual blood, which is contaminating, and the blood of circumcision or sacrifice, which is positively marked, indicates that only some kinds of blood are contaminating"), it is unequivocally clear that these are effects of blood (tied to the function and location of blood) and that they "have nothing to do with an inherent quality of blood." More generally, blood is endowed with a wide range of significance, that is to say, with numerous effects in the Bible: "blood has different meanings depending upon how it originates and from whence it comes."<sup>88</sup>

As has been explored in previous sections, blood has many meanings within Ethiopian Judaism as well. Like Rabbinic Judaism, in Ethiopian Judaism, menstrual blood has connotations of contamination. Likewise, both Ethiopian Jews and Rabbinic Jews require the circumcision (and the shedding of blood that comes from the surgery) of boys. But the symbolism of blood has also been used to divide Ethiopian Jews from the other Jews of Israel. In perhaps the most troubling form of racism against the Beta Israel, the blood of Ethiopian Jews is treated as inferior to the blood of other citizens. Beginning in 1993, Ethiopian blood donations for military personnel were systematically frozen and disposed of rather than used. This event became known as the "Blood Affair" and caused some of the

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<sup>88</sup> Anidjar, *Blood: A Critique of Christianity*, 48.

first major uprisings of Ethiopian Jews regarding their treatment in Israel.<sup>89</sup> According to Ben-Eliezer

The reaction of the Ethiopian Jews was swift and fierce. More than 10,000 members of the community, close to 15 per cent of their total number, from infants to the aged, gathered for a demonstration outside the Prime Minister's Office in Jerusalem. It was a rare moment of truth, a collective manifestation of painful verities. The resulting violence went on for hours; dozens of demonstrators and policemen were injured.<sup>90</sup>

In spite of these violent protests, again in 2006, in the wake of the 2006 July War between Israel and Lebanon, blood donations from Ethiopian Jews were systematically frozen and destroyed after being donated. In a testimony by Gadi Yevrakan, at that time a 25-year-old law student and military lieutenant, we learn of an Ethiopian blood donor who "sits, a needle enters his body, a considerable amount of blood is drawn from him, and yet the minute he turns his head they toss his blood to the garbage."<sup>91</sup> Ethiopian Jews' sacrifice of their blood is not deemed worthy.

According to the Israeli Health Ministry, officials treat Beta Israeli blood the same way they would many from sub-Saharan African groups and they claim concerns regarding the spread of human immunodeficiency virus (HIV), with the major difference being that most of these groups are banned from donating in the first place. Beta Israel were allowed to go through the process of donation, and all of the Ethiopian blood donations were tested. But even those that tested negative for HIV was still disposed of.<sup>92</sup> Furthermore, the Health Ministry gives other examples of other "at risk" groups whose blood is not taken

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<sup>89</sup> Harriet D. Lyons and Don Seeman, "Who Is a Jew?," *Anthropology and Humanism* 37, no. 2 (2012): 259-60.

<sup>90</sup> Ben-Eliezer, "Multicultural Society and Everyday Cultural Racism," 944.

<sup>91</sup> Meital Yasur Beit-Or, "Ethiopians Outraged over Blood Disposal," *ynetnews.com* (2006), <http://www.ynetnews.com/articles/0,7340,L-3322247,00.html>.

<sup>92</sup> Salamon, "Decoding Racial Constructs through Stories of Ethiopian Jews," 17.

(homosexuals, for instance) as further justification for the disposal of Ethiopian blood.<sup>93</sup> This language puts the Beta Israel in the category of “at risk” simply because of their country of origin and skin color. The response from the Israeli Health Ministry was that it was simply following generally agreed-upon policies for blood donations originating from individuals who have spent more than a year in central Africa since 1977: “The testing the blood goes through is not enough since some of these diseases have a ‘window’ in which they are undetectable, like HIV, where even a test cannot discover if the blood is contaminated. These guidelines are not an Israeli invention and they are accepted throughout the entire modern world.”<sup>94</sup> To date, no other immigrant group or group of Jews in Israel is treated in the same way.

