

The Agunah Problem and Israel's Law of the Land

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Israel is both a Jewish state and a democracy. It is governed by civil and religious law (especially Jewish and Muslim law, which govern areas pertaining to family law).

Although there is no constitution, eleven basic laws with constitutional status have been passed over the years. The Basic Law: Human Dignity and Liberty, was passed in 1992. Among other things, it establishes that a person's physical and moral wellbeing, as well as the integrity of his or her property, are protected by law.

Israelis should be incensed not only by the fact that these rulings contradict the principles of justice and impartiality that are required by Torah law, but also by the rulings' affront to Israeli democracy.

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Jewish family law applies to Israel's Jewish citizens, who can only get married and divorced under the auspices of the state rabbinic courts on the basis of religious law. Rabbinic law recognizes the laws of the land, *dina de-malkhuta dina*, a ruling attributed to Samuel, the first generation *amora* (talmudic sage) and head of a rabbinic academy in Babylonia, in the third century C.E.¹

While the scope of this law has been debated by the rabbis over the centuries,² its basic thrust is that the king (or, today, the state) has authority to legislate — as long as it does not contradict Jewish law — so that peace in the land is kept.

While couples getting divorced in Israel can settle all related issues, such as property and child custody, in family court, the divorce itself must be arranged in rabbinic court. Jewish law requires that a husband give a *get* (Jewish writ of divorce) of his own free will. Therefore, if the husband refuses, the wife is chained to him (*agunah*) and cannot remarry. Any children she has from another man will be considered *mamzerim* (bastards according to Jewish law), and the marriage possibilities of those children will be severely limited. Recalcitrant husbands sometimes resort to extortion and demand child custody or property, even if these issues have already been resolved in family court as conditions for giving the *get*.

Rabbinic courts should apply the halakhic (Jewish legal) tools at their disposal to resolve these issues in a fair and timely manner, ensuring that a husband cannot extort his wife in this fashion. *Dayanim* (rabbinic court judges)

are expected to rule in a just way, with total impartiality.³

For example, when a marriage has ended, when the couple has not lived together for an extended period of time, *dayanim* should use appropriate halakhic resources to prevent a woman from being hostage to unreasonable demands; those demands infringe not only on Jewish law, but also on the law of the land — *dina de-malkhuta dina* — as defined in The Basic Law: Human Dignity and Liberty. Israeli society views the failure to expedite a divorce in such circumstances as an infringement of the tenets of democracy (to not discriminate because of religion, race, or sex) as well as Israel's Declaration of Independence.

One phenomenon that surfaces in rabbinic court rulings is the *dayanim's* acquiescence to conditions stipulated by the husband — mainly regarding issues related to the children or to common property, even if these are unreasonable. Some *dayanim* are misusing the responsum of the Maharshdam (R. Samuel of Medina, Salonika, 1506–1580), who ruled that when a condition is practically impossible to fulfill (for example, if the husband stipulates that after the divorce his wife will no longer be able to visit her father's home), a husband can be compelled to divorce his wife without her agreeing to the condition he stipulated. However, when a condition is easy to fulfill, the wife is expected to agree to it as a condition for the divorce and the rabbinic court will not, then, compel the husband to grant the divorce.⁴

Other rulings that continue to disturb a sense of justice are that some rabbinic courts have accepted demands by husbands, even some who were violent and had been incarcerated by civil courts. Very often, the financial rights of the wife according to Israeli civil law are denied by *dayanim* because of Torah law. A husband might also demand that the decisions of the family court be rescinded and that the rabbinic court decide on all issues, or refuse to pay the child support as ruled in family court.⁵

These conditions seem to run contrary to the original intention of the Maharshdam, who recognized a husband's right to place a condition on the divorce as long as the condition was easy to fulfill.

¹ Babylonian Talmud, *Baba Kama* 113a-b and parallel sources

² See Talmudic Encyclopedia, Vol. 7, pp. 295-308, s.v. *dina de-malkhuta dina*.

³ Leviticus 19:16, Rashi ad. loc., Midrash Tannaim on Deuteronomy 16:18, etc.