This treatment of blood is worrisome on its own (why not just ban donations?), but when tied to concepts of citizenship and religious lineage, it becomes even more problematic at a political level. Israeli citizenship is inherited via a legal process known as *jus sanguinis* (right of blood) along with the Law of Return, rather than by *jus soli* (right of soil; where one is born). You are Israeli because either your parents were (inheritance by blood) or because you are able to prove your Jewish heritage and immigrate under the Law of Return.<sup>95</sup> Ethiopian Jews, especially the second generation, can prove their citizenship in both ways. And yet, their blood, that very essence that carries their citizenship, is tossed away as unfit compared to that of their fellow citizens, which is particularly ironic given that the blood being donated was on behalf of the military, in which Ethiopian Jews serve (and shed their blood). This is particularly troubling when one considers the legal status of

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<sup>93</sup> Ben-Eliezer, "Multicultural Society and Everyday Cultural Racism," 944.

<sup>94</sup> Ibid.

<sup>95</sup> Ibid., 945.

an entire separate group of Ethiopians present in Israel: the *Felesmura*. The *Felesmura* are former Beta Israelis who converted to Christianity in Ethiopia within the last few hundred years. Though their lineage is Jewish, they now self-identify as Christian. These *Felesmura* are allowed to immigrate to Israel, without converting, if he or she can prove his or her matrilineal lineage (through blood) back to a Beta Israel. Even if a *Felesmura* converts back to Judaism, he or she can only make *aliyah* if he or she can prove this blood lineage.<sup>96</sup> Thus, Jewish by blood descent, without conversion, is enough to immigrate. But once in Israel, their blood is not deemed worthy, and the *Felesmura* must still convert to marry. In contrast to the dismissive practices by Israeli authorities, for the Beta Israel, blood is an important part of their community. For them, "blood is the soul."<sup>97</sup> It is what makes you Jewish. To have one's blood thrown away is to throw away the very thing that makes one Jewish. For the Health Ministry of the Israeli government to do it when citizenship is determined by bloodlines is highly insulting to the Beta Israel.

### **3d. The Babies of the Beta Israel**

Beginning in 2012, stories began surfacing from within the female Beta Israel community of forced contraception. A TV documentary entitled *Vacuum* aired interviews with Beta Israeli women, who claimed that they had been forced to accept birth control shots of Depo-Provera to enter the country ten years earlier.<sup>98</sup> These women, already in precarious situations in transit camps between Ethiopia and Israel, were told that the shots

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<sup>96</sup> Kaplan, "Genealogies and Gene-Ideologies," 450.

<sup>97</sup> Flum and Cinamon, "Immigration and the Interplay among Citizenship, Identity and Career," 374.

<sup>98</sup> Talila Neshet, "Why Is the Birth Rate in Israel's Ethiopian Community Declining?," *Haaretz*, December 9 2012.

were required to immigrate to Israel and that if they did not take them, they would not receive the benefits of citizenship. One Beta Israel woman, named Emawayish, who immigrated to Israel in 2004, states:

We said we won't have the shot. They told us, if you don't you won't go to Israel and also you won't be allowed into the Joint (American Joint Distribution Committee) office, you won't get aid or medical care. We were afraid... We didn't have a choice. Without them and their aid we couldn't leave [the transit camp]. So we accepted the injection. It was only with their permission that we were allowed to leave.<sup>99</sup>

This interview was one of thirty-five in *Vacuum*, and each of these interviews indicated varying levels of coercion on the part of the Israel Health Ministry on these women.

As Meyers explains, part of the struggles with caring for this community is that most doctors do not speak Amharic. Rather than find proper translators to give informed consent, doctors and nurses, many with good intentions, made the paternalistic decision to inoculate their patients without their permission.<sup>102</sup> While the Health Ministry initially denied these accusations,<sup>103</sup> by 2013, it not only admitted the shots had occurred, but also that it had sent out directives requiring clinics to stop giving the shots and to employ translators.<sup>104</sup>

As of 2011, 130,000 Jews of Ethiopian descent lived in Israel,<sup>105</sup> approximately 1.7 percent of the 7.59 million recognized citizens of Israel.<sup>106</sup> In Ethiopia, these communities

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<sup>99</sup> Ibid.

<sup>102</sup> Sarah Meyers, "'Ethiopians Like Injections': Stereotypes, Language Barriers and a Failure of Care," *Haaretz*, February 3 2013.

<sup>103</sup> Talila Neshet, "Why Is the Birth Rate in Israel's Ethiopian Community Declining?," *ibid.*, December 9 2012.

<sup>104</sup> "Israel Admits Ethiopian Women Were Given Birth Control Shots," *Haaretz*, January 27 2013.

<sup>105</sup> Shaiva Weil, "Israel's Ethiopian Jews Face Challenges," (2011), <http://www.isn.ethz.ch/Digital-Library/Articles/Detail/?lang=en&id=127094>.

<sup>106</sup> Neshet, "Israel Admits Ethiopian Women Were Given Birth Control Shots."



had had between 4.5 and 6.2 children on average per family, a much higher birth rate than their non-Ethiopian Jewish counterparts.<sup>107</sup> Yet, although forming such a small portion of the country, they make up 57 percent of Depo-Provera users nationwide. In the last decade alone, this has led to a 50 percent reduction in the birth rate of the Beta Israel.<sup>108</sup> The Depo-Provera shot is known for many side effects, including a decrease in fertility for at least ten months after shots are ended, increased chance of contracting chlamydia and HIV, and the possible irreversible loss of bone metal density.<sup>109</sup> The racism inherent in not wishing for Black Jews to have children stands in contrast to the need for these same Black Jews to move to Israel and live in the settlements, adding to Jewish numbers against the Palestinians. It seems that while Israel wishes for the Ethiopians to immigrate, placing them in the settlements to help increase the demographic advantage, they do not want these communities growing too quickly.

#### 4. CONCLUSION

Responding to the forced conversions, the blood scandal, their poor housing, and the birth control scandal, beginning in 2015, Ethiopian Jews began public protests of their treatment.<sup>110</sup> Israel began allowing in these Ethiopian Jews roughly forty years ago, and since that time, Ethiopians have found themselves falling lower and lower within Israeli society. Recall the evacuation of thousands of Beta Israel by the Israel Defense Forces.

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<sup>107</sup> Hadass Goldblatt and Sara Rosenblum, "Navigating among Worlds: The Experience of Ethiopian Adolescents in Israel," *Journal of Adolescent Research* 22, no. 6 (2007): 586.

<sup>108</sup> Neshet, "Israel Admits Ethiopian Women Were Given Birth Control Shots."

<sup>109</sup> Mayo Clinic Staff, "Depo-Provera (Contraceptive Injection): Risks," Mayo Clinic, <http://www.mayoclinic.org/tests-procedures/depo-provera/basics/risks/prc-20013801>.

<sup>110</sup> Judy Maltz, "Israel's Long History of Racism: What Exactly Are Ethiopian Israelis Protesting?," *Haaretz* 2015.

What might Israel stand to gain from its almost Hollywood-like liberation of the long-lost Black Jews of Ethiopia? Surely, the humanitarian side is admirable, especially after 4,000 Jews have died in the Sudan just trying to make *aliyah*. As Salamon notes:

a newspaper editor in the Kenyan capital of Nairobi suggested that the airlift might put the rest to the old 'Zionism is racism' canard. On the other hand, Mengistu Haile Maryam, the Ethiopian ruler at the time, railed that the Zionists had 'kidnapped' thousands of black Africans in order to 'to complete their ethnic collection. William Safire of the *New York Times* countered, 'For the first time in history, thousands of black people are being brought into a country not in chains but as citizens'."<sup>111</sup>

Thus, even at the time, questions over Israel's sincerity in relocating the Beta Israel surfaced as understandings of the demographic significance of the Ethiopian Jews in Israel becomes more apparent. But Israel stands to gain far more by systematically moving Ethiopian Jews to Israel and then carefully controlling where they live and how they organize their families. While only making up 130,000 citizens of Israel, their numbers are significant to aid in Israel's demographic goals toward increasing the Jewish population of the State.