⁴ Maharshdam Responsa, Even Ha'ezer 41.

⁵ See Rabbi Shlomo Dichovsky's class on "Compelling Divorce and Us" as recorded by his students at <http://www.etzion.org.il/dk/5768/1136mamar1.html>

Israelis who are concerned with civil law should be incensed not only by the fact that these rulings contradict the principles of justice and impartiality that are implicit in Torah law, but also by the rulings' affront to Israeli democracy that these rulings imply, since all Jews are bound by *dina de-malkhuta dina*. The rulings

imply discrimination against women, which is repudiated by the Declaration of Independence and rejected by the Basic Law: Human Dignity and Liberty, according to which all citizens, male and female alike, are ensured that they will be free to live in dignity as long as they abide by the rule of law. 



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After Madoff: An Rx for Communal Health

SHMARYA ROSENBERG

As the scope of Bernard Madoff's massive Ponzi scheme became clear, a friend who holds a PhD in finance tried to cope with the enormity of it all the way Jews have often coped with bad news. Like the apocryphal Jew reading *Der Stürmer* for the good news — “we” own the banks, “we” control the media, “we” are rich and powerful and in control — my friend quipped that the one good thing about what Madoff did is that it can't get worse.

Unfortunately, it can and probably will, unless we act to stop it.

To be sure, every ethnic group and religion has its criminals — from petty thieves and killers to big-time swindlers and mass murderers. As we all should have learned long ago but still haven't, religion doesn't provide immunity from criminal impulses. In fact, what it often does — and what it did in Madoff's case — is provide easy access to a large pool of trusting victims. As I write this, there is an alleged South African Madoff, an alleged Florida Madoff, and even an alleged Israeli ultra-Orthodox Madoff, and this brief list is by no means complete. Each preyed on — and prayed with — many of his victims.

But these Madoffs aren't alone. Here's an abridged list of a few very identifiably Jewish Jews currently in trouble with the law:

- A Hasidic kosher meat provider convicted on 86 counts of bank, wire, and mail fraud, as well as money laundering and aiding and abetting, who is still facing immigration law charges. He, his father, and others also stand accused of more than 9,000 counts of child labor violations.
- An ultra-Orthodox rabbi convicted of cheating poor, illiterate Eastern Europeans out of their life savings in a crooked mortgage scheme. After his prison sentence, on his return to Lakewood, N.J., he was greeted as a hero at a festive banquet held in his honor and attended by the town's

leading ultra-Orthodox rabbis.

- An ultra-Orthodox woman in New York whose product diversion scam allegedly fleeced major corporations around the U.S. out of hundreds of millions of dollars.
- New Jersey and Brooklyn-based Syrian rabbis accused of money laundering, and the Hasidic rabbi in Brooklyn arrested with them who was accused of organ trafficking.
- Ultra-Orthodox child rapists and abusers — more than 20 in Brooklyn alone — and an even larger number of rabbis and communal leaders who enable them.

Enable them?

As Dov Hikind, an Orthodox New York State Assemblyman from Brooklyn recently noted, “If you're a child molester, the best community to come to [are the ultra-Orthodox communities of] Borough Park, Flatbush, Lakewood, or Monroe. Your chances of being arrested are much smaller because people don't press charges. Even if a rabbi gets kicked out of a yeshiva for doing things, he goes to another yeshiva. No one does anything about it.”

Two common threads run through many cases from the Orthodox community. The first is a Jewish law that prohibits speaking badly of another Jew, even if what is said is true. The second is another Jewish law that prohibits turning over a Jewish criminal to secular authorities. While some writers may claim that Jewish law doesn't prohibit turning in a Madoff or a molester, or point to cases in which a Madoff or a molester was turned in, these cases are exceptions and not the rule, and authorities they quote are matched by other authorities that say one is forbidden to do so. Tell your average non-Orthodox Jew that Jewish law forbids calling police on the Jew who sexually molested her child or raided her retirement fund, and she'll call anyway. Tell it to an Orthodox Jew, especially an ultra-Orthodox Jew, and odds are she won't.

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