In a unique blend of institutionalized and everyday racism, Israel is able to relocate Ethiopian families to its settlement projects that are internationally recognized as illegal. By placing poor, black immigrants (nearly refugees) in these places, rather than well-off, white settlers, Israel attempts to justify its highly questionable paternalistic policies by declaring that they are providing a "higher quality of life" to the Beta Israel than what they would have had in Ethiopia. This paternalism echoes of the treatment of Sephardi and

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<sup>111</sup> Salamon, "Decoding Racial Constructs through Stories of Ethiopian Jews," 7.

Mizrahi Jews in the early days of Israel and continues the orientalist policies of the Zionist founders of the State of Israel.<sup>112</sup>

In an essay written in 1948 entitled "To Save the Jewish Homeland," Hannah Arendt may have unknowingly predicted the problems of unanimity of thought and silencing of minorities currently present in Israel, as seen in the experience of the Beta Israel. In a 1944 essay entitled "Free and Democratic," just prior to the establishment of the State of Israel, Arendt analyzes the Jewish Congresses of the period, raising concerns about their unilateral decisions over defining Zionism and Jewishness:

The first evidence of the success of the 'free and democratic Jewish commonwealth' is the suppression of all free and democratic discussion. . . . [A]ll Jewish politics becomes the monopoly of professional politicians who behave like Führers, and finally it means the hardly happy transformation—but one so characteristic of our times—of a people into more or less fanaticized bands of 'believers'.<sup>113</sup>

In 1948, after the presentation of the United Nations Partition Plan for Britain's Palestinian Mandate, which divided the Mandate into two states—Israel and Palestine—with Jerusalem as an independent city, Arendt was wowed because no significant Zionist party stood against the Plan. Again stating her beliefs on the problems of unanimity, she states in 1948: "[I]t was downright tragic that in this [most crucial of all moments] the loyal opposition of the non-Zionists simply disappeared."<sup>114</sup> Arendt was concerned even at the founding of the State of Israel that the new state could turn into a hegemonic power, unilaterally defining Judaism and not allowing for any opposition of belief.

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<sup>112</sup> Chehata, "Israel: Promised Land for Jews . . . As Long as They're Not Black?," 73.

<sup>113</sup> Arendt, "'Free and Democratic,'" 232.

<sup>114</sup> "To Save the Jewish Homeland," 394.

Israel stands as a state where the Beta Israel are now afraid to protest their treatment, fearing deportation back to Ethiopia,<sup>115</sup> leading to the lack of multiple voices that Arendt cautioned against. As Santamaria noted in 1993, just after the first waves of Ethiopian immigration, Israel had a moment to reevaluate its Zionist project, to move it away from the assimilation of the “other” into an Ashkenazi/Orthodox ideal to a state that truly celebrated its multiculturalism. In the two decades since the first wave of Ethiopian immigration, the Beta Israel’s culture has been weakened. The State of Israel has succeeded in fulfilling for the Beta Israel the Passover prayer of “Next year in Jerusalem” while simultaneously ostracizing them within their own Jewish homeland.

The extensive documentation surrounding the migration and assimilation of the Beta Israel makes it possible to trace systematic discrimination. This certainly tells part of the story. The state of Israel enacts geopolitical strategies internal to settlements and externally in international politics by subjugating the Beta Israel as members of a lower racial caste. Their bodies count as fodder in a convoluted scheme of domestic and international political strategies more complex than a conventional juridical definition of institutional racism can illustrate. The Israeli state’s racialization of the Beta Israel calls attention to the indignities at this particular site, and presents a case example for what may occur elsewhere in the world.

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<sup>115</sup> Ben-Eliezer, "Multicultural Society and Everyday Cultural Racism," 942.

## Conclusion: The Future of the Liberal State

I began this dissertation asking how a state that claimed to be both liberal and democratic while simultaneously vowing to protect the religious traditions of its citizens, especially its *Jewish* citizens, could also enact laws and support policies that infringed upon the rights of particular religious and non-religious individuals, including religious and secular Jews. I began to answer this question by tracing the history of political Zionism through its liberal, primarily secular thinkers. When political Zionists and Israel's founders, even from the earliest days, claimed to be a part of the liberal, democratic West, theorists are given the tools (and tacit permission) to analyze Israel by way of the qualities that make up liberal states: namely some version of a secularized, tolerant government.<sup>1</sup> Thus, it is proper that this dissertation began with concerns about the liberal state in Israel's unique historical, political, and legal context. Recall Butler's concern that scholars who critique the State of Israel are automatically categorized as antisemitic.<sup>2</sup> By beginning in conversations on postcolonialism, nationalism, liberalism, and racism—rather than beginning from the standpoint of religion—I was able to evaluate the challenges to individuals that come from a lack of civil marriage options in Israel in the same way I would any other state. This does not mean that religion, and specifically Judaism, is *not* a key component of this conversation. Religion was brought in where it supplemented concerns about the law or where historical context for particularly cultural systems was needed.

Using personal status laws as the foundations for my inquiry, this dissertation thus explored the changing nature of political rights in Israel, from its founding through the

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<sup>1</sup> Cavanaugh, *The Myth of Religious Violence*, 174.

<sup>2</sup> Butler, *Parting Ways*, 3.

present day. With personal status laws as my main focal point of analysis, I investigated how these laws and have both affected and have been deployed by four key groups within Israel: Jewish women, polygynous individuals, interfaith and exogamous couples, and Ethiopian Jews. In each of these groups I found that there are basic inequalities between citizens in Israel today that emerge from decisions made to retain earlier Ottoman and British Mandatory laws governing marriage, from amendments to these laws passed by the Knesset when deemed necessary, and from the lack of civil marriage alternatives. Additionally, these amendments from the Knesset further limit religious expressions of marriage, making particular forms of marriage within Jewish, Muslim, and Druze communities illegal today in Israel. Thus, today, not only are civil marriage rights not protected in Israel, but certain religiously approved rights, such as Muslim-Jewish intermarriage, are not protected as well.

At the beginning of this research, I assumed that marriage had always been caught up in definitions of Jewish identity within Israel. What I found is that one cannot separate marriage from issues of religious identity within Israel, both because there are no civil alternatives for marriage and because marriage itself became a mechanism of power through which Israel both attempted to dictate matters of security and to maintain control over its demographic goals (see especially chapters three and five). In this way, systematic changes enacted by the Knesset, often with the support of the religious leadership, tell a greater story about growing ethnocentrism and racialism within the Israeli State, a story that finds Jewish expressions of marriage and the family being regulated to support state security. These laws have remained in place because to introduce civil definitions of marriage and nationality now would force Israel to extend equal rights to minorities within

Israel, including Palestinians<sup>3</sup> and Jews of color, both groups whose marginalization has allowed Israel to continue shaping national identity from within a political Zionist frame. By retaining the PSLs from the Ottoman *millet* system without *also* instituting civil laws and courts governing personal status, Israel from its first moments instituted a legal system that could not ensure equality for all citizens under the law and could therefore not live up to its claims of being liberal or of ensuring the equality of its citizens under the law.

With increasing concerns over security, marriage has become a focal point of controlling Israeli identity, demographics, and religion. Those against civil marriage argue that introducing civil marriage in Israel becomes a way of dividing the nation. While it would be imprudent to downplay the importance of religious authorities relative to the ongoing struggle for civil marriage rights, there are larger factors at play: ethnic, racial, cultural, national, and ideological concerns. Israel's lack of civil laws governing matters of personal status, especially in a globalizing West that allows for marriage rights for all-new communities (LGBT individuals, for instance), and even more so in a West that increasingly allows Jews rights under civil law in the Diaspora, is not without its Israeli challengers. A poll reported on by the Jewish newspaper *Haaretz* in April 2016 shows that sixty percent of Israeli Jews are in favor of American Jewish coalitions that are lobbying for civil marriage to be introduced in Israel.<sup>4</sup> If sixty percent of Jews are in favor of changing the law to allow for civil marriage, the Knesset may no longer be able to justify voting civil marriage laws.

This analysis is only a part of what could be a much larger genealogy of marriage in Israel, a genealogy that could include, for instance, the challenges faced within the Christian

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<sup>3</sup> *Ibid.*, 214.

<sup>4</sup> "Most Israeli Jews Encourage U.S. Jewry's Guidance in Religious Policy, Poll Shows," *Haaretz* 2016.

communities<sup>5</sup> and questions being raised today by the increasingly public LGBT communities of Israel.<sup>6</sup> For the purposes of this dissertation, however, I stayed I focused principally on how Jewish citizens with diverse backgrounds are impacted by changes in PSL. As Israel so often asserts, it is a *Jewish* state. While analyzing the experiences of other non-Jewish groups within Israel is a productive study and deserves attention, for my own project, I felt it necessary to explore whether the homeland for the Jews can call itself a homeland for *all* Jews and to focus primarily on inequalities, with regard to personal status, faced by Jews in a Jewish state.

My concerns are not wholly new, and neither are they merely my own. Isaiah Berlin was also concerned regarding definitions of religion being bound into definitions of Israel as a liberal state. Writing in 1959, for Berlin, Israel needed to be a “modern liberal state, . . . secular in character,” adding that “[T]he civil status of the State of Israel must be sharply and definitively divided from Judaism as an established religion.”<sup>7</sup> Yet, definitions of Judaism, Jewishness, and considerations of how they factor into citizenship have all been at play since the founding of the state itself. The earliest leaders of Israel wished to create a state in which Jews could safely practice their Judaism, and leaders’ own understandings of the Jewish faith informed their views of the manner in which religion would figure in the

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<sup>5</sup> See Alisa C. Lewin, "Marriage Patterns among Palestinians in Israel," *European Journal of Population / Revue européenne de Démographie* 28, no. 3 (2012); Justus Reid Weiner, "Palestinian Christians: A Minority's Plea for Rights Silenced by the Politics of Peace," *Journal of Human Rights* 4, no. 3.

<sup>6</sup> See Yoav Dotan, "The Boundaries of Social Transformation through Litigation: Women's and Lgbt Rights in Israel, 1970-2010," *Israel Law Review* 48, no. 1 (2015); Zvi Triger, "Fear of the Wandering Gay: Some Reflections on Citizenship, Nationalism and Recognition in Same-Sex Relationships," *International Journal of Law in Context* 8, no. 2 (2012).

<sup>7</sup> Berlin, "Letter to Ben-Gurion, 1959," 672.



law. The absence of a separation between Jewishness and Israeli identity begins the inherent paradox of the state of Israel as a Jewish, *liberal* state.

Through its attempt to exert control over the population through demographic inducements and prohibitions, Israel has fallen into much the same pattern of other imperial powers before it. In her study of Foucault's presentation of biopower, Stoler explains that the "fixed and firm European bourgeois order of the nineteenth century was one that forged its changing and porous parameters around the biopolitics of race. Biopower may have been a uniquely bourgeois form of modern power, but it was also an inherently imperial one."<sup>8</sup> And yet, as Foucault explains in *The History of Sexuality Volume One*, "[T]he representation of power has remained under the spell of monarchy. In political thought and analysis, we still have not yet cut off the head of the king. Hence the importance that the theory of power gives to the problem of right and violence, law and illegality, freedom and will, and especially the state and sovereignty."<sup>9</sup> And after looking at the pervasive inequality in Israel, and how that inequality is perpetuated by a State that remains committed to a PSL system lacking basic civil marriage options, it becomes apparent that in Israel, the metaphorical king's head, represented in Israel by the Prime Minister, the Knesset, and other members of the government, is still quite tightly affixed to his shoulders. Sovereignty and power is held tightly enough by the State of Israel that the majority of the country, from secular and liberal Jews to Muslims and the Druze, now lives in a state of under laws of personal status that seems insurmountable. And yet, in some ways, the king's crown is showing its age, its cracks. Critics like Butler are finding ways to

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<sup>8</sup> Stoler, *Race and the Education of Desire*, 207.

<sup>9</sup> Foucault, *The History of Sexuality*, Vol. 1.

critique the state from within political theory without the fears of charges of antisemitism.

Ethiopians protest in the streets regarding their treatment under the government.

Inherently racist laws, such as the 2014 Law of the Nation, have failed to pass two Knessets and led to the dissolving of the Knesset and the vote for a new prime minister. In these ways, The anxieties, the paradoxes, the internal problematics within liberalism are being revealed in Israel, and we can hope that the voices of the people of Israel will increasingly be heard in demanding equal rights for all citizens under the law.

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